

LD3928825

SENATE BILL NO. 179

Offered January 20, 1994

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.

Patrons—Howell, Houck, Lucas and Waddell; Delegates: Albo, DeBoer, Plum, Puller, Scott and Van Lanningham

Referred to the Committee for Courts of Justice

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

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60 of the spouse, by force, threat or intimidation of or against the spouse or another person.

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

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

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

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

86 § 18.2-67.2. Object sexual penetration; penalty.

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

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

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

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

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

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

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

116 D. Upon a finding of guilt under subsection B in any case tried by the court without a jury, the
117 court, without entering a judgment of guilt, upon motion of the defendant and with the consent of the
118 complaining witness and the attorney for the Commonwealth, may defer further proceedings and place
119 the defendant on probation pending completion of counseling or therapy, if not already provided, in the
120 manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy,
121 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.

§ 18.2-67.2:1. 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. 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.