

070063105

HOUSE BILL NO. 2459

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact §§ 18.2-95, 18.2-111, 18.2-172, 18.2-178, and 18.2-369 of the Code of Virginia, relating to penalties for crimes committed against incapacitated adults; penalties.

Patron—Cline

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-95, 18.2-111, 18.2-172, 18.2-178, and 18.2-369 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-95. Grand larceny defined; how punished.

Any person who (i) commits larceny from the person of another of money or other thing of value of \$5 or more, (ii) commits simple larceny not from the person of another of goods and chattels of the value of \$200 or more, or (iii) commits simple larceny not from the person of another of any firearm, regardless of the firearm's value, ~~shall be~~ is guilty of grand larceny, punishable by imprisonment in a state correctional facility for not less than one nor more than ~~twenty~~ 20 years or, in the discretion of the jury or court trying the case without a jury, be confined in jail for a period not exceeding ~~twelve~~ 12 months or fined not more than \$2,500, either or both. *Any person convicted of a violation of this section against any other person whom he knows or reasonably should know is an incapacitated adult, as that term is defined in § 18.2-369, shall be punished by imprisonment in a state correctional facility for not less than five nor more than 25 years.*

§ 18.2-111. Embezzlement deemed larceny; indictment.

If any person wrongfully and fraudulently use, dispose of, conceal or embezzle any money, bill, note, check, order, draft, bond, receipt, bill of lading or any other personal property, tangible or intangible, which he shall have received for another or for his employer, principal or bailor, or by virtue of his office, trust, or employment, or which shall have been entrusted or delivered to him by another or by any court, corporation or company, he ~~shall be~~ is guilty of embezzlement. Proof of embezzlement shall be sufficient to sustain the charge of larceny. Any person convicted hereunder shall be deemed guilty of larceny and may be indicted as for larceny and upon conviction shall be punished as provided in § 18.2-95 or § 18.2-96. *Any person convicted of a violation of this section whereby his office, trust, or employment was created for the benefit of any other person whom he knows or reasonably should know is an incapacitated adult, as that term is defined in § 18.2-369, shall be punished by imprisonment in a state correctional facility for not less than five nor more than 40 years.*

§ 18.2-172. Forging, uttering, etc., other writings.

If any person forge any writing, other than such as is mentioned in §§ 18.2-168 and 18.2-170, to the prejudice of another's right, or utter, or attempt to employ as true, such forged writing, knowing it to be forged, he ~~shall be~~ is guilty of a Class 5 felony. Any person who shall obtain, by any false pretense or token, the signature of another person, to any such writing, with intent to defraud any other person, shall be deemed guilty of the forgery thereof, and shall be subject to like punishment. *Any person convicted of a violation of this section against any other person whom he knows or reasonably should know is an incapacitated adult, as that term is defined in § 18.2-369, is guilty of a Class 4 felony.*

§ 18.2-178. Obtaining money or signature, etc., by false pretense.

A. If any person obtain, by any false pretense or token, from any person, with intent to defraud, money, a gift certificate or other property that may be the subject of larceny, he shall be deemed guilty of larceny thereof; or if he obtain, by any false pretense or token, with such intent, the signature of any person to a writing, the false making whereof would be forgery, he ~~shall be~~ is guilty of a Class 4 felony. *Any person convicted of a violation of this section against any other person whom he knows or reasonably should know is an incapacitated adult, as that term is defined in § 18.2-369, is guilty of a Class 3 felony.*

B. Venue for the trial of any person charged with an offense under this section may be in the county or city in which (i) any act was performed in furtherance of the offense, or (ii) the person charged with the offense resided at the time of the 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 serious bodily injury or disease to

INTRODUCED

HB2459

59 the incapacitated adult ~~shall be~~ is guilty of a Class 1 misdemeanor. Any responsible person who is
60 convicted of a second or subsequent offense under this subsection ~~shall be~~ is guilty of a Class 6 felony.

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

64 C. *Any responsible person who abuses or neglects an incapacitated adult in violation of this section*
65 *and the abuse or neglect results in the death of the incapacitated adult is guilty of a Class 3 felony. The*
66 *provisions of this section shall not preclude prosecution under any other homicide statute.*

67 ~~CD.~~ For purposes of this section:

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

72 "Incapacitated adult" means any person 18 years or older who is impaired by reason of mental
73 illness, mental retardation, physical illness or disability, advanced age or other causes to the extent the
74 adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions
75 concerning his well-being.

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

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

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

84 ~~DE.~~ No responsible person shall be in violation of this section whose conduct was (i) in accordance
85 with the informed consent of the incapacitated person or a person authorized to consent on his behalf;
86 (ii) in accordance with a declaration by the incapacitated person under the Natural Death Act of Virginia
87 (§ 54.1-2981 et seq.) or with the provisions of a valid medical power of attorney; (iii) in accordance
88 with the wishes of the incapacitated person or a person authorized to consent on behalf of the
89 incapacitated person and in accord with the tenets and practices of a church or religious denomination;
90 (iv) incident to necessary movement of, placement of or protection from harm to the incapacitated
91 person; or (v) a bona fide, recognized or approved practice to provide medical care.

92 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
93 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
94 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
95 **periods of commitment to the custody of the Department of Juvenile Justice.**