

## Department of Planning and Budget 2024 Session Fiscal Impact Statement

**1. Bill Number:** SB394ER

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

**2. Patron:** Perry

**3. Committee:** Passed both houses

**4. Title:** Carnal knowledge and sexual battery; persons detained or arrested by a law-enforcement officer.

**5. Summary:** Provides that a person is guilty of carnal knowledge of an individual serving as a confidential informant, subject to a Class 6 felony, if the accused (i) is a law-enforcement officer; (ii) knows that such person is serving as a confidential informant for the law-enforcement agency where such officer is employed; and (iii) 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.

The bill expands the crime of sexual battery 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; knows that such person is serving as a confidential informant for the law-enforcement agency where such officer is employed; and such person is serving as a confidential informant or is expected to testify in a criminal case for which he assisted the law-enforcement agency with its investigation. Currently, sexual battery is a Class 1 misdemeanor. A third misdemeanor sexual battery or other specified misdemeanor sex offense within a 10-year period is punishable as a Class 6 felony.

The bill provides definition of confidential informant.

**6. Budget Amendment Necessary:** Yes, Item 390.

**7. Fiscal Impact Estimates:** Final, see Item 8 below.

**8. Fiscal Implications:** The proposal creates a new Class 6 felony and expands the applicability of an existing Class 6 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 or prison population as a result of this proposal. 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 1, 2023 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

Additionally, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$5.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$15.00 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 2023), the estimated total state support for local jails averaged \$45.76 per inmate, per day in FY 2022.

**9. Specific Agency or Political Subdivisions Affected:** State and local law enforcement agencies, Courts, Department of Corrections, Commonwealth's Attorneys, Public Defenders.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.