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HOUSE BILL NO. 296**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee for Courts of Justice
on February 7, 1999)

(Patron Prior to Substitute—Delegate McClure)

A BILL to amend the Code of Virginia by adding a section numbered 18.2-67.4:1, relating to infected sexual battery; penalty.

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 18.2-67.4:1 as follows:**

§ 18.2-67.4:1. Infected sexual battery.

Any person who, knowing he is infected with HIV, has sexual intercourse, cunnilingus, fellatio, anallingus or anal intercourse shall be guilty of infected sexual battery, unless the person, prior to such sexual contact, advises the other person that he is infected, and that such other person then consents to such sexual contact. A minor who is five or more years the junior of the accused shall be deemed legally incompetent to give consent.

If a person commits infected sexual battery he is guilty of a Class 1 misdemeanor. However, if such person commits sexual infected battery with the intent to harm he shall be guilty of a Class 6 felony.

If a person commits a second offense of infected sexual battery and it is alleged in the warrant, indictment or information on which he is convicted, and admitted, or found by the jury or judge before whom he is tried, that he has been before convicted in the Commonwealth of Virginia or in another jurisdiction for any substantially similar offense, regardless of whether the prior conviction was a misdemeanor or a felony, he is guilty of a Class 5 felony.

If a person commits a third or subsequent offense of infected sexual battery and it is alleged in the warrant, indictment or information on which he is convicted, and admitted, or found by the jury or judge before whom he is tried, that he has been at least twice before convicted in the Commonwealth of Virginia or in another jurisdiction for a substantially similar offense, regardless of whether the prior convictions were misdemeanors, felonies or a combination thereof, he is guilty of a Class 4 felony.

As used in this section:

"HIV" means the human immunodeficiency virus or any other related virus which causes acquired immunodeficiency syndrome (AIDS).

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0.