

24106165D

SENATE BILL NO. 394

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 31, 2024)

(Patron Prior to Substitute—Senator Perry)

A *BILL to amend and reenact §§ 18.2-64.2 and 18.2-67.4 of the Code of Virginia, relating to carnal knowledge and sexual battery; persons detained or arrested by a law-enforcement officer, confidential informants, pretrial defendants or posttrial offenders; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-64.2 and 18.2-67.4 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-64.2. Carnal knowledge of a person detained or arrested by a law-enforcement officer or an inmate, parolee, probationer, juvenile detainee, pretrial defendant or posttrial offender, or confidential informant; penalty.

A. An accused is guilty of carnal knowledge of a person detained or arrested by a law-enforcement officer or an inmate, parolee, probationer, juvenile 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 detained or arrested by a law-enforcement officer, inmate, probationer, parolee, juvenile detainee, or pretrial defendant or posttrial offender; knows that the person detained or arrested by a law-enforcement officer, inmate, probationer, parolee, juvenile 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 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; 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 detained or arrested by a law-enforcement officer, probationer, parolee, juvenile detainee, or 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.

An accused is guilty of carnal knowledge of a person serving as a confidential informant if he (1) is a law-enforcement officer; (2) knows that such person is serving as a confidential informant for the law-enforcement agency where such officer is employed; and (3) carnally knows, without use of force, threat, or intimidation, such confidential informant while such person is serving as a confidential informant or is expected to testify in a criminal case for which the confidential informant assisted the law-enforcement agency with its investigation. Such offense is a Class 6 felony.

B. For the purposes of this section:

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

"Confidential informant" means any person, other than an employee of a law-enforcement agency, who engages in or provides information about criminal activity for the purpose of assisting a law-enforcement agency in investigating the criminal activity of another, in exchange for a benefit, the promise of a benefit, or the hope or expectation thereof.

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

§ 18.2-67.4. Sexual battery.

A. An accused is guilty of sexual battery if he sexually abuses, as defined in § 18.2-67.10, (i) the complaining witness against the will of the complaining witness, by force, threat, intimidation, or ruse; (ii) within a two-year period, more than one complaining witness or one complaining witness on more

60 than one occasion intentionally and without the consent of the complaining witness; (iii) an inmate who
61 has been committed to jail or convicted and sentenced to confinement in a state or local correctional
62 facility or regional jail, and the accused is an employee or contractual employee of, or a volunteer with,
63 the state or local correctional facility or regional jail; is in a position of authority over the inmate; and
64 knows that the inmate is under the jurisdiction of the state or local correctional facility or regional jail;
65 or; (iv) a probationer, parolee, or a pretrial defendant or posttrial offender under the jurisdiction of the
66 Department of Corrections, a local community-based probation services agency, a pretrial services
67 agency, a local or regional jail for the purposes of imprisonment, a work program or any other
68 parole/probationary or pretrial services or agency and the accused is an employee or contractual
69 employee of, or a volunteer with, the Department of Corrections, a local community-based probation
70 services agency, a pretrial services agency or a local or regional jail; is in a position of authority over
71 an offender; and knows that the offender is under the jurisdiction of the Department of Corrections, a
72 local community-based probation services agency, a pretrial services agency or a local or regional jail;
73 (v) a person detained or arrested by a law-enforcement officer and the accused is a law-enforcement
74 officer; is in a position of authority over the person detained or arrested; and knows that the person
75 detained or arrested by a law-enforcement officer is in the custody of a private, local, or state
76 law-enforcement agency; (vi) a pretrial defendant or posttrial offender and the accused is an owner or
77 employee of the bail company that posted the pretrial defendant's or posttrial offender's bond and has
78 the authority to revoke the pretrial defendant's or posttrial offender's bond; or (vii) a person serving as
79 a confidential informant and the accused is a law-enforcement officer; knows that such person is serving
80 as a confidential informant for the law-enforcement agency where such officer is employed; and sexually
81 abuses, as defined in § 18.2-67.10, such confidential informant while such person is serving as a
82 confidential informant or is expected to testify in a criminal case for which they assisted the
83 law-enforcement agency with its investigation.

84 B. Sexual battery is a Class 1 misdemeanor.

85 C. For the purposes of this section, "confidential informant" means the same as that term is defined
86 in § 18.2-64.2.

87 2. That the provisions of this act may result in a net increase in periods of imprisonment or
88 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the
89 necessary appropriation cannot be determined for periods of imprisonment in state adult
90 correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I,
91 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of
92 \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary
93 appropriation cannot be determined for periods of commitment to the custody of the Department
94 of Juvenile Justice.