

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: HB434

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

2. Patron: Sewell

3. Committee: Committee for Courts of Justice

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

5. Summary: The proposed legislation adds, “the chest of a child under the age of 15” 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, Item 404.

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 of a child under the age of 15 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.

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.

The impact on the Department of Social Services cannot be determined at this time. The fiscal impact statement will be updated if necessary.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections; Local and regional jails; Local law enforcement; Courts; and Commonwealth's Attorneys.

10. Technical Amendment Necessary: No

11. Other Comments: None