

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 16.1-272, 17.1-805, 18.2-67.3, 18.2-67.4, 18.2-67.5:1, 19.2-11.01, 19.2-298.1, 19.2-299, 46.2-323 and 63.1-198.3 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 18.2-67.5:4, and to repeal § 18.2-67.5 of the Code of Virginia, relating to certain attempted sexual offenses.

[H 1837]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-272, 17.1-805, 18.2-67.3, 18.2-67.4, 18.2-67.5:1, 19.2-11.01, 19.2-298.1, 19.2-299, 46.2-323 and 63.1-198.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-67.5:4 as follows:

§ 16.1-272. Power of circuit court over juvenile offender.

A. In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary charges shall be tried in the same manner as provided for in the trial of adults, except as otherwise provided with regard to sentencing. Upon a finding of guilty of any charge other than capital murder, the court shall fix the sentence without the intervention of a jury.

1. If a juvenile is convicted of a violent juvenile felony, the sentence for that offense and for all ancillary crimes shall be fixed by the court in the same manner as provided for adults, but the sentence may be suspended conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case including, but not limited to, commitment under subdivision 14 of § 16.1-278.8 or § 16.1-285.1.

2. If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this chapter for the hearing and disposition of cases in the juvenile court, including, but not limited to, commitment under § 16.1-285.1 or may in its discretion impose an adult sentence and suspend the sentence conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case.

3. If the juvenile is not convicted of a felony but is convicted of a misdemeanor, the court shall deal with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the juvenile court.

B. If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile court and places the juvenile on probation, the juvenile may be supervised by a juvenile probation officer.

C. Whether the court sentences and commits the juvenile as a juvenile under this chapter or under the criminal law, in cases where the juvenile is convicted of a felony in violation of §§ ~~18.2-61~~, 18.2-63, 18.2-64.1, ~~18.2-67.1~~, ~~18.2-67.2~~, ~~18.2-67.3~~, ~~18.2-67.5~~, 18.2-370 or § 18.2-370.1, *or a violation or attempted violation of §§ 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-67.3 or*, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by § 19.2-390 to the Sex Offender Registry established pursuant to § 19.2-390.1.

§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which shall become effective on January 1, 1995. The initial recommended sentencing range for each felony offense shall be determined first, by computing the actual time-served distribution for similarly situated offenders, in terms of their conviction offense and prior criminal history, released from incarceration during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended sentencing range shall be the median time served for the middle two quartiles and subject to the following additional enhancements:

1. The midpoint of the initial recommended sentencing range for first degree murder, second degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual battery, shall be further increased by (i) 125 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than forty years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of forty years or more, except that the

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recommended sentence for a defendant convicted of first degree murder who has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of forty years or more shall be imprisonment for life;

2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than forty years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of forty years or more;

3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving or distributing, or possessing with the intent to manufacture, sell, give or distribute a Schedule I or II controlled substance shall be increased by (i) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than forty years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of forty years or more; and

4. The midpoint of the initial recommended sentencing range for felony offenses not specified in subdivision 1, 2 or 3 shall be increased by 100 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than forty years, and by 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of forty years or more.

B. 1. For purposes of this chapter, previous convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories.

2. *For the purposes of establishing and updating discretionary sentencing guidelines pursuant to this section, a conviction for attempted sexual battery shall substitute for a conviction for a violation of subsection C of former § 18.2-67.*

C. For purposes of this chapter, violent felony offenses shall include any violation of §§ 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, or § 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40 or § 18.2-41; any Class 5 felony violation of § 18.2-47; any felony violation of §§ 18.2-48, 18.2-48.1 or § 18.2-49; any violation of §§ 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2 or § 18.2-55; any felony violation of § 18.2-57.2; any violation of § 18.2-58 or § 18.2-58.1; any felony violation of § 18.2-60.1 or § 18.2-60.3; any violation or attempted violation of §§ 18.2-61, ~~18.2-64.1~~, 18.2-67.1, 18.2-67.2, 18.2-67.3, or any violation of §§ 18.2-64.1, 18.2-67.2:1, ~~18.2-67.3~~, ~~18.2-67.5~~, or § 18.2-67.5:1 involving a third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in violation of ~~subsection C of § 18.2-67.5~~ § 18.2-67.4; any Class 4 felony violation of § 18.2-63; any violation of subsection A of § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of §§ 18.2-89, 18.2-90, 18.2-91, 18.2-92 or § 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any violation of subsection B of § 18.2-280; any violation of §§ 18.2-281, 18.2-286.1, 18.2-289 or § 18.2-290; any felony violation of subsection A of § 18.2-282; any violation of subsection A of § 18.2-300; any felony violation of §§ 18.2-308.1 and 18.2-308.2; any violation of § 18.2-308.2:1, or subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or § 18.2-312; any violation of subdivision (2) or (3) of § 18.2-355; any violation of § 18.2-358; any violation of subsection B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of §§ 18.2-368, 18.2-370 or § 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3; any second or subsequent offense under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or § 18.2-406; any violation of §§ 18.2-408, 18.2-413, 18.2-414 or § 18.2-433.2; any felony violation of §§ 18.2-460, 18.2-474.1 or § 18.2-477.1; any violation of §§ 18.2-477, 18.2-478, 18.2-480 or § 18.2-485; any violation of § 53.1-203; or any conspiracy or attempt to commit any offense specified in this subsection, and any substantially similar offense under the laws of any state, the District of Columbia, the United States or its territories.

§ 18.2-67.3. Aggravated sexual battery.

A. An accused shall be guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, and

1. The complaining witness is less than thirteen years of age, or
 2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation, or through the use of the complaining witness's mental incapacity or physical helplessness, and

a. The complaining witness is at least thirteen but less than fifteen years of age, or
 b. The accused causes serious bodily or mental injury to the complaining witness, or
 c. The accused uses or threatens to use a dangerous weapon.
 B. Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than twenty years and by a fine of not more than \$100,000.

C. Notwithstanding the provisions of § 18.2-26.2, any person convicted of an attempted violation of this section is guilty of a Class 6 felony.

§ 18.2-67.4. Sexual battery.

A. An accused shall be guilty of sexual battery if he or she sexually abuses, as defined in § 18.2-67.10, (i) the complaining witness against the will of the complaining witness, by force, threat, intimidation or ruse, or through the use of the complaining witness's mental incapacity or physical helplessness, or (ii) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail, and the accused is an employee or contractual employee of, or a volunteer with, the state or local correctional facility or regional jail; is in a position of authority over the inmate; and knows that the inmate is under the jurisdiction of the state or local correctional facility or regional jail, or (iii) a probationer, parolee, or a pretrial or posttrial offender under the jurisdiction of the Department of Corrections, a local community-based probation program, a pretrial services program, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services program and the accused is an employee or contractual employee of, or a volunteer with, the Department of Corrections, a local community-based probation program, a pretrial services program or a local or regional jail; is in a position of authority over an offender; and knows that the offender is under the jurisdiction of the Department of Corrections, a local community-based probation program, a pretrial services program or a local or regional jail.

B. Sexual battery or an attempt to commit sexual battery is a Class 1 misdemeanor.

§ 18.2-67.5:1. Punishment upon conviction of third misdemeanor offense.

When a person is convicted of sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of ~~subsection C of § 18.2-67.5~~ § 18.2-67.4, a violation of § 18.2-371 involving consensual intercourse with a child, or indecent exposure of himself or procuring another to expose himself in violation of § 18.2-387 and it is alleged in the warrant, information or indictment on which the person is convicted and found by the court or jury trying the case, that the person has previously been convicted within the ten-year period immediately preceding the offense charged of two or more of the offenses specified in this section, each such offense occurring on a different date, he shall be guilty of a Class 6 felony.

§ 18.2-67.5:4. Criminal acts represented by repealed § 18.2-67.5.

For the determination of punishment for multiple criminal offenses where former § 18.2-67.5 was a predicate offense, (i) an attempt to commit rape, forcible sodomy, or object sexual penetration shall substitute for any former references to subsection A of § 18.2-67.5, (ii) an attempt to commit aggravated sexual battery in violation of § 18.2-67.3 shall substitute for any former references to subsection B of § 18.2-67.5, and (iii) an attempt to commit sexual battery shall substitute for any former references to subsection C of § 18.2-67.5.

§ 19.2-11.01. Crime victim and witness rights.

A. In recognition of the Commonwealth's concern for the victims and witnesses of crime, it is the purpose of this chapter to ensure that the full impact of crime is brought to the attention of the courts of the Commonwealth; that crime victims and witnesses are treated with dignity, respect and sensitivity; and that their privacy is protected to the extent permissible under law. It is the further purpose of this chapter to ensure that victims and witnesses are informed of the rights provided to them under the laws of the Commonwealth; that they receive authorized services as appropriate; and that they have the opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections agencies and the judiciary at all critical stages of the criminal justice process to the extent permissible under law. Unless otherwise stated and subject to the provisions of § 19.2-11.1, it shall be the responsibility of a locality's crime victim and witness assistance program to provide the information and assistance required by this chapter.

Following a crime, law-enforcement personnel shall provide the victim with a standardized form listing the specific rights afforded to crime victims. The form shall include a telephone number by which the victim can receive further information and assistance in securing the rights afforded crime victims.

1. Victim and witness protection.

a. In order that victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, or prosecution efforts, they shall be provided with information as to the level of protection which may be available pursuant to § 52-35 or to any other federal, state or local program providing protection, and shall be assisted in obtaining this protection from the appropriate authorities.

b. Victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation.

2. Financial assistance.

a. Victims shall be informed of financial assistance and social services available to them as victims of a crime, including information on their possible right to file a claim for compensation from the Crime Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of this title and on other available assistance and services.

b. Victims shall be assisted in having any property held by law-enforcement agencies for evidentiary purposes returned promptly in accordance with §§ 19.2-270.1 and 19.2-270.2.

c. Victims shall be advised that restitution is available for damages or loss resulting from an offense and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, Chapter 21.1 (§ 19.2-368.1 et seq.) of this title, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other applicable laws of the Commonwealth.

3. Notices.

a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii) advised that pursuant to § 18.2-465.1 it is unlawful for an employer to penalize an employee for appearing in court pursuant to a summons or subpoena.

b. Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current addresses and telephone numbers.

c. Victims shall receive notification, if requested, subject to such reasonable procedures as the Attorney General may require pursuant to § 2.1-124, from the Attorney General of the filing and disposition of any appeal or habeas corpus proceeding involving their case.

d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent in whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to the provisions of §§ 53.1-133.02 and 53.1-160 if they have provided their names, current addresses and telephone numbers in writing.

e. Victims shall be advised that, in order to protect their right to receive notices and offer input, all agencies and persons having such duties must have current victim addresses and telephone numbers given by the victims.

4. Victim input.

a. Victims shall be given the opportunity, pursuant to § 19.2-299.1, to prepare a written victim impact statement prior to sentencing of a defendant and may provide information to any individual or agency charged with investigating the social history of a person or preparing a victim impact statement under the provisions of §§ 16.1-273 and 53.1-155 or any other applicable law.

b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding pursuant to the provisions of § 19.2-265.01.

c. On motion of the attorney for the Commonwealth, victims shall be given the opportunity, pursuant to §§ 19.2-264.4 and 19.2-295.3, to testify prior to sentencing of a defendant regarding the impact of the offense.

5. Courtroom assistance.

a. Victims and witnesses shall be informed that their addresses and telephone numbers may not be disclosed, pursuant to the provisions of §§ 19.2-11.2 and 19.2-269.2, except when necessary for the conduct of the criminal proceeding.

b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in accordance with §§ 19.2-164 and 19.2-164.1.

c. Victims of certain sexual offenses shall be advised that there may be a closed preliminary hearing in accordance with § 18.2-67.8 and, if a victim was fourteen years of age or younger on the date of the offense and is sixteen or under at the time of the trial, two-way closed-circuit television may be used in the taking of testimony in accordance with § 18.2-67.9.

B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological or economic harm as a direct result of the commission of a felony or of assault and battery in violation of §§ 18.2-57, 18.2-57.1 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation

of § 18.2-67.4, attempted sexual battery in violation of ~~§ 18.2-67.5~~ § 18.2-67.4, maiming or driving while intoxicated in violation of § 18.2-51.4 or § 18.2-266, (ii) a spouse or child of such a person, (iii) a parent or legal guardian of such a person who is a minor, or (iv) a spouse, parent, sibling or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent, child, spouse, sibling or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in clause (i) of this subsection.

C. Officials and employees of the judiciary, including court services units, law-enforcement agencies, the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided with copies of this chapter by the Department of Criminal Justice Services or a crime victim and witness assistance program. Each agency, officer or employee who has a responsibility or responsibilities to victims under this chapter or other applicable law shall make reasonable efforts to become informed about these responsibilities and to ensure that victims and witnesses receive such information and services to which they may be entitled under applicable law, provided that no liability or cause of action shall arise from the failure to make such efforts or from the failure of such victims or witnesses to receive any such information or services.

§ 19.2-298.1. Registration required of persons convicted of certain offenses.

A. For purposes of this section:

"Offense for which registration is required" means a violation or attempted violation of:

1. §§ 18.2-63, 18.2-64.1, 18.2-67.2:1, ~~subsection B of § 18.2-67.5~~, an attempted violation of § 18.2-67.3, § 18.2-90 with the intent to commit rape, §§ 18.2-370, 18.2-370.1, 18.2-374.1 or subsection D of § 18.2-374.1:1 or a third or subsequent conviction ~~for a violation or attempted violation of § 18.2-67.4 or of subsection C of § 18.2-67.5~~;

2. A "sexually violent offense"; or

3. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, clause (iii) of § 18.2-48, subsection B of § 18.2-361 or subsection B of § 18.2-366, or subdivision B 1 of § 18.2-374.1.

"Sexually violent offense" means a violation or attempted violation of:

1. Clause (ii) of § 18.2-48, §§ 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-67.3 ~~or subsection A of § 18.2-67.5~~; or

2. §§ 18.2-63, 18.2-64.1, 18.2-67.2:1, ~~subsection B of § 18.2-67.5~~, § 18.2-90 with the intent to commit rape, §§ 18.2-370, 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, clause (iii) of § 18.2-48, subsection B of § 18.2-361, subsection B of § 18.2-366, or subdivision B 1 of § 18.2-374.1. Conviction of an offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted of any two or more such offenses occurring within a ten-year period, provided that person had been at liberty between such convictions.

A1. For purposes of registration of violent sexual offenders pursuant to this section, (i) an attempt to commit rape, forcible sodomy, or object sexual penetration shall substitute for any former references to subsection A of § 18.2-67.5, (ii) an attempt to commit aggravated sexual battery in violation of § 18.2-67.3 shall substitute for any former references to subsection B of § 18.2-67.5 and (iii) an attempt to commit sexual battery shall substitute for any former references to subsection C of § 18.2-67.5.

B. Every person convicted on or after July 1, 1997, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, of an offense for which registration is required shall be required as a part of the sentence imposed upon conviction to register and reregister with the Department of State Police as provided in this section. The court shall remand the person to the custody of the local law-enforcement agency of the county or city for the purpose of obtaining the person's fingerprints and photographs of a type and kind specified by the Department of State Police for inclusion in the Sex Offender and Crimes Against Minors Registry established pursuant to § 19.2-390.1. The court shall order the person to provide to the local law-enforcement agency all information required by the State Police for inclusion in the Registry.

It shall be the duty of the local law-enforcement agency to forward to the State Police all the necessary registration information within seven days of the date of sentencing and to promptly provide to the State Police such information as is necessary for any reregistration.

C. Every person serving a sentence of confinement or under community supervision as defined in § 53.1-1 on July 1, 1997, for an offense for which registration is required shall be required to register with the Department of State Police and shall be given notice of the duty to register pursuant to § 53.1-116.1 or § 53.1-160.1 as appropriate. In addition, any person who was convicted under Chapter 17 (18 U.S.C. 2421 et seq.) of Title 18 of the United States Code and who resides in or was convicted in Virginia, shall be required to register with the Department of State Police.

D. Every person required to register shall register within ten days of his release from confinement in a state, local or juvenile correctional facility or, if a sentence of confinement is not imposed, within ten

days of suspension of the sentence or in the case of a juvenile, of disposition. In addition, all persons convicted of violations under the laws of the United States or any other state substantially similar to an offense for which registration is required shall provide to the local agency all necessary information for inclusion in the Registry within ten days of establishing a residence within the Commonwealth. The local law-enforcement agency shall obtain from the person who presents himself for registration or reregistration, two sets of fingerprints and two photographs of a type and kind specified by the State Police for inclusion in the Registry and advise the person of his duties regarding reregistration. Any person required to register shall also be required to reregister within ten days following any change of residence, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of residence for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police within ten days. Whenever a person subject to registration changes residence to another state, the State Police shall notify the designated law-enforcement agency of that state.

The local law-enforcement agency shall promptly submit to the State Police all necessary information for registrations and reregistrations pursuant to this subsection.

E. The registration shall be maintained in the Registry established pursuant to § 19.2-390.1 and shall include the person's name, all aliases which he has used or under which he may have been known, the date and locality of the conviction for which registration is required, his fingerprints and a photograph of a type and kind specified by the State Police, his date of birth, social security number, current address and a description of the offense or offenses for which he was convicted and shall, if applicable, provide the same information on convictions prior to July 1, 1997, for any of the specified offenses or under a substantially similar law of the United States or any other state.

F. Every person required to register under this section, other than a person convicted of a sexually violent offense but including persons required to register between July 1, 1994, and July 1, 1997, shall reregister with the State Police on an annual basis from the date of the initial registration. Every person convicted of a sexually violent offense, including persons convicted of a sexually violent offense who were required to register between July 1, 1994, and July 1, 1997, shall reregister with the State Police every ninety days from the date of initial registration. For purposes of this section, reregistration means that the person has notified the State Police, confirmed his then current address and provided such other information, including identifying information, which the State Police may, pursuant to this section and by regulation, require. Upon registration and as may be necessary thereafter, the State Police shall provide the person with an address verification form to be used for reregistration. The form shall contain in bold print a statement indicating that failure to comply with the registration required is punishable as a Class 1 misdemeanor or a Class 6 felony as provided in § 18.2-472.1.

G. Nonresident offenders entering the Commonwealth for employment, to carry on a vocation, or as a student attending school who are required to register in their state of residence or who would be required to register under this section if a resident of the Commonwealth shall, within ten days of accepting employment or enrolling in school in the Commonwealth, be required to register and reregister pursuant to this section. For purposes of this section, "employment" and "carry on a vocation" include employment that is full-time or part-time for a period of time exceeding fourteen days or for an aggregate period of time exceeding thirty days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. For purposes of this section "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.

H. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister, the State Police shall promptly cause a warrant for the arrest of the person to be issued charging a violation of § 18.2-472.1 by the jurisdiction in which the offender last registered or reregistered or, if the offender failed to comply with the duty to register, in the jurisdiction in which the offender was last convicted of an offense for which registration or reregistration is required. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the offender's last known residence as shown in the records of the State Police.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of §§ 18.2-57, 18.2-57.1 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of ~~§ 18.2-67.5~~ § 18.2-67.4, or maiming or driving while intoxicated in violation of § 18.2-51.4 or § 18.2-266, and is adjudged guilty of such charge, the court may, or on motion of the defendant shall, or (ii) upon a felony charge, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused,

including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be sealed upon the entry of the sentencing order by the court and made available only by court order, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9-169, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense for which the defendant was convicted was a felony, not a capital offense, committed on or after January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

§ 46.2-323. Application for driver's license; proof of completion of driver education program; penalty. A. Every application for a driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit shall be made on a form prescribed by the Department and the applicant shall write his usual signature in ink in the space provided on the form. The form shall include notice to the applicant of the duty to register with the Department of State Police as provided in § 19.2-298.1, if the applicant has been convicted of a felony in violation of §§ ~~18.2-61~~, 18.2-63, or § 18.2-64.1, or a violation or attempted violation of §§ 18.2-61, 18.2-67.1, 18.2-67.2, or § 18.2-67.3, ~~18.2-67.5~~, or a felony in violation of § 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1 whether sentenced as adults or juveniles, or a felony under a substantially similar law of the United States or any other state.

B. Every application shall state the name, year, month and date of birth, social security number, sex, and residence address of the applicant; whether or not the applicant has previously been licensed as a driver and, if so, when and by what state, and whether or not his license has ever been suspended or revoked and, if so, the date of and reason for such suspension or revocation. The Department, as a condition for the issuance of any driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit may require the surrender of any driver's license or, in the case of a motorcycle learner's permit, a motorcycle license issued by another state and held by the applicant. The applicant shall also answer any questions on the application form or otherwise propounded by the Department incidental to the examination. The applicant may also be required to present to the person conducting the examination a birth certificate or other evidence, reasonably acceptable to the Department, of his name and date of birth.

The applicant shall also certify that he is a resident of the Commonwealth by signing a certification statement, on a form prescribed by the Commissioner, and by providing satisfactory proof that he is a resident of the Commonwealth. The Commissioner may adopt regulations to determine the process by

423 which applicants prove that they are residents of the Commonwealth.

424 If the applicant either (i) fails or refuses to sign the certification statement or (ii) fails to follow the
425 process determined by the Commissioner for proving residency, the Department shall not issue the
426 applicant a driver's license, temporary driver's permit, learner's permit or motorcycle learner's permit.

427 Any applicant who knowingly makes a false certification of Virginia residency or supplies false or
428 fictitious evidence of Virginia residency shall be punished as provided in § 46.2-348.

429 The Commissioner may, on a case-by-case basis, waive any provision of such regulations for good
430 cause shown.

431 C. Every application for a driver's license shall include a color photograph of the applicant supplied
432 under arrangements made by the Department. The photograph shall be processed by the Department so
433 that the photograph can be made part of the issued license.

434 D. Notwithstanding the provisions of § 46.2-334, every unlicensed applicant for a driver's license
435 who is under nineteen years of age shall furnish the Department with satisfactory proof of his successful
436 completion of a driver education program approved by the State Department of Education.

437 § 63.1-198.3. Allowing sex offender or child abuser to operate or reside in family day home.

438 A. It shall be unlawful for any person to operate a family day home if he, or if he knows that any
439 other person who resides in the home, has been convicted of a felony in violation of §§ 18.2-48,
440 ~~18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-355, 18.2-361, 18.2-366,~~
441 ~~18.2-369, 18.2-370, 18.2-370.1, 18.2-371.1, or § 18.2-374.1, or of a violation or attempted violation of~~
442 ~~§§ 18.2-61, 18.2-67.1, 18.2-67.2 or § 18.2-67.3,~~ or is the subject of a founded complaint of child abuse
443 or neglect within or outside the Commonwealth. A violation of this section shall be punishable as a
444 Class 1 misdemeanor.

445 B. *For the purposes of determination of eligibility to operate a family day home pursuant to this*
446 *section, a felony conviction under former § 18.2-67.5 shall be treated as an attempted violation of*
447 *§§ 18.2-61, 18.2-67.1, 18.2-67.2 or § 18.2-67.3.*

448 **2. That § 18.2-67.5 of the Code of Virginia is repealed.**

449 **3. That the provisions of this act shall not become effective unless reenacted by the 2002 Session of**
450 **the General Assembly.**