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HOUSE BILL NO. 1996

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 8.01-226.5:2, 18.2-371.1, 40.1-103, and 63.2-1530 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-371.1:1, relating to child endangerment; child abuse; penalty.

Patron—Janis

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-226.5:2, 18.2-371.1, 40.1-103, and 63.2-1530 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-371.1:1 as follows:

§ 8.01-226.5:2. Immunity of hospital or rescue squad personnel for the acceptance of certain infants.

Any personnel of a hospital or rescue squad receiving a child under the circumstances described in subsection B of § 18.2-371, subdivision B 2 of § 18.2-371.1, or subsection B of § 40.1-103 shall be immune from civil liability or criminal prosecution for injury or other damage to the child unless such injury or other damage is the result of gross negligence or willful misconduct by such personnel.

§ 18.2-371.1. Abuse and neglect of children; penalty; abandoned infant.

A. Any parent, guardian, or other person responsible for the care of a child under the age of 18 who by willful act or omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child shall be is guilty of a Class 4 felony. Any person who violates this subsection maliciously is guilty of a Class 3 felony; however, if the person is at least seven years older than the child and the child is less than 15 years of age, the person shall be punished by a term of imprisonment of not less than five years nor more than 30 years in a state correctional facility, five years of which shall be a mandatory minimum term of imprisonment. Any person who maliciously commits a second or subsequent violation of this subsection when the person is at least seven years older than the child and the child is less than 15 years of age shall be punished by a term of imprisonment of not less than 10 years nor more than 40 years, 10 years of which shall be a mandatory minimum. For purposes of this subsection, "serious injury" shall include but not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, (vi) forced ingestion of dangerous substances, or (vii) life-threatening internal injuries.

B. 1. Any parent, guardian, or other person responsible for the care of a child under the age of 18 whose willful act or omission in the care of such child was so gross, wanton and culpable as to show a reckless disregard for human life shall be is guilty of a Class 6 felony.

2. If a prosecution under this subsection is based solely on the accused parent having left the child at a hospital or rescue squad, it shall be an affirmative defense to prosecution of a parent under this subsection that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within the first 14 days of the child's life. In order for the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

C. Any parent, guardian or other person having care, custody, or control of a minor child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall not, for that reason alone, be considered in violation of this section.

§ 18.2-371.1:1. Cruelty and injuries to children; penalty; abandoned infant.

A. It shall be unlawful for any person employing or having the custody of any child willfully or negligently to cause or permit the life of such child to be endangered or the health of such child to be injured, or willfully or negligently to cause or permit such child to be placed in a situation where his life, health, or morals may be endangered, or to cause or permit such child to be overworked, tortured, tormented, mutilated, beaten, or cruelly treated. Any person violating this section is guilty of a Class 6 felony.

B. If a prosecution under this section is based solely on the accused parent having left the child at a hospital or rescue squad, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within the first 14 days of the

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59 *child's life. In order for the affirmative defense to apply, the child shall be delivered in a manner*  
 60 *reasonably calculated to ensure the child's safety.*

61 § 40.1-103. Cruelty and injuries to children; penalty; abandoned infant.

62 A. It shall be unlawful for any person employing or having the custody of any child willfully or  
 63 negligently to cause or permit the life of such child to be endangered or the health of such child to be  
 64 injured, or willfully or negligently to cause or permit such child to be placed in a situation that its life,  
 65 health or morals may be endangered, or to cause or permit such child to be overworked, tortured,  
 66 tormented, mutilated, beaten or cruelly treated. Any person violating this section shall be guilty of a  
 67 Class 6 felony.

68 B. If a prosecution under this section is based solely on the accused parent having left the child at a  
 69 hospital or rescue squad, it shall be an affirmative defense to prosecution of a parent under this section  
 70 that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to  
 71 an attended rescue squad that employs emergency medical technicians, within the first 14 days of the  
 72 child's life. In order for the affirmative defense to apply, the child shall be delivered in a manner  
 73 reasonably calculated to ensure the child's safety.

74 *The following unlawful acts and offenses shall constitute and be punished as a Class 6 felony:*

75 *Violation of § 18.2-371.1:1, subject to the affirmative defense set out in subsection B of*  
 76 *§ 18.2-371.1:1.*

77 § 63.2-1530. Virginia Child Protection Accountability System.

78 A. The Virginia Child Protection Accountability System (the System) is created to collect and make  
 79 available to the public information on the response to reported cases of child abuse and neglect in the  
 80 Commonwealth. The Department shall establish and maintain the System. The Board shall promulgate  
 81 regulations to implement the provisions of this section.

82 B. The following information shall, notwithstanding any state law regarding privacy or confidentiality  
 83 of records, be included in the System and made available to the public via a website maintained by the  
 84 Department and in print format:

85 1. From the Department: (i) the total number of complaints alleging child abuse, neglect, or a  
 86 combination thereof received; (ii) the total number of complaints deemed valid pursuant to § 63.2-1508;  
 87 (iii) the total number of complaints investigated by the Department pursuant to subsection I of  
 88 §§ 63.2-1503 and 63.2-1505; (iv) the total number of cases determined to be founded cases of abuse or  
 89 neglect; and (v) the total number of cases resulting in a finding that the complaint was founded resulting  
 90 in administrative appeal. Information reported pursuant to clause (v) shall be reported by total number of  
 91 appeals to the local department, total number of appeals to the Department, and total number of appeals  
 92 by outcome of the appeal. For each category of information required by this subdivision, the Department  
 93 shall also report the total number of cases by type of abuse; by gender, age, and race of the alleged  
 94 victim; and by the nature of the relationship between the alleged victim and alleged abuser.

95 2. The Department of State Police shall report annually, in a format approved by the Department of  
 96 Social Services, arrest and disposition statistics for violations of §§ 18.2-48, 18.2-61, 18.2-63, 18.2-64.1,  
 97 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-355, 18.2-361, 18.2-366, 18.2-370 through 18.2-370.2,  
 98 18.2-371, 18.2-371.1, 18.2-371.1:1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-387, and 40.1-103 for  
 99 inclusion in the Child Protection Accountability System.

100 3. From every circuit court in the Commonwealth for which data is available through the statewide  
 101 Case Management System: (i) the total number of (a) misdemeanor convictions appealed from the  
 102 district court to the circuit court, (b) felony charges certified from the district court to the circuit court,  
 103 and (c) charges brought by direct indictment in the circuit court that involve a violation of any code  
 104 section set forth in subdivision B 2; (ii) the total number of cases appealed, certified, or transferred to  
 105 the court or brought by direct indictment in the circuit court involving a violation of any code section  
 106 set forth in subdivision B 2 that result in a trial, including the number of bench trials and the number of  
 107 jury trials; and (iii) the total number of trials involving a violation of any code section set forth in  
 108 subdivision B 2 resulting in (a) a plea agreement, (b) transfer to another court, (c) a finding of not  
 109 guilty, (d) conviction on a lesser included offense, or (e) conviction on all charges, by type of trial.  
 110 Information required to be reported pursuant to subdivisions B 1, B 2, and B 3 shall be reported  
 111 annually in a format approved by the Department of Social Services and aggregated by locality.

112 C. Data collected pursuant to subsection B shall be made available to the public on a website  
 113 established and maintained by the Department and shall also be made readily available to the public in  
 114 print format. Information included in the System shall be presented in such a manner that no individual  
 115 identifying information shall be included.

116 2. That the provisions of this act may result in a net increase in periods of imprisonment or  
 117 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot  
 118 be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter  
 119 874 of the Acts of Assembly of 2010 requires the Virginia Criminal Sentencing Commission to  
 120 assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the

121 necessary appropriation cannot be determined for periods of commitment to the custody of the  
122 Department of Juvenile Justice.

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