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**HOUSE BILL NO. 2398**

Offered January 17, 2023

A *BILL to amend and reenact §§ 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, and 18.2-67.10 of the Code of Virginia, relating to sexual extortion; penalties.*

Patrons—Bell and Glass

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, 18.2-67.3, 18.2-67.4, and 18.2-67.10 of the Code of Virginia is amended and reenacted as follows:**

**§ 18.2-61. Rape.**

A. If any person has sexual intercourse with a complaining witness, whether or 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, *or sexual extortion* 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 13 as the victim, he or she shall be guilty of rape.

B. 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 in addition:

1. For a violation of clause (iii) of subsection A where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

2. For a violation of clause (iii) of subsection A where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of clause (iii) of subsection A, where the offender is more than three years older than the victim, is for a term 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.

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 under this section against a spouse 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.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection 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, anilingus, or anal intercourse with a complaining witness whether or 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,

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59 and

60 1. The complaining witness is less than 13 years of age; or

61 2. The act is accomplished against the will of the complaining witness, by force, threat, or  
62 intimidation, or *sexual extortion* of or against the complaining witness or another person, or through the  
63 use of the complaining witness's mental incapacity or physical helplessness.

64 B. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or  
65 for any term not less than five years; and in addition:

66 1. For a violation of subdivision A 1, where the offender is more than three years older than the  
67 victim, if done in the commission of, or as part of the same course of conduct as, or as part of a  
68 common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89,  
69 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of  
70 confinement of 25 years; or

71 2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18  
72 years of age or older at the time of the offense, the punishment shall include a mandatory minimum  
73 term of confinement for life.

74 The mandatory minimum terms of confinement prescribed for violations of this section shall be  
75 served consecutively with any other sentence. If the term of confinement imposed for any violation of  
76 subdivision A 1, where the offender is more than three years older than the victim, is for a term less  
77 than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence  
78 of no less than 40 years. This suspended sentence shall be suspended for the remainder of the  
79 defendant's life, subject to revocation by the court.

80 In any case deemed appropriate by the court, all or part of any sentence imposed for a violation  
81 under this section against a spouse may be suspended upon the defendant's completion of counseling or  
82 therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of  
83 the views of the complaining witness and such other evidence as may be relevant, the court finds such  
84 action will promote maintenance of the family unit and will be in the best interest of the complaining  
85 witness.

86 C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case  
87 tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the  
88 defendant who has not previously had a proceeding against him for violation of this section dismissed  
89 pursuant to this subsection and with the consent of the complaining witness and the attorney for the  
90 Commonwealth, may defer further proceedings and place the defendant on probation pending completion  
91 of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the  
92 defendant fails to so complete such counseling or therapy, the court may make final disposition of the  
93 case and proceed as otherwise provided. If such counseling is completed as prescribed under  
94 § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after  
95 consideration of the views of the complaining witness and such other evidence as may be relevant, the  
96 court finds such action will promote maintenance of the family unit and be in the best interest of the  
97 complaining witness.

98 **§ 18.2-67.2. Object sexual penetration; penalty.**

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

104 1. The complaining witness is less than 13 years of age; or

105 2. The act is accomplished against the will of the complaining witness, by force, threat, or  
106 intimidation, or *sexual extortion* of or against the complaining witness or another person, or through the  
107 use of the complaining witness's mental incapacity or physical helplessness.

108 B. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state  
109 correctional facility for life or for any term not less than five years; and in addition:

110 1. For a violation of subdivision A 1, where the offender is more than three years older than the  
111 victim, if done in the commission of, or as part of the same course of conduct as, or as part of a  
112 common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89,  
113 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of  
114 confinement of 25 years; or

115 2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18  
116 years of age or older at the time of the offense, the punishment shall include a mandatory minimum  
117 term of confinement for life.

118 The mandatory minimum terms of confinement prescribed for violations of this section shall be  
119 served consecutively with any other sentence. If the term of confinement imposed for any violation of  
120 subdivision A 1, where the offender is more than three years older than the victim, is for a term 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.

In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse 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.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection 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; penalty.**

A. An accused is guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, and

1. The complaining witness is less than 13 years of age; or  
2. The act is accomplished through the use of the complaining witness's mental incapacity or physical helplessness; or

3. The offense is committed by a parent, step-parent, grandparent, or step-grandparent and the complaining witness is at least 13 but less than 18 years of age; or

4. The act is accomplished against the will of the complaining witness by force, threat, or intimidation, or *sexual extortion*, and

a. The complaining witness is at least 13 but less than 15 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; or

5. The offense is not a recognized form of treatment in the profession, and is committed, without the express consent of the patient, by (i) a massage therapist, or a person purporting to be a massage therapist, during an actual or purported practice of massage therapy, as those terms are defined in § 54.1-3000; (ii) a person practicing or purporting to practice the healing arts, during an actual or purported practice of the healing arts, as those terms are defined in §§ 54.1-2900 and 54.1-2903; or (iii) a physical therapist, or a person purporting to be a physical therapist, during an actual or purported practice of physical therapy, as those terms are defined in § 54.1-3473.

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 20 years and by a fine of not more than \$100,000.

**§ 18.2-67.4. Sexual battery.**

A. An accused is guilty of sexual battery if he sexually abuses, as defined in § 18.2-67.10, (i) the complaining witness against the will of the complaining witness, by force, threat, intimidation, *sexual extortion*, or ruse, (ii) within a two-year period, more than one complaining witness or one complaining witness on more than one occasion intentionally and without the consent of the complaining witness, (iii) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail, and the accused is an employee or contractual employee of, or a volunteer with, the state or local correctional facility or regional jail; is in a position of authority over the inmate; and knows that the inmate is under the jurisdiction of the state or local correctional facility or regional jail, or (iv) a probationer, parolee, or a pretrial defendant or posttrial offender under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services or agency and the accused is an employee or contractual employee of, or a volunteer with, the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail; is in a position of authority over an offender; and knows that the offender is under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail.

B. Sexual battery is a Class 1 misdemeanor.

**§ 18.2-67.10. General definitions.**

As used in this article:

1. "Complaining witness" means the person alleged to have been subjected to rape, forcible sodomy, inanimate or animate object sexual penetration, marital sexual assault, aggravated sexual battery, or sexual battery.

2. "Intimate parts" means the genitalia, anus, groin, breast, or buttocks of any person, or the chest of a child under the age of 15.

3. "Mental incapacity" means that condition of the complaining witness existing at the time of an offense under this article which prevents the complaining witness from understanding the nature or consequences of the sexual act involved in such offense and about which the accused knew or should have known.

4. "Physical helplessness" means unconsciousness or any other condition existing at the time of an offense under this article which otherwise rendered the complaining witness physically unable to communicate an unwillingness to act and about which the accused knew or should have known.

5. The complaining witness's "prior sexual conduct" means any sexual conduct on the part of the complaining witness which took place before the conclusion of the trial, excluding the conduct involved in the offense alleged under this article.

6. "Sexual abuse" means an act committed with the intent to sexually molest, arouse, or gratify any person, where:

a. The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts;

b. The accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts;

c. If the complaining witness is under the age of 13, the accused causes or assists the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or

d. The accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts.

7. *"Sexual extortion" means the accused maliciously disseminates or sells, or threatens to maliciously disseminate or sell, a videographic or still image created by any means whatsoever that depicts the complaining witness or such complaining witness's family or household member, as defined in § 16.1-228, who is totally nude, or in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast.*

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.