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SENATE BILL NO. 1151

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 17, 2003)

(Patron Prior to Substitute—Senator Stolle)

A BILL to amend and reenact §§ 18.2-371, 18.2-371.1 and 40.1-103 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-371.1:1, relating to protection of abandoned infants; affirmative defense to prosecution for abuse and neglect; immunity for emergency personnel.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-371, 18.2-371.1 and 40.1-103 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 18.2-371.1:1 as follows:

§ 18.2-371. Causing or encouraging acts rendering children delinquent, abused, etc.; penalty.

A. Any person ~~eighteen~~18 years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition ~~which~~ that renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in § 16.1-228, or (ii) engages in consensual sexual intercourse with a child ~~fifteen~~15 or older not his spouse, child, or grandchild, shall be guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§ 18.2-18, 18.2-19, 18.2-61, 18.2-63, 18.2-66, and 18.2-347.

B. *If the prosecution under this section is based solely on the accused parent having left the child at a hospital, rescue squad or fire department, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to a rescue squad or fire department, during its normal hours of operation and that employs emergency medical technicians, within the first 7 days of the child's life.*

§ 18.2-371.1. Abuse and neglect of children; penalty.

A. Any parent, guardian, or other person responsible for the care of a child under the age of ~~eighteen~~18 who by willful act or omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child shall be guilty of a Class 4 felony. For purposes of this subsection, "serious injury" shall include but not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, (vi) forced ingestion of dangerous substances, or (vii) life-threatening internal injuries.

B. Any parent, guardian, or other person responsible for the care of a child under the age of ~~eighteen~~18 whose willful act or omission in the care of such child was so gross, wanton and culpable as to show a reckless disregard for human life shall be guilty of a Class 6 felony.

C. Any parent, guardian or other person having care, custody, or control of a minor child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall not, for that reason alone, be considered in violation of this section.

D. *If the prosecution under this section is based solely on the accused parent having left the child at a hospital, rescue squad or fire department, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to a rescue squad or fire department, during its normal hours of operation and that employs emergency medical technicians, within the first 7 days of the child's life.*

§ 18.2-371.1:1. Immunity.

Any personnel of a hospital, rescue squad or fire department receiving a child under the circumstances described in subsection B of § 18.2-371 or subsection D of § 18.2-371.1 shall be immune from civil liability or criminal prosecution for injury or other damage to the child unless such injury or other damage is the result of gross negligence or willful misconduct by such personnel.

§ 40.1-103. Cruelty and injuries to children.

A. It shall be unlawful for any person employing or having the custody of any child willfully or negligently to cause or permit the life of such child to be endangered or the health of such child to be injured, or willfully or negligently to cause or permit such child to be placed in a situation that its life, health or morals may be endangered, or to cause or permit such child to be overworked, tortured, tormented, mutilated, beaten or cruelly treated. Any person violating this section shall be guilty of a Class 6 felony.

B. *If the prosecution under this section is based solely on the accused parent having left the child at a hospital, rescue squad or fire department, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to a rescue squad or fire department, during its normal hours of operation and*

60 *that employs emergency medical technicians, within the first 7 days of the child's life. Any personnel of*
61 *a hospital, rescue squad or fire department receiving a child under the circumstances described in this*
62 *subsection shall be immune from civil liability or criminal prosecution for injury or other damage to the*
63 *child unless such injury or other damage is the result of gross negligence or willful misconduct by such*
64 *personnel.*