

LD4777761

## SENATE BILL NO. 940

Offered January 23, 1995

A *BILL to amend and reenact § 19.2-297.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 18.2-67.5:2 and 18.2-67.5:3, relating to criminal sexual assault; penalty.*

Patrons—Houck and Howell; Delegate: Puller

Referred to the Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 19.2-297.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 18.2-67.5:2 and 18.2-67.5:3 as follows:**

**§ 18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault.**

A. Any person convicted of more than one offense specified in subsection B, when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or subsequent such offense, be guilty of a Class 2 felony. Notwithstanding any other provision of law, twenty years of the sentence imposed shall not be suspended, in whole or in part, provided it is admitted, or found by the jury or judge before whom the person is tried, that he has been previously convicted of at least one of the specified offenses.

B. The provisions of subsection A shall apply to felony convictions for:

1. Abduction with intent to defile in violation of § 18.2-48;
2. Carnal knowledge of a child between thirteen and fifteen years of age in violation of § 18.2-63;
3. Carnal knowledge of certain minors in violation of § 18.2-64.1;
4. Aggravated sexual battery in violation of § 18.2-67.3;
5. Crimes against nature in violation of subsection B of § 18.2-361;
6. Adultery or fornication with own child or grandchild in violation of § 18.2-366;
7. Taking indecent liberties with a child in violation of § 18.2-370 or § 18.2-370.1; or
8. Conspiracy to commit any offense listed in subdivisions 1 through 6.

C. For purposes of this section prior convictions shall include adult convictions, and findings of not innocent, adjudications or convictions in the case of a juvenile, under the laws of any state or the United States for any offense substantially similar to those listed under subsection B if such offense would be a felony if committed by an adult in the Commonwealth.

**§ 18.2-67.5:3. Punishment upon conviction of certain subsequent violent felony sexual assault.**

A. Any person convicted of more than one offense specified in subsection B, when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or subsequent such offense, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of at least one of the specified offenses.

B. The provisions of subsection A shall apply to convictions for:

1. Rape in violation of § 18.2-61;
2. Forcible sodomy in violation of § 18.2-67.1;
3. Object sexual penetration in violation of § 18.2-67.2; or
4. Conspiracy to commit any offense listed in subdivisions 1 through 3.

C. For purposes of this section prior convictions shall include adult convictions, and findings of not innocent, adjudications or convictions in the case of a juvenile, under the laws of any state or the United States for any offense substantially similar to those listed under subsection B if such offense would be a felony if committed by an adult in the Commonwealth.

**§ 19.2-297.1. Sentence of person twice previously convicted of certain violent felonies.**

A. Any person convicted of two or more separate acts of violence when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction, shall, upon conviction of a third or subsequent act of violence, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of two or more such acts of violence. For the purposes of this section, "act of violence" means (i) any one of the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:

- a. First and second degree murder and voluntary manslaughter under Article 1 (§ 18.2-30 et seq.);
- b. Mob-related felonies under Article 2 (§ 18.2-38 et seq.);

INTRODUCED

SB940

60 c. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.);  
61 d. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.);  
62 e. Robbery under § 18.2-58 and carjacking under § 18.2-58.1; or  
63 f. ~~Any~~ *Except as otherwise provided in § 18.2-67.5:2 or § 18.2-67.5:3*, criminal sexual assault  
64 punishable as a felony under Article 7 (§ 18.2-61 et seq.);  
65 (ii) conspiracy to commit any of the violations enumerated in clause (i) of this section; and (iii)  
66 violations as a principal in the second degree or accessory before the fact of the provisions enumerated  
67 in clause (i) of this section.  
68 B. Prior convictions shall include convictions under the laws of any state or of the United States for  
69 any offense substantially similar to those listed under "act of violence" if such offense would be a  
70 felony if committed in the Commonwealth.  
71 The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its  
72 intention to seek punishment pursuant to this section.  
73 C. Any person sentenced to life imprisonment pursuant to this section shall not be eligible for parole  
74 and shall not be eligible for any good conduct allowance or any earned sentence credits under Chapter 6  
75 (§ 53.1-186 et seq.) of Title 53.1. However, any person subject to the provisions of this section, *other*  
76 *than a person who was sentenced under subsection A for criminal sexual assault convictions specified in*  
77 *subdivision f*, (i) who has reached the age of sixty-five or older and who has served at least five years  
78 of the sentence imposed or (ii) who has reached the age of sixty or older and who has served at least  
79 ten years of the sentence imposed may petition the Parole Board for conditional release. The Parole  
80 Board shall promulgate regulations to implement the provisions of this subsection.  
81 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**  
82 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**  
83 **is \$395,560.**