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SENATE BILL NO. 1420

Offered January 11, 2017

A BILL to amend and reenact §§ 18.2-178.1 and 18.2-369 of the Code of Virginia, relating to abuse and neglect of incapacitated persons; financial exploitation of incapacitated persons; penalty.

Patron—Mason

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-178.1 and 18.2-369 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-178.1. Financial exploitation of incapacitated persons; penalty.

A. It is unlawful for any person who knows or should know that another person suffers from mental incapacity to, through the use of that other person's mental incapacity, take, obtain, or convert money or other thing of value belonging to that other person with the intent to permanently deprive him thereof. Any person who violates this section shall be deemed guilty of larceny.

B. Venue for the trial of an accused charged with a violation of this section shall be in any county or city in which (i) any act was performed in furtherance of the offense or (ii) the accused resided at the time of the offense.

C. This section shall not apply to a transaction or disposition of money or other thing of value in which the accused acted for the benefit of the incapacitated person with mental incapacity or made a good faith effort to assist such person with the management of his money or other thing of value.

D. As used in this section, "mental incapacity" means that condition of a person existing at the time of the offense described in subsection A resulting from mental illness, intellectual disability, physical illness or disability, advanced age, or other cause that prevents him from understanding the nature or consequences of the transaction or disposition of money or other thing of value involved in such offense.

§ 18.2-369. Abuse and neglect of incapacitated adults; penalty.

A. It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in any bodily injury or serious bodily injury or disease to the incapacitated adult is guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection is guilty of a Class 6 felony.

B. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in serious bodily injury or disease to the incapacitated adult is guilty of a Class 4 felony. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in the death of the incapacitated adult is guilty of a Class 3 felony.

C. For purposes of this section:

"Abuse" means (i) knowing and willful conduct that causes physical injury or pain or (ii) knowing and willful use of physical restraint, including confinement, as punishment, for convenience or as a substitute for treatment, except where such conduct or physical restraint, including confinement, is a part of care or treatment and is in furtherance of the health and safety of the incapacitated person.

"Incapacitated adult" means any person 18 years of age or older who is impaired by reason of mental illness, intellectual disability, 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.

"Neglect" means the knowing and willful failure by a responsible person to provide treatment, care, goods or services which results in injury to the health or endangers the safety of an incapacitated adult.

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

"Serious bodily injury or disease" shall include includes but is not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, or (vi) life-threatening internal injuries or conditions, whether or not caused by trauma.

D. No responsible person shall be in violation of this section whose conduct was (i) in accordance with the informed consent of the incapacitated person or a person authorized to consent on his behalf; (ii) in accordance with a declaration by the incapacitated person under the Health Care Decisions Act

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59 (§ 54.1-2981 et seq.) or with the provisions of a valid medical power of attorney; (iii) in accordance
60 with the wishes of the incapacitated person or a person authorized to consent on behalf of the
61 incapacitated person and in accord with the tenets and practices of a church or religious denomination;
62 (iv) incident to necessary movement of, placement of or protection from harm to the incapacitated
63 person; or (v) a bona fide, recognized or approved practice to provide medical care.

64 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
65 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
66 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
67 **780 of the Acts of Assembly of 2016 requires the Virginia Criminal Sentencing Commission to**
68 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
69 **necessary appropriation cannot be determined for periods of commitment to the custody of the**
70 **Department of Juvenile Justice.**