



Protecting Virginia's Children from Forced Marriage RED FLAGS AND TIPS FOR JUDGES AND GUARDIANS AD LITEM

Virginia juvenile and domestic relations law addresses forced marriage at Va. Code §20-89.1 (annulment) and Va. Code §16.1-331-334 (emancipation), and Virginia criminal law penalizes forced marriage at Va. Code §18.2-355(2). You may encounter forced marriages across several different kinds of legal proceedings: protection orders; abuse and neglect; Child in Need of Services or Supervision; guardianship; emancipation; annulment or divorce; and custody or visitation.

This backgrounder provides guidance on how best to leverage the new Virginia law (effective July 1, 2016) governing emancipation based on intent to marry, in order to prevent the forced marriages of minors and to protect them from other abuse and exploitation in the guise of marriage.

WHAT DOES THE LAW SAY ON MINIMUM MARRIAGE AGE?

The youngest age at which one can independently consent to marry in Virginia is 18, unless a minor age 16-17 has been emancipated by court order (Va. Code §20-48). Upon application for a marriage license, an emancipated minor must provide a certified copy of the order of emancipation. No one under the age of 16 may marry in the state of Virginia.

HOW CAN THE LAW BE USED TO PROTECT VIRGINIA'S CHILDREN FROM FORCED MARRIAGE AND OTHER ABUSE?

Across Va. Code §16.1-331-334, the law sets forth several procedural safeguards common to all emancipation proceedings, and, if a minor seeks to emancipate in order to marry, the law also requires judges to examine further substantive criteria specific to concerns about forced and abusive marriages of minors.

Granting permission to marry simultaneously grants the minor emancipation. Importantly, this approach ensures that anyone who marries in Virginia is a legal adult, with all the rights of an adult to protect themselves in case of abuse (for example, to go to a shelter or seek a protection order).

However, since among other effects, emancipation also releases parents from support obligations, and puts the minor beyond the jurisdiction of Child Protective Services, it may further endanger rather than empower an already at-risk minor. *Remember: the emancipation statute enables judges to do more than simply grant or deny the petition—they can make any other orders they deem necessary for the minor's protection.*

WHAT PROCEDURAL SAFEGUARDS DOES THE LAW INCLUDE TO PROTECT MINORS FROM FORCED MARRIAGE?

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| <ul style="list-style-type: none">▪ Minors may petition directly, with/out parental consent▪ Petition must include name, age, date of birth (if known), and residence of intended spouse▪ Petitioner must submit copies of any criminal records of the parties, and of any protective orders between them▪ Court must hold hearing and issue written findings▪ Both parties intending to marry must attend hearing | <ul style="list-style-type: none">▪ Court may require local dept. of social services or other agency to investigate and report on petition allegations▪ Court may make <u>any other orders</u> it deems appropriate▪ Court must appoint counsel for the minor to serve as guardian ad litem (GAL)▪ If petition is granted, minor is empowered with the rights of a legal adult |
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ADDITIONAL GUIDANCE AND RECOMMENDATIONS ON PROCEDURAL SAFEGUARDS:

- **Probe additional protection order and criminal history:** Precisely because un-emancipated minors in Virginia have very limited PO access (only to emergency protection orders issued by a magistrate), it is unlikely that there will be a history of protection orders (POs) between the parties. Yet an intended adult spouse may have had multiple prior POs issued against him or her in prior relationships. Likewise, criminal histories may be incomplete, withheld by the parties, or expunged. A key reason to require both parties to attend the hearing is to enable the judge to ask PO and criminal history questions directly of the intended spouse, under oath.
- **Provide safe opportunity for confidential disclosures and advise minors as to their options:** If a minor is facing threats by their own parents or a “partner,” they will not feel safe disclosing their true circumstances in open court, or even privately to an assigned GAL, unless they can be assured of further confidentiality protections (asking sensitive questions in chambers, sealing or redacting GAL filings, sealing the record except upon order of competent court, etc.), and advised as to options they have to stay safe if they fear retaliation at home.
- **Review past social services files on minor petitioner:** Whether or not the judge decides that a new social services investigation and report is warranted, the judge and GAL should review past reports to Child Protection Services for allegations that the minor has been threatened with a forced marriage, or faced other abuse or exploitation.
- **Take precautions re: translation:** Families may threaten a minor in a language neither the judge nor GAL speaks.
- **Employ other legal tools to protect minors:** If a judge finds evidence of a forced marriage, protection orders and CHINS orders can be issued to include measures to prevent the marriage that may include (for marriages planned out-of-state or overseas) a prohibition on the minor’s marriage before age 18 and on taking the minor out of the court’s jurisdiction without permission, or a requirement that the minor’s passport(s) be surrendered and the minor be kept in the same school; emergency removal and temporary guardianship is also a possibility.
- **Institute a waiting period after emancipation is granted and before marriage license application may be granted:** If a minor feels particularly afraid of those who are threatening her, and especially unsure what the consequences might be if he or she discloses those threats, the minor may be easily coerced into giving coached answers to the judge or GAL, and so the fact that the marriage is forced may evade detection. A waiting period of at least a week is a final failsafe mechanism to enable the minor adequate time outside of the emancipation proceeding to seek help from services that may have been previously inaccessible to him or her as a minor, and to find safety.

While the above recommendations are not expressly covered in the statutory language, they should rest within a judge’s discretion, and could play a critical role in the law’s overall protection framework.

WHAT SUBSTANTIVE CRITERIA MUST JUDGES EXAMINE TO PROTECT MINORS FROM FORCED MARRIAGE?

1. It is the minor’s own will that the minor enter into marriage, and the minor is not being compelled against the minor’s will by force, threats, persuasions, menace, or duress;
2. The individuals to be married are mature enough to make such a decision to marry;
3. The marriage will not endanger the safety of the minor. In making this finding, the court shall consider
 - (i) the age difference between the parties intending to be married;
 - (ii) whether either individual to be married has a criminal record containing any conviction of an act of violence, as defined in § 19.2-297.1, or any conviction of an offense set forth in § 63.2-1719 or 63.2-1726; and
 - (iii) any history of violence between the parties to be married; and
4. It is in the best interests of the minor petitioning for an order of emancipation that such order be entered. Neither a past or current pregnancy of either individual to be married or between the individuals to be married nor the wishes of the parents or legal guardians of the minor desiring to be married shall be sufficient evidence to establish that the best interests of the minor would be served by entering the order of emancipation.

Va. Code §16.1-333.1

ADDITIONAL GUIDANCE AND RECOMMENDATIONS ON SUBSTANTIVE CRITERIA:

Because the statutory language above is necessarily succinct regarding the kinds of due diligence inquiries that we hope both judges and GALs will make, below we suggest ways you might break down each of these substantive criteria to best detect forced marriages and other threats to a minor's welfare.

1. *It is the minor's own will that the minor enter into marriage, and the minor is not being compelled against the minor's will by force, threats, persuasions, menace, or duress.* Questions to ask may include:

- How did you meet your potential spouse? How old were you when the relationship began?
- Can you tell me about how you got engaged or why you decided to get married?
- How do decisions to get married generally happen in your family (e.g., for parents, siblings, cousins)? What is your role in the planning for this marriage?
- What do you believe would happen if you didn't get married right now? Are you afraid of the consequences of saying "no" to this marriage?
- Has anyone ever threatened you with or actually used physical violence against you in an effort to make you agree to get married?
- Has anyone ever threatened to hurt themselves or others (siblings, other family members, friends, someone you may have dated) if you refused to get married?
- Are you feeling other kinds of pressure to get married?

2. *The individuals to be married are mature enough to make such a decision to marry.* Questions to ask may include:

- Can you tell me why you want to get married now as opposed to waiting until you are 18? In what ways do you feel well-prepared and well-positioned to get married and sustain a marriage, and in what ways do you not?
- What do you think married life will be like? What will day-to-day life look like as someone who is married?
- Can you tell me what will be expected of you as a wife/husband? How does this fit into your other life plans?

3. *The marriage will not endanger the safety of the minor. In making this finding, the court shall consider (i) the age difference between the parties intending to be married; (ii) whether either individual to be married has a criminal record containing any conviction of an act of violence, as defined in § 19.2-297.1, or any conviction of an offense set forth in § 63.2-1719 or 63.2-1726; and (iii) any history of violence between the parties to be married.*

We especially recommend that you make the following sensitive inquiries of the minor in private/in chambers:

Age differences:

- If the minor intends to marry an adult (age 18 or older), and there is evidence of a sexual relationship between the parties (e.g., a pregnancy), then the court already has before it evidence that the marriage will "endanger the safety of the minor", and we urge judges to deny petitions in such circumstances. This may also be true even of minors marrying minors, depending on the onset of a sexual relationship.

That is, Virginia has already articulated a set of policy pronouncements in its sex crimes with age-based elements (please refer to Va. Code §§18.2-61, -63, -67.1, -67.2, -67.3, -67.4; and §§18.2-370, -370.1, and -371), that *presume inherently coercive relationships between individuals of certain ages or age differences.*

Criminal records re: crimes of violence or crimes against minors/"barrier" crimes:

- In addition to crimes of violence, the statute requires judges to examine a criminal record of "barrier" crimes – that is, a list of statutorily enumerated crimes that would bar an individual from being approved by a child-placing agency, or from being placed in a position of responsibility for the safety or well-being of children. The inclusion of all these sorts of crimes is a strong policy pronouncement, and so we urge judges to deny petitions if the intended spouse has any such criminal history.

History of violence between the parties:

- Has your intended spouse ever threatened you to make you agree to get married?
- Has your intended spouse ever physically hurt you to make you agree to get married? This can include hitting, pushing, slapping, holding you down, throwing objects at you or hitting you with objects.
- Has your intended spouse ever physically hurt or threatened to hurt someone close to you, or a pet, to make you agree to get married?

We urge judges to deny petitions if they find a history of violence between the parties. As noted above under “procedural safeguards,” we also urge judges to probe additional protection order history in order to ascertain whether the minor would be “endangered” by the marriage (e.g., if the intended spouse has multiple prior protection orders against him/her from prior relationships).

4. *It is in the best interests of the minor petitioning for an order of emancipation that such order be entered. Neither a past or current pregnancy of either individual to be married or between the individuals to be married nor the wishes of the parents or legal guardians of the minor desiring to be married shall be sufficient evidence to establish that the best interests of the minor would be served by entering the order of emancipation.*

These clarifying provisions are particularly critical. For the judge to be a strong gatekeeper against forced marriages and other abuse and exploitation of minors through marriage, and keeping in mind that pregnancy can be evidence of a rape/statutory rape and that “parental consent” can hide “parental coercion”, neither pregnancy nor parental consent, nor both, should suffice to demonstrate the marriage would be in the minor’s best interests.

In fact, we urge judges to deny petitions if they find there is a past or current pregnancy between the parties that resulted from a statutory rape, based on the ages or age differences of the parties at the time of sexual intercourse.

Finally, we note that while judges must examine certain factors specified under the emancipation statute, they certainly have the discretion to consider additional factors bearing on whether the marriage would endanger the minor, and on whether emancipation/marriage is in the minor’s best interests.

Examples of such other factors might be whether the minor has health conditions or disabilities that render them especially vulnerable to coercion or abuse; or whether the marriage will cut short the minor’s education or take the minor out-of-state/overseas where they would be isolated from a support network or other assistance in case of abuse.

To recap some of our key recommendations, we urge judges to make broad inquiries and to deny petitions:

- If there is any evidence that the minor is not fully and freely consenting to marriage, or lacks the maturity to make such an informed decision;
- If there is any evidence that the marriage will endanger the minor’s safety or will not serve the minor’s best interests. In particular, we urge judges to consider the following as outright bars to granting such petitions:
 - if there are prior Child Protection Services records of forced marriage allegations (or other past abuse/coercion by parents, and present evidence that they are driving the decision to marry); or
 - if the intended spouse has:
 - A criminal record for crimes of violence or crimes against minors/“barrier” crimes
 - Prior protection orders against them, whether or not between the parties to be married
 - Committed statutory rape of the minor, based on a pregnancy between the parties or other evidence of a sexual relationship and considering ages/age differences of the parties at the time

We also urge judges not only to deny petitions where there is evidence of a forced marriage or other abuse or exploitation, but also to issue other orders as needed for the minor’s protection.



Forced Marriage Initiative

Statutes Related to the Minimum Marriage Age in Virginia and Protections Against Forced Marriages

Va. Code § 20-45.1 Void and voidable marriages.

A. All marriages that are prohibited by § [20-38.1](#) are void.

B. All marriages solemnized when either of the parties lacked capacity to consent to the marriage at the time the marriage was solemnized, because of mental incapacity or infirmity, shall be void from the time they shall be so declared by a decree of divorce or nullity.

C. All marriages solemnized on or after July 1, 2016, when either or both of the parties were, at the time of the solemnization, under the age of 18 and have not been emancipated as required by §20-48 shall be void from the time they shall be so declared by a decree of divorce or nullity. Notwithstanding the foregoing, this section shall not apply to a lawful marriage entered in another state or country prior to the parties being domiciled in the Commonwealth.

Va. Code § 20-48 Minimum age of marriage.

The minimum age at which persons may marry shall be 18, unless a minor has been emancipated by court order. Upon application for a marriage license, an emancipated minor shall provide a certified copy of the order of emancipation.

Va. Code § 20-89.1 Suit to annul marriage.

A. When a marriage is alleged to be void or voidable for any of the causes mentioned in § 20-13, 20-38.1, or 20-45.1 or by virtue of fraud or duress, either party may institute a suit for annulling the same; and upon proof of the nullity of the marriage, it shall be decreed void by a decree of annulment.

B. In the case of natural or incurable impotency of body existing at the time of entering into the marriage contract, or when, prior to the marriage, either party, without the knowledge of the other, had been convicted of a felony, or when, at the time of the marriage, the wife, without the knowledge of the husband, was with child by some person other than the husband, or where the husband, without knowledge of the wife, had fathered a child born to a woman other than the wife within 10 months after the date of the solemnization of the marriage, or where, prior to the marriage, either party had been, without the knowledge of the other, a prostitute, a decree of annulment may be entered upon proof, on complaint of the party aggrieved.

C. No annulment for a marriage alleged to be void or voidable under subsection B of § 20-45.1 or subsection B of this section or by virtue of fraud or duress shall be decreed if it appears that the party applying for such annulment has cohabited with the other after knowledge of the facts giving rise to what otherwise would have been grounds for

annulment; and, in no event shall any such decree be entered if the parties had been married for a period of two years prior to the institution of such suit for annulment.

D. A party who, at the time of such marriage as is mentioned in § 20-48, was capable of consenting with a party not so capable shall not be permitted to institute a suit for the purpose of annulling such marriage.

Va. Code § 20-90 Suit to affirm marriage.

A. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may institute a suit for affirmance of the marriage, and upon due proof of the validity thereof, it shall be decreed to be valid, and such decree shall be conclusive upon all persons concerned.

B. Notwithstanding § 20-13, a marriage of a couple where one of the parties was under the age of 18 at the time of solemnization may be decreed valid upon petition by the party who was under the age of 18 at the time of the solemnization that would otherwise be deemed voidable under subsection C of § 20-45.1 solely because of age, once such party has attained the age of 18. If both parties were under the age of 18 at the time of solemnization, such petition shall not be granted unless both parties have reached the age of 18 and join in the petition together.

Va. Code § 16.1-331 Petition for emancipation.

Any minor who has reached his sixteenth birthday and is residing in this Commonwealth, or any parent or guardian of such minor, may petition the juvenile and domestic relations district court for the county or city in which either the minor or his parents or guardian resides for a determination that the minor named in the petition be emancipated. The petition shall contain, in addition to the information required by § 16.1-262 [biographic information, eligibility, and custody status], the gender of the minor and, if the petitioner is not the minor, the name of the petitioner and the relationship of the petitioner to the minor. If the petition is based on the minor's desire to enter into a valid marriage, the petition shall also include the name, age, date of birth, if known, and residence of the intended spouse. The petitioner shall also attach copies of any criminal records of each individual intending to be married. The petitioner shall also attach copies of any protective order issued between the individuals to be married.

Va. Code § 16.1-332 Orders of court; investigation, report and appointment of counsel.

If deemed appropriate the court may (i) require the local department of social services or any other agency or person to investigate the allegations in the petition and file a report of that investigation with the court, (ii) appoint counsel for the minor's parents or guardian, or (iii) make any other orders regarding the matter which the court deems appropriate. In any case pursuant to this article the court shall appoint counsel for the minor to serve as guardian ad litem.

Va. Code § 16.1-333 Findings necessary to order that minor is emancipated.

The court may enter an order declaring the minor emancipated if, after a hearing, it is found that: (i) the minor has entered into a valid marriage, whether or not that marriage has been terminated by dissolution; (ii) the minor is on active duty with any of the armed forces of the United States of America; (iii) the minor willingly lives separate and apart from his parents or guardian, with the consent or acquiescence of the parents or guardian, and that the minor is or is capable of supporting himself and competently managing his own financial affairs; or (iv) the minor desires to enter into a valid marriage and the requirements of § 16.1-333.1 are met.

Va. Code § 16.1-333.1 Written findings necessary to order that minor is emancipated on the basis of intent to marry.

The court may enter an order declaring such a minor who desires to get married emancipated if, after a hearing where both individuals intending to marry are present, the court makes written findings that:

1. It is the minor's own will that the minor enter into marriage, and the minor is not being compelled against the minor's will by force, threats, persuasions, menace, or duress;

2. The individuals to be married are mature enough to make such a decision to marry;
3. The marriage will not endanger the safety of the minor. In making this finding, the court shall consider
 - (i) the age difference between the parties intending to be married;
 - (ii) whether either individual to be married has a criminal record containing any conviction of an act of violence, as defined in § 19.2-297.1 [listing crimes considered an “act of violence” for purposes of three-strikes rule], or any conviction of an offense set forth in § 63.2-1719 [convictions which render person unable to be responsible for the safety or well-being of children] or 63.2-1726 [list of crimes which bar an individual from being approved by a child-placing agency]; and
 - (iii) any history of violence between the parties to be married; and
4. It is in the best interests of the minor petitioning for an order of emancipation that such order be entered. Neither a past or current pregnancy of either individual to be married or between the individuals to be married nor the wishes of the parents or legal guardians of the minor desiring to be married shall be sufficient evidence to establish that the best interests of the minor would be served by entering the order of emancipation.

Va. Code § 16.1-334 Effects of order.

An order that a minor is emancipated shall have the following effects:

1. The minor may consent to medical, dental, or psychiatric care, without parental consent, knowledge, or liability;
2. The minor may enter into a binding contract or execute a will;
3. The minor may sue and be sued in his own name;
4. The minor shall be entitled to his own earnings and shall be free of control by his parents or guardian;
5. The minor may establish his own residence;
6. The minor may buy and sell real property;
7. The minor may not thereafter be the subject of a petition under this chapter as abused, neglected, abandoned, in need of services, in need of supervision, or in violation of a juvenile curfew ordinance enacted by a local governing body;
8. The minor may enroll in any school or college, without parental consent;
9. The minor may secure a driver’s license under § [46.2-334](#) or § [46.2-335](#) without parental consent;
10. The parents of the minor shall no longer be the guardians of the minor;
11. The parents of a minor shall be relieved of any obligations respecting his school attendance under Article 1 (§ [22.1-254](#) et seq.) of Chapter 14 of Title 22.1;
12. The parents shall be relieved of all obligation to support the minor;
13. The minor shall be emancipated for the purposes of parental liability for his acts;
14. The minor may execute releases in his own name;
15. The minor may not have a guardian ad litem appointed for him pursuant to any statute solely because he is under age eighteen; and
16. The minor may marry without parental, judicial, or other consent.

The acts done when such order is or is purported to be in effect shall be valid notwithstanding any subsequent action terminating such order or a judicial determination that the order was void ab initio.

Appendix A: Forced Marriage Criminal Statute

Va. Code § 18.2-355 Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking.

Any person who:

- (1) For purposes of prostitution or unlawful sexual intercourse, takes any person into, or persuades, encourages or causes any person to enter, a bawdy place, or takes or causes such person to be taken to any place against his or her will for such purposes; or
- (2) Takes or detains a person against his or her will with the intent to compel such person, by force, threats, persuasions, menace or duress, to marry him or her or to marry any other person, or to be defiled; or
- (3) Being parent, guardian, legal custodian or one standing in loco parentis of a person, consents to such person being taken or detained by any person for the purpose of prostitution or unlawful sexual intercourse; or
- (4) For purposes of prostitution, takes any minor into, or persuades, encourages, or causes any minor to enter, a bawdy place, or takes or causes such person to be taken to any place for such purposes; is guilty of pandering.

A violation of subdivision (1), (2), or (3) is punishable as a Class 4 felony. A violation of subdivision (4) is punishable as a Class 3 felony.

Appendix B: Sex Crimes with Age-Based Elements

Va. Code § 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 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.

[Va. Code § 18.2-63](#) Carnal knowledge of child between thirteen and fifteen years of age.

A. If any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age, such person shall be guilty of a Class 4 felony.

B. If any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age who consents to sexual intercourse and the accused is a minor and such consenting child is three years or more the accused's junior, the accused shall be guilty of a Class 6 felony. If such consenting child is less than three years the accused's junior, the accused shall be guilty of a Class 4 misdemeanor.

In calculating whether such child is three years or more a junior of the accused minor, the actual dates of birth of the child and the accused, respectively, shall be used.

C. For the purposes of this section, (i) a child under the age of thirteen years shall not be considered a consenting child and (ii) "carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, and animate and inanimate object sexual penetration.

[Va. Code § 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, and

1. The complaining witness is less than 13 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. Forcible sodomy is a felony punishable 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 subdivision A 1, 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 subdivision A 1 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 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.

[Va. Code § 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, whether or not his or her spouse, 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 13 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. 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; and in addition:

1. For a violation of subdivision A 1, 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 subdivision A 1 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 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.

[Va. Code § 18.2-67.3](#) Aggravated sexual battery; penalty.

- A. An accused shall be 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, 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.
- 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.

[Va. Code § 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, 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.

Va. Code § 18.2-370 Taking indecent liberties with children; penalties.

A. Any person 18 years of age or over, who, with lascivious intent, knowingly and intentionally commits any of the following acts with any child under the age of 15 years is guilty of a Class 5 felony:

- (1) Expose his or her sexual or genital parts to any child to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person; or
- (2) [Repealed.]
- (3) Propose that any such child feel or fondle his own sexual or genital parts or the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child; or
- (4) Propose to such child the performance of an act of sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act constituting an offense under § [18.2-361](#); or
- (5) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding subdivisions of this subsection.

Va. Code § 18.2-370.1 Taking indecent liberties with child by person in custodial or supervisory relationship; penalties.

A. Any person 18 years of age or older who, except as provided in § [18.2-370](#), maintains a custodial or supervisory relationship over a child under the age of 18 and is not legally married to such child and such child is not emancipated who, with lascivious intent, knowingly and intentionally (i) proposes that any such child feel or fondle the sexual or genital parts of such person or that such person feel or handle the sexual or genital parts of the child; or (ii) proposes to such child the performance of an act of sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act constituting an offense under § [18.2-361](#); or (iii) exposes his or her sexual or genital parts to such child; or (iv) proposes that any such child expose his or her sexual or genital parts to such person; or (v) proposes to the child that the child engage in sexual intercourse, sodomy or fondling of sexual or genital parts with another person; or (vi) sexually abuses the child as defined in subdivision 6 of § [18.2-67.10](#) is guilty of a Class 6 felony.

Va. Code § 18.2-371 Causing or encouraging acts rendering children delinquent, abused, etc.; penalty; abandoned infant.

Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition that renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in § [16.1-228](#) or (ii) engages in consensual sexual intercourse or anal intercourse with or performs cunnilingus, fellatio, or anilingus upon or by a child 15 or older not his spouse, child, or grandchild is guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§ [18.2-18](#), [18.2-19](#), [18.2-61](#), [18.2-63](#), and [18.2-347](#).