



## Impact Analysis on Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### **House Bill No. 2248** **Amendment in the Nature of a Substitute** **(Patron Prior to Substitute – Bell)**

**Date Submitted:** 2/16/2005

**LD #:** 05-5564232

**Topic:** Sex crimes against spouses

#### **Proposed Change:**

This proposal amends the *Code of Virginia* to eliminate the spousal exception in forcible sodomy and object sexual penetration statutes. The proposal removes language that, under existing *Code*, restricts prosecution for marital forcible sodomy or marital object sexual penetration under § 18.2-67.1 or § 18.2-67.2 to cases in which the spouses were living apart or there was bodily injury caused by force or violence. By removing this restriction, the statute that defines the crime of marital sexual assault (§ 18.2-67.2:1) becomes unnecessary and is repealed under the proposal. Numerous other sections of the *Code* are revised or repealed to accommodate the substantive changes.

Prior to fiscal year (FY) 2003, the crimes of rape, forcible sodomy and object sexual penetration when committed by the spouse of the victim, residing in the same home and without causing injury could be charged under marital sexual assault (§ 18.2-67.2:1). Beginning in FY2003, the exception made for a spouse committing rape was removed from § 18.2-61, but remained in the statutes for forcible sodomy (§ 18.2-67.1) and object sexual penetration (§ 18.2-67.2).

Under current Code, marital sexual assault is a felony punishable by imprisonment of 1 to 20 years. Rape, forcible sodomy and object sexual penetration are punishable by five years to life in prison.

#### **Data Analysis:**

According to the FY2003 and FY3004 Local Inmate Data System (LIDS), which contains information on persons held pre- or post-trial in local jails, three offenders were convicted under the current crime of marital sexual assault. Of these, two received local-responsible (jail) terms of six and seven months, respectively. The remaining offender received a state-responsible (prison) term of three years.

By removing the “spousal exception” and the crime of marital sexual assault, as proposed, these offenses could be prosecuted as either forcible sodomy or object sexual penetration. Nearly all offenders convicted of forcible sodomy or object sexual penetration, according to the FY2002 and FY2003 Pre/Post-Sentence Investigation (PSI) database, are sentenced to prison. The

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median prison sentence (after suspended time) for forcible sodomy is 12 years; the median prison sentence (after suspended time) for object sexual penetration is 9.5 years.

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

Because the proposed legislation eliminates the remaining “spousal exceptions” in sexual assault cases, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The proposal has the effect of increasing the penalty for forcible sodomy and object sexual penetration involving a spouse from 1 to 20 years (penalty for marital sexual assault under § 18.2-67.2:1) to a range of 5 years to life in prison. Increasing the statutory maximum from 20 years to life will not have an impact within the six-year window required by § 30-19.1:4 for fiscal impact analyses. Increasing the statutory minimum penalty from one to five years may result in an increased need for state-responsible (prison) beds. This impact is difficult to assess because judges may suspend time from the statutory minimum specified in *Code* for nearly all crimes, but a jury must impose the statutory minimum and may not suspend any portion of the sentence (although a judge in Virginia is permitted by law to suspend all or a portion of a sentence imposed by a jury, judges let the jury sentence stand in about 75% of the trials with a jury).

To calculate the minimum potential impact of this proposal, the analysis focused on sentencing in jury cases; sentences were increased to the proposed statutory minimum for the proportion of cases sentenced by a jury (and judicial adjustment of jury sentences was taken into account). Eliminating the provisions that allow for deferral of disposition, counseling and dismissal of charges in spousal cases tried without a jury is unlikely to result in additional prison beds because judges may suspend the all of the sentence imposed for this offense. The net high impact on state-responsible bed space needs is approximately two beds by June 2011.

The bed space requirements for local-responsible (jail) inmates may also be affected. It is expected that there will be a decreased need of a partial bed statewide by June 2011, for a savings to the state of \$2,259 (using FY2003 jail inmate costs) for reimbursement to localities. There would also be a savings for the localities of \$1,876 for the same partial bed.

Sentencing guidelines would be affected by the proposal. Should the crime of marital sexual assault be removed from the *Code*, the Virginia Criminal Sentencing Commission will need to be revised the guidelines to reflect this change.

### **Estimated Six-Year Impact in State-Responsible (Prison) Beds**

FY06	FY07	FY08	FY09	FY10	FY11
0	0	1	1	2	2

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$43,177 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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**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2004.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in August 2003.
3. Cost per prison bed was assumed to be \$22,854 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2003 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$27.48 per day or \$10,037 per year. The local cost was calculated by using the daily expenditure cost of \$54.51 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$22.83 per day or \$8,338 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation on criminal provisions, which would be effective on July 1, 2005, is phased in to account for case processing time.
2. The bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2003; for sexual assault offenses the rate was 11.2%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%.
3. Increased statutory minimums may impact bed space through jury sentencing. Sentences were adjusted to reflect the dynamics of jury sentencing using information from the Sentencing Guideline (SG) database. Sentences were increased to the statutory minimum for the proportion of cases that were sentenced by a jury in violent sex offenses (rape, forcible sodomy, and object sexual penetration). For the proportion of cases where the judge suspended some of the jury-imposed time, the jury sentence was reduced by the ratio of (imposed minus suspended time)/imposed time. If the actual sentence already exceeded the proposed statutory minimum penalty, the case was presumed to have no impact.

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