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## HOUSE BILL NO. 2132

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact §§ 18.2-178.1 and 18.2-369 of the Code of Virginia, relating to crimes against incapacitated or vulnerable persons; penalties.*

Patron—Murphy

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-178.1 and 18.2-369 of the Code of Virginia are amended and reenacted as follows:**

**§ 18.2-178.1. Financial exploitation of incapacitated persons; penalty.**

A. It is unlawful for any person who knows or should know that another person suffers from ~~mental~~ an incapacity to, through the use of that other person's ~~mental~~ incapacity, take, obtain, or convert money or other thing of value belonging to that other person with the intent to permanently deprive him thereof. Any person who violates this section ~~shall be deemed~~ is guilty of larceny.

B. Venue for the trial of an accused charged with a violation of this section shall be in any county or city in which (i) any act was performed in furtherance of the offense or (ii) the accused resided at the time of the offense.

C. This section shall not apply to a transaction or disposition of money or other thing of value in which the accused acted for the benefit of the *incapacitated* person ~~with mental incapacity~~ or made a good faith effort to assist such person with the management of his money or other thing of value.

D. As used in this section, "~~mental~~ incapacity" means that condition of a person existing at the time of the offense described in subsection A *resulting from mental illness, intellectual disability, physical illness, advanced age over the age of 60, or other cause* that prevents him from understanding the nature or consequences of the transaction or disposition of money or other thing of value involved in such offense.

**§ 18.2-369. Abuse and neglect of incapacitated or vulnerable adults; penalties.**

A. It ~~shall be~~ is unlawful for any responsible person to abuse or neglect any incapacitated *adult or vulnerable* adult as defined in this section. Any responsible person who abuses or neglects an incapacitated *adult or vulnerable* adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated *adult or vulnerable adult* is guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection is guilty of a Class 6 felony.

B. Any responsible person who abuses or neglects an incapacitated *adult or vulnerable adult* in violation of this section and the abuse or neglect results in serious bodily injury or disease to the incapacitated *adult or vulnerable adult* is guilty of a Class 4 felony. Any responsible person who abuses or neglects an incapacitated *adult or vulnerable adult* in violation of this section and the abuse or neglect results in the death of the incapacitated *adult or vulnerable adult* is guilty of a Class 3 felony.

C. For purposes of this section:

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

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

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

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

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

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59       *"Vulnerable adult" means any person 60 years of age or older.*

60       D. No responsible person shall be in violation of this section whose conduct was (i) in accordance  
61 with the informed consent of the incapacitated ~~person~~ *adult or vulnerable adult* or a person authorized  
62 to consent on his behalf; (ii) in accordance with a declaration by the incapacitated ~~person~~ *adult or*  
63 *vulnerable adult* under the Health Care Decisions Act (§ 54.1-2981 et seq.) or with the provisions of a  
64 valid medical power of attorney; (iii) in accordance with the wishes of the incapacitated ~~person~~ *adult or*  
65 *vulnerable adult* or a person authorized to consent on behalf of the incapacitated ~~person~~ *adult or*  
66 *vulnerable adult* and in accord with the tenets and practices of a church or religious denomination; (iv)  
67 incident to necessary movement of, placement of, or protection from harm to the incapacitated ~~person~~  
68 *adult or vulnerable adult*; or (v) a bona fide, recognized, or approved practice to provide medical care.

69       **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
70 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**  
71 **necessary appropriation cannot be determined for periods of imprisonment in state adult**  
72 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I,**  
73 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**  
74 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**  
75 **appropriation cannot be determined for periods of commitment to the custody of the Department**  
76 **of Juvenile Justice.**