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SENATE BILL NO. 223

Offered January 9, 2002

Prefiled January 8, 2002

A BILL to amend and reenact §§ 18.2-52.1, 18.2-60, 18.2-83, 19.2-66, 19.2-120 and 44-146.16 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 18.2-52.2, relating to definition of terrorism; definitions of infectious biological substances and imitation infectious biological substances; criteria for requesting wiretaps; limitations on bail; threats of bodily injury; bomb threats; penalties.

Patrons—Stolle and Rerras

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-52.1, 18.2-60, 18.2-83, 19.2-66, 19.2-120 and 44-146.16 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-52.2 as follows:

§ 18.2-52.1. Possession of infectious biological substances.

A. Any person who possesses, *manufactures, sells, gives, distributes or uses an infectious biological substance*, with the intent ~~thereby to injure to cause death or serious bodily injury to another, an~~ infectious biological substance capable of causing death, is guilty of a Class 5 felony.

B. Any person who destroys or damages, or attempts to destroy or damage, any facility, equipment or material involved in the sale, manufacturing, storage or distribution of an infectious biological substance ~~capable of causing death~~, with the intent to ~~injure cause death or serious bodily injury to another by releasing the substance~~, is guilty of a Class 4 felony.

B. Any person who threatens to use an infectious biological substance to cause death or serious bodily injury to another is guilty of a Class 6 felony.

An "infectious biological substance" includes any bacteria, ~~virus~~ viruses, fungi, protozoa, or rickettsiae, other microorganism or biological matter capable of causing death or serious bodily injury. It shall not be a defense to prosecution hereunder that the defendant was unaware that the substance was an imitation infectious biological substance.

§ 18.2-52.2. Imitation infectious biological substances.

A. Any person who threatens death or bodily harm to another by the use of an imitation infectious biological substance, or who uses, manufactures, sells, gives or distributes an imitation infectious biological substance with the intent to place a person in reasonable apprehension of death or bodily harm is guilty of a Class 6 felony.

B. "Imitation infectious biological substance" means a substance that (i) by its overall appearance, including color, shape, size, marking, packaging would reasonably cause it to be mistaken for an infectious biological substance as defined in § 18.2-52.1; or (ii) by express or implied representation purports to act like an infectious biological substance as defined in § 18.2-52.1.

§ 18.2-60. Threats of death or bodily injury; penalty.

A. ~~Any person who knowingly communicates, in a writing, including an electronically transmitted communication producing a visual or electronic message, a threat to kill or do bodily injury to a person, regarding that person, or to kill or do bodily injury to any member of his family other person, and the threat places such person the recipient, or would place the apparent intended victim, in reasonable apprehension of death or bodily injury to himself or his family member, is guilty of a Class 6 felony. If the threat is made in furtherance of an act of terrorism as defined in § 44-146.16, the person is guilty of a Class 5 felony.~~

2. Any person who communicates a threat, in a writing, including an electronically transmitted communication producing a visual or electronic message, to kill or do bodily harm, (i) on the grounds or premises of any elementary, middle or secondary school property, (ii) at any elementary, middle or secondary school-sponsored event or (iii) on a school bus to any person or persons, regardless of whether the person who is the object of the threat actually receives the threat, and the threat would place the person who is the object of the threat in reasonable apprehension of death or bodily harm, is guilty of a Class 6 felony.

B. Any person who orally makes a threat to any employee of any elementary, middle or secondary school, while on a school bus, on school property or at a school-sponsored activity, to kill or to do bodily injury to such a person, regarding that person, or to kill or do bodily injury to any other person, and the threat places the recipient, or would place the apparent intended victim, in reasonable

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59 *apprehension of death or bodily injury*, is guilty of a Class 1 misdemeanor. *If the threat is made in*
60 *furtherance of an act of terrorism as defined in § 44-146.16, the person is guilty of a Class 6 felony.*

61 A ~~prosecution pursuant to violation of~~ this section may be ~~either prosecuted~~ in the county, city or
62 town in which the communication was *either* made or received.

63 § 18.2-83. Threats to bomb or damage buildings or means of transportation; false information as to
64 danger to such buildings, etc.; punishment; venue.

65 A. Any person ~~(a) who makes and communicates to another by any means any threat to bomb, burn,~~
66 ~~destroy, poison or in any manner damage, or makes and communicates to another by any means any~~
67 ~~threat that compels the emergency evacuation of, any place of assembly, building or other structure, or~~
68 ~~any means of transportation, whether the threat is real or false or (b) who communicates to another, by~~
69 ~~any means, information, knowing the same to be false, as to the existence of any peril of bombing,~~
70 ~~burning, destruction or damage to any such place of assembly, building or other structure, or any means~~
71 ~~of transportation, shall be~~ is guilty of a Class 5 felony; provided, however, that if such person ~~be is~~
72 under fifteen years of age, he ~~shall be~~ is guilty of a Class 1 misdemeanor. *Any person who violates this*
73 *section in furtherance of an act of terrorism as defined in § 44-146.16 is guilty of a Class 4 felony.*

74 B. A violation of this section may be prosecuted either in the jurisdiction from which the
75 communication was made or in the jurisdiction where the communication was received.

76 § 19.2-66. When Attorney General or Chief Deputy Attorney General may apply for order
77 authorizing interception of communications.

78 The Attorney General or Chief Deputy Attorney General, if the Attorney General so designates in
79 writing, in any case where the Attorney General is authorized by law to prosecute or pursuant to a
80 request in his official capacity of an attorney for the Commonwealth in any city or county, may apply to
81 a judge of competent jurisdiction for the jurisdiction where the proposed intercept is to be made for an
82 order authorizing the interception of wire, electronic or oral communications by the Department of State
83 Police, when such interception may reasonably be expected to provide evidence of the commission of a
84 felonious offense of extortion, bribery, kidnapping, murder, any felony violation of § 18.2-248 or
85 § 18.2-248.1, any felony violation of Chapter 29 (§ 59.1-364 et seq.) of Title 59.1, *any felonious act of*
86 *terrorism described in subdivision 14 of § 44-146.16*, or any conspiracy to commit any of the foregoing
87 offenses. The Attorney General or Chief Deputy Attorney General may apply for authorization for the
88 observation or monitoring of the interception by a police department of a county or city or by
89 law-enforcement officers of the United States. Such application shall be made, and such order may be
90 granted, in conformity with the provisions of § 19.2-68. Application for installation of a mobile
91 interception device may be made to and granted by any court of competent jurisdiction in the
92 Commonwealth.

93 § 19.2-120. Admission to bail.

94 Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to
95 the extent feasible, obtain the person's criminal history.

96 A. A person who is held in custody pending trial or hearing for an offense, civil or criminal
97 contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to
98 believe that:

99 1. He will not appear for trial or hearing or at such other time and place as may be directed, or

100 2. His liberty will constitute an unreasonable danger to himself or the public.

101 B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of
102 conditions will reasonably assure the appearance of the person or the safety of the public if the person is
103 currently charged with:

104 1. An act of violence as defined in § 19.2-297.1;

105 2. An offense for which the maximum sentence is life imprisonment or death;

106 3. A violation of §§ 18.2-248, 18.2-248.01, 18.2-255 or § 18.2-255.2 involving a Schedule I or II
107 controlled substance if (i) the maximum term of imprisonment is ten years or more and the person was
108 previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as
109 defined in § 18.2-248;

110 4. A violation of §§ 18.2-308.1, 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and
111 provides for a minimum, mandatory sentence;

112 5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1
113 or 2, whether under the laws of this Commonwealth or substantially similar laws of the United States;

114 6. Any felony committed while the person is on release pending trial for a prior felony under federal
115 or state law or on release pending imposition or execution of sentence or appeal of sentence or
116 conviction; or

117 7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted
118 of an offense listed in § 18.2-67.5:2 and the judicial officer finds probable cause to believe that the
119 person who is currently charged with one of these offenses committed the offense charged; or

120 8. *Any felony committed in furtherance of an act of terrorism as defined in § 44-146.16.*

C. The court shall consider the following factors and such others as it deems appropriate in determining, for the purpose of rebuttal of the presumption against bail described in subsection B, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public:

1. The nature and circumstances of the offense charged;

2. The history and characteristics of the person, including his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

3. The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

D. The judicial officer shall inform the person of his right to appeal from the order denying bail or fixing terms of bond or recognizance consistent with § 19.2-124.

§ 44-146.16. Definitions.

As used in this chapter unless the context requires a different meaning:

(1) "Natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire or other natural catastrophe resulting in damage, hardship, suffering or possible loss of life;

(2) "Man-made disaster" means any condition following an attack by any enemy or foreign nation upon the United States resulting in substantial damage of property or injury to persons in the United States and may be by use of bombs, missiles, shell fire, nuclear, radiological, chemical or biological means or other weapons or by overt paramilitary actions; terrorism, foreign and domestic; also any industrial, nuclear or transportation accident, explosion, conflagration, power failure, resources shortage or other condition such as sabotage, oil spills and other injurious environmental contaminations, which threaten or cause damage to property, human suffering, hardship or loss of life;

(2a) "Emergency" means any occurrence, or threat thereof, whether natural or man-made, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property or natural resources and may involve governmental action beyond that authorized or contemplated by existing law because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens or the environment of the Commonwealth or some clearly defined portion or portions thereof;

(3) "Emergency services" means the preparation for and the carrying out of functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from natural or man-made disasters, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions. These functions include, without limitation, fire-fighting services, police services, medical and health services, rescue, engineering, warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, emergency resource management, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions related to civilian protection. These functions also include the administration of approved state and federal disaster recovery and assistance programs;

(4) "Major disaster" means any natural catastrophe, including any: hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought, or regardless of cause, any fire, flood, or explosion, in any part of the United States, which, in the determination of the President of the United States is, or thereafter determined to be, of sufficient severity and magnitude to warrant major disaster assistance under the Strafford Act (P.L. 43-288 as amended) to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby and is so declared by him;

(5) "State of emergency" means the condition declared by the Governor when in his judgment, the threat or actual occurrence of an emergency or a disaster in any part of the Commonwealth is of sufficient severity and magnitude to warrant disaster assistance by the Commonwealth to supplement the efforts and available resources of the several localities, and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him

(6) "Local emergency" means the condition declared by the local governing body when in its judgment the threat or actual occurrence of an emergency or disaster is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby; provided, however, that a local emergency arising wholly or substantially out of a resource shortage may be declared only by the

182 Governor, upon petition of the local governing body, when he deems the threat or actual occurrence of
183 such an emergency or disaster to be of sufficient severity and magnitude to warrant coordinated local
184 government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused
185 thereby; provided, however, nothing in this chapter shall be construed as prohibiting a local governing
186 body from the prudent management of its water supply to prevent or manage a water shortage;

187 (7)7. "Local emergency management organization" means an organization created in accordance with
188 the provisions of this chapter by local authority to perform local emergency service functions;

189 (8)8. "Political subdivision" means any city or county in the Commonwealth and for the purposes of
190 this chapter, the Town of Chincoteague and any town of more than 5,000 population which chooses to
191 have an emergency management program separate from that of the county in which such town is
192 located;

193 (9)9. "Interjurisdictional agency for emergency management" is any organization established between
194 contiguous political subdivisions to facilitate the cooperation and protection of the subdivisions in the
195 work of disaster prevention, preparedness, response, and recovery;

196 (10)10. "Resource shortage" means the absence, unavailability or reduced supply of any raw or
197 processed natural resource, or any commodities, goods or services of any kind which bear a substantial
198 relationship to the health, safety, welfare and economic well-being of the citizens of the Commonwealth;

199 (11)11. "Discharge" means spillage, leakage, pumping, pouring, seepage, emitting, dumping,
200 emptying, injecting, escaping, leaching, fire, explosion, or other releases;

201 (12)12. "Hazardous substances" means all materials or substances which now or hereafter are
202 designated, defined, or characterized as hazardous by law or regulation of the Commonwealth or
203 regulation of the United States government;

204 (13)13. "Hazard mitigation" means any action taken to reduce or eliminate the long-term risk to
205 human life and property from natural hazards.

206 14. "Terrorism" includes activities or actions in violation of the criminal laws of the Commonwealth
207 that are violent or are dangerous to human life and that appear to be intended to (i) threaten,
208 intimidate or coerce the civilian population or a segment thereof, or (ii) influence the policy or affect
209 the conduct of government. Activities or actions considered violent or dangerous to human life include
210 assassination, kidnapping, and mass destruction of life or property by any method.

211 2. That the provisions of this act may result in a net increase in periods of imprisonment or
212 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
213 be determined for periods of imprisonment in state adult correctional facilities and cannot be
214 determined for periods of commitment to the custody of the Department of Juvenile Justice.