

**REPORT OF THE  
VIRGINIA STATE CRIME COMMISSION**

**Embracery**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**REPORT DOCUMENT NO. 277**

**COMMONWEALTH OF VIRGINIA  
RICHMOND**

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*Attachment A: House Bill 2265 (2005)*

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## **I. Authority for Study**

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The *Code of Virginia*, § 30-156, authorizes the Virginia State Crime Commission (“Crime Commission”) to study, report and make recommendations “on all areas of public safety and protection.” Additionally, the Crime Commission is to study “compensation of persons in law enforcement and related fields” and to study “apprehension, trial and punishment of criminal offenders.”<sup>1</sup> Section 30-158(3) empowers the Crime Commission to “conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-156. . .and formulate its recommendations to the Governor and the General Assembly.”

Using the statutory authority granted to the Crime Commission, staff conducted a study on the crime of embracery, or attempting to corruptly influence a jury member.

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## **II. Executive Summary**

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During the 2005 Session of the Virginia General Assembly, Delegate Rob B. Bell introduced House Bill 2265.<sup>2</sup> This bill was referred to the House Courts of Justice Committee, which sent a letter to the Crime Commission, asking for an examination of the bill.

The language of House Bill 2265 makes it a Class 1 misdemeanor to “corruptly influence” a juror. This is, in essence, the common law crime of embracery, and is a recognizable offense that currently can be prosecuted in Virginia. The Supreme Court of Virginia specifically held that the offense of embracery exists in the Commonwealth, as a Class 1 misdemeanor, even though it has not been codified.<sup>3</sup>

### **Recommendation**

Because the common law crime of embracery already exists as a Class 1 misdemeanor under Virginia law, it is not necessary for an “embracery” statute to be enacted.

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## **III. Methodology**

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The Crime Commission examined the legal definition of embracery and reviewed Virginia case law. Possible methods of drafting an embracery statute were considered, in order to determine if there was a need to codify the crime.

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<sup>1</sup> VA. CODE ANN. § 30-156 (Michie 2005).

<sup>2</sup> House Bill 2265, 2005 General Assembly, Reg. Sess. (Va. 2005). See attachment A.

<sup>3</sup> Wiseman v. Commonwealth, 143 Va. 631 (1925).

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## IV. Background

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Embracery is a common law crime, usually defined as “attempting to influence a jury corruptly to one side or the other, by promises, persuasions, entreaties, entertainments...and the like.”<sup>4</sup> Implicit in this definition is the fact that neither a bribe nor a threat needs to be involved for the crime of embracery to be committed. The crime has also been defined as an attempt, “by any means other than production of evidence and argument in court, to influence a grand or petit juror.”<sup>5</sup>

The Virginia Supreme Court has recognized that the crime of embracery exists in Virginia, and can be prosecuted.<sup>6</sup> In 1924, a defendant by the name of Joseph Wiseman was being investigated by a grand jury in Shenandoah County for selling coal without having paid a license tax. The defendant approached a friend, whom he knew to be friends with a member of the grand jury, and asked his friend to persuade the juror to vote against an indictment. The Supreme Court held that this action constituted the common law misdemeanor offense of embracery as it was “an attempt corruptly to influence a juror.”<sup>7</sup> Embracery is an attempt crime, so it made no difference that the defendant’s efforts were completely unsuccessful, and the crime applies to grand jurors as well as petit jurors (jurors who decide an individual case).<sup>8</sup> Although the crime of embracery had never been codified by the Virginia legislature, the “common law of England is in full force in Virginia, except where it is repugnant to the principles of the Bill of Rights and the Constitution of this State.”<sup>9</sup> Because the legislature has never enacted legislation to modify or repeal the holding in this case, the crime of embracery continues to exist in the Commonwealth, as a Class 1 misdemeanor.<sup>10</sup>

### Related Crimes

It should be noted that the crime of embracery is distinct from bribing jurors, which is criminalized under two separate statutes, *Code of Virginia* §§ 18.2-441 and 18.2-447, both of which are Class 4 felonies. It is also distinct from the offense of intimidating a juror, which is covered by *Code of Virginia* § 18.2-460, and is either a Class 1 misdemeanor, or a Class 5 felony if the underlying offense involves drug distribution, gang violence, or certain violent felonies.

Therefore, if a person approaches a juror and attempts to buy his vote, he is guilty of bribery, a Class 4 felony. If he threatens the juror to vote a certain way, he is guilty of

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<sup>4</sup> BLACK’S LAW DICTIONARY 469 (5<sup>th</sup> ed. 1979).

<sup>5</sup> ROGER D. GROOT, CRIMINAL OFFENSES AND DEFENSES IN VIRGINIA *Interfering with Justice* § 4 (2005 ed.).

<sup>6</sup> *Wiseman v. Commonwealth*, 143 Va. 631 (1925).

<sup>7</sup> *Id.* at 635.

<sup>8</sup> The defendant’s friend made no attempt to speak with the juror, and instead reported the defendant to authorities. Technically, the defendant was tried on a charge of soliciting an embracery, rather than a direct charge of embracery. *Id.* at 635-637.

<sup>9</sup> *Id.* at 640. This general principle is still the law today. VA. CODE ANN. § 1-200 (Michie 2005); *see also Commonwealth v. Holland*, 211 Va. 530 (1971).

<sup>10</sup> “A misdemeanor for which no punishment...is prescribed by statute shall be punishable as a Class 1 misdemeanor.” VA. CODE ANN. § 18.2-12 (Michie 2005).

obstruction of justice, which is either a Class 1 misdemeanor or a Class 5 felony, depending on the circumstances. If he approaches a juror and inappropriately pleads with him to vote a certain way, without promising any specific benefit in exchange, he is guilty of embracery, which is a Class 1 misdemeanor.

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## **V. Conclusion and Recommendation**

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The crime of trying to corruptly influence a juror, without using either threats or bribes, does exist in the Commonwealth as the common law offense of embracery. A person can be indicted and punished for this crime, even though it has never been codified by the legislature. While there may seem to be some advantages to creating statutes and definitions for all of the common law crimes, the state of Virginia has traditionally resisted this approach. Many frequent and familiar offenses, such as murder, robbery, and larceny are not statutorily defined, although the legislature has specified their punishments.<sup>11</sup> Instead, the common law is used to supply the elements of the offense, as well as any exceptions or defenses that may exist for those particular crimes.

### **Recommendation**

Because embracery already exists as a crime in the Commonwealth, and because the proposed legislation would merely duplicate the penalty of a Class 1 misdemeanor for this offense, it is the recommendation of the Crime Commission to not codify this crime.

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<sup>11</sup> See generally, VA. CODE ANN. §§ 18.2-30, 18.2-32, 18.2-58, 18.2-95, 18.2-96 (Michie 2005).

# **ATTACHMENT A**

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**HOUSE BILL NO. 2265**

Offered January 12, 2005

Prefiled January 11, 2005

A *BILL to amend the Code of Virginia by adding a section numbered 18.2-460.01, relating to embracery or corruptly influencing a juror; penalty.*

\_\_\_\_\_  
Patron—Bell

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Referred to Committee for Courts of Justice

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

**1. That the Code of Virginia is amended by adding a section numbered 18.2-460.01 as follows:**

*§18.2-460.01. Corruptly influencing a juror; penalty.*

*A. Any person who attempts to corruptly influence a juror is guilty of a Class 1 misdemeanor.*

*B. For purposes of this section: (i) a "juror" is a grand or petit juror; (ii) a person is a grand juror from the time his name is entered on the venire facias required by § 19.2-194 and remains so until discharged by the court; (iii) a person is a petit juror from the time his name appears on the list required by § 8.01-351 and remains so until discharged by the court; (iv) a person acts "corruptly" when (a) he knows another person is a juror and (b) in the case of a grand juror, acts outside of the grand jury proceedings to instruct the grand juror about his duties or to present any form of evidence or argument to the grand juror, or (c) in the case of a petit juror, acts outside of the judicial proceeding to instruct the petit juror or to present any form of evidence or argument to the petit juror.*

INTRODUCED

HB2265