

VIRGINIA ACTS OF ASSEMBLY -- 2002 RECONVENED SESSION

CHAPTER 867

An Act to amend and reenact §§ 19.2-298.1, 19.2-298.2, 19.2-298.3 and 46.2-323 of the Code of Virginia, relating to registration under the Sex Offender and Crimes Against Minors Registry; penalties.

[H 452]

Approved April 17, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-298.1, 19.2-298.2, 19.2-298.3 and 46.2-323 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-298.1. Registration required of persons convicted of certain offenses; prima facie evidence.

A. ~~For purposes of this section:~~

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

1. ~~A violation or attempted violation of §§ 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, § 18.2-374.1 or subsection D of § 18.2-374.1:1 or a third or subsequent conviction of § 18.2-67.4 or a third or subsequent conviction 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 (i) or (iii) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, subsection B of § 18.2-361 or subsection B of § 18.2-366; or subdivision B 4 of § 18.2-374.1; or~~

3. A "sexually violent offense".

"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, subsection subsections A and B of §§ 18.2-67.5, § 18.2-370 or § 18.2-370.1; 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 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, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) or (iii) of § 18.2-48, subsection B of § 18.2-361, subsection B of § 18.2-366, or subdivision B 4 of § 18.2-374.1. Conviction of an offense listed under this subdivision 2 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.~~

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 47 117 (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. The State Police shall forthwith post offender information on the Internet in accordance with § 19.2-390.1. 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 forward to the jurisdiction, together with the warrant, an affidavit signed by the custodian of the records that such person failed to comply with the duty to register or reregister. Such affidavit shall be admitted into evidence as prima facie evidence of the failure to comply with the duty to register or reregister in any trial for the violation of § 18.2-472.1. 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.

§ 19.2-298.2. Duration of registration requirement.

Any person required by § 19.2-298.1 to register or reregister shall be required to register for a period of ten years from the date of initial registration. However, any person who has been convicted of (i) any sexually violent offense, or (ii) § 18.2-67.2:1 shall have a continuing duty to reregister, for life.

Any period of confinement in a state or local correctional facility, hospital or any other institution or facility during the otherwise applicable ten-year period shall toll the registration period and the duty to reregister shall be extended.

§ 19.2-298.3. Expungement from Registry.

A. Any person required by § 19.2-298.1 to register, other than a person who has been convicted of (i) any sexually violent offense as defined in § 19.2-298.1, or (ii) any violation of § 18.2-67.2:1 may petition the circuit court in which he was convicted or the circuit court in the jurisdiction where he then resides for removal of his name and all identifying information from the Registry. A petition may not be

filed earlier than ten years after the date of the initial registration pursuant to subsection D of § 19.2-298.1. The court shall hold a hearing on the petition at which the applicant and any interested persons may present witnesses and other evidence. If, after such hearing, the court is satisfied that such person no longer poses a risk to public safety, the court shall grant the petition. In the event the petition is not granted, the person shall wait at least twenty-four months from the date of the denial to file a new petition for removal from the Registry. A petition for expungement shall not be granted to any person convicted of two or more offenses for which registration is required or convicted of any sexually violent offense.

B. The name of any person required to register under § 19.2-298.1 and all identifying information shall be removed from the Registry by the Department of State Police upon receipt of an order granting a petition pursuant to subsection A or at the end of the period for which the person is required to register under § 19.2-298.2.

§ 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, 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, 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 an offense for which registration with the Sex Offender and Crimes Against Minors Registry is required.

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 which applicants prove that they are residents of the Commonwealth.

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

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

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

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

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

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$ 0 for periods of commitment to the custody of the Department of Juvenile Justice.