



## Impact Analysis on Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

#### **House Bill No. 660**

#### *As Engrossed*

#### *(Patron Prior to Engrossment – Bell)*

**Date Submitted:** 2/6/04

**LD #:** 04-7552232

**Topic:** Aggravated sexual battery through the victim's mental incapacity

#### **Proposed Change:**

The proposed legislation amends § 18.2-67.3 to define *any* sexual abuse accomplished through the victim's mental incapacity as aggravated sexual battery. Under existing *Code*, sexual abuse of a victim who is mentally incapacitated is not defined as aggravated sexual battery unless the act is committed against a child who is 13 or 14 years of age, the act causes serious bodily or mental injury, or the offender used or threatened to use a dangerous weapon. The proposal removes the additional criteria found in current *Code* for victims who are mentally incapacitated. The proposal does not change or modify the punishment level specified by this statute (1 to 20 years).

#### **Data Analysis:**

According to the fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database, there were 126 convictions for aggravated sexual battery of a victim 13 years of age or older in violation of § 18.2-67.3. The majority, (61%) were sentenced to a state-responsible (prison) term, 20% received a local-responsible (jail) sentence. The remaining 19% did not receive an active term of incarceration.

According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, 408 offenders held pre- or post-trial were convicted of misdemeanor sexual battery. Of these, the majority (91%) were sentenced to local-responsible (jail) terms with a median sentence of 5.3 months. Four percent of these offenders received probation and the remaining 5%, convicted of additional charges, received state-responsible (prison) terms with a median sentence of three years. The data are not sufficiently detailed to determine if any victims in these cases were mentally incapacitated or physically helpless at the time of the offense.

#### **Impact of Proposed Legislation:**

Because the proposed legislation expands the definition of aggravated sexual battery, the proposal may have an impact on the state-responsible (prison) bed space needs of the Commonwealth. However, the databases available to the Commission are insufficient to provide information on the number of new convictions for aggravated sexual battery that may result under the proposed legislation. No adjustment to the guidelines would be necessary under the proposal.

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The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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