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**HOUSE BILL NO. 1616**

Offered January 11, 2017

Prefiled January 3, 2017

A *BILL to amend and reenact § 18.2-33 of the Code of Virginia, relating to felony homicide; certain drug offenses; penalty.*

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Patron—Lingamfelter

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 18.2-33 of the Code of Virginia is amended and reenacted as follows:****§ 18.2-33. Felony homicide defined; punishment.**

A. The killing of one accidentally, contrary to the intention of the parties, while in the prosecution of some felonious act other than those specified in §§ 18.2-31 and 18.2-32, is murder of the second degree and is punishable by confinement in a state correctional facility for not less than five years nor more than ~~forty~~ 40 years.

B. Except as otherwise provided in subsection C, a person is guilty of felony homicide under subsection A 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 the 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.

C. If a person prosecuted under subsection B proves that he gave or distributed a controlled substance classified in Schedule I or II only as an accommodation to the person who died 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.

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 780 of the Acts of Assembly of 2016 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.

INTRODUCED

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