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SENATE BILL NO. 1188

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 13, 2023)

(Patron Prior to Substitute—Senator Reeves)

A BILL to amend and reenact §§ 18.2-46.4 and 18.2-46.6 of the Code of Virginia, relating to weapon of terrorism; definition; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-46.4 and 18.2-46.6 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-46.4. Definitions.

As used in this article, unless the context requires otherwise or it is otherwise provided:

"Act of terrorism" means an act of violence as defined in clause (i) of subdivision A of § 19.2-297.1 or an act that would be an act of violence if committed within the Commonwealth committed within or outside the Commonwealth with the intent to (i) intimidate a civilian population at large or (ii) influence the conduct or activities of a government, including the government of the United States, a state, or a locality, through intimidation.

"Base offense" means an act of violence as defined in clause (i) of subdivision A of § 19.2-297.1 committed with the intent required to commit an act of terrorism.

"Weapon of terrorism" means any device or material that is designed, intended or used to cause death, bodily injury or serious bodily harm, through the release, dissemination, or impact of (i) poisonous chemicals; (ii) an infectious biological substance; or (iii) release of radiation or radioactivity. "Weapon of terrorism" also means any mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, as described in Schedule II of the Drug Control Act (§ 54.1-3400 et seq.), except as authorized in the Drug Control Act.

§ 18.2-46.6. Possession, manufacture, distribution, etc., of weapon of terrorism or hoax device prohibited; penalty.

A. Any person who, with the intent to commit an act of terrorism, possesses, uses, sells, gives, distributes or manufactures (i) a weapon of terrorism or (ii) a "fire bomb," "explosive material," or "device," as those terms are defined in § 18.2-85, is guilty of a Class 2 felony.

B. Any person who, with the intent to commit an act of terrorism, possesses, uses, sells, gives, distributes or manufactures any device or material that by its design, construction, content or characteristics appears to be or appears to contain a (i) weapon of terrorism or (ii) a "fire bomb," "explosive material," or "device," as those terms are defined in § 18.2-85, but that is an imitation of any such weapon of terrorism, "fire bomb," "explosive material," or "device" is guilty of a Class 3 felony.

C. Any person who, with the intent to (i) intimidate the civilian population, (ii) influence the conduct or activities of the government of the United States, a state or locality through intimidation, (iii) compel the emergency evacuation of any place of assembly, building or other structure or any means of mass transportation, or (iv) place any person in reasonable apprehension of bodily harm, uses, sells, gives, distributes or manufactures any device or material that by its design, construction, content or characteristics appears to be or appears to contain a weapon of terrorism, but that is an imitation of any such weapon of terrorism is guilty of a Class 6 felony.

D. Any person who knowingly and intentionally manufactures or knowingly and intentionally distributes a weapon of terrorism when such person knows that such weapon of terrorism is, or contains, any mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, as described in Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) is guilty of a Class 4 felony. A violation of this section shall constitute a separate and distinct offense.

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 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.