

## Department of Planning and Budget 2018 Fiscal Impact Statement

**1. Bill Number:** HB985

**House of Origin**    ☒ Introduced    ☐ Substitute    ☐ Engrossed  
**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:**        Gilbert

**3. Committee:** Courts of Justice

**4. Title:**            Unlawful creation of image of another; incapacitated adult; penalty.

**5. Summary:** Current law prohibits anyone from knowingly and intentionally creating a videographic or still image of a nonconsenting person if such person is totally nude, clad in undergarments, or in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast or if the recording device was positioned directly beneath or between such person's legs. Current law also prohibits anyone who, without authorization and with the intent to coerce, harass, or intimidate, from maliciously disseminating or selling a videographic or still image of a person who is totally nude, or in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast. Violation of either of these provisions is punishable as a Class 1 misdemeanor. The proposed legislation establishes that violating the existing provisions when the nonconsenting person is an incapacitated adult is punishable as a Class 6 felony.

**6. Budget Amendment Necessary:** Yes. Item 394.

**7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.

**Expenditure Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Fund</b></i>
2019	\$50,000	General
2020	\$0	
2021	\$0	
2022	\$0	
2023	\$0	
2024	\$0	
2025	\$0	

**8. Fiscal Implications:** For someone convicted of a Class 6 felony, a judge has the option of sentencing him to up to one year in jail, or 1 to 5 years in prison. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate how many additional inmates in jail could result from this proposal. Ultimately, the presiding judge will decide if there is to be any time served in jail; however, any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$4.00 a day for each misdemeanor or otherwise local responsible prisoner held in a jail and \$12.00 a day for each state responsible inmate. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2017), the estimated total state support for local jails averaged \$34.58 per inmate, per day in FY 2016.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 836 of the 2017 Acts of Assembly requires that a minimum impact of \$50,000 be assigned to the bill.

**9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, Local and Regional jails.

**10. Technical Amendment Necessary:** None

**11. Other Comments:** This bill is similar to SB563.