

992021837

## HOUSE BILL NO. 1732

Offered January 13, 1999

*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 rape; forcible sodomy; object sexual penetration; marital sexual assault; penalty.*

Patrons—Watts, Moss, Puller and Woodrum; Senators: Houck and Howell

Referred to 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.

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. There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, 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.

**§ 18.2-67.1. 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 injury to the spouse by the use of force or violence.

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C. Forcible sodomy is a felony punishable 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.

§ 18.2-67.2. Object sexual penetration; penalty.

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

§ 18.2-67.2:1. Marital sexual assault.

A. An accused shall be guilty of marital sexual assault if (i) he or she engages in sexual intercourse, cunnilingus, fellatio, anallingsus 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 or intimidation of or against the spouse or another person.

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.

122 In any case deemed appropriate by the court, all or part of any sentence may be suspended upon the  
123 defendant's completion of counseling or therapy if not already provided, in the manner prescribed under  
124 § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as  
125 may be relevant, the court finds such action will promote maintenance of the family unit and will be in  
126 the best interest of the complaining witness.

127 C. Upon a finding of guilt under this section in any case tried by the court without a jury, the court,  
128 without entering a judgment of guilt, upon motion of the defendant and with the consent of the  
129 complaining witness and the attorney for the Commonwealth, may defer further proceedings and place  
130 the defendant on probation pending completion of counseling or therapy, if not already provided, in the  
131 manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy,  
132 the court may enter an adjudication of guilt and proceed as otherwise provided. If such counseling is  
133 completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the  
134 proceedings against him if, after consideration of the views of the complaining witness and such other  
135 evidence as may be relevant, the court finds such action will promote maintenance of the family unit  
136 and be in the best interest of the complaining witness.

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

139 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**  
140 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**  
141 **is \$0 in FY 2009.**