



## Impact Analysis on Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 718 As Engrossed (Patron Prior to Engrossment – Shannon)

Date Submitted: 2/5/04

LD #: 04-6645502

Topic: Definition of sexual abuse

#### Proposed Change:

This proposal amends § 18.2-67.10 to expand the definition of sexual abuse to include instances where the complaining witness is under the age of 13 and the accused causes or assists the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts without the use of force.

The definition of sexual abuse is referred to in crimes under §§ 18.2-67.3 and 18.2-67.4. Currently, sexual abuse is defined as (1) intentional touching of the complaining witness's intimate parts or the material directly covering such intimate parts, (2) forcing the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts, or (3) forcing another person to touch the complaining witness's intimate parts or material directly covering such intimate parts, with the intent to sexually molest, arouse, or gratify any person.

#### Data Analysis:

Based on FY2001 and FY2002 Local Inmate Data System (LIDS) data, 436 offenders held pre- or post-trial in jail were convicted under § 18.2-67.4. Generally, offenders convicted a non-felony Sexual Battery and given a state-responsible (prison) sentence also were convicted of an accompanying felony charge.

#### Background Information for Offenders Confined in Jail Between 7/1/2000 and 6/30/2002

Non-Felony Sexual Assault Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local Responsible Sentence
Sexual Battery (Class 1 misd.)	432	3.7%	92.6%	3.7%	6 months
Sexual Battery of inmate etc. by DOC/jail etc. employee (Class 1 misd.)	4	0%	100%	0%	6 months

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.

Data Source: FY2001 and FY2002 Local Inmate Data System (LIDS) database

Based on FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 596 offenders were convicted under § 18.2-67.3. Median sentences for these sentencing events, which may include other offenses, range from 4 years to 5.4 years.

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.

**Background Information for Offenders Sentenced Between 7/1/2000 and 6/30/2001**

Felony Sexual Assault Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State Responsible Sentence
Aggravated Sexual Battery, vict < age 13 (F9)	446	13%	9%	78%	5.38 yrs.
Aggravated Sexual Battery, by force threat, intim or via mental incap/helpless of victim (F9)	150	15.3%	17.3%	67.3%	4 yrs.

Data Source: FY2001 Pre/Post-Sentence Investigation (PSI) database

**Impact of Proposed Legislation:**

The proposed legislation may affect state-responsible (prison) bed space needs by expanding the definition of sexual abuse. However, databases are insufficient to determine how many, if any, additional convictions will result from the expansion of this definition.

Convictions under the felony provisions of § 18.2-67.3 are covered by the sentencing guidelines as the primary offense. The misdemeanor provisions of § 18.2-67.4 are not covered by guidelines as the primary offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the sentencing guidelines would be necessary under the proposal.

The Department of Juvenile Justice (DJJ) does not believe that the proposal will affect Juvenile Correctional Center (JCC) bed space needs.

**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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