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## HOUSE BILL NO. 2208

Offered January 12, 2011

Prefiled January 12, 2011

*A BILL to amend and reenact §§ 18.2-46.3:3 and 18.2-255.2 of the Code of Virginia, relating to gang activities or drug use or distribution within 1,000 feet of housing for older persons; penalty.*

Patrons—McQuinn, Alexander, Bulova, Carr, James, Sickles, Torian, Tyler and Ward

Referred to Committee for Courts of Justice

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

**1. That §§ 18.2-46.3:3 and 18.2-255.2 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-46.3:3. Enhanced punishment for gang activity taking place in a gang-free zone; penalties.

A. Any person who violates § 18.2-46.2 (i) upon the property, including buildings and grounds, of any public or private elementary, secondary, or postsecondary school, or any public or private two-year or four-year institution of higher education; (ii) upon public property or any property open to public use within 1,000 feet of such school property; (iii) on any school bus as defined in § 46.2-100; ~~or~~ (iv) upon the property, including buildings and grounds, of any publicly owned or operated community center or any publicly owned or operated recreation center; *or* (v) *within 1,000 feet of multifamily housing for older persons* is guilty of a felony punishable as specified in § 18.2-46.2, and shall be sentenced to a mandatory minimum term of imprisonment of two years. A person who violates subsection A of § 18.2-46.3 upon any property listed in this section is guilty of a Class 6 felony, except that any person 18 years of age or older who violates subsection A of § 18.2-46.3 upon any property listed in this section, when such offense is committed against a juvenile, is guilty of a Class 5 felony. Any person who violates subsection B of § 18.2-46.3 upon any property listed in this section is guilty of a Class 5 felony. It is a violation of this section if the person violated § 18.2-46.2 or 18.2-46.3 on the property described in clauses (i) through (iii) regardless of where the person intended to commit such violation.

B. *As used in this section, "multi-family housing for older persons" means housing that is multi-unit housing unit where the majority of residents, living independently or in an assisted manner, are older persons living in housing as defined in § 36-96.7.*

§ 18.2-255.2. Prohibiting the sale or manufacture of drugs on or near certain properties; penalty.

A. It shall be unlawful for any person to manufacture, sell or distribute or possess with intent to sell, give or distribute any controlled substance, imitation controlled substance or marijuana while:

~~(i) upon~~ 1. Upon the property, including buildings and grounds, of any public or private elementary, secondary, or post secondary school, or any public or private two-year or four-year institution of higher education, or any clearly marked licensed child day center as defined in § 63.2-100;

~~(ii) upon~~ 2. Upon public property or any property open to public use within 1,000 feet of the property described in ~~clause (i)~~ subdivision 1;

~~(iii) on~~ 3. On any school bus as defined in § 46.2-100;

~~(iv) upon~~ 4. Upon a designated school bus stop, or upon either public property or any property open to public use which is within 1,000 feet of such school bus stop, during the time when school children are waiting to be picked up and transported to or are being dropped off from school or a school-sponsored activity;

~~(v) upon~~ 5. Upon the property, including buildings and grounds, of any publicly owned or publicly operated recreation or community center facility or any public library; ~~or~~

~~(vi) upon~~ 6. *Within 1,000 feet of multi-family housing for older persons, as defined in § 18.2-46.3:3; or*

7. Upon the property of any state facility as defined in § 37.2-100 or upon public property or property open to public use within 1,000 feet of such an institution.

It is a violation of the provisions of this section if the person possessed the controlled substance, imitation controlled substance or marijuana on the property described in ~~clauses (i)~~ subdivisions 1 through ~~(vi)~~ of this subsection 7, regardless of where the person intended to sell, give or distribute the controlled substance, imitation controlled substance or marijuana. Nothing in this section shall prohibit the authorized distribution of controlled substances.

B. Violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section shall, upon conviction, be imprisoned for a term of not less than one year nor more than five years and fined not more than \$100,000. A second or subsequent conviction hereunder for an offense involving a controlled substance classified in Schedule I, II, or III of the Drug Control

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59 Act (§ 54.1-3400 et seq.) or more than one-half ounce of marijuana shall be punished by a mandatory  
60 minimum term of imprisonment of one year to be served consecutively with any other sentence.  
61 However, if such person proves that he sold such controlled substance or marijuana only as an  
62 accommodation to another individual and not with intent to profit thereby from any consideration  
63 received or expected nor to induce the recipient or intended recipient of the controlled substance or  
64 marijuana to use or become addicted to or dependent upon such controlled substance or marijuana, he  
65 shall be guilty of a Class 1 misdemeanor.

66 C. If a person commits an act violating the provisions of this section, and the same act also violates  
67 another provision of law that provides for penalties greater than those provided for by this section, then  
68 nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of  
69 law or the imposition of any penalties provided for thereby.

70 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
71 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
72 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**  
73 **874 of the Acts of Assembly of 2010 requires the Virginia Criminal Sentencing Commission to**  
74 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**  
75 **necessary appropriation cannot be determined for periods of commitment to the custody of the**  
76 **Department of Juvenile Justice.**  
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