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HOUSE BILL NO. 102

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice on February 24, 2016)

(Patron Prior to Substitute—Delegate Lingamfelter)

A BILL to amend the Code of Virginia by adding a section numbered 18.2-33.1, relating to felony homicide; felony drug offenses; penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 18.2-33.1 as follows:

§ 18.2-33.1. Felony homicide; felony drug offenses; affirmative defense.

A. A person is guilty of felony homicide under § 18.2-33 if the felonious act that resulted in the killing of one accidentally, contrary to the intention of the parties, involved the manufacture, sale, gift, or distribution of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) to another person in violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 and (i) such other person's death results from his use of the controlled substance and (ii) such controlled substance is a proximate cause of the death of such other person regardless of the time or place death occurred in relation to the commission of the underlying felony. It is not a defense to a prosecution under this subsection that the decedent contributed to his own death by his knowing or voluntary use of the controlled substance. Venue for a prosecution under this subsection shall lie in the locality where the felony violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 occurred, where the use of the controlled substance occurred, or where death occurred.

B. Except as otherwise provided in subsection C, if a person proves that he gave or distributed a controlled substance classified in Schedule I or II only as an accommodation to another individual, who is not an inmate in a community correctional facility, local correctional facility, or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with intent to profit thereby from any consideration received or expected nor to induce the recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, he is guilty of a Class 5 felony.

C. It shall be an affirmative defense to prosecution under this section if such person gave or distributed a controlled substance classified in Schedule I or II only as an accommodation to another individual as provided in subsection B and:

1. Such person, in good faith, seeks or obtains emergency medical attention for the other individual, if such other individual is experiencing an overdose, by contemporaneously reporting such overdose to a firefighter, as defined in § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, a law-enforcement officer, as defined in § 9.1-101, or an emergency 911 system;

2. Such person (i) remains at the scene of the overdose until a law-enforcement officer responds to the report of an overdose or (ii) if transported by a firefighter or emergency medical services personnel responding to the report of the overdose for emergency medical attention prior to the arrival of a law-enforcement officer, remains at the location to which he was transported until a law-enforcement officer responds to the report of an overdose at such location;

3. Such person identifies himself to the law-enforcement officer who responds to the report of the overdose; and

4. If requested by a law-enforcement officer, such person substantially cooperates in any investigation of any criminal offense reasonably related to the controlled substance, alcohol, or combination of such substances that resulted in the overdose.

2. That the provisions of this act clarify the intent of the General Assembly with regard to the law governing felony homicide and serve to overrule the decision of the Court of Appeals of Virginia in *Woodard v. Commonwealth*, 61 Va. App. 567, 739 S.E.2d 220 (2013), *aff'd*, 287 Va. 276, 754 S.E.2d 309 (2014).

3. 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 665 of the Acts of Assembly of 2015 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.