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SENATE BILL NO. 1151

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 22, 2003)

(Patron Prior to Substitute—Senator Stolle)

A BILL to amend and reenact §§ 18.2-371, 18.2-371.1, and 40.1-103 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 8.01-226.5:2 and 63.2-910.1, relating to protection of infants.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-371, 18.2-371.1, and 40.1-103 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 8.01-226.5:2 and 63.2-910.1 as follows:

§ 8.01-226.5:2. Immunity of hospital or rescue squad personnel for the acceptance of certain infants. Any personnel of a hospital or rescue squad receiving a child under the circumstances described in subsection B of § 18.2-371, subdivision B 2 of § 18.2-371.1 or subsection B of § 40.1-103 shall be immune from civil liability or criminal prosecution for injury or other damage to the child unless such injury or other damage is the result of gross negligence or willful misconduct by such personnel.

§ 18.2-371. Causing or encouraging acts rendering children delinquent, abused, etc.; penalty.

Any person ~~eighteen~~ 18 years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition which renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in § 16.1-228, or (ii) engages in consensual sexual intercourse with a child ~~fifteen~~ 15 or older not his spouse, child, or grandchild, shall be guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§ 18.2-18, 18.2-19, 18.2-61, 18.2-63, 18.2-66, and 18.2-347.

If the prosecution under this section is based solely on the accused parent having left the child at a hospital or rescue squad, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within the first 14 days of the child's life.

§ 18.2-371.1. Abuse and neglect of children; penalty.

A. Any parent, guardian, or other person responsible for the care of a child under the age of ~~eighteen~~ 18 who by willful act or 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 shall be guilty of a Class 4 felony. For purposes of this subsection, "serious injury" shall include but not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, (vi) forced ingestion of dangerous substances, or (vii) life-threatening internal injuries.

B. 1. Any parent, guardian, or other person responsible for the care of a child under the age of ~~eighteen~~ 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 shall be 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 rescue squad, it shall be an affirmative defense to prosecution of a parent under this subsection that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within the first 14 days of the child's life.

C. 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.

§ 40.1-103. Cruelty and injuries to children; penalty.

A. It shall be unlawful for any person employing or having the custody of any child willfully or negligently to cause or permit the life of such child to be endangered or the health of such child to be injured, or willfully or negligently to cause or permit such child to be placed in a situation that its life, health or morals may be endangered, or to cause or permit such child to be overworked, tortured, tormented, mutilated, beaten or cruelly treated. Any person violating this section shall be guilty of a Class 6 felony.

B. If a prosecution under this section is based solely on the accused parent having left the child at a hospital or rescue squad, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to

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60 *an attended rescue squad that employs emergency medical technicians, within the first 14 days of the*
61 *child's life.*
62 *§ 63.2-910.1. Acceptance of children by local departments of social services.*
63 *A local department of social services has the authority to take custody of abandoned children, to*
64 *arrange appropriate placements for abandoned children, including foster care, and to institute*
65 *proceedings for the termination of parental rights of abandoned children as provided in this title and*
66 *Title 16.1.*