

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: HB434H1

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

2. Patron: Sewell

3. Committee: House

4. Title: Criminal sexual assault; definition of intimate parts; penalty.

5. Summary: The substitute bill adds, “the chest,” to the definition of “intimate parts,” thereby expanding the scope of criminal sexual assault, which ranges in punishment from a Class 1 misdemeanor to a Class 4 felony contingent upon the age of the victim and other circumstance of the crime such as the relationship of the child to the offender.

6. Budget Amendment Necessary: Yes, Items 404 and 340

7. Fiscal Impact Estimates: Preliminary (see Item 8 below).

8. Fiscal Implications: Current law defines, “intimate parts” as the genitalia, anus, groin, breast, or buttocks of any person. This term is used in the definition of sexual abuse under § 18.2-67.10 and is also used in § 18.2-386.1 regarding creating an unlawful image of another person. The proposed legislation adds “the chest” to the definition of intimate parts, which thereby expands the scope of sexual abuse and the crime of creating an unlawful image of another person. By expanding the definition of sexual abuse, the proposal could also expand the applicability of other provisions of the Code that directly or indirectly reference the definition of sexual abuse.

The Department of Social Services (DSS) has determined that the proposed legislation would likely result in an expansion of the current service population and additional CPS sexual abuse investigations. DSS child welfare data for the last three state fiscal years indicates that the local departments of social services (LDSS) conducted 6,624 sexual abuse investigations, with 1,169 of those involving sexual abuse allegations with a sub-category of sexual molestation equating to approximately 390 investigations per SFY.

Therefore, DSS anticipates a 10 percent increase in the number of sexual abuse investigations conducted by local departments, which equates to about 39 new Child Protective Services (CPS) investigations per year. The 10 percent increase is based on: (i) the percentage of the body that the chest encompasses, (ii) the term “chest” is inclusive as it is gender-neutral and applies broadly to the anatomy of males, females, and gender non-conforming individuals; whereas, the term “breast” is generally oriented toward the anatomy of females and (iii) the impact on employees in out-of-family settings (i.e., coaches and teachers).

The current level of effort suggests each sexual abuse investigation requires an average of 58 hours to complete which equates to an increase of 2,262 hours of work (39 cases * 58 hours). With 1,500 hours per local Family Services Specialist (FSS) dedicated to casework, 1.5 additional FSSs with an average salary of \$51,924 would be needed for a total cost of \$138,997 (\$117,452 GF and \$21,545 local match) in FY 2023. Staff costs include salary, fringe benefits and a one-time on-boarding cost in the first year. In FY 2024 and each year thereafter, local staff costs would be \$131,254 (\$110,910 GF and \$20,344 local match).

According to the Virginia Criminal Sentencing Commission (VCSC), if the proposal results in additional convictions for crimes such as aggravated sexual battery, sexual battery, and indecent liberties, the proposal would increase the number of offenders who are required to register with the Sex Offender and Crimes Against Minors Registry (§ 9.1-902). Under § 18.2-472.1, the first Sex Offender Registry violation committed by an offender who has not been convicted of a Tier III offense or murder as defined in § 9.1-902 is punishable as a Class 1 misdemeanor; a second or subsequent Registry violation is a Class 6 felony. For an offender previously convicted of a Tier III offense or murder, the first Registry violation is a Class 6 felony, while a subsequent violation is a Class 5 felony.

For someone convicted of a Class 6 felony, a judge has the option of sentencing the offender to a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. 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 the increase in jail population as a result of this proposal. 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 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020.

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 552, 2021 Acts of Assembly, Special Session I, 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; Local law enforcement; Courts; Commonwealth's Attorneys; and, Local departments of social services.

10. Technical Amendment Necessary: No

11. Other Comments: None