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HOUSE BILL NO. 846**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee for Courts of Justice
on February 27, 2006)

(Patron Prior to Substitute—Delegate Albo)

A *BILL to amend and reenact §§ 18.2-48, 18.2-61, 18.2-67.1, 18.2-67.2, and 19.2-303 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 18.2-370.3, relating to sentences for certain sex crimes; penalties.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-48, 18.2-61, 18.2-67.1, 18.2-67.2, and 19.2-303 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 18.2-370.3 as follows:

§ 18.2-48. Abduction with intent to extort money or for immoral purpose.

Abduction (i) with the intent to extort money or pecuniary benefit, (ii) of any person with intent to defile such person, or (iii) of any child under sixteen years of age for the purpose of concubinage or prostitution, shall be a Class 2 felony. *If the sentence imposed for a violation of (ii) or (iii) includes a term of confinement less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life subject to revocation by the court.*

§ 18.2-61. Rape.

A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

B. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years; *the penalty for a violation of subdivision A (iii) where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90 or 18.2-91, or (iii) § 18.2-51.2, shall include a mandatory minimum term of confinement of 25 years. If the term of confinement imposed for any violation of subdivision A (iii), where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life subject to revocation by the court.*

There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 18.2-67.1. Forcible sodomy.

A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio, anilingus, or anal intercourse with a complaining witness whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person,

60 and

61 1. The complaining witness is less than 13 years of age, or

62 2. The act is accomplished against the will of the complaining witness, by force, threat or
63 intimidation of or against the complaining witness or another person, or through the use of the
64 complaining witness's mental incapacity or physical helplessness.

65 B. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or
66 for any term not less than five years. *The penalty for a violation of subdivision A 1 where the offender*
67 *is more than three years older than the victim, if done in the commission of, or as part of the same*
68 *course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of*
69 *§ 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, shall include a*
70 *mandatory minimum term of confinement of 25 years. If the term of confinement imposed for any*
71 *violation of subdivision A 1, where the offender is more than three years older than the victim, is for a*
72 *term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended*
73 *sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the*
74 *defendant's life subject to revocation by the court.* In any case deemed appropriate by the court, all or
75 part of any sentence imposed for a violation under this section against a spouse may be suspended upon
76 the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed
77 under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other
78 evidence as may be relevant, the court finds such action will promote maintenance of the family unit
79 and will be in the best interest of the complaining witness.

80 C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case
81 tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the
82 defendant who has not previously had a proceeding against him for violation of this section dismissed
83 pursuant to this subsection and with the consent of the complaining witness and the attorney for the
84 Commonwealth, may defer further proceedings and place the defendant on probation pending completion
85 of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the
86 defendant fails to so complete such counseling or therapy, the court may make final disposition of the
87 case and proceed as otherwise provided. If such counseling is completed as prescribed under
88 § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after
89 consideration of the views of the complaining witness and such other evidence as may be relevant, the
90 court finds such action will promote maintenance of the family unit and be in the best interest of the
91 complaining witness.

92 § 18.2-67.2. Object sexual penetration; penalty.

93 A. An accused shall be guilty of inanimate or animate object sexual penetration if he or she
94 penetrates the labia majora or anus of a complaining witness, whether or not his or her spouse, other
95 than for a bona fide medical purpose, or causes such complaining witness to so penetrate his or her own
96 body with an object or causes a complaining witness, whether or not his or her spouse, to engage in
97 such acts with any other person or to penetrate, or to be penetrated by, an animal, and

98 1. The complaining witness is less than 13 years of age, or

99 2. The act is accomplished against the will of the complaining witness, by force, threat or
100 intimidation of or against the complaining witness or another person, or through the use of the
101 complaining witness's mental incapacity or physical helplessness.

102 B. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state
103 correctional facility for life or for any term not less than five years. *The penalty for a violation of*
104 *subdivision A 1 where the offender is more than three years older than the victim, if done in the*
105 *commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as*
106 *a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii)*
107 *§ 18.2-51.2, shall include a mandatory minimum term of confinement of 25 years. If the term of*
108 *confinement imposed for any violation of subdivision A 1, where the offender is more than three years*
109 *older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to*
110 *any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be*
111 *suspended for the remainder of the defendant's life subject to revocation by the court.* In any case
112 deemed appropriate by the court, all or part of any sentence imposed for a violation under this section
113 against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not
114 already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the
115 complaining witness and such other evidence as may be relevant, the court finds such action will
116 promote maintenance of the family unit and will be in the best interest of the complaining witness.

117 C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case
118 tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the
119 defendant who has not previously had a proceeding against him for violation of this section dismissed
120 pursuant to this subsection and with the consent of the complaining witness and the attorney for the
121 Commonwealth, may defer further proceedings and place the defendant on probation pending completion

of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 18.2-370.3. *Sex offenses prohibiting working on school property; penalty.*

A. Every adult who has been convicted of an offense occurring on or after July 1, 2006, where the offender is more than three years older than the victim, of one of the following qualifying offenses: (i) subdivision A (iii) of § 18.2-61, (ii) subdivision A 1 of § 18.2-67.1 or (iii) subdivision A 1 of § 18.2-67.2, shall be forever prohibited from working or engaging in any volunteer activity on property he knows or has reason to know is public or private elementary or secondary school or child day center property. A violation of this section is punishable as a Class 6 felony. The provisions of this section shall only apply if the qualifying offense was done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90 or 18.2-91, or (iii) § 18.2-51.2,

B. Both the person who employs or procures as a volunteer a convicted person who violated this section, and the school or child day center where the violation of this section occurred, are immune from civil liability unless they had actual knowledge that such person had been convicted of an offense listed in subsection A.

§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the ~~accused~~ defendant on probation under such conditions as the court shall determine or may, as a condition of a suspended sentence, require the ~~accused~~ defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. The judge, after convicting the ~~accused~~ defendant of a felony, shall determine whether a copy of the ~~accused's~~ defendant's fingerprints are on file at the Central Criminal Records Exchange. In any case where fingerprints are not on file, the judge shall require that fingerprints be taken as a condition of probation. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision program operated by the Department of Corrections, and for at least three years of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation for such time as the court shall determine, or otherwise modify the sentence imposed.

If a person has been sentenced for a felony to the Department of Corrections but has not actually been transferred to a receiving unit of the Department, the court which heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Department, suspend or otherwise modify the unserved portion of such a sentence. The court may place the person on probation for such time as the court shall determine.

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 cannot be determined for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.