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HOUSE BILL NO. 36

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 9, 2024)

(Patron Prior to Substitute—Delegate Willett)

*A BILL to amend and reenact §§ 18.2-371.1 and 53.1-202.3 of the Code of Virginia, relating to abuse and neglect of children; causing or enabling child to gain possession of a firearm; penalty.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-371.1 and 53.1-202.3 of the Code of Virginia are amended and reenacted as follows:****§ 18.2-371.1. Abuse and neglect of children; penalties; 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 willful 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 is guilty of a Class 4 felony. For purposes of this subsection, "serious injury" includes but is not limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, (vi) forced ingestion of dangerous substances, and (vii) life-threatening internal injuries. For purposes of this subsection, "willful act or willful omission" includes operating or engaging in the conduct of a child welfare agency as defined in § 63.2-100 or a child day program or family day system as defined in § 22.1-289.02 without first obtaining a license such person knows is required by Subtitle IV (§ 63.2-1700 et seq.) of Title 63.2 or Article 3 (§ 22.1-289.010 et seq.) of Chapter 14.1 of Title 22.1 or after such license has been revoked or has expired and not been renewed.

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 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 emergency medical services agency, it shall be an affirmative defense to prosecution of a parent under this subsection that such parent safely delivered the child within the first 30 days of the child's life to (i) a hospital that provides 24-hour emergency services, (ii) an attended emergency medical services agency that employs emergency medical services personnel, or (iii) a newborn safety device located at and operated by such hospital or emergency medical services agency. 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. 1. Any parent, guardian, or other person who is 18 years of age or older and is responsible for the care of a child under the age of 18 whose willful act or omission causes or enables that child to gain possession of a firearm (i) after having received notice of a preliminary determination pursuant to § 22.1-79.4 that the child poses a threat of violence or physical harm to self or others or (ii) when such parent, guardian, or other person responsible for the care of the child knows or reasonably should know that such child has charges pending for or has been convicted or adjudicated delinquent of a violent juvenile felony as defined in § 16.1-228 is guilty of a Class 5 felony.

2. No person shall be subject to arrest or prosecution for a violation of this subsection (i) related to clause (i) of subdivision 1 after such person has received notice that the threat assessment team that made such preliminary determination has concluded that the child does not indicate a threat of violence or physical harm to self or others or that any case or review opened or conducted by that threat assessment team as a result of such preliminary determination has been closed or (ii) related to clause (ii) of subdivision 1 after such person has received notice that any pending charge for a violent juvenile felony has been dismissed or a nolle prosequi has been entered.

3. It is an affirmative defense to prosecution for a violation of this subsection if the parent, guardian, or other person responsible for the care of a child caused or enabled such child to gain possession of a firearm while in a dwelling because of a reasonable belief that he or such child was in imminent danger of bodily injury.

D. 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.

§ 53.1-202.3. Rate at which sentence credits may be earned; prerequisites.

A. A maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence for a conviction for any offense of:

1. A Class 1 felony;

- 60 2. Solicitation to commit murder under § 18.2-29 or any violation of § 18.2-32, 18.2-32.1, 18.2-32.2,
61 or 18.2-33;
- 62 3. Any violation of § 18.2-40 or 18.2-45;
- 63 4. Any violation of subsection A of § 18.2-46.5, of subsection D of § 18.2-46.5 if the death of any
64 person results from providing any material support, or of subsection A of § 18.2-46.6;
- 65 5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2;
- 66 6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.)
67 of Chapter 4 of Title 18.2, any violation of § 18.2-51.6 or 18.2-51.7, or any felony violation of
68 § 18.2-57.2;
- 69 7. Any felony violation of § 18.2-60.3;
- 70 8. Any felony violation of § 16.1-253.2 or 18.2-60.4;
- 71 9. Robbery under § 18.2-58 or carjacking under § 18.2-58.1;
- 72 10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of
73 Title 18.2;
- 74 11. Any violation of § 18.2-90;
- 75 12. Any violation of § 18.2-289 or subsection A of § 18.2-300;
- 76 13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2;
- 77 14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, except for a
78 violation of § 18.2-362 or subsection B or C of § 18.2-371.1;
- 79 15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a
80 violation of subsection A of § 18.2-374.1:1;
- 81 16. Any violation of subsection F of § 3.2-6570, any felony violation of § 18.2-128, or any violation
82 of § 18.2-481, 37.2-917, 37.2-918, 40.1-100.2, or 40.1-103; or
- 83 17. A second or subsequent violation of the following offenses, in any combination, when such
84 offenses were not part of a common act, transaction, or scheme and such person has been at liberty as
85 defined in § 53.1-151 between each conviction:
- 86 a. Any felony violation of § 3.2-6571;
- 87 b. Voluntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
- 88 c. Any violation of § 18.2-41 or felony violation of § 18.2-42.1;
- 89 d. Any violation of subsection B, C, or D of § 18.2-46.5 or § 18.2-46.7;
- 90 e. Any violation of § 18.2-51 when done unlawfully but not maliciously, § 18.2-51.1 when done
91 unlawfully but not maliciously, or § 18.2-54.1 or 18.2-54.2;
- 92 f. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony
93 violation of § 18.2-79;
- 94 g. Any violation of § 18.2-89 or 18.2-92;
- 95 h. Any violation of subsection A of § 18.2-374.1:1;
- 96 i. Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; or
- 97 j. Any violation of subdivision E 2 of § 40.1-29.
- 98 The earning of sentence credits shall be conditioned, in part, upon full participation in and
99 cooperation with programs to which a person is assigned pursuant to § 53.1-32.1.
- 100 B. For any offense other than those enumerated in subsection A for which sentence credits may be
101 earned, earned sentence credits shall be awarded and calculated using the following four-level
102 classification system:
- 103 1. Level I. For persons receiving Level I sentence credits, 15 days shall be deducted from the
104 person's sentence for every 30 days served. Level I sentence credits shall be awarded to persons who
105 participate in and cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1
106 and who have no more than one minor correctional infraction and no serious correctional infractions as
107 established by the Department's policies or procedures.
- 108 2. Level II. For persons receiving Level II sentence credits, 7.5 days shall be deducted from the
109 person's sentence for every 30 days served. Level II sentence credits shall be awarded to persons who
110 participate in and cooperate with all programs, job assignments, and educational curriculums to which
111 the person is assigned pursuant to § 53.1-32.1, but who require improvement in not more than one area
112 as established by the Department's policies or procedures.
- 113 3. Level III. For persons receiving Level III sentence credits, 3.5 days shall be deducted from the
114 person's sentence for every 30 days served. Level III sentence credits shall be awarded to persons who
115 participate in and cooperate with all programs, job assignments, and educational curriculums to which
116 the person is assigned pursuant to § 53.1-32.1, but who require significant improvement in two or more
117 areas as established by the Department's policies or procedures.
- 118 4. Level IV. No sentence credits shall be awarded to persons classified in Level IV. A person will be
119 classified in Level IV if that person willfully fails to participate in or cooperate with all programs, job
120 assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1 or that
121 person causes substantial security or operational problems at the correctional facility as established by

the Department's policies or procedures.

C. A person's classification level under subsection B shall be reviewed at least once annually, and the classification level may be adjusted based upon that person's participation in and cooperation with programs, job assignments, and educational curriculums assigned pursuant to § 53.1-32.1. A person's classification and calculation of earned sentence credits shall not be lowered or withheld due to a lack of programming, educational, or employment opportunities at the correctional facility at which the person is confined. Records from this review, including an explanation of the reasons why a person's classification level was or was not adjusted, shall be maintained in the person's correctional file.

D. A person's classification level under subsection B may be immediately reviewed and adjusted following removal from a program, job assignment, or educational curriculum that was assigned pursuant to § 53.1-32.1 for disciplinary or noncompliance reasons.

E. A person may appeal a reclassification determination under subsection C or D in the manner set forth in the grievance procedure established by the Director pursuant to his powers and duties as set forth in § 53.1-10.

F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full participation in and cooperation with programs afforded to the juvenile during that portion of the sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile offender under § 16.1-285.1.

G. Notwithstanding any other provision of law, no portion of any sentence credits earned shall be applied to reduce the period of time a person must serve before becoming eligible for parole upon any sentence.

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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.