



AN INTERIM REPORT
of the Advisory Task Force
to Study
CRIMINAL SEXUAL ASSAULT
for the
VIRGINIA STATE CRIME COMMISSION

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CRIMINAL SEXUAL ASSAULT STUDY

Introduction

Over the past years, Virginia's crime rates have zoomed to overwhelming proportions, especially in the area of sexual assault. While crimes such as homicide and robbery have fluctuated and, in some instances, decreased, sexual assault crimes continue to increase in Virginia annually.

Continuing the trend in recent years, forcible rape showed a 6% increase during the calendar year 1977 as compared with the previous year. There was a total of 1,167 offenses reported in 1977 as compared with 1,103 in 1976. Of those reported last year, 865 were forcible rapes, an increase of 65 over the previous year. (See Appendix I). These figures are from the Uniform Crime Reporting section of the Department of State Police.

The Crime Commission became concerned over this increasing problem after a review of the state's statistics for 1974 and 1975 revealed substantial increases over other major crimes. The Commission also heard concerns expressed from law enforcement agencies throughout the state. Added attention was brought to the problem after a number of heinous sexual assaults were committed involving children and college students. This stirred citizens in various parts of the state. Women's organizations and rape crisis centers brought to the public's attention the need for improvement of victim treatment and more victim reporting of the crime.

In a 1976 Senate Resolution, the Crime Commission asked that a comprehensive study be conducted to determine the problems associated with the high occurrence of sexual assaults. The Senate Joint Resolution passed and the General Assembly directed the Crime Commission to research all aspects of these crimes in Virginia and report its findings and recommendations to the Governor and General Assembly.

The objectives of this study, as set forth in its mandate, were to reduce

the occurrence and work toward the prevention of criminal sexual assault. The goal of the study is to enact a new Sexual Assault Statute in Virginia--one that is conclusive and comprehensive, and provides better treatment to victims of sexual assault crimes.

In August 1976, a 42-member advisory task force was appointed by the Commission to study criminal sexual assault. These persons were chosen, based on their expertise, professions or interests in sexual assault crimes. They represent the entire State in regard to sex, race, age, occupations, economic status and interest. The task force has worked diligently in researching all aspects of sexual assault. The task force was divided into five (5) distinct areas of study according to expertise and interests. The five subcommittees are Legislation, Court Process, Public Education, Law Enforcement, and Treatment, Rehabilitation and Punishment.

Methodology

As is the procedure with use of task forces, the Commission outlined specific objectives for each subcommittee. The subcommittees then began many hours of separate meetings in order to organize their groups' interests with their assignment. The subcommittee work also avoided overlapping research.

Much of the information used in the first months of task force work was gathered by staff and disseminated to the appropriate subcommittee. The information included corrections' reports on incarcerated sex offenders, police reports on the number of sexual assaults in a given area at a given time, FBI crime report statistics, contacts with rape crisis centers, mental health centers, volunteer services, hospitals, and information on national sexual assault prevention programs such as the Iowa Rape Prevention Project, Minnesota Rape Project, and the Colorado, Michigan, and Maryland programs. Also, information and research on newly revised sexual assault legislation and statutes in other states were gathered.

Many of the projects researched had been established under similar circumstances as Virginia's, using the task force concept with report and recommendations. Through discussions with various contacts throughout the state, it was found that the increasing number of sexual assault crimes is a national problem which approximately 45 states have recognized through revised legislation. Their research and legislative reports provided additional views to the task force's perspective of new legislation in Virginia.

Public Hearings

The Crime Commission and Advisory Task Force held six public hearings on Criminal Sexual Assault to solicit citizen participation and to increase the awareness of citizens throughout the Commonwealth. The public hearings were held in Norfolk, Roanoke, Fairfax, Charlottesville, Bristol and Richmond, from May through September, 1977.

A majority of the more than 250 persons appearing before the task force panelists voiced strong sentiment for revised legislation geared toward less humiliating and more professional treatment of the victims of sexual assault. Several groups offered resolutions. A legislative proposal was offered by representatives of the Coalition on Sexual Assault Reform (COSAR), a coalition of rape crisis center representatives and interested persons working to coordinate a statewide effort for the development of comprehensive criminal sexual assault legislation for introduction to the Virginia General Assembly. The COSAR proposal included a number of sweeping changes, and has been given in-depth study by the Legislative and Court Process subcommittees of the task force.

In each of the six public hearings it was emphasized that there is an acute need for sensitivity and specialized training for law enforcement officers, and for more female officers to be available to investigate allegations of rape.

Stress was also placed on the need for specially trained hospital emergency room medical personnel to examine victims and to properly preserve and record the evidence. Many speakers emphasized the need for a uniform protocol in treating sexual assault victims. It was recommended by a number of Commonwealth's attorneys and by volunteers working with crisis centers that the physician conducting the examination be also sensitive to the needs of the victim and be able to provide any information necessary for follow-up treatment.

Among the other concerns of citizens who spoke during the public hearings were: the increasing number of cases of sexual abuse among children which include incest, child molestation, fondling, and abduction; the need for more human sexuality courses in public schools for school-age children and adults; the battered woman syndrome and no spousal exemptions in prosecuting husbands who sexually assault wives; treatment and rehabilitation of the sex offender; and better services in all areas relating to the handling of victims of sexual assault as well as increases in abuse of children through pornography.

Three rape victims related their traumatic experiences during public hearing. Several parents and other family members also appeared, as did one inmate now serving time for rape.

Major Findings

One of the most revealing facts found during this study was that rape is not a crime of sexual gratification. Based on testimony of interviewed sex offenders, as heard by the Commission, the task force and staff, approximately 40 inmates stated that sex was not the motive for rape. Most stated they were sorry about the incident; some had completely blocked the incident out of their minds and could not remember; some stated they were under the influence of a substance such as drugs, alcohol, or peer pressure to commit the crime. This

finding supports information found in research materials by staff. It was determined, in a broad psychological study conducted by Dr. Ralph Garofalo at the Center for Diagnosis and Treatment of Sexually Dangerous Persons in Bridgewater, Massachusetts, that one category of rapists are motivated primarily by aggressive feelings directed toward women. "Their victims are invariably total strangers, whom they substitute for important women in their lives who have disappointed them." (Taken from Portrait of a Rapist - Newsweek, August 20, 1973, pages 67-68.)

Facts on convicted sex offenders presently incarcerated have been researched and compiled by M. Kathryn Jewett, a University of Virginia law intern, on Sex Offenders in Virginia - A Study of Those Convicted. (See Appendix II). It describes statistically who sex offenders in Virginia really are, their victims, their trial format, and their sentences.

According to Department of Corrections' records, the largest number of sex offenders incarcerated are from Norfolk, Richmond, and Fairfax County. The average sentence in years and months given inmates in these jurisdictions for the fiscal year ending June 30, 1976 was: Norfolk - 15 years, 2 months; Richmond - 13 years, 10 months; and Fairfax County - 5 years and 6 months.

The average sentence in years and months to inmates in these jurisdictions for the fiscal year ending June 30, 1977 was: Norfolk - 14 years, 5 months; Richmond - 16 years, 4 months; Fairfax County - 6 years, 0 months. (See Appendix III).

An overwhelming number of citizens and citizen groups spoke to the Commission and to the Advisory Task Force about the high number of sexually abused children in Virginia. In 1977, the State Welfare Department estimated 208 cases of sexual child abuse were reported out of a total of approximately 20,000 cases. For January 1978, the Department has received 1,210 reported cases of child abuse; and from 1975 (the year the child abuse reporting system went into effect) to 1977, the Department has received a grand total of 51,348 reported cases of child

abuse. These figures continue to increase from month to month.

It was mentioned in the testimony of several speakers at the public hearing that sexual abuse of children is rapidly increasing; however, most go unreported because of the position of authority of the perpetrators. According to representatives of the State Welfare Department, 38% of the sexual child abuse cases are perpetrated by a close relative or a friend of the family or of the child.

The Department of Education has included in the safety units of the health curriculum instruction which is relative to accepting food, favors, and rides from strangers. Films, filmstrips, and pamphlets on sexual assault have been previewed for appropriate use in schools for teachers or pupil use.

In June 1977, 108 questionnaires were mailed to every accredited hospital in Virginia. The questionnaires were sent to the chief administrator of each hospital. The survey was to determine those services offered to victims of sexual assault and whether there were specific procedures for treatment. Of the total number of survey questionnaires sent, 67.5% responded. Of those responding, 58 or 53% were equipped with full emergency room services. (For the purposes of this survey, the questions were tabulated based on 58 as 100%. The hospitals responding had full emergency room services.) Of those responding to the survey, 100% stated that the local police department is the agency to which forcible rape cases are reported; 41.3% report to sheriff's departments.

In regard to emergency services offered victims: 68.99% stated there was a secluded waiting area for victims of sexual assault; 50% stated there was no secluded waiting area. Fifty-seven or 98.2% said that priority is given for treatment to alleged victims of sexual assault; 1.7% had none. According to this survey, 70.9% of the responding hospitals use the PERK Kit, 13.8% never use it, and 15.3% stated it is used sometimes; 67.9% of the respondents stated that counseling related to pregnancy is given; for venereal disease, counseling is given 77.5% of the time.

In regard to crisis intervention counseling in hospitals, 58% responded that psychiatric nurses counseled victims of sexual assault; 50% stated counseling was done by the psychiatric social worker; 6.8% was done by a psychiatrist, and 1.7% was done by a psychologist.

Of total hospitals responding to the survey, 46 adults were treated last year, and 32 children; of the total adults and children treated, 70 were females and eight males.

The positions of the majority who responded to this survey were assistant administrators. Of 73 hospitals responding, 52% were in administrative positions, 40% were nurses and doctors (in and out of emergency room services), and eight were undeterminable.

The Virginia Education Association submitted two resolutions that were introduced and passed in the 1976 legislative session. One sought state and local legislation requiring educators to report suspected child abuse cases and granting them immunity from prosecution. The second called for enactment and enforcement of national and state legislation against sexual exploitation of children where they are used in the making of pornographic films and literature.

In June 1977, all registrants at the Virginia Women's meeting were handed a questionnaire on sexual assault. According to the Conference's Credentials Committee, 1,277 people were registered. Of those, 201 completed and returned the questionnaire.

Tabulations of the questionnaires by members of COSAR concluded the following:

1. 52% of the respondents indicated that they had been a victim of sexual assault (raped, sodomized or molested)
2. 36% were 18 or older at the time of the assault
3. 55% were or had been married at the time they answered the questionnaire.

4. 83% of the respondents were white, 15% were black, 2% other.
5. Respondants ranged from 16 to 66 years of age.
6. 84% of the respondents felt that a wife should be able to charge her husband with rape.

Conclusions

The Study of Criminal Sexual Assault has generated more statewide interest than any study the Crime Commission has ever undertaken. Based on research done by the Commission and the Advisory Task Force, the following conclusions are listed:

1. That the citizens of Virginia need to be educated as to the trauma-physical and psychological - experienced by the victims of sexual assault.
2. That there is a dire need for a program aimed at treatment and rehabilitation of the sex offender.
3. That Virginia needs a comprehensive criminal sexual assault statute that is aimed at more reporting and convictions and better treatment of victims during the courtroom process.
4. That all of the aspects covered and discovered in this study need much more attention than the one-year study period allowed; therefore another year of study is needed in order to complete all phases of the research.
5. That the task force has accomplished all of the assignments set forth in the original study mandate, and more.

Task Force Recommendations

Listed are the major recommendations of the Advisory Task Force to study Criminal Sexual Assault:

1. Adopt a joint resolution by Senator Joseph V. Gartlan, Jr., to

extend the study of Criminal Sexual Assault until November 1, 1978, or thereabout, and, at that time, report to the Governor and General Assembly;

2. Establish a Crime Prevention Resource Center with special emphasis on criminal sexual assault within the Office of the Secretary of Public Safety;
3. Adopt a comprehensive legislative proposal to cover all criminal sexual assaults, amending the Code of Virginia, Chapter 4, Title 18.2;
4. Establish a Sex Offender Treatment program within the Department of Corrections with assistance of the Department of Mental Health and Mental Retardation;
5. Require Virginia hospitals to adopt the proposed medical protocol for treatment of sexual assault victims to ensure uniform treatment and practice throughout the State;
6. Establish a Rape Crisis Center Coalition which would regulate guidelines for providing the proper services and training of crisis center counselors throughout Virginia;
7. Establishment of a Sexual Assault Speakers Bureau within the proposed Resource Center to speak to public groups, schools, churches, organizations, and other agencies on the prevention and awareness aspects of sexual assault;
8. Print and distribute a pamphlet on Rape and Sexual Assault, including medical and legal information to Virginia's citizens;
9. Print the protocol for treatment of sexual assault victims and the rape crisis centers' guidelines for distribution;

10. Improve the training for law enforcement to include in the curriculum courses in sensitivity and investigative skills for basic and in-service training;
11. Study the feasibility of developing separate Modus Operandi and sex offender files for the State Police computer network;
12. Encourage reporting and sending of information on the criminal history of sex offenders by local law enforcement agencies to the State Police;
13. Develop protocols for police procedures, courtroom procedures, and Commonwealth's attorney procedures in dealing with sexual assault cases.

Subcommittee Reports

Legislative and Court Process Subcommittees

After many long hours of debating and arguing the fine points of a proposed sexual assault bill, the members of the Court Process and Legislation Subcommittees have developed a comprehensive bill. These are Senate Bill 291 introduced by Senator Stanley C. Walker, and House Bill 623 introduced by Delegate Ralph L. Axselle, as chief patrons.

It can be summarized in the seven major issues addressed in the draft legislations: 1. sex neutrality of the proposed statute; 2. expansion of the notion of criminal sexual assault to include penetration by any part of the body or by an object; 3. a degree system; 4. a special recidivist statute; 5. elimination of spousal exemption; 6. limitations on admissibility of certain evidence and in-camera hearings; and, 7. victims' rights. (See Appendix IV - copy of proposed bill.)

A group of law students from the University of Virginia assisted the subcommittee in the enormous task of researching the history of the present Virginia statute and its interpretation which is based on common law; the constitutionality

and effects of certain controversial issues such as no spousal exemption in the crime of rape, position of authority and admissibility of certain evidence; statistical data on sex offenders, recidivists and first offenders statutes, and sex offender sentencing information. The Commission and task force are extremely grateful to these law students for a job well done. The information they provided was used in the careful drafting of the proposed legislation. These statistics and data will be included with the study's final report.

Law Enforcement Subcommittee

The Law Enforcement Subcommittee of the Task Force directed its efforts into four areas of specific importance. These were: 1. the appropriate statewide collection of data on sexual assault crimes; 2. basic and in-service training for law enforcement in handling sexual assault and its victims; 3. a protocol for law enforcement for sexual assault investigations; 4. a survey of law enforcement agencies in the Commonwealth as to their policies and capabilities in dealing with all facets of criminal sexual assault.

The subcommittee has met with representatives of the State Police concerning information systems in finding suspected sex offenders' Modus Operandi. The Sex Motivated Crime Reporting System in Michigan was used as a model in discussing this system. The Virginia State Police feel that the present Virginia computer system is more than adequate and is much more efficient than Michigan's; however, local law enforcement agencies are not utilizing the computer to its full potential as far as reporting and evidence-gathering is concerned.

The subcommittee feels strongly that more time is needed to plan and develop the extensive basic and advanced curriculum in sex crime investigations for law enforcement officers. One of the major problems found in the study was failure of victims to report due to harsh and prejudicial treatment by investigating police officers and detectives. The subcommittee has discussed a regional system of law enforcement training schools in Virginia with representatives of the

Criminal Justice Services Commission and members of the Council on Criminal Justice. They have confirmed the need for improved investigating techniques of law enforcement agencies in sex crimes, and also feel that there should be more uniformity of these investigation procedures from jurisdiction to jurisdiction.

Treatment, Rehabilitation and Punishment Subcommittee

The Treatment, Rehabilitation and Punishment Subcommittee of the Task Force completed most of the objectives in its topic area. The main goal of this subcommittee was to establish and develop a protocol for improving victim treatment in hospital emergency rooms. It was the majority opinion of many citizens and organizations dealing with sexual assaults that the hospitals are often the victim's first contact after the assault, and, therefore, must be adequately prepared to correctly handle the emotional, as well as physical trauma of the victim. It was repeatedly stressed that how the first contact responds to the situation may mean the difference in reporting or not reporting the crime.

The medical protocol was also developed to provide uniformity in victim treatment aimed at sensitivity throughout the hospitals in the Commonwealth.

Another major concern of this subcommittee was sex offender treatment. It was found through the study's research that many rapists and other sex offenders have a long repeat history. Sex offenders interviewed by staff stated that they have raped more women than their present convictions indicate. These offenders also stated that these crimes were not sexually motivated, and that they did not seek sexual gratification from their victims.

A number of sex offender treatment centers were contacted during the study period. Many have shown little rehabilitative results. The subcommittee has talked with corrections' officials, mental health representatives and psychiatrists working with sex offenders. All have stated that this type of offender is not easily dealt with, and agree that special programs and rehabilitative methods

are necessary. It was also agreed that more time is needed to develop a program within the Virginia Corrections' System that will provide adequate rehabilitative results to the large number of sex offenders in Virginia. This program will be developed in the extended study period with the assistance of the Departments of Corrections and Mental Health.

Because of the rising concern in victim treatment, a number of rape crisis centers have emerged across the state, providing counseling and referral services to victims of sexual assault and emotional support during hospital examinations and courtroom appearances. These centers are composed of volunteers who work out of interest and concern for the victims of these violent crimes. However, the subcommittee feels, after talking with members of these groups, that some guidelines need to be established for crisis centers so that the victim will receive counseling and services through the entire experience. The subcommittee has proposed a set of guidelines for establishing crisis centers, suggesting counselor training requirements, services to be rendered, possible funding sources, establishing contacts and liaisons, and crisis management techniques. These guidelines have been sent to all of the existing crisis centers for suggestions, comments and other feedback. The guidelines will be included in the recommendations of the final report. (See Appendix V.)

Public Education Subcommittee

From the year-long research involved in this study, all of the major problems discussed by the other subcommittees would have been non-existent if the public was made aware of the myths and fallacies associated with sexual assaults. One of the major problems, which is certainly difficult to rectify, is the lack of community education in prevention and treatment of the sexual assault, and the detection, prevention and treatment of sexual child abuse and incest.

The Public Education Subcommittee had five (5) major areas of interest:

1. The formulation of a comprehensive list of audio and visual aid material for public school and community use;
2. the development of a fact sheet which consisted of facts and myths about rape and sexual assault, national and statewide statistics, and statistics on sexual child abuse;
3. information on sex education programs existing in Virginia school systems where sexual assault awareness and prevention can be incorporated;
4. the inclusion of sexual assault awareness and prevention courses in the safety curriculum of public schools and in Parenting Courses in junior and senior high school curriculum; and,
5. the establishment of a statewide Crime Prevention Resource Center within the Office of the Secretary of Public Safety.

This resource center would gather and distribute information on sexual assault to various agencies, and organizations dealing with sexual assault prevention and would furnish around-the-clock assistance to the public, especially to those who have been assaulted and to those who fear possible assault. The information gathered would be distributed to the various community agencies and service agencies such as Planned Parenthood, public health centers, mental health centers, juvenile learning centers, nursing homes, and others in order to reach all of Virginia's citizens.

The subcommittee has worked closely with representatives of the Department of Education in providing a mechanism for reaching public school children in sexual assault awareness and prevention. The Department of Education is more than interested in this study and has been extremely helpful in establishing avenues for prevention and awareness education in the public schools in Virginia. The Department is working with the Albemarle County school system in the development of materials on crime resistance for the schools. Also, the school divisions having family life and sex education programs are being encouraged to include content on sexual assault.

Sex education programs have been incorporated into the curriculum of 16 school divisions. They include:

Bristol	Norfolk City
Charlottesville	Waynesboro City
Hampton	Newport News City
Roanoke County and Salem	Orange County
Williamsburg - James City	Albemarle County
Roanoke City	Arlington County
Falls Church City	Harrisonburg City
King and Queen County	Fairfax County

The Public Education Subcommittee also desires further study of the development of a resource center, its functions and long-term effectiveness.

APPENDICES

APPENDIX I

FORCIBLE RAPE

	<u>OFFENSES REPORTED</u>	<u>FORCIBLE RAPE</u>	<u>ATTEMPTED RAPE</u>	<u>OFFENSES CLEARED</u>	<u>TOTAL PERSONS ARRESTED</u>	<u>JUVENILES ARRESTED</u>
1976	1,103	805	298	719	639	86
1977	1,167	865	302	754	642	69

APPENDIX II

Sex Offenses in Virginia:
A Study of Those Convicted

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December, 1977

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M. Kathryn Jewett
Charlottesville, Virginia
December, 1977

Points of view or opinions stated in this document are those of the author and do not necessarily represent the official position or policies of the Virginia State Crime Commission or the Virginia Department of Corrections.

Within the last few years, a widespread interest in reforming the way our society deals with sexual assaults has suddenly emerged. This has led to a rapid nationwide drive to change criminal code sections on sexual assault. Michigan led the way in 1975 with the first major code revision and since then many other states have followed suit.¹

Currently, the Virginia legislature is studying its own criminal code sections on sex offenses with an eye toward reform. However, before it can rationally decide what changes are needed it must first learn what is happening now in Virginia. That is, who are convicted of sex offenses? What sort of sentences, if any, are these offenders serving? Who are their victims? Which areas of the state are convicting these offenders? What variables affect sentence length? These are but a few of the questions that must first be answered before problems with the current system can be identified and rectified. This study hopes to answer these and other questions by focusing on those who have already been convicted of a sex offense in Virginia. Hopefully, this information will aid Virginians interested in reform to find the true strengths and weaknesses of our current system and will lead to changes that will make the state a safer place in which to live.

¹James L. Hague, "Issues In Reform of Criminal Law on Rape," Virginia Law Weekly, 23 September 1977, p. 1.

HOW THE DATA WAS OBTAINED

The majority of information in this report was derived from the files of the Adult Division of the Virginia Department of Corrections. First, law students from the University of Virginia went through the daily computer printout for September 13, 1977 which listed all of the inmates incarcerated in the adult division in Virginia on that day. A master list of every file number of an inmate with a sex offense code number was then compiled from this printout. Unfortunately however, if an inmate was convicted of more than one offense, only one offense was listed on the printout-- usually the most serious crime. Thus, an inmate convicted of murder, rape, and abduction would probably have murder listed as his offense. This meant that an inestimable number of sex offenders could not be identified and included in this study, primarily those where the victim was murdered. It was also impossible to determine from the printout alone whether an inmate convicted of assault or burglary had actually committed a sex offense but had had the charge dropped or reduced in exchange for the other conviction. An attempt was made to look at a random number of assault and burglary files, and while a few of these did reveal what really were sex offenses, there was not sufficient time to look at a large enough sampling of files to make a reasonable estimate of how many similar cases there might be. Further, there were some inaccuracies in the printout due to human error. For these reasons, figures in this study should not be taken as conclusive totals for the total inmate population, but only as representative totals from a sample population.

Once the list of sex offenders was compiled from the printout their individual files were read to obtain further information and to check the accuracy of data from the printout. No names were used. Each inmate was assigned a new number for purposes of the study so that even his or her inmate number could not be used to identify any one specifically. Over five hundred such files were studied. Only about eighteen of the files requested were unobtainable because they were in use elsewhere at the time.

In addition to those sex offenders missed because of the previously mentioned problems, it should be remembered that this study does not, and cannot, attempt to cover those offenders who were acquitted yet were guilty, whose cases were dropped or were never brought or whose sentences were totally suspended. Further, it does not cover those incarcerated for sex offenses under the juvenile detention system or those who were on parole or probation at the time of the study.

After the information from the files was compiled, it was analyzed by computer at the University of Virginia. As before, human error came into play in the coding and keypunching. And no machine, including a computer, is completely accurate. For these reasons, the reader is warned to pay more attention to percentages than to totals.

WHO ARE CONVICTED OF SEX OFFENSES?

Age, Race and Sex

The 500+ sample showed that a majority of those convicted of a sex offense were black. That is:

	<u>%</u>	<u>no.</u>
Black	58.8	303
White	41.0	211
Other	.2	1

The ages of these offenders at the time of their offense were:*

	<u>%</u>	<u>no.</u>
Under 18	10.0	51
18-21	26.8	138
22-29	40.6	209
30-49	20.9	106
50 & over	1.6	8
missing	16	3

When these ages are analyzed racially, it appears that there is a higher percentage of offenders under 18 who are black than the percentage of black offenders for all other age groups. This could be because black youths are more likely to be tried as adults than white youths, or because they are more likely to be reported and arrested, or because blacks tend to commit serious sex offenses earlier than whites, or because black youths are more likely to be given prison time than whites. We have no data to clarify these possibilities. The figures also showed a higher incidence of white

*If more than one offense was committed, the earliest age was used.

offenders after age 30. The racial breakdown by age is:

	<u>black</u>		<u>white</u>		<u>other</u>	
	<u>%</u>	<u>no.</u>	<u>%</u>	<u>no.</u>	<u>%</u>	<u>no.</u>
under 18	72.5	37	27.5	14		
18-21	62.3	86	37.7	52		
22-29	59.3	124	40.2	84	.5	1
30-49	46.2	49	53.8	57		
50 & over	50.0	4	50.0	4		
missing - 3						

% = % of the total in that age group

The earliest offense for which an inmate is still incarcerated occurred in 1922, followed by offenses committed in 1931 and 1947. All three of these offenders received at least one life sentence and committed at least one subsequent offense either in prison or on parole. The oldest sex offender at the time of the offense was 62. However, note that only 8 committed their offense after age 50.

Three of the inmates in the sample are women. All three were accomplices to their crimes. It should be noted that, while none still serve, several mothers were convicted as accomplices to incest

Prior Record

Prior records were determined by field and presentence reports and by records furnished by state and local police and by the Federal Bureau of Investigation. When multiple reports were present in one file, they were often contradictory. Many of the reports, especially older ones, did not give the final disposition of an arrest, therefore no distinction was made between arrests and convictions. The study includes any information found pertaining to juvenile records.

.31.8% of the inmate sample had a prior record of arrests and/or convictions for sex offenses. Of these, only 3.1% (16) of the 500+ had records consisting solely of sex offenses without any other type of offense (excluding traffic offenses). And only 10.1% (52) of the sample had no prior arrest or conviction record. For purposes of this study, sex offense includes fondling, enticing a minor, indecent exposure, and obscene phone calls. 86.3% of the sample had a prior record of arrests and/or convictions for nonsex offenses. Of these, 57.6% (297) had a prior record of only nonsex offenses. Very few of the nonsex offenses were drug related. Traffic offenses were excluded. These figures make it clear that most convicted sex offenders were involved in other types of crime prior to the offense.

The following table shows the breakdown by offense of the type of prior record those charged with each offense had before the sex offense took place. The percentage is the percentage of those charged with that offense who had that type of record. Both means both sex and nonsex offenses and neither means no record (except traffic). The percentages for multirape and multisodomy indicate the percentage of those charged with more than one count of that particular crime.

<u>offense</u>	<u>sex</u>	<u>nonsex</u>	<u>both</u>	<u>neither</u>
rape	1.9	59.3	29.0	9.8
sodomy	2.2	48.1	35.6	14.1
incest	12.5	62.5	12.5	12.5
attempt rape	4.2	56.9	30.6	8.3
attempt sodomy	16.7	33.3	50.0	--
abduction	2.7	56.6	31.0	9.7
statutory rape	3.1	62.5	28.1	6.3
nonsex property	.7	58.4	30.7	10.2
nonsex violent	2.3	58.6	32.2	6.9
multirape	5.9	38.2	35.3	20.6
multisodomy	3.8	34.6	38.5	23.1

26% of the sample had either completed an earlier parole or probation or were on it at the time of the offense. This percentage is much lower than the percentage of prior arrests, suggesting that little of their prior offense records reflect time actually served for felony convictions.

Intelligence

When an adult inmate enters the state penal system, he or she is almost always administered the Otis quickscore verbal and revised Beta nonverbal intelligence tests. Another test is given to illiterates. These tests have been given since 1955. The results of these tests can be affected by the inmate's cultural background. The score range for each level of intelligence is:

Severely retarded	below 40
Moderately retarded	40-70
Borderline	70-79
Dull normal	80-89
Normal	99-109
Bright normal	110-119
Superior	120-128

The following figures compare the sex offenders' test results to those for the total adult prison population

	<u>sex offenders</u>		<u>total pop.</u>
	<u>%</u>	<u>no.</u>	<u>%</u>
Severley retarded	3.4	17	1
Moderately retarded	6.6	33	4
Borderline	9.6	48	12
Dull normal	18.0	90	27
Normal	49.2	246	44
Bright normal	10.8	54	11
Superior	1.6	8	3
missing	.8	4	

It was suggested by a prison official who administers the test that inmates may have some incentive to do poorly on the tests in order to receive less taxing work assignments. Therefore, each inmate is also interviewed by a psychiatrist or psychologist to supplement the test results. If inmates do deliberately try to do poorly on the test, this would in part explain the high percentage (44%) scoring dull normal or below. Since the score levels are based on a bell curve, these figures could mean that more inmates are of below average intelligence than would be found in a general

cross section of the population as a whole.

This testing, of course, does not indicate any mental illness, only intelligence. It should be noted that some files (not a high percentage, but we have no exact figures) showed hospitalization for mental disorders prior to the offense. The location of three of the inmates on September 13, 1977 was Central State Hospital.

Occupations

Although a wide variety of occupations were represented in the sample, the vast majority were blue collar workers, especially unskilled common laborers. Only .4% (2) were listed on the Department of Corrections printout as unemployed. It is probable that more than that were unemployed at the time of the offense but that their last employment was listed. The groups were:

	<u>%</u>	<u>no.</u>
Professional or Managerial	0.9	5
Office Clerical or Sales Personnel	2.3	12
Service Workers (e.g., butcher, barber, janitor, cook, policeman, postman)	5.8	30
Skilled & Semiskilled Workers (e.g., electrician, painter, mechanic, carpenter, plumber)	19.6	101
Agricultural Workers	1.2	6
Truck Driver	4.3	22
Common Laborer	62.0	320
Student	1.4	7
Armed Forces	.4	2
Unemployed	.4	2
Other or missing	1.7	9

Location of the Offense

The Tidewater area had the largest number of convictions for sex offenses, followed by the Richmond area and then the area surrounding Washington, D.C. This is hardly surprising since these are the most heavily populated areas of the state. The following is a breakdown of convicting courts by area.

	<u>%</u>	<u>no.</u>
<u>Tidewater</u> (Va. Beach, Norfolk, Portsmouth, Hampton, Newport News, Isle of Wight Co., Suffolk, Chesapeake)	32.0	165
<u>Richmond area</u> (City of Richmond, Henrico Co., Chesterfield Co.)	17.1	88
<u>Washington, D.C. suburbs</u> (Arlington, Fairfax Co., Falls Church, Alexandria)	10.7	55
<u>Southside</u> (Danville, Martinsville, Boston, Halifax Co., Emporia, Greensville Co., Brunswick Co., Mecklenburg Co.)	4.3	22
<u>Roanoke area</u> (City of Roanoke, Roanoke Co., City of Salem)	4.1	21
<u>Williamsburg area</u> (Williamsburg, York Co., Surry Co., Charles City Co.)	2.9	15
<u>Southwest Virginia</u> (Bristol, Lee Co., Scott Co., Washington Co., Smyth Co., Wise Co., Dickenson Co., Norton, Buchanan Co., Russell Co., Tazewell Co., Wythe Co., Bland Co., Grayson Co., Galax, Carroll Co., Pulaski Co., Radford, Montgomery Co.)	2.3	12
<u>Lynchburg area</u> (Lynchburg, Bedford, Bedford Co., Campbell Co., Amherst Co.)	2.3	12
<u>Charlottesville area</u> (Charlottesville, Albemarle Co., Fluvanna Co., Louisa Co.)	2.3	12
<u>Other</u>	17.2	

The counties and cities given in parenthesis indicate which courts were included in each geographic grouping. The fact that a county or city is listed does not necessarily mean that a sex offense conviction took place there.

Custody Status

The custody status of the offender primarily reflects how much of a security risk he or she is determined to be. This determination is based not only on the seriousness of the offense for which the inmate was convicted and on the length of sentence, but also on the inmate's behavior once incarcerated. It is, therefore, often a good indicator of how violent an inmate is or of whether he is a behavior problem or "troublemaker." "C" custody is maximum, "B" custody is medium, and "A" custody is minimum security. The custody breakdown according to the type of offense for which the inmate was convicted* is as follows:

*Here the percentages represent the number of inmates with at least one conviction for the listed offense. Each inmate convicted of more than one offense is listed under more than one offense. For example, an inmate convicted of rape, abduction and armed robbery is listed in the totals for rape, abduction, and nonsex property.

offense	custody status		
	A	B	C
rape	15.2%	37.4%	47.4%
sodomy	19.4	41.9	38.7
incest	50.0	16.7	33.3
attempt rape	23.5	41.2	35.3
abduction	8.3	31.9	59.7
statutory rape	20.6	52.9	26.5
nonsex property*	7.5	30.0	62.5
nonsex violent**	14.0	28.0	58.0
all offenses of the sample	18.0	40.9	41.1

It should be noted that, from viewing some files, it appears that some rapists are dangerous only when women are present and are "model" prisoners in an all-male setting. Also, some people adjust poorly to incarceration and therefore may be more of a problem there than they would be on the streets.

Place of Incarceration

The figures below reflect the location of the sex offenders in the study on September 13, 1977. Secondary units are primarily road camps and farms; that is, smaller units with less security. The inmates within them are almost exclusively either "A" or "B" custody (3 "C" custody inmates were located in secondary institutions).

Primary units, while also including "A" custody inmates, are maximum security units, usually with much larger populations.

Women prisoners are accommodated only at one prison and one

*Nonsex property includes any burglary unless burglary with intent to rape was specified as the offense.

**Nonsex violent includes burglary with intent to rape.

half-way house. Thus, all custody levels are found at the Virginia Correctional Center for Women (V.C.C.W.).

The sex offenders are located as follows:

	<u>%</u>	<u>no.</u>
Secondary Institutions	21.1	109
Pre-release units	.2	1
Primary units	71.9	371 (total)
Bland	8.3	43
Penitentiary	22.1	114
Southampton	12.4	64
Powhatan	12.0	62
V.C.C.W.	.4	2
James River	5.2	27
Powhatan West	1.0	5
Staunton	1.7	9
Powhatan 100-men annex	4.5	23
Mecklenburg	2.3	12
Medical Facilities*	4.3	22
Receiving units	.2	1
other	2.3	12

*includes penitentiary hospital

These figures are generally in keeping with the custody statistics and show that about a fourth of the sex offenders are incarcerated in minimum security units.

THE VICTIMS

The information on the victims was not as complete as that on the inmates. It varied in quality depending on whether a field report or presentence report was included in a file and on how thoroughly that report was done. If no report was present, the only information available, if any, was that supplied by the inmate. This often proved to be unreliable where it could be checked. For instance, if the victim was under 10, he might report her as 16. If the victim was a stranger, he might report that he was dating her and that her husband or boyfriend just found out about them, so she screamed rape (this excuse was given innumerable times). Therefore, wherever possible, the information on the victim and on the circumstances surrounding the offense was taken from reports other than the inmate's. Unfortunately, in some cases, not even the inmate's version was available. This was especially true if the inmate had been incarcerated more than 10 years ago. The files compiled recently showed dramatic improvement, although their quality still varied. Also, information needed for research is not always necessary to make the normal decisions confronting prison officials and the parole board, and therefore is not always recorded. Again, as with the information on the offender, the reader is warned to pay closer attention to percentages than to totals.

Age

The oldest victim at the time of the offense was 90 and the youngest was three.* The overall breakdown of the victims' ages at

*Note - children below the age of 7 are presumed incapable of testifying in court in Virginia. Therefore, when a small child is sexually molested, the chance of criminal action being taken is slight unless an adult or older child witnessed the act. Sometimes a judge will allow an adult to testify to what the child told them, but small children usually have trouble describing exactly what took place because of their limited vocabulary.

the time of their attack is as follows:

	<u>%</u>	<u>no.</u>
under 13	15.6	78
13-16	20.4	102
17-25	31.0	155
26-54	19.2	96
55 & over	5.2	26

The ages and race of at least half of the victims was missing from the files.

These figures make it obvious that the years when a woman first reaches sexual maturity, 13 to 16, are the years she is most vulnerable.

When broken down by offense, the victims' ages are as follows:

<u>age</u>	<u>rape</u>		<u>sodomy</u>		<u>attempt rape</u>	
	<u>%</u>	<u>no.</u>	<u>%</u>	<u>no.</u>	<u>%</u>	<u>no.</u>
under 13	18.1	60	36.8	21	13.6	6
13-16	12.1	40	40.3	23	13.6	6
17-25	40.2	133	19.3	11	31.8	14
26-54	22.7	75	3.5	2	29.5	13
55 & over	6.9	23			11.3	5
total	100%	337	99.9%	57	99.8%	44

It is clear that the majority (77.1%) of all sodomy victims are 10 or under and that the majority of all rape and attempt rape victims are over 16. (Rape - 69.8%; attempt rape - 72.6%). Note also the higher percentage of attempt rape victims over 25 and over 55 as compared to rape victims.

There were only 38 convictions for statutory rape* as compared to 87 victims under 13 and 102 between 13 and 16. Assuming that the cases of 21 of those children below 13 were prosecuted as sodomy, that still means that a majority were prosecuted as rape or attempt rape rather than as statutory rape. In reading through the files, it seemed that statutory rape was used only when the Commonwealth's case was not strong or when there was evidence of consent.

Sex

Overall, most offenders committed their offense or offenses exclusively upon women. The sex of the victim or victims of each inmate was:

	<u>%</u>	<u>no.</u>
victims all female	87.8	453
victims all male	7.2	37
victims both male & female	4.7	24

Cases where there were both male and female victims usually involved the attacking of a group of children or attacking a couple where the woman is raped and her male companion is robbed.

The sex of the victim by type of offense is as follows:

That is, the Commonwealth need only show that the victim was below 13 and that penetration occurred. Lack of consent need not be known as with the rape of an adult. Virginia also has a modified version of statutory rape for victims 13-15.

offense	victims all female		victims all male		victim male & fem
	<u>%</u>	<u>no.</u>	<u>%</u>	<u>no.</u>	<u>%</u>
rape	94.5	344			5.5
sodomy	67.4	91	26.7	36	5.9
incest	100.0	7			
attempt rape	97.2	70	1.4	1	1.4
attempt sodomy	50.0	3	33.3	2	16.7
abduction	81.4	92	7.1	8	11.5
statutory rape	100.0	3			
nonsex property	89.1	122	2.9	4	8.0
nonsex violent	83.5	71			16.5
multirape	93.9	32			6.1
multisodomy	42.3	11	46.2	12	11.5

Race

In comparing the race of the actor to the victim, the figures showed that blacks are convicted of sex offenses against both black and white victims, but whites are seldom convicted of sex offenses against black victims.

race of any given offender's victims	Black Offenders		White Offenders		Other [*]
	<u>%</u>	<u>no.</u>	<u>%</u>	<u>no.</u>	<u>%</u>
all black	35.5	60	3.2	3	
all white	57.4	97	93.7	89	100
other	.6	1	1.1	1	
black & white	2.4	4			
black & ?	1.8	3	1.1	1	
white & ?	2.4	4	1.1	1	

*The question mark signifies cases where the offender had more than one victim but that the race of each victim was not given.

The figures show that the majority of the victims of black offenders are white.

Relationship of the Victim to the Actor

Here we relied primarily on the description of the offense. If there was any relationship between the actor and the victim prior to the offense, other than mere acquaintances, the chances were good that it was recorded because it was very significant to any description of the offense. Thus it may be safely assumed that the vast majority of the 49.2% of actors for which we could not conclusively determine a relationship, the victims and actors were strangers to each other prior to the offense. The breakdown that follows shows that 10% of the offenses were committed against family or household members.

	<u>%</u>	<u>no.</u>
Daughter	3.2	16
Stepdaughter	3.0	15
Niece/nephew	.6	3
Other family	3.2	16
Girlfriend	2.0	10
Friend	6.4	32
Acquaintance	10.8	54
Stranger	21.4	107
Don't know	49.2	246

In coding this information, if an inmate assaulted more than one victim, the most prominent victim relationship was recorded. That is, if an inmate had raped both his niece and a stranger, only the niece appears in the figures.

At present, wives cannot bring rape charges against their husbands in Virginia. However, we did come across a number of files with indications that the inmate's wife had brought assault charges against him prior to the sex offense against someone else.

The National Commission on the Causes and Prevention of Violence found that 53% of all rape victims were total strangers to their attackers, that 30% were slightly acquainted, that 7% had a family relationship, and that 3% had had a previous close, nonfamily relationship.¹ If these figures are an accurate reflection of reported and unreported assaults combined, and if the 49.2% unknown are strangers, then somehow Virginia is not convicting a proportionate number of assailants where the victim was already known to the actor.

When the race of the actor was taken into account, a higher percentage of white actors were charged with raping their daughters or stepdaughters (18.8% (23)) than were blacks (6.8% (9)). But where there was a rape charge and the victims of the actor were either all black or all white, a greater number of offenses against black victims were against someone the actor already knew.

¹Susan Brownmiller, Against Our Will: Men, Women and Rape (New York: Simon and Schuster, 1975), p. 391-92.

<u>relationship</u>	<u>victims</u> <u>all black</u>		<u>victims</u> <u>all white</u>	
	<u>%</u>	<u>no.</u>	<u>%</u>	<u>no.</u>
daughter	15.8	6	12.5	11
stepdaughter	2.6	1	8.0	7
niece/nephew	5.3	2		
other family	15.8	6	5.7	5
girlfriend	5.3	2	2.3	2
friend	10.4	4	9.1	8
acquaintance	18.4	7	12.5	11
stranger	26.3	10	50.0	44

Note however the higher number of stepdaughters among white victims.

COURT PROCEEDINGS

Plea

The most significant finding of the study was what these offenders pled at arraignment. Even though they may have pled guilty to another charge, 61.4% (307) of the sample inmates pled not guilty to at least one of the charges against them. This figure would be even greater if those cases where the defendant was accused of sexual assault and was acquitted were included. This means that the vast majority of defendants accused of sex offenses pled not guilty to at least one offense. This is very significant since the vast majority of all offenders across the board in Virginia or elsewhere in the United States plead guilty. The whole purpose behind plea bargaining is to insure that the majority of defendants plead guilty and thereby save the state the expense of a full-blown trial. With sexual assaults in Virginia, the figures are reversed. This could be because sexual

assaults as now defined in the Virginia code are too hard to prove, and therefore the defendant is more willing to take a chance on acquittal. Alternatively, the figures could mean that the same percentage of defendants are pleading guilty to sexual assaults, but that their bargain was based on their pleading to lesser or nonsex offense--probably assault. This 61% figure is much higher than that for Washington, D.C. which had only 34.3% plead not guilty to sexual assault.¹

Trial Format

Of those pleading not guilty, 53% (160) were tried by a judge and 47% (141) were tried by a jury. Information was missing on 26 cases.

SENTENCES AND CIRCUMSTANCES OF THE OFFENSE

Our primary objective in analyzing sentences was to determine how different circumstances surrounding the offense affect the amount of time given. Determining the exact sentence for each inmate was often difficult. Some of the files had contradictory reports that

¹Kristen M. Williams, "Sexual Assaults and the Law: The Problem of Prosecution," Washington, D.C., 1976. (Mimeographed.) Institute for Law and Social Research. Figures given in this report on pleas of those cases that went to trial were:

plea	sexual assaults	aggravated assault	robbery	burglary
guilty	65.7%	62.2%	64.6%	61.3%
not guilty	34.3%	37.8%	35.4%	38.7%

This data is based on arrests made in Washington, D.C. in 1973. 14.3% of those sexual assault cases that went to trial resulted in an acquittal.

often necessitated reading the formal court order to determine exactly what sentence was given. In at least one case where an inmate had multiple convictions, it was impossible to determine from the file exactly what sentence the inmate was serving. Thus, as much double checking as possible was done to determine the sentence.

Computer space also limited our ability to analyze all of the sentencing information. We felt that actual time to serve was more important than parts of sentences which were suspended, so we only used actual time the inmate was sentenced to serve unless the entire sentence for an offense was suspended or was to run concurrently. Thus, an inmate given 40 years for rape with 20 suspended would have 20 recorded as his sentence in the computer. If he also received 20 years for sodomy to be served concurrently, 20 years was recorded along with the fact that it was concurrent. In effect, recording the information in this way gives a truer picture of sentences since time to serve determines parole. If a suspended sentence had been revoked so that the inmate was serving his time for the offense on Sept. 13, 1977, it was treated as if the inmate had originally been sentenced to serve. In the majority of cases, suspended sentences seemed to serve more of a cosmetic purpose than any actual use since few cases were encountered where an inmate was serving a part of a sentence which had been suspended. Further, we found that the parole board usually allows for a period of supervised parole for all offenders, thereby making a period of court supervision less necessary.

At this point it should be observed that all three students who went through the files found that a clear majority of the cases involved some form of sodomy, whether it was included in the charge

or not. Most common was oral sodomy committed by the victim upon the actor. This addition to any sex offense of course makes it more serious. Unfortunately however, it was impossible to get exact figures on how many cases involved sodomy because of the variance in quality of the descriptions of the offense. Thus, no effort was made to link the presence of sodomy to sentence lengths.

A sizeable number of offenses occurred when the victim's small child or children were present or nearby. Threats against the child were used alone or with a weapon to force the mother to submit. Again, it was impossible to gather exact figures.

Six victims were pregnant at the time of the offense. Three of these were in their sixth month or beyond.

Overview of Sentences

The sentences for all sex offenses fall under Virginia's sentencing schedule with the exception of rape and statutory rape of girls under 13. VA. CODE ANN. § 18.2-61 authorizes sentences of 5 years to life for these last two offenses. All other sex offenses are a specified class of the following Virginia felony sentencing schedule as set forth in VA. CODE ANN. § 18.2-10.

Class 1 felony	death*
Class 2 felony	20 to life
Class 3 felony	5 to 20
Class 4 felony	2 to 10
Class 5 felony	1 to 10 or 12 months in jail and/or a \$1,000 fine.
Class 6 felony	1 to 5 or 12 months in jail and/or a \$1,000 fine.

*In 1977, a Class 1 felony was revised to include life imprisonment.

Statutory rape of girls 13 to 15 years of age is a Class 4 or Class 6 felony under VA. CODE ANN. § 18.2-63, depending upon the age of the actor. Statutory rape of a mental patient is a Class 3 felony under § 18.2-64. Sodomy by force is a Class 3 felony* and sodomy by consent is a Class 6 felony under § 18.2-361. Incest as set forth under § 18.2-366 is a Class 1 misdemeanor unless the victim is a son, daughter, father, mother, grandson, or granddaughter in which case it is a Class 2 felony.** VA. CODE ANN. § 18.2-370 "Taking Indecent Liberties with Children," covers fondling, enticing, and indecent exposure to a minor and makes them Class 6 felonies.

The following table shows sentences as they were given for each offense.*** The sentences shown are the actual time the inmates were sentenced to serve. Concurrent and suspended sentences are included. Imposition of sentence suspended means that the judge will not specify a sentence unless the defendant commits another offense.

At a glance it is apparent that the minimum sentence for rape is meaningless. It is easily gotten around by suspending part of the sentence.

The table also makes clear that when a defendant is convicted of multiple offenses, the sentences for offenses other than the primary sex offense are more likely to be served concurrently than to be totally suspended. Further, rape and attempt rape sentences are far less likely to be totally suspended or made to run concurrently with sentences for other offenses.

...s offense was changed from a Class 4 to a Class 3 felony in 1977. These extremes in sentencing probably explain the small number of actual incests convicted as incest.

...most cases the actual sentences were for 5, 10, 15, 20, 25, 30, 40 years and life rather than numbers which were not multiples of

sentence length	rape	sodomy	stat. rape	incest	att. rape	att. sodomy	fondling*	enticing	indecent exposure	abduction	nonsex property	nonsex violence
less than 1	.3%	1.2%								2.5%	1.4%	
1-4	3.7%	31.1%	34.2%	71.4%	4.6%	14.3%	66.7%	71.4%	100%	12.5%	17.5%	20.2%
5-9	17.0%	39.8%	28.9%		25.3%	14.3%	33.3%	28.6%		27.9%	25.0%	14.5%
10-14	17.7%	22.4%	7.9%	14.3%	18.4%	57.1%				20.2%	14.2%	24.6%
15-19	9.8%	.6%	10.5%		18.4%					6.7%	5.8%	4.3%
20-24	12.5%	1.9%	2.6%		14.9%					19.2%	15.0%	17.4%
25-29	7.4%				1.2%					2.9%	2.5%	
30-34	5.4%	.6%	7.9%		3.5%	14.3%				1.0%	3.3%	1.4%
35-39	2.0%										.8%	
40-44	3.9%	1.2%	5.3%		2.3%						2.5%	1.4%
45-90	3.9%				1.2%					3.9%	5.8%	2.9%
life	15.7%			14.3%	8.1%					3.9%	5.0%	8.7%
death	.7%		2.6%		2.3%							
imposition of sentence suspended		.6%			1.1%					1.9%	.8% (1)	
totally suspended	.3% (1)	4.4% (7)			2.3% (2)	14.3% (1)	22.2% (2)		75% (3)	1.9% (2)	5.8% (7)	1.4% (1)
totally concurrent	2.5% (10)	19.3% (31)	10.5% (4)	28.6% (2)	5.8% (5)	57.1% (4)	22.2% (2)	57.1% (4)	25% (1)	20.2% (21)	31.7% (38)	27.5% (19)
total no. for offense	407	161	38	7	87	7	9	7	4	104	120	69

The following table shows the percentage of sentences under each offense that would fall into each of the felony classes under Virginia's sentencing schedule. The underlined number is the class under which sentences for that particular offense are now authorized.

<u>Offense</u>	<u>Felony Class</u>					
	<u>1*</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
rape	.7%	50.9%	55.8%	30.0%	32.5%	12.6%
sodomy		4.3	64.0	82.6	98.1	<u>51.5</u>
attempt rape	2.3	31.0	73.6	42.5	44.8	14.9
incest		14.3	28.6	28.6	85.7	71.4
statutory rape	2.6	15.8	50.0	71.0	71.0	50.0
attempt sodomy		14.3	85.7	85.7	85.7	28.6
fondling				77.8	100.0	<u>88.9</u>
enticing				100.0	100.0	<u>100.0</u>
indecent exposure				25.0	100.0	<u>100.0</u>
abduction		34.6	61.5	69.2	70.2	22.1
nonsex property		35.0	57.5	46.7	58.3	41.7
nonsex violent		34.8	60.9	53.6	59.4	33.3

Many sentences fit into more than one class. Sentences shown for abduction, nonsex property, and nonsex violent offenses were given in conjunction with a sentence for a sex offense and thus are not representative of those categories as a whole.

Charges versus Convictions

A comparison of the number of charges of any offense to the number of convictions gives some indication of which charges were

figures do not include life imprisonment.

most likely to be dropped or under which a defendant was most likely to be acquitted. Here again, we have no idea how complete the files were in recording charges dropped or acquittals.

The following table shows the number and percentage of inmates in the sample who were charged and/or convicted of at least one count of the offense listed.

offense	charged		convicted	
	%	no.	%	no.
Rape	70.6	353	67.8	339
Sodomy	25.8	129	17.6	88
Incest	1.4	7	1.0	5
Attempt Rape	14.4	72	13.8	69
Attempt Sodomy	1.2	6	.4	2
Fondling	2.2	11	1.8	9
Enticing	1.6	8	1.4	7
Indecent Exposure	1.6	8	.8	4
Abduction	21.8	109	14.0	70
Statutory Rape	6.8	34	6.6	33
Nonsex property	26.6	133	15.8	79
Nonsex violent	17.4	87	10.0	50

These figures show that the charges most likely to be dropped or most likely to result in acquittal are abduction, nonsex property and nonsex violent offenses when these are combined with a sex offense. Also, it appears that a conviction is less likely to result from a sodomy charge than from a rape charge.

The study also showed that multiple abduction, nonsex property or nonsex violent charges were more likely than multiple charges

any given kind of sex offense.

The number of inmates with multiple charges for each type of offense of those charged with the offense is shown below.

Multiple charges for:

	<u>%</u>	<u>no.</u>
Rape	6.8	34
Sodomy	5.0	26
Incest	.4	2
Attempt rape	1.6	8
Abduction	13.3	15
Statutory rape	2.9	1
Nonsex property	34.8	48
Nonsex violent	19.5	17

The study also showed that offenders convicted of sodomy were less likely to be charged with a nonsex violent or property offense than those convicted of rape or attempt rape.

Variables Affecting Sentence Length

The computer, through multiple regression, can determine which variables affected sentence length and whether they tended to make sentence go up or down. When this process was used with the sex offender sample, we were able to determine which circumstances surrounding the offenses were most significant to sentencing.

Rape sentence lengths were affected most by whether or not a weapon was used and by the race of the victim. Sentences tended to go up if a weapon was involved and if the victim(s) was white. The fact that the victim was between the ages of 13 and 16 was also important, although this factor tended to make the sentence go down.

Significant, but less so, were the factors that the victim was under the age of 13, that the defendant was white, and that there were also multiple charges for attempt rape or attempt sodomy. All three tended to make the sentence for rape go down. The sentence also went down when there was a sodomy charge. Abduction, nonsex violent and nonsex property charges tended to make the sentence for rape go up.

Sodomy sentence lengths were most affected by the presence of multiple sodomy charges and by the presence of a male victim. These increased sentences. If the sodomy case was tried by a judge the sentence was likely to be less, though this factor was less significant than the other two.

Attempt rape sentences were influenced by the race of the victim and by the presence of multiple attempt charges. If multiple victims were all of the same race or if there was more than one charge, the sentence went up.

Use of a weapon tended to make abduction sentences go up although this was less significant than in rape cases. Trial by judge for abduction made the sentence go down.

These and other variables were examined more closely with the following results.

Weapons

Of the sample as a whole, 42.2% used a weapon to commit at least one offense. While some were imaginative, using such objects as screwdrivers, broken bottles, pipes, and curtain cords, most used knives followed closely by handguns in popularity. It should be pointed out that only a small number were charged with or convicted of the use of a gun in the commission of a felony.

The percentage of offenders using weapons went up as the sentences increased. The following shows the percentage of defendants receiving sentences in the specified ranges who used a weapon.

<u>Sentence for Rape</u>	
less than 10	25.0%
10-19	45.2%
20-29	41.4%
30-39	56.0%
40-90	65.9%
life	66.7%
death	33.3% (1 out of 3)

<u>Sentence for Sodomy</u>	
less than 5	24.0%
5-9	31.7%
10-19	55.3%
20 & over	57.1%

These figures bear out the multiple regression determination of significance used earlier.

Prior Record

Prior records of the offenders had virtually no influence on the length of the sentence they received. This proved to be true for all varieties of offenses.

Each offense was divided by the sentence length which came closest to dividing the number of inmates convicted of it in half. For instance, 55 out of 123 sentences for rape were for 10 years or more. Assuming that if a defendant had a prior record, his sentence would

increase, then there should be a higher percentage of inmates receiving sodomy sentences for 10 years or more with prior records than the percentage of the entire sample with prior records. The differences proved to be hardly great enough to be significant. The following table illustrates this.

	Prior Record			
	<u>sex offenses</u>	<u>nonsex offenses</u>	<u>sex & nonsex offenses</u>	<u>non</u>
total sample	3.1%	57.9%	28.8%	10.1
rape sentences 25 & over	4.5%	54.1%	33.8%	7.6%
sodomy sentences 10 & over	1.8%	43.6%	40.0%	14.5%
attempt rape sentences 15 & over	5.4%	51.4%	29.7%	13.5%
abduction sentences 15 & over	2.2%	55.6%	33.3%	8.9%
statutory rape sentences 10 & over	2.8%	58.3%	25.0%	2.8%
nonsex property sentences 10 & over	1.5%	58.2%	29.9%	10.4%
nonsex violent sentences 10 & over	.0%	56.8%	36.4%	6.8%
missing	.6%			

The only category which significantly increases sentences is that of prior records of both sex and nonsex offenses, and this fact seems to primarily affect sodomy and nonsex violent offenses. Statutory rape and nonsex violent sentences seemed to go down slightly when the defendant had no prior record. Nevertheless, it cannot be said that as a general rule, sentence lengths were significantly affected by prior records.

Codefendants

Overall, 24.6% of the inmates committed their offense with at least one other person. The following is a breakdown of the number of codefendants. It should be noted that not all codefendants were tried and convicted of the offense.

<u>no. of codefendants</u>	<u>% of offenders</u>	<u>no. of offenders</u>
none	75.4	389
1	13.6	70
2	6.0	31
3	3.5	18
4	.8	4
5	.2	1
7	.2	1
9 or more	.4	2

Many of the offenses involving more than 3 codefendants occurred in penal institutions.

The following tables show what percentage of the inmates receiving sentences in the specified range for the particular offense had committed the offense with one or more codefendants.

offense	sentence	%	offense	sentence	%
rape	less than 10	32.9	sodomy	less than 5	30.
	10-19	23.6		5-9	18.
	20-29	23.0		10-19	25.
	30-39	32.0	20-81	50	
	40-90	31.0	abduction	less than 10	26
	life	33.3		10-19	
death (2 out of 3)	66.7	20-90		5	
statutory rape	less than 10	33.3	life (1 out of 4)	25	
	10-19	28.5	nonsex violent	less than 10	
	20-40	16.7		10-19	10
	death	0		20-50	33
nonsex property	less than 10	28.0	life	33	
	10-19	29.2			
	20-96	29.7			

% = % of inmates in that category for that offense

As these figures show, cases with codefendants are generally evenly spread throughout most sentencing ranges as far as rape and nonsex property offense convictions. Sodomy, abduction and nonsex violent offense sentences tend to go up when there are codefendants. Statutory rape sentences tend to go down. Overall, codefendants appear to affect sentences less than do weapons.

Sex of the Victim

20% of those receiving life sentences for rape committed offenses against both male and female victims. Of the 19 rape cas

where both male and female victims were involved, 12 received sentences of 25 years or more.

44.4% of the sodomy cases where the victims were female received sentences of 10 years or more. 34.3% of the sodomy cases where the victims were all male received sentences of 10 years or more. 87.5% of the sodomy cases involving both male and female victims received sentences of 10 years or more.

Plea

Of those pleading not guilty overall, 37.2% were white and 62.8% were black. Of those pleading guilty, 48.0% were white and 51.4% were black. Thus, white defendants were more likely to plead guilty.

Whether a defendant pled guilty or not had a slight affect on sentence length in the middle range of sentences. That is, a defendant pleading guilty would be more likely to receive a 10 to 19 year sentence for rape than a 20-39 year sentence. Also life and death sentences were given more frequently for rape when the defendant pled not guilty. Likewise, sodomy sentences were most affected in the middle ranges by the pleadings. The following tables illustrate this.

<u>R a p e</u>			<u>S o d o m y</u>		
<u>sentence</u>	<u>guilty</u>	<u>not guilty</u>	<u>sentence</u>	<u>guilty</u>	<u>not guilty</u>
less than 10	17.6%	19.8%	less than 5	22.2%	19.7%
10-19	31.9%	20.3%	5-9	31.1%	35.5%
20-39	23.5%	29.5%	10-20	37.8%	39.5%
40-90	14.3%	10.6%	20 & over	8.9%	5.3%
life	12.6%	18.5%			
death		1.3%			

% = % of those with the same plea for the offense.

Again, the plea appears less determinative of sentence length than the presence or absence of a weapon when the presence of a weapon is added the following results occur:

<u>Rape (with a weapon)</u>		
<u>sentence</u>	<u>guilty</u>	<u>non guilty</u>
less than 10	14.3%	7%
10-19	33.3%	17%
20-39	20.6%	30%
40-90	15.9%	17%
life	15.9%	28%
death		1%

The two factors combined show that rape sentences tend to be longer when the defendant pleads not guilty.

Trial Format

A comparison of rape and sodomy sentences by whether the sentence was set by a judge or jury showed that judges were more lenient, particularly with sodomy sentences. The following tables show the

percentage of inmates in each sentencing range of the total who took a judge or who took a jury for that offense.

Sentence	<u>R a p e</u>		Sentence	<u>S o d o m y</u>	
	Judge	Jury		Judge	Jury
less than 10	21.9%	11.9%	less than 5	29.8%	11.1%
0-19	24.6%	23.9%	5-9	38.1%	22.2%
0-39	24.1%	35.8%	10-19	34.5%	50.0%
0-90	13.2%	9.2%	20 & over	2.4%	16.7%
life	14.9%	19.3%			
death	1.3%				

race

Black offenders tended to receive longer sentences than white offenders for rape but shorter sentences than white offenders for sodomy.

sentence	<u>R a p e</u>		sentence	<u>S o d o m y</u>	
	black	white		black	white
less than 10	16.5%	23.1%	less than 5	27.8%	15.2%
0-19	17.9%	34.3%	5-9	33.3%	34.8%
0-39	31.6%	20.9%	10-19	35.1%	40.9%
0-90	12.3%	11.2%	20 & over	3.7%	9.1%
life	20.3%	10.4%			
death	1.4%				

% of offenders of that race convicted of that crime.

CONCLUSION

Based upon the total findings of the study, a stereotype sex offense where a conviction would be likely in Virginia would involve a black male actor in his early twenties. He would be a common laborer of normal intelligence who had been arrested in the past for burglary, for stealing a car, and for being drunk in public. He was only convicted of one of these. He probably had one earlier complaint against him for a sexual assault, but if it led to an arrest, it probably did not result in a conviction. He would be serving time now for a rape which occurred in 1975 or 1976. The victim was a white female about 16 or 17 years of age. He had never seen her before that event. He forced her to commit oral sodomy on him before penetration by threatening her with a knife. He pled not guilty to the offense and was tried by a judge. He was found guilty of rape but the sodomy charge was nolle prossed. He was sentenced to 20 years in prison, 10 of which were suspended. Once in prison, when asked about the offense, he reported that he was not guilty and that he had been framed.

This stereotype probably fits the mental image that most people have about the average rapist. The problem is that this is not how a sex offense occurs all the time. The fact that the majority of sex offenders plead not guilty to a large degree reflects their knowledge that if they do not fit into this stereotype, they have a good chance of acquittal. Not only does this cost the Commonwealth of Virginia a large amount of money, it also means that many sex offenders receive no punishment for their crime. Therefore, the Virginia legislature is wise to reconsider its sex offense statutes at this time.

Selected Bibliography

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This work is widely considered to be the best and most comprehensive book to date on the subject of rape.

Hague, James L. "Issues In Reform of Criminal Law on Rape." Virginia Law Weekly, 23 September 1977: 1-4.

This article compares common law concepts on sexual assault to the new Michigan sexual assault statute.

Williams, Kirsten M. "Sexual Assaults and the Law: The Problem of of Prosecution." Washington, D.C., 1976. (Mimeographed.)

This work studies information gained through the PROMIS computer in Washington, D.C. on sexual assaults from the time of arrest through conviction.

APPENDIX III

AVERAGE SENTENCES OF FELONS COMMITTED
FOR SEXUAL ASSAULT OFFENSES

Committing Court	Fiscal Year Ending 6/ 30/ 76		Fiscal Year Ending 6/30/77	
	Number of Inmates	Average Sentence Years/Months	Number of Inmates	Average Sentence Years/Months
COUNTY COURTS				
Accomack	1	10/0		
Amherst			1	4/0
Arlington	1	3/0	3	51/0
Augusta			2	12/0
Bedford			1	5/0
Bland			1	6/0
Buchanan			1	5/0
Caroline	1	4/0		
Chesterfield	2	8/6	2	16/0
Clarke			1	10/0
Fairfax	10	5/6	10	6/0
Fluvanna			1	50/0
Greensville	1	5/0	1	2/0
Henrico	4	25/10	3	4/0
Henry	1	8/0	1	15/0
King and Queen			1	1/0
Loudoun	1	15/0	1	16/0
Lunenburg			2	6/0
Montgomery			1	5/0
Nelson			2	5/0
Northampton	1	63/1	1	80/0
Orange			1	8/0
Page	1	5/0		
Pittsylvania	2	3/0		
Powhatan			1	2/0
Prince George			1	3/0
Prince William	2	7/6		
Pulaski			1	2/0
Rockingham	1	30/11		
Roanoke			2	37/6
Russell	1	3/0		
Southampton	1	0/6		
Tazewell			1	5/0
Warren	1	10/0	1	2/0
Wise	1	1/0		
Wythe			1	4/9
York	1	15/0		

CITY COURTS	Fiscal Year Ending 6/30/76		Fiscal Year Ending 6/30/77	
	Number of Inmates	Average Sentence Years/Months	Number of Inmates	Average Sentence Years/Months
Alexandria	7	14/9	5	9/0
Buena Vista			1	2/0
Charlottesville	2	50/3		
Chesapeake			1	6/0
Fairfax	1	25/0		
Fredricksburg			1	40/0
Hampton	2	20/9	6	13/4
Hopewell			1	2/0
Lynchburg	2	5/6	1	1/0
Martinsville	2	7/6	1	14/0
Newport News	7	22/5	3	20/0
Norfolk	16	15/2	8	14/5
Petersburg	1	5/0	1	3/0
Portsmouth	5	14/0	1	25/0
Richmond	12	13/10	14	16/4
Roanoke	3	6/10	6	28/10
Staunton	1	1/0		
Suffolk			1	5/0
Virginia Beach	4	34/9	8	10/8
Williamsburg	3	4/4	2	6/6
TOTAL	102	14/6	106	14/2

1 Two hundred fifty-nine D 1/15/78JAB C 1/19/78neg

2 A BILL to amend the Code of Virginia by adding in Chapter 4
3 of Title 18.2 an article numbered 7.1, containing
4 sections numbered 18.2-67.1 through 18.2-67.14, and in
5 Title 19.2 a section numbered 19.2-247.1, relating to
6 criminal sexual assault and venue therefor; and to
7 repeal Article 7 of Title 18.2, containing sections
8 numbered 18.2-61 through 18.2-67, relating to rape;
9 penalties.

10

11 Be it enacted by the General Assembly of Virginia:

12 1. That the Code of Virginia is amended by adding in
13 Chapter 4 of Title 18.2 an article numbered 7.1, containing
14 sections numbered 18.2-67.1 through 18.2-67.14, and in Title
15 19.2 a section numbered 19.2-247.1 as follows:

16 Article 7-1.

17 Criminal Sexual Assault.

18 § 18.2-67.1. Definitions.--As used in this article:

19 A. "Actor" means a person accused of criminal sexual
20 assault.

21 B. "Force or coercion" includes but is not limited to
22 any of the following acts:

23 1. The application of force or violence on the victim
24 or the intimidation of the victim by the application of
25 force or violence on any other person.

26 2. A threat, by words or conduct, to use immediate
27 force or violence on the victim or any other person, where
28 the victim believes the actor has the ability to execute
29 that threat.

1 3. A threat to retaliate in the future against the
2 victim or any other person, where the victim believes the
3 actor has the ability to execute that threat.

4 As used in this subsection, "threat to retaliate"
5 includes but is not limited to threats of personal injury,
6 kidnapping, defamation of character, or interference with
7 rights to property of value to the victim or any other
8 person.

9 C. "Intimate parts" means the genitalia, anus, groin,
10 inner thigh, buttocks, or breast of any person.

11 D. "Mental incapacity" is that condition existing at
12 the time of the criminal sexual assault which prevents a
13 person from understanding the nature or consequences of, or
14 from controlling, the sexual contact or sexual penetration
15 as defined herein, whether that condition is produced by
16 illness, injury, retardation, the influence of a substance,
17 or from some other similar cause.

18 E. "Personal injury" means substantial bodily injury,
19 disabling mental anguish, chronic pain, pregnancy, or
20 disease.

21 F. "Physically helpless" means unconscious, asleep, or
22 otherwise physically unable to communicate an unwillingness
23 to act.

24 G. "Position of authority" is any relationship in
25 which the actor appears to the victim to have a status which
26 implies the right of the actor to expect or demand
27 obedience, acquiescence or submission on the part of the
28 victim. Authority or appearance of authority may be

1 established by, but is not limited to, evidence of the
 2 relative ages, maturity, or occupations of the victim and
 3 actor; the blood or household relationship of the actor to
 4 the victim; or the actor's position of trust relative to the
 5 victim such as that involved in the support, care, comfort,
 6 discipline, custody, education or counseling of the victim.

7 H. "Sexual contact" includes the following intentional
 8 or coerced acts, if those acts can reasonably be construed
 9 as being for the purpose of sexual abuse of the victim or
 10 some third person, or sexual arousal or gratification of the
 11 actor or some third persons:

- 12 1. The intentional touching by the actor of the
- 13 victim's intimate parts, or
- 14 2. The coerced touching by the victim of the actor's,
- 15 the victim's, or another person's intimate parts, or
- 16 3. The coerced touching by another person of the
- 17 victim's intimate parts, or
- 18 4. In any of the above cases, the intentional or
- 19 coerced touching of the clothing covering the immediate area
- 20 of the intimate parts.

21 I. "Sexual penetration" means vaginal intercourse,
 22 cunnilingus, fellatio, anal intercourse, or any other
 23 intrusion, however slight, by any part of a person's body or
 24 by any object into the labia majora or anal openings of
 25 another person's body. Emission of semen is not required to
 26 prove sexual penetration.

27 J. "Victim" means the person alleging to have been
 28 subjected to criminal sexual assault. When the death of the

1 victim occurs in connection with criminal sexual assault, it
2 shall be immaterial to a charge under this article whether
3 the criminal sexual assault occurred before, during, or
4 after the death of the victim.

5 § 18.2-67.2. Criminal sexual assault in the first
6 degree.--A. A person is guilty of criminal sexual assault
7 in the first degree if such person engages in sexual
8 penetration with a victim under any of the following
9 circumstances:

10 1. The victim is less than thirteen years of age.

11 2. The victim is at least thirteen but less than
12 sixteen years of age and the actor:

13 a. Is the parent or any person acting in the place or
14 stead of the parent of the victim, or

15 b. Uses force or coercion or a position of authority
16 to accomplish the sexual penetration, or

17 c. Uses the victim's mental incapacity to accomplish
18 the sexual penetration.

19 3. The victim is mentally incapacitated or physically
20 helpless, and the actor uses that condition to accomplish
21 the sexual penetration, and

22 a. Another person, in addition to the actor and the
23 victim, is present and the victim believes such person is
24 assisting, supporting or encouraging the actor in the sexual
25 penetration, or

26 b. The actor causes personal injury to the victim, or

27 c. The actor uses or threatens to use a dangerous
28 weapon or anything the victim reasonably believes to be a

1 dangerous weapon.

2 4. The actor uses force or coercion or a position of
3 authority to accomplish the sexual penetration, and

4 a. Another person, in addition to the actor and the
5 victim, is present and the victim believes such person is
6 assisting, supporting or encouraging the actor in the sexual
7 penetration, or

8 b. The actor causes personal injury to the victim, or

9 c. The actor uses or threatens to use a dangerous
10 weapon or anything the victim reasonably believes to be a
11 dangerous weapon.

12 5. The victim is in custody of law or, is detained in
13 or is an inmate, patient, or resident in any jail or other
14 penal institution, juvenile correctional facility, mental
15 institution, mental retardation facility, or similar
16 institution or facility and the actor uses force or coercion
17 or a position of authority, or the victim's mental
18 incapacity to accomplish the sexual penetration, where the
19 sexual penetration is not incident to a lawful search, and

20 a. The act takes place in such an institution or
21 facility, or

22 b. The act takes place outside such an institution or
23 facility and the actor knew or should have known that the
24 victim was in custody of law, was detained in, or was an
25 inmate, patient, or resident in such an institution or
26 facility.

27 B. Criminal sexual assault in the first degree is a
28 felony punishable by imprisonment for life or for any term

1 not less than five years.

2 § 18.2-67.3. Criminal sexual assault in the second
3 degree.--A. A person is guilty of criminal sexual assault
4 in the second degree if such person engages in sexual
5 penetration with a victim, and

6 1. The actor uses force or coercion or a position of
7 authority to accomplish the sexual penetration, or

8 2. The victim is mentally incapacitated or physically
9 helpless, and the actor uses that condition to accomplish
10 the sexual penetration.

11 B. Criminal sexual assault in the second degree is a
12 felony punishable by a term of imprisonment of not less than
13 five years nor more than twenty years.

14 § 18.2-67.4. Criminal sexual assault in the third
15 degree.--A. A person is guilty of criminal sexual assault
16 in the third degree if such person engages in sexual contact
17 with a victim under any of the circumstances set forth in §
18 18.2-67.2 A.; provided, that for the purposes of this
19 section the term "sexual contact" will be substituted for
20 the term "sexual penetration" throughout § 18.2-67.2 A.

21 B. Criminal sexual assault in the third degree is a
22 felony punishable by a term of imprisonment of not less than
23 five nor more than twenty years.

24 § 18.2-67.5. Criminal sexual assault in the fourth
25 degree.--A. A person is guilty of criminal sexual assault
26 in the fourth degree if such person engages in sexual
27 contact with a victim under any of the circumstances set
28 forth in § 18.2-67.3 A.; provided, that for the purposes of

1 this section the term "sexual contact" will be substituted
2 for the term "sexual penetration" throughout § 18.2-67.3 A.

3 B. Criminal sexual assault in the fourth degree is a
4 felony punishable by a term of imprisonment of not less than
5 one year nor more than five years, or in the discretion of
6 the jury or the court trying the case without a jury, by
7 confinement in jail for not more than twelve months.

8 § 18.2-67.6. Attempted criminal sexual assault.--A.
9 An attempt to commit criminal sexual assault in the first or
10 second degree is a felony punishable by a term or
11 imprisonment of not less than two nor more than twenty
12 years.

13 B. An attempt to commit criminal sexual assault in the
14 third degree is a felony punishable by a term of
15 imprisonment of not less than one year nor more than five
16 years.

17 C. An attempt to commit criminal sexual assault in the
18 fourth degree is a misdemeanor punishable by confinement in
19 jail for not more than twelve months.

20 § 18.2-67.7. Subsequent criminal sexual assault
21 offenses.--A. Upon conviction of a subsequent offense under
22 §§ 18.2-67.2 through 18.2-67.4 or § 18.2-67.6 A., the court,
23 pursuant to the procedures and conditions set forth in §
24 53-29e, shall impose the following sentence in addition to
25 the sentence imposed by the jury or the court for the
26 criminal sexual assault:

27 1. An additional term of five years if the conviction
28 is for a second such offense; or

1 2. An additional term of ten years if the conviction
2 is for a third such offense; or

3 3. An additional term of imprisonment for life if the
4 conviction is for a fourth or more such offense.

5 B. For purposes of this section, an offense is
6 considered a second or subsequent offense if, prior to
7 conviction of that second or subsequent offense, the actor
8 has at any time been convicted under (i) §§ 18.2-67.2
9 through 18.2-67.4 or § 18.2-67.6 A., or (ii) under any
10 present or former similar statute of the United States or of
11 this or any other state, or an attempt to commit any such
12 offense.

13 C. For purposes of this section, the additional
14 sentence shall be served consecutively to the sentence
15 imposed by the jury or court for the criminal sexual
16 assault. The additional sentence prescribed by this section
17 shall be imposed forthwith and shall not be stayed, nor
18 shall it be suspended in whole or in part; and no person
19 sentenced hereunder shall be eligible for parole or
20 probation during the additional period of imprisonment. The
21 additional sentence shall commence immediately upon the
22 determination of prior conviction and, upon termination of
23 the additional sentence, such person shall forthwith
24 commence to serve the term or terms or remainder thereof
25 imposed upon him or her for the criminal sexual assault
26 conviction upon which the additional sentence was based.

27 D. Whenever a juvenile is adjudicated delinquent for
28 having committed criminal sexual assault under §§ 18.2-67.2,

1 18.2-67.4 or 18.2-67.6 A. that disposition shall be
2 considered by the court as a prior offense for purposes of
3 this section.

4 § 18.2-67.8. Consecutive sentences.--When a person who
5 has been convicted under §§ 18.2-67.2 through 18.2-67.6 is
6 also convicted of another felony arising out of the same
7 transaction, the sentence for criminal sexual assault shall
8 be served consecutively to the sentence for the other
9 felony.

10 § 18.2-67.9. Consideration of public safety: probation
11 and parole.--A. If a person convicted under §§ 18.2-67.2
12 through 18.2-67.6 is considered for probation or suspended
13 sentence, the safety of the public shall be the first
14 consideration of the court and the Commonwealth's Attorney
15 shall have the opportunity to be heard on this issue.

16 B. If a person convicted under §§ 18.2-67.2 through
17 18.2-67.6 is considered for parole, work release, study
18 release, or furlough, the safety of the public shall be the
19 first consideration. The Commonwealth's Attorney of both
20 the jurisdiction in which the actor was convicted and the
21 jurisdiction to which the actor is to be released shall be
22 notified and shall have the opportunity to be heard in
23 person or in writing on this issue prior to any such
24 determination.

25 § 18.2-67.10. Corroboration of victim's testimony and
26 proof of resistance not required.--The testimony of a victim
27 need not be corroborated by other evidence and a victim need
28 not have cried out or resisted the actor in any way in order

1 to convict the actor of an offense under §§ 18.2-67.2
2 through 18.2-67.6.

3 § 18.2-67.11. Admission of evidence.--A. In
4 prosecutions under §§ 18.2-67.2 through 18.2-67.6, opinion
5 evidence and reputation evidence of the victim's sexual
6 conduct shall not be admitted. Evidence of specific
7 instances of the victim's sexual conduct shall not be
8 admitted unless, and only if, the court finds that the
9 evidence is material to a fact at issue in the case and that
10 its probative value substantially outweighs its inflammatory
11 or prejudicial nature and it is:

12 1. necessary to provide an alternative explanation for
13 semen, pregnancy, disease, trauma, or other physical
14 evidence of the offense charged, and the prosecution uses
15 such evidence, or it is

16 2. necessary to support a claim that the victim has an
17 ulterior motive in accusing the actor of criminal sexual
18 assault, provided the evidence is essential to such a
19 showing and not merely cumulative, or it is

20 3. evidence of sexual conduct between the victim and
21 the actor which is necessary to show whether force or
22 coercion, or a position of authority, or use of the victim's
23 mental incapacity, was used to accomplish the offenses
24 complained of, and:

25 a. an ulterior motive to accuse the actor of criminal
26 sexual assault is otherwise shown by the facts in the case,
27 and

28 b. the conduct was sufficiently proximate in terms of

1 time to, and sufficiently consistent with the life style of
2 the victim at the time of, the incident at issue, and
3 a distinctive pattern of behavior or a single
4 remarkably similar incident gives this evidence probative
5 value great enough to outweigh the Commonwealth's strong
6 interest in excluding it, or it is

7 4. evidence as to which the victim voluntarily waives
8 his or her privacy interest, or it is

9 5. necessary to rebut evidence of the victim's sexual
10 history introduced by the prosecution.

11 B. 1. No evidence described in subsection A. of this
12 section may be referred to in any preliminary hearing or
13 before a jury or introduced at trial prior to an in camera
14 hearing as provided in this section.

15 2. If the actor proposes to offer evidence described
16 in subsection A., the actor no later than ten days prior to
17 trial shall file a written motion and offer of proof. The
18 court shall order an in camera hearing to determine whether
19 the proposed evidence is admissible under subsection A. If
20 new information is discovered during the course of the trial
21 that may make the evidence described in subsection (1)
22 admissible, the court shall order an in camera hearing to
23 determine whether the proposed evidence is admissible under
24 subsection A.

25 C. The court shall instruct the jury as individual
26 cases require that the law of criminal sexual assault
27 recognizes no defense based on provocation by the victim,
28 assumption of risk by the victim, or the victim's past

1 conduct, sexual or otherwise.

2 § 18.2-67.12. Closed preliminary hearings.--If the
3 actor is accused of an offense under §§ 18.2-67.2 through
4 18.2-67.6, the court may, in its discretion, at the request
5 of the victim or actor, or counsel, or on the court's own
6 motion, exclude from a preliminary hearing all persons
7 except officers of the court and persons who, in the
8 judgment of the court, would be supportive of the victim or
9 actor and would not impair the conduct of a fair hearing by
10 their presence.

11 § 18.2-67.13. Victim's rights.--In any proceeding
12 under §§ 18.2-67.2 through 18.2-67.6:

13 A. The Commonwealth's Attorney shall inform the victim
14 of the protections for privacy provided in §§ 18.2-67.11 and
15 18.2-67.12, and shall file the required motions at the
16 victim's request or on his or her own motion. The
17 Commonwealth's Attorney shall inform the victim of these
18 rights as soon as practicable but before the first hearing
19 at which the victim is present. The court shall provide a
20 private area, when available, for the victim.

21 B. The terms "prosecutrix," "unchaste character," and
22 "lewd female," or any other similarly derogatory or
23 prejudicial term may not be used with reference to the
24 victim.

25 C. The jury shall not be instructed to examine with
26 caution the testimony of the victim solely because of the
27 nature of the charge, nor shall the jury be instructed that
28 such a charge is easy to make but difficult to defend

1 against, nor shall any similar instruction be given.

2 D. The victim shall be treated with dignity and
3 respect at all times.

4 § 18.2-67.14. Prosecution of spouse.--A. It is not a
5 defense to a charge of criminal sexual assault in the first
6 or second degree under §§ 18.2-67.2 and 18.2-67.3 or an
7 attempt to commit those offenses that the victim is the
8 actor's legal spouse.

9 B. It is not a defense to a charge of criminal sexual
10 assault in the third or fourth degree under §§ 18.2-67.4 and
11 18.2-67.5 or an attempt to commit those offenses that the
12 victim is the actor's legal spouse, if the actor and victim
13 are living apart and the actor knew or should have known
14 that the victim intended to remain apart.

15 § 19.2-247.1. Venue in cases of criminal sexual
16 assault.--Where evidence exists that a criminal sexual
17 assault has been committed under circumstances which make it
18 uncertain where such offense was committed, the offense
19 shall be amenable to prosecution in the courts of the county
20 or city where the victim was assaulted or in any county or
21 city in which any part of the transportation of the victim
22 took place.

23 2. That Article 7 of Title 18.2, consisting of sections
24 numbered 18.2-61 through 18.2-67, is repealed.

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APPENDIX V

BIBLIOGRAPHY OF SEXUAL ASSAULT MATERIAL

I. Reports and Research Papers

- Crime Resistance, 1977, FBI and Norfolk Police Department.
- Background Material on Sexual Assault, University of Virginia School of Law, October, 1976.
- Task Force on Rape, Charlottesville Commission on Women, 1975.
- Rape Crisis Counseling, Charlottesville Commission on Women, 1975.
- Report on Public Hearing, Fairfax Commission on Women, 1976.
- Incidence of the Death Penalty for Rape in Virginia, Washington and Lee Law Review, 1972.
- Report on a Program of Behavior Treatment for Incarcerated Pedophiles (Child Molesters), Connecticut Correctional Institute.
- Rape Prevention Research Project Annual Report, Violence Research Unit, Denver, Colorado.
- Forcible Rape and the Criminal Justice System, National Council on Crime and Delinquency, 1974.
- The Treatment of Rape Victims in the Metropolitan Washington Area, Metropolitan Washington Council of Governments, September, 1976.
- National Conference on Sexual Assault, Metropolitan Organization to Counter Sexual Assault, Inc., Kansas City, Missouri.
- The Renaissance of Rape, Armand Arabian, Judge of Superior Court, Los Angeles, California.

II. Programs and Projects

Virginia Rape Crisis Centers

1. Alexandria Commission on Women, Alexandria, Virginia.
2. Alexandria Rape Victim Companion Program, Alexandria, Virginia, 22041.
3. Arlington County Committee on the Status of Women, Arlington, Virginia.
4. Charlottesville Commission on Women, Charlottesville, Virginia.
5. Fairfax County Commission on Women, Fairfax, Virginia, 22309, % Linda Golodner.
6. People Against Rape, % Marney Gibbs, 42 Woodlee Road, Staunton, Virginia, 24401, 703-885-2430.

7. Richmond Organized Against Rape (ROAR), Richmond, Virginia.
8. Tidewater Rape Information Services, Inc. (TRIS), Norfolk, Virginia 2350
9. TRUST - % Mrs. Jane G. Gray, 360 Washington, Roanoke, Virginia 24016,
703-345-8859.

Other Crisis Centers

1. Iowa Project for Victims of Sexual Assault, Polk County, Iowa.
2. Minnesota Program for Victims of Sexual Assault, St. Paul, Minnesota.
3. Montgomery County Police Department, Montgomery County, Maryland.
4. Women's Crisis Center, Ann Arbor, Michigan.