

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 18.2-61 of the Code of Virginia, relating to presumption arising from*  
3 *age.*

4 [S 1145]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 18.2-61 of the Code of Virginia is amended and reenacted as follows:**

8 § 18.2-61. Rape.

9 A. If any person has sexual intercourse with a complaining witness who is not his or her spouse or  
10 causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any  
11 other person and such act is accomplished (i) against the complaining witness's will, by force, threat or  
12 intimidation of or against the complaining witness or another person, or (ii) through the use of the  
13 complaining witness's mental incapacity or physical helplessness, or (iii) with a child under age thirteen  
14 as the victim, he or she shall be guilty of rape.

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

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

21 C. A violation of this section shall be punishable, in the discretion of the court or jury, by  
22 confinement in a state correctional facility for life or for any term not less than five years. There shall  
23 be a rebuttable presumption that a juvenile over the age of 10 but less than 14 12, does not possess the  
24 physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all  
25 or part of any sentence imposed for a violation of subsection B may be suspended upon the defendant's  
26 completion of counseling or therapy, if not already provided, in the manner prescribed under  
27 § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as  
28 may be relevant, the court finds such action will promote maintenance of the family unit and will be in  
29 the best interest of the complaining witness.

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

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