

Department of Planning and Budget 2014 Fiscal Impact Statement

1. Bill Number: SB 14

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

2. Patron: Garrett

3. Committee: House Courts of Justice

4. Title: Sodomy

5. Summary:

Currently, state law makes it a Class 6 felony for any person to “carnally know any male or female by the anus or by or with the mouth.” The United States Court of Appeals for the Fourth Circuit has ruled that this prohibition of non-forcible sodomy is unconstitutional. The United States Supreme Court has declined to hear the case on appeal.

The proposed language would delete the statutory language making non-forcible sodomy illegal. There are other sections in the Code of Virginia defining unlawful sexual intercourse and incorporating the sodomy statute by reference. The proposed legislation would add the terms “anal intercourse, cunnilingus, fellatio, an anilingus” to the acts prohibited by those statutes. In addition, the proposed legislation would add those acts to other statutes prohibiting certain sexual conduct that do not reference the sodomy statute.

6. Budget Amendment Necessary: Yes. See Item 385.

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

Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2015	\$50,000	General
2016	\$0	
2017	\$0	
2018	\$0	
2019	\$0	
2020	\$0	

8. Fiscal Implications:

Because many of the current statutes defining illegal sexual activity include acts of sodomy by referencing the statute, now declared unconstitutional, prohibiting all acts of sodomy, those laws dealing with specific illegal sexual acts now, as a result of the court decision, do not include acts of sodomy. By making these and other statutes apply to anal intercourse, cunnilingus, fellatio, and anilingus, as well as sexual intercourse, the proposed legislation would broaden the statutes as they are now applicable. Many of these provisions are a Class 6 felony.

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. 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 2013), the estimated total state support for local jails averaged \$30.06 per inmate, per day in FY 2012.

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 806 of the 2013 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: The proposed legislation has an emergency clause.

Date: 2/14/2014

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