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## SENATE BILL NO. 746

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on January 27, 2025)

(Patrons Prior to Substitute—Senators McDougle and DeSteph [SB 1235])

A *BILL to amend and reenact §§ 18.2-33 and 18.2-251.03 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 and 18.2-251.03 of the Code of Virginia are 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 a minor accidentally, contrary to the intention of the parties, involved the knowing and intentional manufacture, sale, gift, or distribution of fentanyl, including its derivatives, isomers, esters, ethers, salts, and salts of isomers, in Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) to another person who is a minor in violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 and (i) such minor's death results solely as a consequence of his use of such fentanyl and (ii) such fentanyl is the proximate cause of the death of such minor 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 fentanyl. Venue for a prosecution under this subsection shall lie in the locality where the felony violation of Article 1 of Chapter 7 occurred, where the use of fentanyl occurred, or where death occurred.

C. No person convicted pursuant to this section for conduct described in subsection B shall be subject to a prosecution for a violation of subsection D of § 18.2-46.6 or § 18.2-248, 18.2-248.01, 18.2-250, or 18.2-256 for the same transaction or occurrence.

D. However, if a person proves that he gave or distributed fentanyl classified in Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility, or state correctional facility as defined in § 53.1-1, or in the custody of an employee thereof, and not with intent to profit thereby from any consideration received or expected nor to induce the recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, he is guilty of a Class 5 felony.

**§ 18.2-251.03. Arrest and prosecution when experiencing or reporting overdoses.**

A. For purposes of this section, "overdose" means a life-threatening condition resulting from the consumption or use of a controlled substance, alcohol, or any combination of such substances.

B. No individual shall be subject to arrest or prosecution for the unlawful purchase, possession, or consumption of alcohol pursuant to § 4.1-305, unlawful purchase, possession, or consumption of marijuana pursuant to § 4.1-1105.1, possession of a controlled substance pursuant to § 18.2-250, intoxication in public pursuant to § 18.2-388, ~~or~~ possession of controlled paraphernalia pursuant to § 54.1-3466, or felony homicide pursuant to § 18.2-33 if:

1. Such individual (i) in good faith, seeks or obtains emergency medical attention (a) for himself, if he is experiencing an overdose, or (b) for another individual, if such other individual is experiencing an overdose; (ii) is experiencing an overdose and another individual, in good faith, seeks or obtains emergency medical attention for such individual, 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; or (iii) in good faith, renders emergency care or assistance, including cardiopulmonary resuscitation (CPR) or the administration of naloxone or other opioid antagonist for overdose reversal, to an individual experiencing an overdose while another individual seeks or obtains emergency medical attention in accordance with this subdivision;

2. Such individual remains at the scene of the overdose or at any alternative location to which he or the person requiring emergency medical attention has been transported until a law-enforcement officer responds to the report of an overdose. If no law-enforcement officer is present at the scene of the overdose or at the alternative location, then such individual shall cooperate with law enforcement as otherwise set forth herein;

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

4. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a result of the individual seeking or obtaining emergency medical attention or rendering emergency care or assistance.

60 C. The provisions of this section shall not apply to any person who seeks or obtains emergency medical  
61 attention for himself or another individual, to a person experiencing an overdose when another individual  
62 seeks or obtains emergency medical attention for him, or to a person who renders emergency care or  
63 assistance to an individual experiencing an overdose while another person seeks or obtains emergency  
64 medical attention during the execution of a search warrant or during the conduct of a lawful search or a  
65 lawful arrest.

66 D. This section does not establish protection from arrest or prosecution for any individual or offense other  
67 than those listed in subsection B.

68 E. No law-enforcement officer acting in good faith shall be found liable for false arrest if it is later  
69 determined that the person arrested was immune from prosecution under this section.

70 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
71 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**  
72 **appropriation cannot be determined for periods of imprisonment in state adult correctional facilities;**  
73 **therefore, Chapter 2 of the Acts of Assembly of 2024, Special Session I, requires the Virginia Criminal**  
74 **Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the**  
75 **Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for**  
76 **periods of commitment to the custody of the Department of Juvenile Justice.**