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SENATE BILL NO. 242

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 24, 2020)

(Patron Prior to Substitute—Senator Marsden)

A BILL to amend and reenact § 18.2-64.2 of the Code of Virginia, relating to carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial defendant or posttrial offender; local or state law-enforcement officer; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-64.2 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-64.2. Carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or posttrial offender; penalty.

An accused is guilty of carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial defendant or posttrial offender if he is a law-enforcement officer, as defined in § 9.1-101, or an employee or contractual employee of, or a volunteer with, a state or local correctional facility or regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home; as defined in § 16.1-228, a state or local court services unit; as defined in § 16.1-235, a local community-based probation services agency, or a pretrial services agency; is in a position of authority over the inmate, probationer, parolee, detainee, or a pretrial defendant or posttrial offender; knows that the inmate, probationer, parolee, detainee, or pretrial defendant or posttrial offender is in the custody of a private, local, or state law-enforcement agency or under the jurisdiction of the a state or local correctional facility, a or regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home; as defined in § 16.1-228, a state or local court services unit; as defined in § 16.1-235, a local community-based probation services agency, or a pretrial services agency; and carnally knows, without the use of force, threat, or intimidation, (i) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail or (ii) a probationer, parolee, detainee, or a pretrial defendant or posttrial offender in the custody of a private, local, or state law-enforcement agency or under the jurisdiction of the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home; as defined in § 16.1-228, a state or local court services unit; as defined in § 16.1-235, a local community-based probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program, or any other parole/probationary or pretrial services program or agency. Such offense is a Class 6 felony.

An accused is guilty of carnal knowledge of a pretrial defendant or posttrial offender if he (a) is an owner or employee of the bail bond company that posted the pretrial defendant's or posttrial offender's bond, (b) has the authority to revoke the pretrial defendant's or posttrial offender's bond, and (c) carnally knows, without use of force, threat, or intimidation, a pretrial defendant or posttrial offender. Such offense is a Class 1 misdemeanor.

For the purposes of this section, "carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, and animate or inanimate object sexual penetration.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.