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HOUSE BILL NO. 412

Offered January 10, 2018

Prefiled January 5, 2018

A *BILL to amend and reenact §§ 18.2-19, 18.2-67.5:2, 18.2-346, 18.2-362, 18.2-363, 18.2-364, 18.2-366, 19.2-69, 19.2-271.1, 19.2-271.2, 20-38.1, 20-40, 20-43, and 20-82 of the Code of Virginia and to repeal § 18.2-365 of the Code of Virginia, relating to marriage-related criminal laws; gender-neutral terms; adultery repeal; penalty.*

 Patron—Simon

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-19, 18.2-67.5:2, 18.2-346, 18.2-362, 18.2-363, 18.2-364, 18.2-366, 19.2-69, 19.2-271.1, 19.2-271.2, 20-38.1, 20-40, 20-43, and 20-82 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-19. How accessories after the fact punished; certain exceptions.

Every accessory after the fact is guilty of (i) a Class 6 felony in the case of a homicide offense that is punishable by death or as a Class 2 felony or (ii) a Class 1 misdemeanor in the case of any other felony. However, no person in the relation of ~~husband or wife~~ *spouse*, parent or grandparent, child or grandchild, ~~brother or sister~~ *sibling*, by consanguinity or affinity, or servant to the offender, who, after the commission of a felony, shall aid or assist a principal felon or accessory before the fact to avoid or escape from prosecution or punishment, shall be deemed an accessory after the fact.

§ 18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault.

A. Any person convicted of (i) more than one offense specified in subsection B or (ii) one of the offenses specified in subsection B of this section and one of the offenses specified in subsection B of § 18.2-67.5:3 when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or subsequent such offense, be sentenced to the maximum term authorized by statute for such offense, and shall not have all or any part of such sentence suspended, provided it is admitted, or found by the jury or judge before whom the person is tried, that he has been previously convicted of at least one of the specified offenses.

B. The provisions of subsection A shall apply to felony convictions for:

1. Carnal knowledge of a child between ~~thirteen 13~~ and ~~fifteen 15~~ years of age in violation of § 18.2-63 when the offense is committed by a person over the age of ~~eighteen 18~~;
2. Carnal knowledge of certain minors in violation of § 18.2-64.1;
3. Aggravated sexual battery in violation of § 18.2-67.3;
4. Crimes against nature in violation of subsection B of § 18.2-361;
5. ~~Adultery or fornication~~ *Sexual intercourse* with one's own child or grandchild in violation of § 18.2-366;
6. Taking indecent liberties with a child in violation of § 18.2-370 or § 18.2-370.1; or
7. Conspiracy to commit any offense listed in subdivisions 1 through 6 pursuant to § 18.2-22.

C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under the laws of any state or the United States that are substantially similar to those listed in subsection B and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile offense is substantially similar to those listed in subsection B, the offense would be a felony if committed by an adult in the Commonwealth and the offense was committed less than ~~twenty 20~~ years before the second offense.

The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its intention to seek punishment pursuant to this section.

§ 18.2-346. Prostitution; commercial sexual conduct; commercial exploitation of a minor; penalties.

A. Any person who, for money or its equivalent, (i) commits ~~adultery, fornication, or~~ any act in violation of § 18.2-361, performs cunnilingus, fellatio, or anilingus upon or by another person, or engages in *sexual intercourse or* anal intercourse or (ii) offers to commit ~~adultery, fornication, or~~ any act in violation of § 18.2-361, perform cunnilingus, fellatio, or anilingus upon or by another person, or engage in *sexual intercourse or* anal intercourse and thereafter does any substantial act in furtherance thereof is guilty of prostitution, which is punishable as a Class 1 misdemeanor.

B. Any person who offers money or its equivalent to another for the purpose of engaging in sexual

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59 acts as enumerated in subsection A and thereafter does any substantial act in furtherance thereof is
 60 guilty of solicitation of prostitution, which is punishable as a Class 1 misdemeanor. However, any
 61 person who solicits prostitution from a minor (i) 16 years of age or older is guilty of a Class 6 felony
 62 or (ii) younger than 16 years of age is guilty of a Class 5 felony.

63 **§ 18.2-362. Person marrying when spouse is living; penalty; venue.**

64 If any person, being married, shall, during the life of the ~~husband or wife~~ *such person's spouse*,
 65 marry another person in this Commonwealth, or if the marriage with such other person take place out of
 66 the Commonwealth, shall thereafter cohabit with such other person in this Commonwealth, he ~~or she~~
 67 ~~shall be~~ *is* guilty of a Class 4 felony. Venue for a violation of this section may be in the county or city
 68 where the subsequent marriage occurred or where the parties to the subsequent marriage cohabited.

69 **§ 18.2-363. Leaving Commonwealth to evade law against bigamy.**

70 If any persons, resident in this Commonwealth, one of whom has a ~~husband or wife~~ *spouse* living,
 71 shall, with the intention of returning to reside in this Commonwealth, go into another state or country
 72 and there intermarry and return to and reside in this Commonwealth cohabiting as ~~man and wife~~ *a*
 73 *married couple*, such marriage shall be governed by the same law, in all respects, as if it had been
 74 solemnized in this Commonwealth.

75 **§ 18.2-364. Exceptions to preceding sections.**

76 Sections 18.2-362 and 18.2-363 shall not extend to a person whose ~~husband or wife~~ *spouse* shall
 77 have been continuously absent from such person for seven years next before marriage of such person to
 78 another, and shall not have been known by such person to be living within that time; nor to a person
 79 who can show that the second marriage was contracted in good faith under a reasonable belief that the
 80 former consort was dead; nor to a person who shall, at the time of the subsequent marriage, have been
 81 divorced from the bond of the former marriage; nor to a person whose former marriage was void.

82 **§ 18.2-366. Sexual intercourse by persons forbidden to marry; incest.**

83 A. Any person who ~~commits adultery or fornication~~ *engages in sexual intercourse* with any person
 84 whom he or she is forbidden by law to marry ~~shall be~~ *is* guilty of a Class 1 misdemeanor except as
 85 provided by subsection B.

86 B. Any person who ~~commits adultery or fornication~~ *engages in sexual intercourse* with his daughter
 87 or granddaughter, ~~or with her son or grandson, or her father or his mother,~~ *shall be* *is* guilty of a Class
 88 5 felony. However, if a parent or grandparent ~~commits adultery or fornication~~ *engages in sexual*
 89 *intercourse* with his or her child or grandchild, and such child or grandchild is at least ~~thirteen~~ 13 years
 90 of age but less than ~~eighteen~~ 18 years of age at the time of the offense, such parent or grandparent ~~shall~~
 91 *be* *is* guilty of a Class 3 felony.

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

94 **§ 19.2-69. Civil action for unlawful interception, disclosure or use.**

95 Any person whose wire, electronic or oral communication is intercepted, disclosed or used in
 96 violation of this chapter shall (i) have a civil cause of action against any person who intercepts,
 97 discloses or uses, or procures any other person to intercept, disclose or use such communications, and
 98 (ii) be entitled to recover from any such person:

99 1. Actual damages but not less than liquidated damages computed at the rate of \$400 a day for each
 100 day of violation or \$4,000, whichever is higher, provided that liquidated damages shall be computed at
 101 the rate of \$800 a day for each day of violation or \$8,000, whichever is higher, if the wire, electronic,
 102 or oral communication intercepted, disclosed, or used is between (i) a ~~husband and wife~~ *persons married*
 103 *to each other*; (ii) an attorney and client; (iii) a licensed practitioner of the healing arts and patient; (iv)
 104 a licensed professional counselor, licensed clinical social worker, licensed psychologist, or licensed
 105 marriage and family therapist and client; or (v) a clergy member and person seeking spiritual counsel or
 106 advice;

107 2. Punitive damages; and

108 3. A reasonable ~~attorney's~~ *attorney* fee and other litigation costs reasonably incurred.

109 A good faith reliance on a court order or legislative authorization shall constitute a complete defense
 110 to any civil or criminal action brought under this chapter or under any other law.

111 **§ 19.2-271.1. Competency of spouses to testify.**

112 ~~Husband and wife~~ *Persons married to each other* shall be competent witnesses to testify for or
 113 against each other in criminal cases, except as otherwise provided.

114 **§ 19.2-271.2. Testimony of spouses in criminal cases (Subsection (b) of Supreme Court Rule**
 115 **2:504 derived from this section).**

116 In criminal cases ~~husband and wife~~ *persons married to each other* shall be allowed, and, subject to
 117 the rules of evidence governing other witnesses, may be compelled to testify in behalf of each other, but
 118 neither shall be compelled to be called as a witness against the other, except (i) in the case of a
 119 prosecution for an offense committed by one against the other, against a minor child of either, or against
 120 the property of either; (ii) in any case where either is charged with forgery of the name of the other or

121 uttering or attempting to utter a writing bearing the allegedly forged signature of the other; or (iii) in
 122 any proceeding relating to a violation of the laws pertaining to criminal sexual assault (§§ 18.2-61
 123 through 18.2-67.10), crimes against nature (§ 18.2-361) involving a minor as a victim and provided the
 124 defendant and the victim are not married to each other, incest (§ 18.2-366), or abuse of children
 125 (§§ 18.2-370 through 18.2-371). The failure of either ~~husband or wife~~ *spouse* to testify, however, shall
 126 create no presumption against the accused, nor be the subject of any comment before the court or jury
 127 by any attorney.

128 Except in the prosecution for a criminal offense as set forth in (i), (ii) or (iii) above, in any criminal
 129 proceeding, a person has a privilege to refuse to disclose, and to prevent anyone else from disclosing,
 130 any confidential communication between his spouse and him during their marriage, regardless of
 131 whether he is married to that spouse at the time he objects to disclosure. For the purposes of this
 132 section, "confidential communication" means a communication made privately by a person to his spouse
 133 that is not intended for disclosure to any other person.

134 **§ 20-38.1. Certain marriages prohibited.**

135 (a) The following marriages are prohibited:

136 (1) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

137 (2) A marriage between an ancestor and descendant, or between a ~~brother and a sister~~ *siblings*,
 138 whether the relationship is by the half or the whole blood or by adoption;

139 (3) A marriage between an uncle ~~and a niece~~ or ~~between~~ an aunt and a nephew *or a niece*, whether
 140 the relationship is by the half or the whole blood.

141 (b) [Repealed.]

142 **§ 20-40. Punishment for violation of such prohibition; leaving Commonwealth to avoid.**

143 If any person marry in violation of § 20-38.1 he shall be confined in jail not exceeding six months,
 144 or fined not exceeding \$500, in the discretion of the jury. If any persons, resident in this
 145 Commonwealth, and within the degrees of relationship mentioned in that section, shall go out of this
 146 Commonwealth for the purpose of being married, and with the intention of returning, and be married out
 147 of it, and afterwards return to and reside in it, cohabiting as ~~man and wife~~ *a married couple*, they shall
 148 be punished as provided in this section, and the marriage shall be governed by the same law as if it had
 149 been solemnized in this Commonwealth. The fact of such cohabitation here shall be evidence of such
 150 marriage. Venue for a violation of this section may be in the county or city where the subsequent
 151 marriage occurred or where the parties to the subsequent marriage cohabited.

152 **§ 20-43. Bigamous marriages void without decree.**

153 All marriages which are prohibited by law on account of either of the parties having a former ~~wife~~
 154 ~~or husband~~ *spouse* then living shall be absolutely void, without any decree of divorce, or other legal
 155 process.

156 **§ 20-82. Spouses competent as witnesses.**

157 In every prosecution under this chapter ~~both husband and wife~~ *persons married to each other* shall
 158 be competent witnesses to testify against each other in all relevant matters, including the facts of such
 159 marriage, provided that neither shall be compelled to give evidence incriminating himself ~~or herself~~.

160 **2. That § 18.2-365 of the Code of Virginia is repealed.**

161 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
 162 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
 163 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
 164 **836 of the Acts of Assembly of 2017 requires the Virginia Criminal Sentencing Commission to**
 165 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
 166 **necessary appropriation cannot be determined for periods of commitment to the custody of the**
 167 **Department of Juvenile Justice.**