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**HOUSE BILL NO. 2528****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Governor  
on March 26, 2019)

(Patron Prior to Substitute—Delegate Hugo)

A *BILL to amend and reenact § 18.2-33 of the Code of Virginia, relating to felony homicide, certain drug offenses; penalty.*

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

**1. That § 18.2-33 of the Code of Virginia is amended and reenacted as follows:**

**§ 18.2-33. Felony homicide defined; punishment.**

A. The killing of one accidentally, contrary to the intention of the parties, while in the prosecution of some felonious act other than those specified in §§ 18.2-31 and 18.2-32, is murder of the second degree and is punishable by confinement in a state correctional facility for not less than five years nor more than ~~forty~~ 40 years.

B. A person is guilty of felony homicide under subsection A if the felonious act that resulted in the killing of one accidentally, contrary to the intention of the parties, involved the manufacture or sale of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) to another person in violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 and (i) such other person's death results from his use of the controlled substance and (ii) such controlled substance is the proximate cause of the death of such other person regardless of the time or place death occurred in relation to the commission of the underlying felony. It is not a defense to a prosecution under this subsection that the decedent contributed to his own death by his knowing or voluntary use of the controlled substance. Venue for a prosecution under this subsection shall lie in the locality where the felony violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 occurred, where the use of the controlled substance occurred, or where death occurred.

C. It shall be an affirmative defense to prosecution under this section if such person sold a controlled substance classified in Schedule I or II to another individual as provided in subsection B and:

1. Such person, in good faith, seeks or obtains emergency medical attention for the other individual, if such other individual is experiencing an overdose, by contemporaneously reporting such overdose to a firefighter, as defined in § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, a law-enforcement officer, as defined in § 9.1-101, or an emergency 911 system;

2. Such person (i) remains at the scene of the overdose until a law-enforcement officer responds to the report of an overdose or (ii) if transported by a firefighter or emergency medical services personnel responding to the report of the overdose for emergency medical attention prior to the arrival of a law-enforcement officer, remains at the location to which he was transported until a law-enforcement officer responds to the report of an overdose at such location; and

3. Such person identifies himself to the law-enforcement officer who responds to the report of the overdose.

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \$149,967 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

HOUSE  
SUBSTITUTE

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