



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### Senate Bill No. 394 (Patron – Perry)

LD#: 24104794

Date: 01/11/2024

Topic: Carnal knowledge of confidential informant

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000 \*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Direct Care:**  
Cannot be determined\*\*
- **Juvenile Detention Facilities:**  
Cannot be determined\*\*

\*\*Provided by the Department of Juvenile Justice

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

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#### Summary of Proposed Legislation:

The proposal amends § 18.2-64.2 to make it a Class 6 felony for individuals to carnally know, without force, threat, or intimidation, a person serving as a confidential informant if such individual is (i) a law-enforcement officer; (ii) in a position of authority over the person serving as a confidential informant; and (iii) knows that such person is serving as a confidential informant for a private, local, or state law-enforcement agency.

Currently, the Class 6 felonies defined in § 18.2-64.2 apply to 1) carnal knowledge of a detained person by a law enforcement officer, 2) carnal knowledge of a bailee by an employee of a bail bond company, and 3) carnal knowledge of an inmate, probationer, etc., by an employee of the Department of Corrections (DOC), Department of Juvenile Justice (DJJ), or another specified criminal justice agency.<sup>1</sup>

The proposal also expands the crime of sexual battery under § 18.2-67.4 to include the sexual abuse of (i) a person detained or arrested by law-enforcement when the accused is a law-enforcement officer, (ii) a pretrial defendant or posttrial offender when the accused is an owner or employee of a bail bond company, and (iii) a person serving as a confidential informant when the accused is a law-enforcement officer. Currently, sexual battery is a Class 1 misdemeanor. Under § 18.2-67.5:1, a third misdemeanor sexual battery or other specified misdemeanor sex offense within a 10-year period is punishable as a Class 6 felony.<sup>1</sup>

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<sup>1</sup> Under current law, the felony offenses defined in §§ 18.2-64.2 and 18.2-67.5:1 are ineligible for the enhanced sentence credits specified in § 53.1-202.3; therefore, individuals convicted of these offenses must serve a minimum of 85% of the sentence ordered by the court. The proposed legislation does not change the earned sentence credits available to offenders convicted of this felony.

**Analysis:**

Existing data sources do not contain sufficient detail to identify the number of additional individuals who would be convicted of specified felony or misdemeanor offenses if the proposal is enacted. However, affected offenders may be sentenced similarly to those currently convicted under existing provisions. See table below.

**Offenders Convicted of Selected Offenses, FY2018 - FY2023**

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Carnal knowledge by employee of bail bond company § 18.2-64.2 <sup>a</sup>	0	N/A	N/A	N/A	N/A	N/A.
Carnal knowledge of person detained, etc., by DOC/DJJ staff or law enforcement officer § 18.2-64.2 <sup>a</sup>	17	58.8%	35.3%	4.5 mos.	5.9%	4.0 yrs.
Sexual battery § 18.2-67.4(A,i) <sup>b</sup>	372	35.5%	64.5%	2.8 mos.	N/A	N/A
Sexual battery on >1 occasion or involving >1 victim within two years § 18.2-67.4(A,ii) <sup>b</sup>	11	27.3%	72.7%	2.0 mos.	N/A	N/A
Sexual battery of inmate by a DOC/jail employee § 18.2-67.4(A,iii) <sup>b</sup>	3	66.6%	33.3%	3.0 mos.	N/A	N/A
3 <sup>rd</sup> or subsequent misdemeanor sex offense § 18.2-67.5:1 <sup>a</sup>	65	7.7%	46.2%	6.0 mos.	46.2%	2.0 yrs.

Notes: Analysis is based on cases in which the specified offense was the primary (most serious) offense in the sentencing event.

<sup>a</sup> Source: Supreme Court of Virginia's Circuit Court Case Management System, as analyzed by the Sentencing Commission

<sup>b</sup> Source: Supreme Court of Virginia's General District Court Case Management System, as analyzed by the Sentencing Commission

**Impact of Proposed Legislation:**

**State adult correctional facilities.** By creating a new Class 6 felony and expanding the applicability of an existing Class 6 felony, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Existing data do not provide sufficient detail to estimate the number of new felony convictions that would result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

**Local adult correctional facilities.** By creating and expanding felonies and expanding a current Class 1 misdemeanor, the proposal may increase local-responsible (jail) bed space needs. Since the number of new convictions that may result from enactment of the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated.

**Adult community corrections programs.** Because the proposal could result in felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections cannot be quantified.

**Virginia's Sentencing Guidelines.** As a new felony offense, a conviction under the proposed amendment to § 18.2-64.2 would not initially be covered by the Guidelines as the primary (most serious) offense. Conviction for a third or subsequent misdemeanor sex offense (§ 18.2-67.5:1) is currently not covered by the Guidelines when it is the most serious offense at sentencing. Such convictions, however, could augment the Guidelines recommendation (as additional offenses) if the most serious offense at sentencing is covered by the Guidelines. Felony offenses currently in §§ 18.2-64.2 and 18.2-67.5:1 are not defined as violent in § 17.1-805(C) for the purposes of the Guidelines, with the exception of a third or subsequent conviction for sexual battery or attempted sexual battery, which is defined as violent under this provision. No adjustment to the Guidelines is necessary under the proposal.

**Juvenile direct care.** According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or an alternative commitment placement) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

**Pursuant to § 30-19.1:4, 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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