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HOUSE BILL NO. 2263

Offered January 15, 2013

A BILL to amend the Code of Virginia by adding in Article 6 of Chapter 4 of Title 18.2 a section numbered 18.2-60.5 and by adding a section numbered 18.2-308.1:6, relating to temporary seizure of firearm or ammunition; procedure; penalty.

Patron—Krupicka

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 6 of Chapter 4 of Title 18.2 a section numbered 18.2-60.5 and by adding a section numbered 18.2-308.1:6 as follows:

§ 18.2-60.5. Certain threats of serious violence to be reported; penalty.

A. As used in this section, unless the context requires a different meaning, "threat of suicide or serious violence" means any verbal or physical action indicating the imminent (i) infliction of death or bodily injury, either self-inflicted or to any other person, or (ii) criminal sexual assault of any other person.

B. The following persons who, in their professional or official capacity, see, hear, or otherwise receive or have communicated to them a threat of suicide or serious violence by a person shall immediately report the substance of the threat to the law-enforcement or sheriff's office of the jurisdiction in which the threat was made or in which the threat was seen, heard, received, or communicated:

- 1. Any person licensed to practice medicine or any of the healing arts;
- 2. Any hospital resident or intern and any person employed in the nursing profession;
- 3. Any person employed as a social worker;
- 4. Any probation officer;
- 5. Any teacher or other person employed in a public or private school, kindergarten, or nursery school;
- 6. Unless otherwise provided under § 54.1-2400.1, any mental health professional;
- 7. Any law-enforcement officer or animal control officer;
- 8. Any professional staff person not previously enumerated, employed by a private or state-operated hospital, institution, or facility;
- 9. Any person who is designated a court-appointed special advocate pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;
- 10. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5; and
- 11. Any person employed by a public or private institution of higher education other than an attorney who is employed by a public or private institution of higher education as it relates to information gained in the course of providing legal representation to a client.

C. The provisions of subsection B shall not apply to any minister, priest, rabbi, imam, or duly accredited practitioner of any religious organization or denomination usually referred to as a church as it relates to (i) information required by the doctrine of the religious organization or denomination to be kept in a confidential manner or (ii) information that would be subject to § 8.01-400 or 19.2-271.3 if offered as evidence in court.

D. If the information is received by a teacher, staff member, resident, intern, or nurse in the course of professional services in a hospital, school, or similar institution, such person may, in place of such report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report.

E. Any report made in accordance with this subsection may be made orally, but such report shall be reduced to writing by the law-enforcement or sheriff's office to which the report is made. Any person required to make the report pursuant to this subsection shall disclose all information that is the basis of his suspicion relating to the threat of suicide or serious violence and, upon request, shall make available to the law-enforcement or sheriff's office to which the report is made any information, records, or reports documenting the basis for the report.

F. Any person who makes a report or provides records or information pursuant to subsection B or who testifies in any judicial proceeding arising from such report, records, or information shall be immune from any civil or criminal liability or administrative penalty or sanction on account of such report, records, information, or testimony, unless such person acted in bad faith or with malicious

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59 *purpose.*

60 *G. Any person required to make a report pursuant to this section shall make such report no more*  
61 *than two hours after having seen, heard, received, or otherwise having communicated to him a threat of*  
62 *suicide or serious violence and shall be fined not more than \$500 for the first failure and for any*  
63 *subsequent failure not less than \$1,000. In cases in which the threat seen, heard, received, or otherwise*  
64 *communicated involves a violent felony offense as defined in § 17.1-805 against another person, a*  
65 *person required to make a report pursuant to this section who knowingly and intentionally fails to make*  
66 *such report shall be guilty of a Class 1 misdemeanor.*

67 *H. No person shall be required to make a report pursuant to this section if the person has actual*  
68 *knowledge that the same matter has already been reported to the appropriate law-enforcement or*  
69 *sheriff's office.*

70 **§ 18.2-308.1:6. Emergency seizure of firearms from certain persons.**

71 *A. A law-enforcement officer who has received a report pursuant to § 18.2-60.5, and who has*  
72 *substantiated the report following an investigation, may temporarily seize any firearm or ammunition*  
73 *that the person making the threat possesses, owns, or may immediately access.*

74 *B. A law-enforcement officer who has taken a person into emergency custody pursuant to subsection*  
75 *B or G of § 37.2-808 may temporarily seize any firearm or ammunition that the person who is subject*  
76 *to the emergency custody order possesses, owns, or may immediately access.*

77 *C. A law-enforcement officer who temporarily seizes any firearm or ammunition pursuant to this*  
78 *section shall (i) provide a written inventory of the firearm or ammunition temporarily seized to the*  
79 *person who is the subject of the seizure; (ii) provide written notice to the person who is the subject of*  
80 *the seizure of his right to contest the temporary seizure of the firearm or ammunition; (iii) provide a*  
81 *written statement, supported by affidavit, describing the basis for the seizure no more than 48 hours*  
82 *following the temporary seizure to the circuit court of the jurisdiction in which the firearm or*  
83 *ammunition was temporarily seized; and (iv) transport the temporarily seized firearm or ammunition to*  
84 *a secure facility in which the seized object shall be stored until final disposition of the object by the*  
85 *circuit court pursuant to this section.*

86 *D. The circuit court shall set a hearing no more than 28 days following the written notice filed with*  
87 *the court. An attorney for the Commonwealth shall represent the Commonwealth's interests at the*  
88 *hearing. If the circuit court finds by a preponderance of the evidence that the temporary seizure was*  
89 *justified, it may order that the seized firearm or ammunition shall remain temporarily seized. If the*  
90 *circuit court determines that the temporary seizure was not justified, any seized firearm or ammunition*  
91 *shall be immediately returned to the person who is the subject of the seizure if he may lawfully possess*  
92 *a firearm or ammunition and there is no cause exists for the retention of the firearm or ammunition.*  
93 *The circuit court shall enter a written order outlining its findings.*

94 *E. If the temporary seizure is determined to be justified, the circuit court may order that the firearm*  
95 *or ammunition shall remain seized for a period not to exceed six months. The attorney for the*  
96 *Commonwealth may file a written request for a hearing, providing proper notice to the owner, to extend*  
97 *the seizure period. The circuit court shall promptly schedule a hearing upon receipt of a written notice*  
98 *provided in accordance with this subsection. If the circuit court finds by a preponderance of the*  
99 *evidence that the temporary seizure of the firearm or ammunition is justified, it may enter an order*  
100 *extending the seizure for a period not to exceed six months.*