

2020 SPECIAL SESSION I

HOUSE SUBSTITUTE

20201022D

HOUSE BILL NO. 5045

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on August 26, 2020)

(Patron Prior to Substitute—Delegate Delaney)

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

A. An accused is guilty of carnal knowledge of a person in the custody of a law-enforcement officer or an inmate, parolee, probationer, detainee, or pretrial defendant or posttrial offender if he is a law-enforcement officer 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 person in the custody of a law-enforcement officer, inmate, probationer, parolee, detainee, or a pretrial defendant or posttrial offender; knows that the person in the custody of a law-enforcement officer, 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 person in the custody of a law-enforcement officer, 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 6 felony.

B. For the purposes of this section, a person is in the custody of a law-enforcement officer when due to physical force, words, or actions by the law-enforcement officer, such person reasonably believes he is not free to leave under the circumstances.

C. For the purposes of this section, "carnal:

"Carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, and animate or inanimate object sexual penetration.

"Law-enforcement officer" means the same as that term is defined in § 9.1-101.

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 1289 of the Acts of Assembly of 2020 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.

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