

LD1329264

HOUSE BILL NO. 2218

Offered January 23, 1995

A BILL to amend and reenact §§ 18.2-61, 18.2-64.1 as it is currently effective and as it may become effective, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-361, 18.2-366, 18.2-370 and 18.2-370.1 of the Code of Virginia, relating to criminal sexual assault; crimes against nature; sexual crimes against children; penalty.

Patrons—Hamilton, Diamonstein, Purkey and Wardrup; Senators: Andrews and Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-61, 18.2-64.1 as it is currently effective and as it may become effective, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-361, 18.2-366, 18.2-370 and 18.2-370.1 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.

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~~, and the offender shall not have all or any portion of his sentence suspended nor be placed on probation except as provided hereinafter. There shall be a rebuttable presumption that a juvenile over the age of ~~10~~ *ten* but less than ~~14~~ *fourteen*, does not possess the physical capacity to commit 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.

§ 18.2-64.1. (For effective date - See note) Carnal knowledge of certain minors.

If any person providing services, paid or unpaid, to juveniles under the purview of the Juvenile and Domestic Relations District Court Law, or to juveniles who have been committed to the custody of the State Department of Youth and Family Services, carnally knows, without the use of force, any minor fifteen years of age or older, when such minor is confined or detained in jail, is detained in any facility mentioned in § 16.1-249, or has been committed to the custody of the Department of Youth and Family Services pursuant to § 16.1-278.8, knowing or having good reason to believe that (i) such minor is in such confinement or detention status, (ii) such minor is a ward of the Department of Youth and Family Services, or (iii) such minor is on probation, furlough, or leave from or has escaped or absconded from such confinement, detention, or custody, he shall be guilty of a Class 6 ~~4~~ felony.

For the purposes of this section, "carnal knowledge" includes the acts of sexual intercourse,

INTRODUCED

HB2218

60 cunnilingus, fellatio, anallungus, anal intercourse, and animate and inanimate object sexual penetration.

61 § 18.2-64.1. (Delayed effective date - See notes) Carnal knowledge of certain minors.

62 If any person providing services, paid or unpaid, to juveniles under the purview of the Family Court
63 Law, or to juveniles who have been committed to the custody of the State Department of Youth and
64 Family Services, carnally knows, without the use of force, any minor fifteen years of age or older, when
65 such minor is confined or detained in jail, is detained in any facility mentioned in § 16.1-249, or has
66 been committed to the custody of the Department of Youth and Family Services pursuant to
67 § 16.1-278.8, knowing or having good reason to believe that (i) such minor is in such confinement or
68 detention status, (ii) such minor is a ward of the Department of Youth and Family Services, or (iii) such
69 minor is on probation, furlough, or leave from or has escaped or absconded from such confinement,
70 detention, or custody, he shall be guilty of a Class 6 4 felony.

71 For the purposes of this section, "carnal knowledge" includes the acts of sexual intercourse,
72 cunnilingus, fellatio, anallungus, anal intercourse, and animate and inanimate object sexual penetration.

73 § 18.2-67.1. Forcible sodomy.

74 A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio,
75 anallungus, or anal intercourse with a complaining witness who is not his or her spouse, or causes a
76 complaining witness, whether or not his or her spouse, to engage in such acts with any other person,
77 and

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

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

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

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

88 C. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or
89 for any term not less than five years, and the offender shall not have all or any portion of his sentence
90 suspended nor be placed on probation except as provided hereinunder. In any case deemed appropriate
91 by the court, all or part of any sentence imposed for a violation of subsection B may be suspended upon
92 the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed
93 under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other
94 evidence as may be relevant, the court finds such action will promote maintenance of the family unit
95 and will be in the best interest of the complaining witness.

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

106 § 18.2-67.2. Object sexual penetration; penalty.

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

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

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

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

121 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.

C. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state correctional facility for life ~~or for any term not less than five years, and the offender shall not have all or any portion of his sentence suspended nor be placed on probation except as provided hereinunder.~~ 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.

§ 18.2-67.3. Aggravated sexual battery.

A. An accused shall be guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, 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, or through the use of the complaining witness's mental incapacity or physical helplessness, and

a. The complaining witness is at least thirteen but less than fifteen 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.

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 twenty years~~ life and by a fine of not more than \$100,000. *The accused shall not have all or any portion of his sentence suspended nor be placed on probation.*

§ 18.2-67.5. Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery.

A. An attempt to commit rape, forcible sodomy, or inanimate or animate object sexual penetration shall be punishable as a Class 4 felony.

B. An attempt to commit aggravated sexual battery shall be a felony punishable as a Class 6 felony.

C. An attempt to commit sexual battery is a Class 1 misdemeanor.

§ 18.2-361. Crimes against nature.

A. If any person carnally knows in any manner any brute animal, or carnally knows any male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, he or she shall be guilty of a Class 6 felony, except as provided in subsection B.

B. Any person who carnally knows by the anus or by or with the mouth his daughter or granddaughter, son or grandson, brother or sister, or father or mother shall be guilty of a Class 5 felony. However, (i) if a parent or grandparent commits any such act with his child or grandchild and such child or grandchild is at least thirteen but less than eighteen years of age at the time of the offense, such parent or grandparent shall be guilty of a Class 3 felony, and (ii) *if the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation of this subsection shall be punishable by life imprisonment and the offender shall not have all or any portion of his sentence suspended nor be placed on probation.*

§ 18.2-366. Adultery and fornication by persons forbidden to marry; incest.

A. Any person who commits adultery or fornication with any person whom he or she is forbidden by law to marry shall be guilty of a Class 1 misdemeanor except as provided by subsection B.

B. Any person who commits adultery or fornication with his daughter or granddaughter, or with her son or grandson, or her father or his mother, shall be guilty of a Class 5 felony. However, (i) if a parent or grandparent commits adultery or fornication with his or her child or grandchild, and such child or grandchild is at least thirteen years of age but less than eighteen years of age at the time of the offense, such parent or grandparent shall be guilty of a Class 3 felony, and (ii) *if the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation of this subsection shall be punishable by life imprisonment and the offender shall not have all or any portion of his*

183 *sentence suspended nor be placed on probation.*

184 § 18.2-370. Taking indecent liberties with children.

185 Any person eighteen years of age or over, who, with lascivious intent, shall knowingly and
186 intentionally:

187 (1) Expose his or her sexual or genital parts to any child under the age of fourteen years to whom
188 such person is not legally married or propose that any such child expose his or her sexual or genital
189 parts to such person; or

190 (2) [Repealed.]

191 (3) Propose that any such child feel or fondle the sexual or genital parts of such person or propose
192 that such person feel or fondle the sexual or genital parts of any such child; or

193 (4) Propose to such child the performance of an act of sexual intercourse or any act constituting an
194 offense under § 18.2-361; or

195 (5) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other
196 place, for any of the purposes set forth in the preceding subdivisions of this section; or

197 (6) Receive money, property, or any other remuneration for allowing, encouraging, or enticing any
198 person under the age of eighteen years to perform in or be a subject of sexually explicit visual material
199 as defined in § 18.2-374.1 or who knowingly encourages such person to perform in or be a subject of
200 sexually explicit material; shall be guilty of a Class 6 4 felony.

201 § 18.2-370.1. Taking indecent liberties with child by person in custodial or supervisory relationship.

202 Any person eighteen years of age or older who maintains a custodial or supervisory relationship over
203 a child under the age of eighteen, including but not limited to the parent, step-parent, grandparent,
204 step-grandparent, or who stands in loco parentis with respect to such child and is not legally married to
205 such child, and who, with lascivious intent, knowingly and intentionally (i) proposes that any such child
206 feel or fondle the sexual or genital parts of such person or that such person feel or handle the sexual or
207 genital parts of the child, or (ii) proposes to such child the performance of an act of sexual intercourse
208 or any act constituting an offense under § 18.2-361, or (iii) exposes his or her sexual or genital parts to
209 such child, or (iv) proposes that any such child expose his or her sexual or genital parts to such person,
210 or (v) proposes to the child that the child engage in sexual intercourse, sodomy or fondling of sexual or
211 genital parts with another person, or (vi) sexually abuses the child as defined in § 18.2-67.10 (6), shall
212 be guilty of a Class 6 4 felony.

213 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
214 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
215 **is \$13,485,000.**