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## HOUSE BILL NO. 1606

Offered January 12, 2011

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*A BILL to amend and reenact §§ 18.2-369 and 19.2-8 of the Code of Virginia, relating to abuse and neglect of incapacitated adults, prosecutions; penalty.*

Patrons—Loupassi, Athey, Bell, Richard P., Lingamfelter and Robinson

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-369 and 19.2-8 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-369. Abuse and neglect of incapacitated adults; penalty.

A. It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult is guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection is guilty of a Class 6 felony.

B. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in serious bodily injury or disease to the incapacitated adult is guilty of a Class 4 felony. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in the death of the incapacitated adult is guilty of a Class 3 felony.

C. For purposes of this section:

"Abuse" means (i) knowing and willful conduct that causes physical injury or pain or (ii) knowing and willful use of physical restraint, including confinement, as punishment, for convenience or as a substitute for treatment, except where such conduct or physical restraint, including confinement, is a part of care or treatment and is in furtherance of the health and safety of the incapacitated ~~person~~ adult.

"Incapacitated adult" means any person 18 years or older who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age, or other causes ~~to the extent the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his well-being.~~

"Neglect" means the knowing and willful failure by a responsible person to provide treatment, care, goods or services ~~which that~~ (i) results in injury to the health of an incapacitated adult or ~~endangers the~~ (ii) creates a significant risk or danger to the health or safety of an incapacitated adult.

"Responsible person" means a person who has responsibility for the care, custody or control of an incapacitated ~~person~~ adult by operation of law or who has assumed such responsibility voluntarily, by contract or in fact.

"Serious bodily injury or disease" shall include but not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, or (vi) life-threatening internal injuries or conditions, whether or not caused by trauma.

D. No responsible person shall be in violation of this section whose conduct was (i) in accordance with the informed consent of the incapacitated ~~person~~ adult or a person authorized to consent on his behalf; (ii) in accordance with a declaration by the incapacitated ~~person~~ adult under the ~~Natural Death Act of Virginia~~ *Health Care Decisions Act* (§ 54.1-2981 et seq.) or with the provisions of a valid medical power of attorney; (iii) in accordance with the wishes of the incapacitated ~~person~~ adult or a person authorized to consent on behalf of the incapacitated ~~person~~ adult and in accord with the tenets and practices of a church or religious denomination; (iv) incident to necessary movement of, placement of or protection from harm to the incapacitated ~~person~~ adult; or (v) a bona fide, recognized or approved practice to provide medical care.

§ 19.2-8. Limitation of prosecutions.

A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny may be commenced within five years, and for an attempt to produce abortion, within two years after commission of the offense.

A prosecution for violation of laws governing the placement of children for adoption without a license pursuant to § 63.2-1701 shall be commenced within one year from the date of the filing of the petition for adoption.

A prosecution for making a false statement or representation of a material fact knowing it to be false

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59 or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under  
60 the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) shall be commenced within three  
61 years next after the commission of the offense.

62 A prosecution for any violation of § 10.1-1320, 62.1-44.32 (b), 62.1-194.1, or Article 11  
63 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 that involves the discharge, dumping or emission  
64 of any toxic substance as defined in § 32.1-239 shall be commenced within three years next after the  
65 commission of the offense.

66 Prosecution of Building Code violations under § 36-106 shall commence within one year of  
67 discovery of the offense by the owner or by the building official; provided that such discovery occurs  
68 within two years of the date of initial occupancy or use after construction of the building or structure, or  
69 the issuance of a certificate of use and occupancy for the building or structure, whichever is later.  
70 However, prosecutions under § 36-106 relating to the maintenance of existing buildings or structures as  
71 contained in the Uniform Statewide Building Code shall commence within one year of the discovery of  
72 the offense.

73 Prosecution of any misdemeanor violation of § 54.1-111 shall commence within one year of the  
74 discovery of the offense by the complainant, but in no case later than five years from occurrence of the  
75 offense.

76 Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within  
77 two years next after the commission of the offense.

78 Prosecution of any violation of § 55-79.87, 55-79.88, 55-79.89, 55-79.90, 55-79.93, 55-79.94,  
79 55-79.95, 55-79.103, or any rule adopted under or order issued pursuant to § 55-79.98, shall commence  
80 within three years next after the commission of the offense.

81 Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under  
82 § 29.1-553 shall commence within three years after commission of the offense.

83 Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements,  
84 documents or returns, or for the offense of willfully attempting in any manner to evade or defeat any  
85 tax or the payment thereof, or for the offense of willfully failing to pay any tax, or willfully failing to  
86 make any return at the time or times required by law or regulations shall commence within three years  
87 next after the commission of the offense, unless a longer period is otherwise prescribed.

88 Prosecution of violations of subsection A or B of § 3.2-6570 shall commence within five years of the  
89 commission of the offense, except violations regarding agricultural animals shall commence within one  
90 year of the commission of the offense.

91 A prosecution for a violation of § 18.2-386.1 shall be commenced within five years of the  
92 commission of the offense.

93 A prosecution for any violation of the Campaign Finance Disclosure Act, Chapter 9.3 (§ 24.2-945 et  
94 seq.) of Title 24.2, shall commence within one year of the discovery of the offense but in no case more  
95 than three years after the date of the commission of the offense.

96 A prosecution of a crime that is punishable as a misdemeanor pursuant to the Virginia Computer  
97 Crimes Act (§ 18.2-152.1 et seq.) or pursuant to § 18.2-186.3 for identity theft shall be commenced  
98 before the earlier of (i) five years after the commission of the last act in the course of conduct  
99 constituting a violation of the article or (ii) one year after the existence of the illegal act and the identity  
100 of the offender are discovered by the Commonwealth, by the owner, or by anyone else who is damaged  
101 by such violation.

102 *A prosecution for a misdemeanor violation of § 18.2-369 shall be commenced within five years of the*  
103 *commission of the offense.*

104 Nothing in this section shall be construed to apply to any person fleeing from justice or concealing  
105 himself within or without the Commonwealth to avoid arrest or be construed to limit the time within  
106 which any prosecution may be commenced for desertion of a spouse or child or for neglect or refusal or  
107 failure to provide for the support and maintenance of a spouse or child.

108 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
109 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
110 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**  
111 **874 of the Acts of Assembly of 2010 requires the Virginia Criminal Sentencing Commission to**  
112 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**  
113 **necessary appropriation cannot be determined for periods of commitment to the custody of the**  
114 **Department of Juvenile Justice.**