

## Department of Planning and Budget 2021 Fiscal Impact Statement

**1. Bill Number:** SB1138

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

**2. Patron:** Locke

**3. Committee:** Judiciary

**4. Title:** Sexually transmitted infections; infected sexual battery; repeal.

**5. Summary:** Under current law, infected sexual battery is a crime punishable, depending on the circumstances, as a Class 1 misdemeanor or a Class 6 felony (§ 18.2-67.4:1) and the donation or sale of blood, body fluids, organs and tissues by persons infected with human immunodeficiency virus is a crime punishable as a Class 6 felony (§ 32.1-289.2). This bill repeals both of these sections.

The bill provides that § 32.1-291.16 (Sale or purchase of parts prohibited; penalty) does not prohibit the donation of any organs, tissues, or any natural body part, knowing that the donor is, or was, infected with a sexually transmitted infection, for use in medical or scientific research. The bill also provides and that this section does not prohibit the donation or acquisition of organs for transplantation, provided that (i) the recipient of such organ is informed that such organ is infected with human immunodeficiency virus and, following such notice, consents to the receipt of such organ and (ii) acquisition and transplantation of such organ is in compliance with the provisions of the HIV Organ Policy Equity Act, 42 U.S.C. § 274f-5.

This bill repeals § 18.2-62, Code of Virginia, which governs the testing of persons charged with certain crimes for human immunodeficiency virus or hepatitis B or C viruses.

Current law also requires convicted prostitutes and injection drug users to be tested for infection with human immunodeficiency viruses and hepatitis C and are required to receive counseling from personnel of the Department of Health concerning (i) the meaning of the test, (ii) acquired immunodeficiency syndrome and hepatitis C, and (iii) the transmission and prevention of infection with human immunodeficiency viruses and hepatitis C. This bill requires instead that those convicted of such crimes be provided the option to be tested and replaces the terms human immunodeficiency viruses and hepatitis C with the term sexually transmitted infection. Further, current law provides that, upon receiving a report of a positive test for hepatitis C, the State Health Commissioner may share protected health information relating to a positive test for certain reasons with certain law-enforcement organizations and emergency responders. The bill removes this allowance. The bill also provides that the result of the tests are not admissible in any criminal proceedings.

**6. Budget Amendment Necessary:** Indeterminate

7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.
8. **Fiscal Implications:** By repealing penalties currently associated with § 18.2-67.4:1 (Infected sexual battery), the proposed legislation is expected to reduce the number of offenders who would be sentenced to terms in state prisons and local jails.

According to FY 2019 and FY 2020 Sentencing Guidelines data, provided by the Virginia Criminal Sentencing Commission (VCSC), three offenders were convicted of a felony for sexual intercourse, etc. with intent to transmit infection under § 18.2-67.4:1. These charges were the primary, or most serious, offenses in all three cases. All three cases resulted in active terms of incarceration: 66.7 percent were sentenced to local-responsible (jail) terms for which the median sentence length was 5.0 months, the remaining 33.3 percent of offenders were sentenced to serve a state-responsible (prison) term, with a median sentence length of 1.0 year.

Also, according to FY 2019 and FY 2020 Sentencing Guidelines data, provided by the VCSC, seven offenders were convicted of a misdemeanor for sexual intercourse, etc. without disclosing infections under § 18.2-67.4:1. These charges were the primary, or most serious, offenses in all seven cases. Of those offenders 57.1 percent did not receive active terms of incarceration. Of the remaining offenders, 42.9 percent were sentenced to local-responsible (jail) terms for which the median sentence length was 12.0 months.

The VCSC did not provide conviction data for § 32.1-289.2 (Donation or sale of blood, body fluids, organs and tissues by persons infected with human immunodeficiency virus).

The potential savings associated with repealing offenses depends on how many offenders would have been sentenced to a state-responsible (prison) term and where those offenders would ultimately serve their sentences. The cost of a bed in a DOC facility (prison) in FY2020 was \$38,688 as calculated by the Department of Planning and Budget. The Commonwealth pays localities \$12.00 a day for any state-responsible prisoner held in a local jail.

For offenders who would have been sentenced to local-responsible (jail) terms of incarceration, the Commonwealth would pay the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. The Commonwealth also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

According to the Department of Forensic Science and the Virginia Department of Health, this bill is not expected to have a fiscal impact on agency operations. However, the impact this bill may have on the Division of Consolidated Laboratory Services and the Department of Health Professions is not known at this time.

**9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, Local and regional jails, Department of Juvenile Justice, Courts, Commonwealth's Attorneys, Public Defenders Office, Division of Consolidated Laboratory Services, Department of Health Professions

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None