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HOUSE BILL NO. 1889

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 2, 1997)

(Patron Prior to Substitute—Delegate Cantor [HB 1892])

A *BILL to amend and reenact §§ 18.2-77, 18.2-79, 18.2-90 and 18.2-91 of the Code of Virginia, relating to arson and burglary of a church; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-77, 18.2-79, 18.2-90 and 18.2-91 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-77. Burning or destroying dwelling house, etc.

A. If any person maliciously (i) burns, or by use of any explosive device or substance destroys, in whole or in part, or causes to be burned or destroyed, or (ii) aids, counsels or procures the burning or destruction of any dwelling house or manufactured home whether belonging to himself or another, or any occupied hotel, hospital, mental health facility, or other house in which persons usually dwell or lodge, any occupied railroad car, boat, vessel, or river craft in which persons usually dwell or lodge, or any occupied jail or prison, *or any occupied church as defined in § 18.2-127*, he shall be guilty of a felony, punishable by imprisonment for life or for any period not less than five years and, subject to subdivision g (g) of § 18.2-10, a fine of not more than \$100,000. Any person who maliciously sets fire to anything, or aids, counsels or procures the setting fire to anything, by the burning whereof such occupied dwelling house, manufactured home, hotel, hospital, mental health facility or other house, or railroad car, boat, vessel, or river craft, jail or prison, *or church as defined in § 18.2-127*, is burned shall be guilty of a violation of this subsection.

B. Any such burning or destruction when the building or other place mentioned in subsection A is unoccupied, shall be punishable as a Class 4 felony.

§ 18.2-79. Burning or destroying meeting house, etc.

If any person maliciously burn, or by the use of any explosive device or substance, maliciously destroy, in whole or in part, or cause to be burned or destroyed, or aid, counsel, or procure the burning or destroying, of any meeting house, courthouse, townhouse, college, academy, schoolhouse, or other building erected for public use, except an asylum, hotel, jail or prison, *church as defined in § 18.2-127*, or any banking house, warehouse, storehouse, manufactory, mill, or other house, whether the property of himself or of another person, not usually occupied by persons lodging therein at night, at a time when any person is therein, or if he maliciously set fire to anything, or cause to be set on fire, or aid, counsel, or procure the setting on fire of anything, by the burning whereof any building mentioned in this section shall be burned, at a time when any person is therein, he shall be guilty of a Class 3 felony. If such offense be committed when no person is in such building mentioned in this section, the offender shall be guilty of a Class 4 felony.

§ 18.2-90. Entering dwelling house, etc., with intent to commit murder, rape, robbery or arson.

If any person in the nighttime enters without breaking or in the daytime breaks and enters or enters and conceals himself in a dwelling house or an adjoining, occupied outhouse or in the nighttime enters without breaking or at any time breaks and enters or enters and conceals himself in any office, shop, manufactured home, storehouse, warehouse, banking house, *church as defined in § 18.2-127*, or other house, or any ship, vessel or river craft or any railroad car, or any automobile, truck or trailer, if such automobile, truck or trailer is used as a dwelling or place of human habitation, with intent to commit murder, rape ~~or~~, robbery *or arson of a church as defined in § 18.2-277*, he shall be deemed guilty of statutory burglary, which offense shall be a Class 3 felony. However, if such person was armed with a deadly weapon at the time of such entry, he shall be guilty of a Class 2 felony.

§ 18.2-91. Entering dwelling house, etc., with intent to commit larceny, assault and battery or other felony.

If any person commits any of the acts mentioned in § 18.2-90 with intent to commit larceny, or any felony other than murder, rape ~~or~~, robbery *or arson in violation of § 18.2-77*, or if any person commits any of the acts mentioned in § 18.2-89 or § 18.2-90 with intent to commit assault and battery, he shall be guilty of statutory burglary, punishable by confinement in a state correctional facility for not less than one or more than twenty years or, in the discretion of the jury or the court trying the case without a jury, be confined in jail for a period not exceeding twelve months or fined not more than \$2,500, either or both. However, if the person was armed with a deadly weapon at the time of such entry, he shall be guilty of a Class 2 felony.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation

60 is \$62,500.