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SENATE BILL NO. 1324

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 24, 2011)

(Patrons Prior to Substitute—Senators Herring and McDougle [SB 919])

A *BILL to amend the Code of Virginia by adding a section numbered 18.2-504.2, relating to crimes against incapacitated or elder adults; penalties.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 18.2-504.2 as follows:

§ 18.2-504.2. Crimes against incapacitated or elder adults; penalty.

A. For purposes of this section:

"Incapacitated or elder adult" means any person 18 years of age 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.

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

B. Any person who commits an offense set forth in Chapter 4 (§ 18.2-30 et seq.), 5 (§ 18.2-77 et seq.), or 6 (§ 18.2-168 et seq.), knowing or having reason to know that the victim of the offense is an incapacitated or elder adult is guilty of a separate and distinct Class 1 misdemeanor if the underlying offense is a misdemeanor, and a separate and distinct Class 6 felony if the underlying offense is a felony.

However, if the offender is a responsible person, punishment for a misdemeanor under this section shall include a mandatory minimum term of confinement of 30 days and shall include a mandatory minimum term of confinement of six months if the underlying offense is a felony.

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