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HOUSE BILL NO. 428

Offered January 24, 1994

A BILL to amend and reenact § 18.2-61 of the Code of Virginia, relating to rape.

Patrons—McDonnell, Albo, Christian, Connally, Cooper, Copeland, Cox, Crittenden, Davies, Dillard, Griffith, Howell, Ingram, Keating, Newman, Orrock, Purkey, Rhodes, Ruff and Sherwood; Senators: Bell, Earley and Woods

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 18.2-61 of the Code of Virginia is amended and reenacted as follows:****§ 18.2-61. Rape.**

A. If any person has sexual intercourse with a complaining witness who is 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 thirteen as the victim, he or she shall be guilty of rape.

B. If any person has sexual intercourse with his or her spouse and such act is accomplished against the spouse's will by force, threat or intimidation of or against the spouse or another, he or she shall be guilty of rape.

However, no person shall be found guilty under this subsection unless, at the time of the alleged offense, (i) the spouses were living separate and apart, or (ii) the defendant caused serious physical injury to the spouse by the use of force or violence.

Additionally, there shall be no prosecution under this subsection unless the spouse or someone acting on the spouse's behalf reports the violation to a law-enforcement agency within ten days of the commission of the alleged offense. However, the ten-day limitation shall not apply while the spouse is physically unable to make such report or is restrained or otherwise prevented from reporting the violation.

C. 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. *It shall not be presumed that a person over the age of ten years is incapable of a violation of this section.* In any case deemed appropriate by the court, all or part of any sentence imposed for a violation of subsection B 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.

D. Upon a finding of guilt under subsection B in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant 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.

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INTRODUCED

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