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SENATE BILL NO. 42

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on January 29, 2020)

(Patron Prior to Substitute—Senator DeSteph)

A BILL to amend and reenact § 18.2-67.3 of the Code of Virginia, relating to aggravated sexual battery; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-67.3 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-67.3. Aggravated sexual battery; penalty.

A. An accused ~~shall be~~ is 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 physical helplessness; 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

4. The act is accomplished against the will of the complaining witness by force, threat or intimidation, 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; or

5. *The offense is not a recognized form of treatment in the profession, and is committed, without the express consent of the patient, by (i) a massage therapist, or a person purporting to be a massage therapist, during an actual or purported practice of massage therapy, as those terms are defined in § 54.1-3000; (ii) a person practicing or purporting to practice the healing arts, during an actual or purported practice of the healing arts, as those terms are defined in §§ 54.1-2900 and 54.1-2903; or, (iii) a physical therapist, or a person purporting to be a physical therapist, during an actual or purported practice of physical therapy, as those terms are defined in § 54.1-3473.*

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.

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 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.