

Department of Planning and Budget
2021 Special Session I - Fiscal Impact Statement

1. Bill Number: SB1138 ER

House of Origin	<input type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input checked="" type="checkbox"/>	Enrolled

2. Patron: Locke

3. Committee: Passed both houses

4. Title: Sexually transmitted infections; infected sexual battery; repeal.

5. Summary: The bill provides that § 32.1-291.16 (Sale or purchase of parts prohibited; penalty) does not prohibit the donation of any organs, tissues, or any natural body part, knowing that the donor is, or was, infected with a sexually transmitted infection, for use in medical or scientific research. The bill also provides and that this section does not prohibit the donation or acquisition of organs for transplantation, provided that (i) the recipient of such organ is informed that such organ is infected with human immunodeficiency virus and, following such notice, consents to the receipt of such organ and (ii) acquisition and transplantation of such organ is in compliance with the provisions of the HIV Organ Policy Equity Act, 42 U.S.C. § 274f-5.

This bill repeals § 18.2-62, Code of Virginia, which governs the testing of persons charged with certain crimes for human immunodeficiency virus or hepatitis B or C viruses and § 32.1-289.2, which establishes that the donation or sale of blood, body fluids, organs and tissues by persons infected with human immunodeficiency virus is a crime punishable as a Class 6 felony.

Under current law, knowingly infecting another with certain sexually transmitted diseases is punishable a Class 6 felony (§ 18.2-67.4:1). The enrolled bill amends this language, providing that any person who is diagnosed with a sexually transmitted infection and engages in sexual behavior that poses a substantial risk of transmission to that person with the intent to transmit the infection to another person and transmits such infection to that person is guilty of the Class 6 felony offense.

Current law also requires convicted prostitutes and injection drug users to be tested for infection with human immunodeficiency viruses and hepatitis C and are required to receive counseling from personnel of the Department of Health concerning (i) the meaning of the test, (ii) acquired immunodeficiency syndrome and hepatitis C, and (iii) the transmission and prevention of infection with human immunodeficiency viruses and hepatitis C. This bill requires instead that those convicted of such crimes be provided the option to be tested and replaces the terms human immunodeficiency viruses and hepatitis C with the term “sexually transmitted infection.”

6. Budget Amendment Necessary: Indeterminate

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

8. Fiscal Implications: According to the Virginia Criminal Sentencing Commission (VCSC) no one was convicted of a felony offense for violating § 32.1-289.2 (Donation or sale of blood, body fluids, organs and tissues by persons infected with human immunodeficiency virus) between FY 2015 and FY 2020.

The potential savings associated with repealing a felony offense depends on how many offenders would be sentenced to a state-responsible (prison) term and where those offenders would ultimately serve their sentences. The cost of a bed in a DOC facility (prison) in FY2020 was \$38,688 as calculated by the Department of Planning and Budget. The Commonwealth pays localities \$12.00 a day for any state-responsible prisoner held in a local jail.

For offenders who would be sentenced to local-responsible (jail) terms of incarceration, the Commonwealth would pay the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. The Commonwealth also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

According to the Department of Forensic Science and the Virginia Department of Health, this bill is not expected to have a fiscal impact on agency operations. This bill is not expected to have a fiscal impact on the Division of Consolidated Laboratory Services or the Department of Health Professions.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, Local and regional jails, Department of Health, Department of Juvenile Justice, Courts, Commonwealth's Attorneys, Public Defenders Office

10. Technical Amendment Necessary: No

11. Other Comments: None