

HOUSE BILL NO. 36

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Willett)

A BILL to amend and reenact § 18.2-371.1 of the Code of Virginia, relating to abuse and neglect of children; causing or enabling child to gain access or possess a firearm; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-371.1 of the Code of Virginia is 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 of Chapter 14.1 of Title 22.1 or after such license has been revoked or has expired and not been renewed.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

27 life to (i) a hospital that provides 24-hour emergency services, (ii) an attended emergency medical services
28 agency that employs emergency medical services personnel, or (iii) a newborn safety device located at
29 and operated by such hospital or emergency medical services agency. In order for the affirmative defense
30 to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

31 C. 1. Any parent, guardian, or other person responsible for the care of a child under the age of 18
32 whose willful act or omission causes or enables that child to gain access to or possession of a firearm (i)
33 after having received notice of a preliminary determination pursuant to § 22.1-79.4 that the child poses a
34 threat of violence or physical harm to self or others or (ii) when such parent, guardian, or other person
35 responsible for the care of the child knows or reasonably should know that such child has been charged
36 with, either by warrant or petition, convicted of, or adjudicated delinquent of a violent juvenile felony as
37 defined in § 16.1-228 is guilty of a Class 5 felony.

38 2. No person shall be subject to arrest or prosecution for a violation of this subsection related to
39 clause (i) after such person has received notice that the threat assessment team that made such preliminary
40 determination has concluded that the child does not indicate a threat of violence or physical harm to self
41 or others or that any case or review opened or conducted by that threat assessment team as a result of such
42 preliminary determination has been closed.

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

47 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
48 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
49 **appropriation is _____ for periods of imprisonment in state adult correctional facilities;**
50 **therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia**
51 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-**
52 **19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is _____ for**
53 **periods of commitment to the custody of the Department of Juvenile Justice.**

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