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## HOUSE BILL NO. 1898

Offered January 12, 2011

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*A BILL to amend and reenact §§ 18.2-47, 18.2-48, 18.2-49, 18.2-67.7, and 18.2-382 of the Code of Virginia, relating to abduction of minors for sexual purposes; penalties.*

Patrons—Hugo, Watts, Bulova, Carrico, Cole, Comstock, Ebbin, Iaquinto, Keam, Kory, Miller, J.H., Plum and Rust

Referred to Committee for Courts of Justice

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

**1. That §§ 18.2-47, 18.2-48, 18.2-49, 18.2-67.7, and 18.2-382 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-47. Abduction and kidnapping defined; punishment.

A. Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge, shall be deemed guilty of "abduction."

B. Any person who; (i) by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes, recruits, entices, harbors, transports, provides, purchases, or obtains by any means, or attempts to recruit, entice, harbor, provide, purchase, or obtain by any means another person with the intent to subject him to forced labor or services or (ii) seizes, takes, transports, detains, secretes, recruits, entices, harbors, provides, purchases, or obtains by any means, or attempts to recruit, entice, harbor, provide, purchase, or obtain by any means a minor for purposes of prostitution, pornography or sexual performance by the minor shall be deemed guilty of "abduction." For purposes of this subsection, the term "intimidation" shall include destroying, concealing, confiscating, withholding, or threatening to withhold a passport, immigration document, or other governmental identification or threatening to report another as being illegally present in the United States.

C. The provisions of this section shall not apply to any law-enforcement officer in the performance of his duty. The terms "abduction" and "kidnapping" shall be synonymous in this Code. Abduction for which no punishment is otherwise prescribed shall be punished as a Class 5 felony.

D. If an offense under subsection A is committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending, the offense shall be a Class 1 misdemeanor in addition to being punishable as contempt of court. However, such offense, if committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending and the person abducted is removed from the Commonwealth by the abducting parent, shall be a Class 6 felony in addition to being punishable as contempt of court.

§ 18.2-48. Abduction with intent to extort money or for immoral purpose.

Abduction (i) with the intent to extort money or pecuniary benefit, (ii) of any person with intent to defile such person, or (iii) of any ~~child under sixteen years of age~~ minor for the purpose of concubinage, or prostitution, pornography or sexual performance by the minor shall be punishable as a Class 2 felony. For any prosecution pursuant to clause (iii), (a) lack of knowledge of the minor victim's age shall not be a defense and (b) consent of the minor to the sexual act shall not be a defense. If the sentence imposed for a violation of clause (ii) or (iii) includes a term of confinement less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life subject to revocation by the court.

§ 18.2-49. Threatening, attempting or assisting in such abduction.

Any person who (1) threatens, or attempts, to abduct any other person with intent to extort money, or pecuniary benefit, or (2) assists or aids in the abduction of, or threatens to abduct, any person with the intent to defile such person, or (3) assists or aids in the abduction of, or threatens to abduct, any ~~minor female under sixteen years of age~~ for the purpose of concubinage, or prostitution, shall be punishable as a Class 5 felony.

§ 18.2-67.7. Admission of evidence.

A. In prosecutions under this article, or under subsection B of § 18.2-47, clause (iii) of § 18.2-48, § 18.2-370, 18.2-370.01, or 18.2-370.1, general reputation or opinion evidence of the complaining witness's unchaste character or prior sexual conduct shall not be admitted. Unless the complaining

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58 witness voluntarily agrees otherwise, evidence of specific instances of his or her prior sexual conduct  
59 shall be admitted only if it is relevant and is:

60 1. Evidence offered to provide an alternative explanation for physical evidence of the offense charged  
61 which is introduced by the prosecution, limited to evidence designed to explain the presence of semen,  
62 pregnancy, disease, or physical injury to the complaining witness's intimate parts; or

63 2. Evidence of sexual conduct between the complaining witness and the accused offered to support a  
64 contention that the alleged offense was not accomplished by force, threat or intimidation or through the  
65 use of the complaining witness's mental incapacity or physical helplessness, provided that the sexual  
66 conduct occurred within a period of time reasonably proximate to the offense charged under the  
67 circumstances of this case; or

68 3. Evidence offered to rebut evidence of the complaining witness's prior sexual conduct introduced  
69 by the prosecution.

70 B. Nothing contained in this section shall prohibit the accused from presenting evidence relevant to  
71 show that the complaining witness had a motive to fabricate the charge against the accused. If such  
72 evidence relates to the past sexual conduct of the complaining witness with a person other than the  
73 accused, it shall not be admitted and may not be referred to at any preliminary hearing or trial unless  
74 the party offering same files a written notice generally describing the evidence prior to the introduction  
75 of any evidence, or the opening statement of either counsel, whichever first occurs, at the preliminary  
76 hearing or trial at which the admission of the evidence may be sought.

77 C. Evidence described in subsections A and B of this section shall not be admitted and may not be  
78 referred to at any preliminary hearing or trial until the court first determines the admissibility of that  
79 evidence at an evidentiary hearing to be held before the evidence is introduced at such preliminary  
80 hearing or trial. The court shall exclude from the evidentiary hearing all persons except the accused, the  
81 complaining witness, other necessary witnesses, and required court personnel. If the court determines  
82 that the evidence meets the requirements of subsections A and B of this section, it shall be admissible  
83 before the judge or jury trying the case in the ordinary course of the preliminary hearing or trial. If the  
84 court initially determines that the evidence is inadmissible, but new information is discovered during the  
85 course of the preliminary hearing or trial which may make such evidence admissible, the court shall  
86 determine in an evidentiary hearing whether such evidence is admissible.

87 § 18.2-382. Photographs, slides and motion pictures.

88 Every person who knowingly:

89 (1)1. Photographs himself or any other person, for purposes of preparing an obscene film,  
90 photograph, negative, slide or motion picture for purposes of sale or distribution; or

91 (2)2. Models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph,  
92 negative, slide or motion picture for purposes of sale or distribution; shall be guilty of a Class 3  
93 misdemeanor, *except that a minor cannot consent to such act and the use of a minor in the preparation*  
94 *is a crime of abduction for purposes of prostitution pursuant to subsection B of § 18.2-47 and clause*  
95 *(iii) of § 18.2-48.*

96 2. That the provisions of this act may result in a net increase in periods of imprisonment or  
97 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot  
98 be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter  
99 874 of the Acts of Assembly of 2010 requires the Virginia Criminal Sentencing Commission to  
100 assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the  
101 necessary appropriation cannot be determined for periods of commitment to the custody of the  
102 Department of Juvenile Justice.