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HOUSE BILL NO. 960

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on March 2, 1994)

(Patron Prior to Substitute—Delegate Darner)

*A BILL to amend and reenact §§ 18.2-61, 18.2-67.1, 18.2-67.2 and 18.2-67.2:1 of the Code of Virginia, relating to criminal sexual assault generally; reporting offenses.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-61, 18.2-67.1, 18.2-67.2 and 18.2-67.2:1 of the Code of Virginia are 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. 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.

§ 18.2-67.1. Forcible sodomy.

A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio, anallungus, or anal 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 such acts with any other person, and

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

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

B. An accused shall be guilty of forcible sodomy if (i) he or she engages in cunnilingus, fellatio, anallungus, or anal intercourse with his or her spouse, and (ii) such act is accomplished against the will of the spouse, by force, threat or intimidation of or against the spouse or another person.

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

60 injury to the spouse by the use of force or violence.

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

66 C. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or
67 for any term not less than five years. In any case deemed appropriate by the court, all or part of any
68 sentence imposed for a violation of subsection B may be suspended upon the defendant's completion of
69 counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after
70 consideration of the views of the complaining witness and such other evidence as may be relevant, the
71 court finds such action will promote maintenance of the family unit and will be in the best interest of
72 the complaining witness.

73 D. Upon a finding of guilt under subsection B in any case tried by the court without a jury, the
74 court, without entering a judgment of guilt, upon motion of the defendant and with the consent of the
75 complaining witness and the attorney for the Commonwealth, may defer further proceedings and place
76 the defendant on probation pending completion of counseling or therapy, if not already provided, in the
77 manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy,
78 the court may make final disposition of the case and proceed as otherwise provided. If such counseling
79 is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the
80 proceedings against him if, after consideration of the views of the complaining witness and such other
81 evidence as may be relevant, the court finds such action will promote maintenance of the family unit
82 and be in the best interest of the complaining witness.

83 § 18.2-67.2. Object sexual penetration; penalty.

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

89 1. The complaining witness is less than thirteen years of age, or

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

93 B. An accused shall be guilty of inanimate or animate object sexual penetration if (i) he or she
94 penetrates the labia majora or anus of his or her spouse with any object other than for a bona fide
95 medical purpose, or causes such spouse to so penetrate his or her own body with an object and (ii) such
96 act is accomplished against the spouse's will by force, threat or intimidation of or against the spouse or
97 another person.

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

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

106 C. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state
107 correctional facility for life or for any term not less than five years. In any case deemed appropriate by
108 the court, all or part of any sentence imposed for a violation of subsection B may be suspended upon
109 the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed
110 under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other
111 evidence as may be relevant, the court finds such action will promote maintenance of the family unit
112 and will be in the best interest of the complaining witness.

113 D. Upon a finding of guilt under subsection B in any case tried by the court without a jury, the
114 court, without entering a judgment of guilt, upon motion of the defendant and with the consent of the
115 complaining witness and the attorney for the Commonwealth, may defer further proceedings and place
116 the defendant on probation pending completion of counseling or therapy, if not already provided, in the
117 manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy,
118 the court may make final disposition of the case and proceed as otherwise provided. If such counseling
119 is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the
120 proceedings against him if, after consideration of the views of the complaining witness and such other
121 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.

§ 18.2-67.2:1. Marital sexual assault.

A. An accused shall be guilty of marital sexual assault if (i) he or she engages in sexual intercourse, cunnilingus, fellatio, anallingus or anal intercourse with his or her spouse, or penetrates the labia majora or anus of his or her spouse with any object other than for a bona fide medical purpose, or causes such spouse to so penetrate his or her own body with an object, and (ii) such act is accomplished against the spouse's will by force or a present threat of force against the spouse or another person.

B. There shall be no prosecution under this section 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. B. A violation of this section shall be punishable by confinement in a state correctional facility for a term of not less than one year nor more than twenty years or, in the discretion of the court or jury, by confinement in jail for not more than twelve months and a fine of not more than \$1,000, either or both. In any case deemed appropriate by the court, all or part of any sentence 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. C. Upon a finding of guilt under this section 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 enter an adjudication of guilt 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.

E. D. A violation of this section shall constitute a lesser, included offense of the respective violation set forth in §§ 18.2-61 B, 18.2-67.1 B or § 18.2-67.2 B.