

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 185

*An Act to amend and reenact §§ 18.2-67.3, 18.2-361, 18.2-370 and 18.2-370.1 of the Code of Virginia, relating to reformation of sexual offenses against children by a parent or grandparent; penalties.*

[H 2564]

Approved March 20, 2005

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-67.3, 18.2-361, 18.2-370 and 18.2-370.1 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-67.3. Aggravated sexual battery; penalty.

A. An accused shall be guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, and

1. The complaining witness is less than 13 years of age, or
2. The act is accomplished through the use of the complaining witness's mental incapacity, or
3. *The offense is committed by a parent, step-parent, grandparent, or step-grandparent and the complaining witness is at least 13 but less than 18 years of age, or*

3 4. The act is accomplished against the will of the complaining witness by force, threat or intimidation or through the use of the complaining witness's physical helplessness, and

- a. The complaining witness is at least 13 but less than 15 years of age, or
- b. The accused causes serious bodily or mental injury to the complaining witness, or
- c. The accused uses or threatens to use a dangerous weapon.

B. Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of not more than \$100,000.

§ 18.2-361. Crimes against nature; penalty.

A. If any person carnally knows in any manner any brute animal, or carnally knows any male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, he or she shall be guilty of a Class 6 felony, except as provided in subsection B.

B. Any person who ~~carnally knows by the anus or by or with the mouth~~ *performs or causes to be performed cunnilingus, fellatio, anilingus or anal intercourse upon or by* his daughter or granddaughter, son or grandson, brother or sister, or father or mother ~~shall be~~ *is* guilty of a Class 5 felony. However, if a parent or grandparent commits any such act with his child or grandchild and such child or grandchild is at least ~~thirteen~~ 13 but less than ~~eighteen~~ 18 years of age at the time of the offense, such parent or grandparent ~~shall be~~ *is* guilty of a Class 3 felony.

C. *For the purposes of this section, parent includes step-parent, grandparent includes step-grandparent, child includes step-child and grandchild includes step-grandchild.*

§ 18.2-370. Taking indecent liberties with children; penalties.

A. Any person ~~eighteen~~ 18 years of age or over, who, with lascivious intent, ~~shall~~ knowingly and intentionally ~~commit~~ *commits* any of the following acts with any child under the age of ~~fourteen~~ 15 years ~~shall be~~ *is* guilty of a Class 5 felony:

(1) Expose his or her sexual or genital parts to any child to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person; or

(2) [Repealed.]

(3) Propose that any such child feel or fondle the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child; or

(4) Propose to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361; or

(5) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding subdivisions of this section.

B. Any person ~~eighteen~~ 18 years of age or over who, with lascivious intent, knowingly and intentionally receives money, property, or any other remuneration for allowing, encouraging, or enticing any person under the age of ~~eighteen~~ 18 years to perform in or be a subject of sexually explicit visual material as defined in § 18.2-374.1 or who knowingly encourages such person to perform in or be a subject of sexually explicit material; shall be guilty of a Class 5 felony.

C. Any person who is convicted of a second or subsequent violation of this section shall be guilty of a Class 4 felony; provided that (i) the offenses were not part of a common act, transaction or scheme, (ii) the accused was at liberty as defined in § 53.1-151 between each conviction, and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

D. *Any parent, step-parent, grandparent or step-grandparent who commits a violation of either this*

*section or clause (v) or (vi) of subsection A of § 18.2-370.1 (i) upon his child, step-child, grandchild or step-grandchild who is at least 15 but less than 18 years of age is guilty of a Class 5 felony or (ii) upon his child, step-child, grandchild or step-grandchild less than 15 years of age is guilty of a Class 4 felony.*

§ 18.2-370.1. Taking indecent liberties with child by person in custodial or supervisory relationship; penalties.

A. Any person ~~eighteen~~ 18 years of age or older who, *except as provided in § 18.2-370*, maintains a custodial or supervisory relationship over a child under the age of ~~eighteen~~ 18, ~~including but not limited to the parent, step-parent, grandparent, step-grandparent, or who stands in loco parentis with respect to such child~~ and is not legally married to such child *and such child*, ~~and is not emancipated~~ who, with lascivious intent, knowingly and intentionally (i) proposes that any such child feel or fondle the sexual or genital parts of such person or that such person feel or handle the sexual or genital parts of the child; or (ii) proposes to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361; or (iii) exposes his or her sexual or genital parts to such child; or (iv) proposes that any such child expose his or her sexual or genital parts to such person; or (v) proposes to the child that the child engage in sexual intercourse, sodomy or fondling of sexual or genital parts with another person; or (vi) sexually abuses the child as defined in § 18.2-67.10 (6), shall be guilty of a Class 6 felony.

B. Any person who is convicted of a second or subsequent violation of this section shall be guilty of a Class 5 felony; provided that (i) the offenses were not part of a common act, transaction or scheme; (ii) the accused was at liberty as defined in § 53.1-151 between each conviction; and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$351,875 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.**