

Department of Planning and Budget

2020 Special Session I - Fiscal Impact Statement

1. Bill Number: HB5045 H1

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

2. Patron: Delaney

3. Committee: Courts of Justice

4. Title: Carnal knowledge of an inmate, parolee, probationer, arrestee, detainee, or pretrial defendant.

5. Summary: Current law prohibits carnal knowledge of an inmate, parolee, probationer, detainee, pretrial defendant or post-trial offender by an 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, a state or local court services unit as defined in § 16.1-235 (probation, parole related services), a local community-based probation services agency, or a pretrial services agency. Violations of this provision are punishable as a Class 6 felony.

This proposal adds law-enforcement officers, as defined in § 9.1-101 (lists specific types of employees who are considered law-enforcement officers) to the current list of persons subject to the Class 6 felony. The substitute bill expands the list of those protected under the current law to include persons in the custody of a law-enforcement officer. The substitute bill defines person in the custody of a law-enforcement officer as those who, when due to physical force, words, or actions by the law-enforcement officer, reasonably believes he is not free to leave under the circumstances

6. Budget Amendment Necessary: Yes, Item 402.

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

8. Fiscal Implications: Based on Circuit Court Case Management System (CMS) data for fiscal year (FY) 2014 through FY2019 obtained by the Virginia Criminal Sentencing Commission, 23 offenders were convicted of felony carnal knowledge of an inmate, etc., under § 18.2-64.2 as the primary (or most serious) offense. While 56.5% of these offenders did not receive an active term of incarceration to serve after sentencing, 34.8% of the offenders were sentenced to local-responsible (jail) terms with a median sentence of 4.5 months. The remaining two offenders (8.7%) were sentenced to state-responsible (prison) terms of 1.3 years and 1.5 years, respectively.

The proposed legislation expands the applicability of an existing felony offense. For someone convicted of a Class 6 felony, a judge has the option of sentencing him to up to 12 months in jail, or one to five years in prison. Therefore, the bill may increase future state

prison bed needs in the Commonwealth. However, available data is not sufficient to estimate the number of cases under the proposed legislation or estimate the overall impact. Accordingly, the magnitude of the impact on prison bed space cannot be determined at this time.

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 1289, 2020 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

Although the proposed legislation may also increase the local-responsible jail bed space needs, the extent of the impact cannot be determined at this time using existing data. However, any increase in jail population will increase costs to the state. The Commonwealth currently 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 prisoner. 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 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

Any potential fiscal impact on the Department of Juvenile Justice (DJJ) is indeterminate at this time.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, Local and Regional jails, Commonwealth's Attorneys, Public Defenders, Courts

10. Technical Amendment Necessary: None

11. Other Comments: None