

SENATE BILL NO. 44

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on _____)

(Patrons Prior to Substitute--Senators VanValkenburg and Ebbin)

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 access or possess 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 of Chapter 14.1 of Title 22.1 or after such license has been revoked or has expired and not been renewed.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

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 charges pending
36 for or has been convicted or adjudicated delinquent of a violent juvenile felony as defined in § 16.1-228
37 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) of subdivision 1 after such person has received notice that the threat assessment team that made
40 such preliminary determination has concluded that the child does not indicate a threat of violence or
41 physical harm to self or others or that any case or review opened or conducted by that threat assessment
42 team as a result of such preliminary determination has been closed.

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

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

51 **§ 53.1-202.3. Rate at which sentence credits may be earned; prerequisites.**

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

- 54 1. A Class 1 felony;
- 55 2. Solicitation to commit murder under § 18.2-29 or any violation of § 18.2-32, 18.2-32.1, 18.2-
56 32.2, or 18.2-33;
- 57 3. Any violation of § 18.2-40 or 18.2-45;
- 58 4. Any violation of subsection A of § 18.2-46.5, of subsection D of § 18.2-46.5 if the death of any
59 person results from providing any material support, or of subsection A of § 18.2-46.6;
- 60 5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title
61 18.2;
- 62 6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et
63 seq.) of Chapter 4 of Title 18.2, any violation of § 18.2-51.6 or 18.2-51.7, or any felony violation of §
64 18.2-57.2;
- 65 7. Any felony violation of § 18.2-60.3;
- 66 8. Any felony violation of § 16.1-253.2 or 18.2-60.4;
- 67 9. Robbery under § 18.2-58 or carjacking under § 18.2-58.1;
- 68 10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4
69 of Title 18.2;
- 70 11. Any violation of § 18.2-90;
- 71 12. Any violation of § 18.2-289 or subsection A of § 18.2-300;
- 72 13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2;
- 73 14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, except for a
74 violation of § 18.2-362 or subsection B or C of § 18.2-371.1;
- 75 15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a
76 violation of subsection A of § 18.2-374.1:1;
- 77 16. Any violation of subsection F of § 3.2-6570, any felony violation of § 18.2-128, or any
78 violation of § 18.2-481, 37.2-917, 37.2-918, 40.1-100.2, or 40.1-103; or

79 17. A second or subsequent violation of the following offenses, in any combination, when such
80 offenses were not part of a common act, transaction, or scheme and such person has been at liberty as
81 defined in § 53.1-151 between each conviction:

- 82 a. Any felony violation of § 3.2-6571;
- 83 b. Voluntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
- 84 c. Any violation of § 18.2-41 or felony violation of § 18.2-42.1;
- 85 d. Any violation of subsection B, C, or D of § 18.2-46.5 or § 18.2-46.7;
- 86 e. Any violation of § 18.2-51 when done unlawfully but not maliciously, § 18.2-51.1 when done
87 unlawfully but not maliciously, or § 18.2-54.1 or 18.2-54.2;
- 88 f. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony
89 violation of § 18.2-79;
- 90 g. Any violation of § 18.2-89 or 18.2-92;
- 91 h. Any violation of subsection A of § 18.2-374.1:1;
- 92 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
- 93 j. Any violation of subdivision E 2 of § 40.1-29.

94 The earning of sentence credits shall be conditioned, in part, upon full participation in and
95 cooperation with programs to which a person is assigned pursuant to § 53.1-32.1.

96 B. For any offense other than those enumerated in subsection A for which sentence credits may be
97 earned, earned sentence credits shall be awarded and calculated using the following four-level
98 classification system:

99 1. Level I. For persons receiving Level I sentence credits, 15 days shall be deducted from the
100 person's sentence for every 30 days served. Level I sentence credits shall be awarded to persons who
101 participate in and cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1 and
102 who have no more than one minor correctional infraction and no serious correctional infractions as
103 established by the Department's policies or procedures.

104 2. Level II. For persons receiving Level II sentence credits, 7.5 days shall be deducted from the
105 person's sentence for every 30 days served. Level II sentence credits shall be awarded to persons who

106 participate in and cooperate with all programs, job assignments, and educational curriculums to which the
107 person is assigned pursuant to § 53.1-32.1, but who require improvement in not more than one area as
108 established by the Department's policies or procedures.

109 3. Level III. For persons receiving Level III sentence credits, 3.5 days shall be deducted from the
110 person's sentence for every 30 days served. Level III sentence credits shall be awarded to persons who
111 participate in and cooperate with all programs, job assignments, and educational curriculums to which the
112 person is assigned pursuant to § 53.1-32.1, but who require significant improvement in two or more areas
113 as established by the Department's policies or procedures.

114 4. Level IV. No sentence credits shall be awarded to persons classified in Level IV. A person will
115 be classified in Level IV if that person willfully fails to participate in or cooperate with all programs, job
116 assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1 or that
117 person causes substantial security or operational problems at the correctional facility as established by the
118 Department's policies or procedures.

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

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

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

132 F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under
133 § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full
134 participation in and cooperation with programs afforded to the juvenile during that portion of the sentence.
135 The Department of Juvenile Justice shall provide a report that describes the juvenile's adherence to the
136 facility's rules and the juvenile's progress toward treatment goals and objectives while sentenced as a
137 serious juvenile offender under § 16.1-285.1.

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

141 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
142 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
143 **appropriation is _____ for periods of imprisonment in state adult correctional facilities;**
144 **therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia**
145 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-**
146 **19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is _____ for**
147 **periods of commitment to the custody of the Department of Juvenile Justice.**

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