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HOUSE BILL NO. 1808

Offered January 9, 2019

Prefiled December 29, 2018

A BILL to amend and reenact § 19.2-268.3 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 4 of Title 18.2 a section numbered 18.2-57.5, relating to assault and battery in the presence of a minor; penalty.

Patron—Gooditis

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-268.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 4 of Title 18.2 a section numbered 18.2-57.5 as follows:

§ 18.2-57.5. Assault and battery or act of violence in the presence of a minor; penalty.

A. Any person who commits an assault and battery in violation of § 18.2-57 or an assault and battery against a family or household member in violation of § 18.2-57.2, while (i) in the physical presence of a minor and (ii) knowing or having reason to know that such minor may see or hear such assault and battery is guilty of a Class 1 misdemeanor for a first offense and a Class 6 felony for a second or subsequent offense.

B. Any person who commits any act of violence as defined in § 19.2-297.1 while (i) in the physical presence of a minor and (ii) knowing or having reason to know that such minor may see or hear such act of violence is guilty of a Class 5 felony.

C. A violation of this section shall constitute a separate and distinct offense. If the acts or activities violating this section also violate another provision of law, a prosecution under this section shall not prohibit or bar any prosecution or proceeding under such other provision or the imposition of any penalties provided for thereby.

§ 19.2-268.3. Admissibility of statements by children in certain cases.

A. As used in this section, "offense against children" means a violation or an attempt to violate § 18.2-31, 18.2-32, or 18.2-35, subsection A of § 18.2-47, § 18.2-48, 18.2-51, 18.2-51.2, 18.2-51.6, 18.2-52, 18.2-54.1, 18.2-54.2, 18.2-57.5, 18.2-61, 18.2-67.1, 18.2-67.2, or 18.2-67.3, subsection B of § 18.2-346 if punishable as a felony, § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1, subsection B of § 18.2-361, subsection B of § 18.2-366, § 18.2-370, 18.2-370.1, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, or 18.2-374.4, § 18.2-386.1 if punishable as a felony, or § 40.1-103.

B. An out-of-court statement made by a child who is under 13 years of age at the time of trial or hearing who is the alleged victim of an offense against children describing any act directed against the child relating to such alleged offense shall not be excluded as hearsay under Rule 2:802 of the Rules of Supreme Court of Virginia if both of the following apply:

1. The court finds, in a hearing conducted prior to a trial, that the time, content, and totality of circumstances surrounding the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining such trustworthiness, the court may consider, among other things, the following factors:

- a. The child's personal knowledge of the event;
- b. The age, maturity, and mental state of the child;
- c. The credibility of the person testifying about the statement;
- d. Any apparent motive the child may have to falsify or distort the event, including bias or coercion;
- e. Whether the child was suffering pain or distress when making the statement; and
- f. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act; and

2. The child:

a. Testifies; or

b. Is declared by the court to be unavailable as a witness; when the child has been declared unavailable, such statement may be admitted pursuant to this section only if there is corroborative evidence of the act relating to an alleged offense against children.

C. At least 14 days prior to the commencement of the proceeding in which a statement will be offered as evidence, the party intending to offer the statement shall notify the opposing party, in writing, of the intent to offer the statement and shall provide or make available copies of the statement to be introduced.

D. This section shall not be construed to limit the admission of any statement offered under any

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59 other hearsay exception or applicable rule of evidence.

60 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
61 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
62 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
63 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I,**
64 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
65 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
66 **appropriation cannot be determined for periods of commitment to the custody of the Department**
67 **of Juvenile Justice.**