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HOUSE BILL NO. 1898

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 31, 2011)

(Patron Prior to Substitute—Delegates Hugo and Watts [HB 1893])

A BILL to amend and reenact §§ 18.2-48, 18.2-67.7, and 18.2-356 of the Code of Virginia, relating to abduction of minors for sexual purposes; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-48, 18.2-67.7, and 18.2-356 of the Code of Virginia are amended and reenacted 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 minor for the purpose of concubinage, or prostitution, or the manufacture of pornography shall be punishable as a Class 2 felony. For any prosecution pursuant to clause (iii), consent of the minor to the sexual act shall not be a defense. Abduction of any adult for the purpose of concubinage or prostitution is punishable as a Class 4 felony. If the sentence imposed for a violation of clause (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.

§ 18.2-67.7. Admission of evidence.

A. In prosecutions under this article, or under clause (iii) of § 18.2-48, § 18.2-370, 18.2-370.01, or 18.2-370.1, general reputation or opinion evidence of the complaining witness's unchaste character or prior sexual conduct shall not be admitted. Unless the complaining witness voluntarily agrees otherwise, evidence of specific instances of his or her prior sexual conduct shall be admitted only if it is relevant and is:

1. Evidence offered to provide an alternative explanation for physical evidence of the offense charged which is introduced by the prosecution, limited to evidence designed to explain the presence of semen, pregnancy, disease, or physical injury to the complaining witness's intimate parts; or

2. Evidence of sexual conduct between the complaining witness and the accused offered to support a contention that the alleged offense was not accomplished by force, threat or intimidation or through the use of the complaining witness's mental incapacity or physical helplessness, provided that the sexual conduct occurred within a period of time reasonably proximate to the offense charged under the circumstances of this case; or

3. Evidence offered to rebut evidence of the complaining witness's prior sexual conduct introduced by the prosecution.

B. Nothing contained in this section shall prohibit the accused from presenting evidence relevant to show that the complaining witness had a motive to fabricate the charge against the accused. If such evidence relates to the past sexual conduct of the complaining witness with a person other than the accused, it shall not be admitted and may not be referred to at any preliminary hearing or trial unless the party offering same files a written notice generally describing the evidence prior to the introduction of any evidence, or the opening statement of either counsel, whichever first occurs, at the preliminary hearing or trial at which the admission of the evidence may be sought.

C. Evidence described in subsections A and B of this section shall not be admitted and may not be referred to at any preliminary hearing or trial until the court first determines the admissibility of that evidence at an evidentiary hearing to be held before the evidence is introduced at such preliminary hearing or trial. The court shall exclude from the evidentiary hearing all persons except the accused, the complaining witness, other necessary witnesses, and required court personnel. If the court determines that the evidence meets the requirements of subsections A and B of this section, it shall be admissible before the judge or jury trying the case in the ordinary course of the preliminary hearing or trial. If the court initially determines that the evidence is inadmissible, but new information is discovered during the course of the preliminary hearing or trial which may make such evidence admissible, the court shall determine in an evidentiary hearing whether such evidence is admissible.

§ 18.2-356. Receiving money for procuring person.

Any person who shall receive receives any money or other valuable thing for or on account of (I) procuring for or placing in a house of prostitution or elsewhere any person for the purpose of causing such person to engage in unlawful sexual intercourse or any act in violation of § 18.2-361, or (ii) causing any person to engage in forced labor or services, concubinage, prostitution, or the manufacture of pornography shall be guilty of a Class 4 felony.

60 2. That the provisions of this act may result in a net increase in periods of imprisonment or
61 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
62 be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter
63 874 of the Acts of Assembly of 2010 requires the Virginia Criminal Sentencing Commission to
64 assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the
65 necessary appropriation cannot be determined for periods of commitment to the custody of the
66 Department of Juvenile Justice.