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## SENATE BILL NO. 1332

Senate Amendments in [ ] — February 3, 2003

A BILL to amend and reenact §§ 16.1-272, 18.2-472.1, 19.2-390, 19.2-390.1, 46.2-323, 53.1-116.1 and 53.1-160.1 of the Code of Virginia, to amend the Code of Virginia by adding in Title 9.1 a chapter numbered 9, consisting of sections numbered 9.1-900 through 9.1-918, and to repeal §§ 19.2-298.1 through 19.2-298.4 and 19.2-390.2 of the Code of Virginia, relating to the Sex Offender and Crimes Against Minors Registry; penalties.

Patron Prior to Engrossment—Senator Houck

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 16.1-272, 18.2-472.1, 19.2-390, 19.2-390.1, 46.2-323, 53.1-116.1 and 53.1-160.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 9.1 a chapter numbered 9, consisting of sections numbered 9.1-900 through 9.1-918, as follows:

## CHAPTER 9.

## SEX OFFENDER AND CRIMES AGAINST MINORS REGISTRY ACT.

§ 9.1-900. Purpose of the Sex Offender and Crimes Against Minors Registry.

The purpose of the Sex Offender and Crimes Against Minors Registry ("Registry") shall be to assist the efforts of law-enforcement agencies and others to protect their communities and families from repeat sex offenders and to protect children from becoming victims of criminal offenders by helping to prevent such individuals from being allowed to work directly with children.

§ 9.1—901. Persons for whom registration is required.

Every person convicted on or after July 1, 1994, of an offense set forth in § 9.1-902 shall register and reregister as required by this chapter. Every person serving a sentence of confinement on or after July 1, 1994, for a conviction of an offense set forth in § 9.1-902 shall register and reregister as required [ by ] this chapter. Every person under community supervision as defined by § 53.1-1 or any similar form of supervision under the laws of the United States or any political subdivision thereof, on or after July 1, 1994, resulting from a conviction of an offense set forth in § 9.1-902 shall register and reregister as required by this chapter.

§ 9.1-902. Offenses requiring registration.

A. For purposes of this chapter:

"Offense for which registration is required" means:

1. A violation or attempted violation of §§ 18.2-63, 18.2-64.1, 18.2-67.2:1, 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. 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, § 18.2-361 or § 18.2-366; or

3. A violation of Chapter 117 (18 U.S.C. 2421 et seq.) of Title 18 of the United States Code; or

4. 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, 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, § 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, §§ 18.2-361, 18.2-366, or § 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 2 or more such offenses, provided that person had been at liberty between such convictions.

B. "Offense for which registration is required" and "sexually violent offense" shall also include any similar offense under the laws of the United States or any political subdivision thereof.

§ 9.1-903. Registration procedures.

A. Every person convicted, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as an adult or juvenile, of an offense for which registration is required shall be required upon conviction to register and reregister with the Department of State Police. The court shall order the person to provide to the local law-enforcement agency of the county or city all

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59 information required by the State Police for inclusion in the Registry. The court shall remand the person  
60 to the custody of the local law-enforcement agency for the purpose of obtaining the person's fingerprints  
61 and photographs of a type and kind specified by the State Police for inclusion in the Registry. The local  
62 law-enforcement agency shall forward to the State Police all the necessary registration information  
63 within 7 days of the date of sentencing.

64 B. Every person required to register shall register in person within 10 days of his release from  
65 confinement in a state, local or juvenile correctional facility or, if a sentence of confinement is not  
66 imposed, within 10 days of suspension of the sentence or in the case of a juvenile of disposition. The  
67 local law-enforcement agency shall obtain from the person who presents himself for registration or  
68 reregistration 2 sets of fingerprints, proof of residency and 2 photographs of a type and kind specified  
69 by the State Police for inclusion in the Registry and advise the person of his duties regarding  
70 reregistration. The local law-enforcement agency shall promptly forward to the State Police all  
71 necessary registration information .

72 C. To establish proof of residence in Virginia, a person shall present one photo-identification form  
73 issued by a governmental agency of the Commonwealth which contains the person's complete name,  
74 gender, date of birth and complete address.

75 D. Any person required to register shall also reregister in person within 10 days [ with the local  
76 law-enforcement agency ] following any change of residence, whether within or without the  
77 Commonwealth. If a probation or parole officer becomes aware of a change of residence for any of his  
78 probationers or parolees required to register, the probation or parole officer shall notify the State  
79 Police within 10 days of learning of the change of residence. Whenever a person subject to registration  
80 changes residence to another state, the State Police shall notify the designated law-enforcement agency  
81 of that state.

82 E. The registration shall be maintained in the Registry and shall include the person's name, all  
83 aliases that he has used or under which he may have been known, the date and locality of the  
84 conviction for which registration is required, his fingerprints and a photograph of a type and kind  
85 specified by the State Police, his date of birth, social security number, current physical and mailing  
86 address and a description of the offense or offenses for which he was convicted. The registration shall  
87 also include the locality of the conviction and a description of the offense or offenses for previous  
88 convictions for the offenses set forth in § 9.1- 902.

89 F. The local law-enforcement agency shall promptly forward to the State Police all necessary  
90 registration or reregistration information received by it. Upon receipt of registration or reregistration  
91 information the State Police shall forthwith notify the chief law-enforcement officer of the locality listed  
92 as the person's address on the registration and reregistration.

93 § 9.1-904. Reregistration.

94 Every person required to register, other than a person convicted of a sexually violent offense, shall  
95 reregister with the State Police on an annual basis from the date of the initial registration. Every person  
96 convicted of a sexually violent offense shall reregister with the State Police every 90 days from the date  
97 of initial registration. Reregistration means that the person has notified the State Police, confirmed his  
98 current physical and mailing address and provided such other information, including identifying  
99 information, which the State Police may require. Upon registration and as may be necessary thereafter,  
100 the State Police shall provide the person with an address verification form to be used for reregistration.  
101 The form shall contain in bold print a statement indicating that failure to comply with the registration  
102 required is punishable as a Class 1 misdemeanor or a Class 6 felony as provided in § 18.2-472.1.

103 § 9.1-905. New residents and nonresident offenders; registration required.

104 A. All persons required to register shall register within 10 days of establishing a residence in the  
105 Commonwealth.

106 B. Nonresident offenders entering the Commonwealth for employment, to carry on a vocation, or as  
107 a student attending school who are required to register in their state of residence or who would be  
108 required to register if a resident of the Commonwealth shall, within 10 days of accepting employment or  
109 enrolling in school in the Commonwealth, be required to register and reregister in person [ with the  
110 local law-enforcement agency ] .

111 C. To document employment or school attendance in Virginia a person shall present proof of  
112 enrollment as a student or suitable proof of temporary employment in the Commonwealth and one  
113 photo-identification form issued by a governmental agency of the person's state of residence which  
114 contains the person's complete name, gender, date of birth and complete address.

115 [ € D ] . For purposes of this section:

116 "Employment" and "carry on a vocation" include employment that is full-time or part-time for a  
117 period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any  
118 calendar year, whether financially compensated, volunteered, or for the purpose of government or  
119 educational benefit.

120 "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.

§ 9.1-906. Enrollment or employment at institution of higher learning; information required.

A. Persons required to register or reregister who are enrolled in or employed at institutions of higher learning shall, in addition to other registration requirements, indicate on their registration and reregistration form the name and location of the institution attended by or employing the registrant whether such institution is within or without the Commonwealth. In addition, persons required to register or reregister shall notify the [ ~~Registry~~ local law-enforcement agency ] in person within 10 days of any change in their enrollment or employment status with an institution of higher learning. [ The local law-enforcement agency shall promptly forward to the State Police all necessary registration or reregistration information received by it. ]

B. Upon receipt of a registration or reregistration indicating enrollment or employment with an institute of higher learning or notification of a change in status, the State Police shall notify the chief law-enforcement officer of the institution's law-enforcement agency or, if there is no institutional law-enforcement agency, the local law-enforcement agency serving that institution, of the registration, reregistration, or change in status. The law-enforcement agency receiving notification under this section [ ~~may make such information available as it deems necessary to ensure the safety of the student population and public.~~ shall make such information available upon request. ]

C. For purposes of this section:

"Employment" includes full- or part-time, temporary or permanent or contractual employment at an institution of higher learning either with or without compensation.

"Enrollment" includes both full- and part-time.

"Institution of higher learning" means any post-secondary school, trade or professional institution, or institution of higher education.

§ 9.1-907. Procedures upon a failure to register or reregister.

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 investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered or, if the person failed to comply with the duty to register, in the jurisdiction in which the person 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 person's last known residence as shown in the records of the State Police.

§ 9.1-908. Duration of registration requirement.

Any person required to register or reregister shall be required to register for a period of 10 years from the date of initial registration, except that 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 federal, state or local correctional facility, hospital or any other institution or facility during the otherwise applicable 10-year period shall toll the registration period and the duty to reregister shall be extended. Persons confined in a federal, state, or local correctional facility shall not be required to reregister until released from custody.

§ 9.1-909. Relief from registration or reregistration.

A. Upon expiration of 3 years from the date upon which the duty to register as a sexually violent offender is imposed, the person required to register may petition the court in which he was convicted for relief from the requirement to reregister every 90 days. The court shall hold a hearing on the petition, on notice to the attorney for the Commonwealth, to determine whether the person suffers from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or significantly impairs his ability to control his sexual behavior. Prior to the hearing the court shall order a comprehensive assessment of the applicant by a panel of 3 certified sex offender treatment providers as defined in § 54.1-3600. A report of the assessment shall be filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of the proceeding.

If, after consideration of the report and such other evidence as may be presented at the hearing, the court finds by clear and convincing evidence that the person does not suffer from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or significantly impairs his ability to control his sexual behavior, the petition shall be granted and the duty to reregister every 90 days shall be terminated. The court shall promptly notify the State Police upon entry of an order granting the petition and the State Police shall remove Registry information on the offender from the Internet system. The person shall, however, be under a continuing duty to register

182 annually for life. If the petition is denied, the duty to reregister every 90 days shall continue. An appeal  
183 from the denial of a petition shall lie to the Supreme Court.

184 A petition for relief pursuant to this subsection may not be filed within 3 years from the date on  
185 which any previous petition for such relief was denied.

186 B. The duly appointed guardian of a person convicted of an offense requiring registration or  
187 reregistration as either a sex offender or sexually violent offender, who due to a physical condition is  
188 incapable of (i) reoffending and (ii) reregistering, may petition the court in which the person was  
189 convicted for relief from the requirement to reregister. The court shall hold a hearing on the petition, on  
190 notice to the attorney for the Commonwealth, to determine whether the person suffers from a physical  
191 condition that makes the person (i) no longer a menace to the health and safety of others and (ii)  
192 incapable of reregistering. Prior to the hearing the court shall order a comprehensive assessment of the  
193 applicant by at least 2 licensed physicians other than the person's primary care physician. A report of  
194 the assessment shall be filed with the court prior to the hearing. The costs of the assessment shall be  
195 taxed as costs of the proceeding.

196 If, after consideration of the report and such other evidence as may be presented at the hearing, the  
197 court finds by clear and convincing evidence that due to his physical condition the person (i) no longer  
198 poses a menace to the health and safety of others and (ii) is incapable of reregistering, the petition  
199 shall be granted and the duty to reregister shall be terminated. However, for a person whose duty to  
200 reregister was terminated under this subsection, the Department of State Police shall, annually for sex  
201 offenders and quarterly for sexually violent offenders, verify and report to the attorney for the  
202 Commonwealth in the jurisdiction in which the person resides that the person continues to suffer from  
203 the physical condition that resulted in such termination.

204 The court shall promptly notify the State Police upon entry of an order granting the petition to  
205 terminate the duty to reregister and the State Police shall remove any Registry information on the  
206 offender from the Internet system.

207 If the petition is denied, the duty to reregister shall continue. An appeal from the denial of a petition  
208 shall be to the Virginia Supreme Court.

209 A petition for relief pursuant to this subsection may not be filed within 3 years from the date on  
210 which any previous petition for such relief was denied.

211 If, at any time, the person's physical condition changes so that he is capable of reoffending or  
212 reregistering, the attorney for the Commonwealth shall file a petition with the circuit court in the  
213 jurisdiction where the person resides and the court shall hold a hearing on the petition, with notice to  
214 the person and his guardian, to determine whether the person still suffers from a physical condition that  
215 makes the person (i) no longer a menace to the health and safety of others and (ii) incapable of  
216 reregistering. If the petition is granted, the duty to reregister shall commence from the date of the  
217 court's order. An appeal from the denial or granting of a petition shall be to the Virginia Supreme  
218 Court. Prior to the hearing the court shall order a comprehensive assessment of the applicant by at  
219 least 2 licensed physicians other than the person's primary care physician. A report of the assessment  
220 shall be filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of  
221 the proceeding.

222 § 9.1-910. Removal of name and information from Registry.

223 A. Any person required to register, other than a person who has been convicted of any (i) sexually  
224 violent offense, (ii) 2 or more offenses for which registration is required or (iii) a violation of  
225 § 18.2-67.2:1, may petition the circuit court in which he was convicted or the circuit court in the  
226 jurisdiction where he then resides for removal of his name and all identifying information from the  
227 Registry. A petition may not be filed earlier than 10 years after the date of initial registration. The court  
228 shall hold a hearing on the petition at which the applicant and any interested persons may present  
229 witnesses and other evidence. If, after such hearing, the court is satisfied that such person no longer  
230 poses a risk to public safety, the court shall grant the petition. In the event the petition is not granted,  
231 the person shall wait at least 24 months from the date of the denial to file a new petition for removal  
232 from the Registry.

233 B. The State Police shall remove from the Registry the name of any person and all identifying  
234 information upon receipt of an order granting a petition pursuant to subsection A or at the end of the  
235 period for which the person is required to register under § 9.1-908.

236 § 9.1-911. Registry maintenance.

237 A. The Registry shall include conviction data received from the courts, including the disposition  
238 records for juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, on convictions  
239 for offenses for which registration is required and registrations and reregistrations received from  
240 persons required to do so. The Registry shall also include a separate indication that a person has been  
241 convicted of a sexually violent offense. The State Police shall forthwith transmit the appropriate  
242 information as required by the Federal Bureau of Investigation for inclusion in the National Sex  
243 Offender Registry.

§ 9.1-912. Registry access and dissemination; fees.

A. Except as provided in § 9.1-913 and subsection B of this section, Registry information shall be disseminated upon request made directly to the State Police or to the State Police through a local law-enforcement agency. Such information may be disclosed to any person requesting information on a specific individual in accordance with subsection B. The State Police shall make Registry information available, upon request, to criminal justice agencies including local law-enforcement agencies through the Virginia Criminal Information Network (VCIN). Registry information provided under this section shall be used for the purposes of the administration of criminal justice, for the screening of current or prospective employees or volunteers or otherwise for the protection of the public in general and children in particular. The Superintendent of State Police may by regulation establish a fee not to exceed \$15 for responding to requests for information from the Registry. Any fees collected shall be deposited in a special account to be used to offset the costs of administering the Registry.

B. Information regarding a specific person shall be disseminated upon receipt of an official request form that may be submitted directly to the State Police or to the State Police through a local law-enforcement agency. The official request form shall include a statement of the reason for the request; the name and address of the person requesting the information; the name, address and, if known, the social security number of the person about whom information is sought; and such other information as the State Police may require to ensure reliable identification.

§ 9.1-913. Public dissemination by means of the Internet.

The State Police shall develop and maintain a system for making certain Registry information on violent sex offenders publicly available by means of the Internet. The information to be made available shall include the offender's name; all aliases that he has used or under which he may have been known; the date and locality of the conviction and a brief description of the offense; his age, current address and photograph; and such other information as the State Police may from time to time determine is necessary to preserve public safety including but not limited to the fact that an individual is wanted for failing to register or reregister. The system shall be secure and not capable of being altered except by the State Police. The system shall be updated each business day with newly received registrations and reregistrations. The State Police shall remove all information that it knows to be inaccurate from the Internet system.

§ 9.1-914. Automatic notification of registration to certain entities.

Any school, day-care service and child-minding service, and any state-regulated or state-licensed child day center, child day program, children's residential facility, family day home or foster home as defined in § 63.2-100 may request from the State Police and, upon compliance with the requirements therefor established by the State Police, shall be eligible to receive from the State Police electronic notice of the registration or reregistration of any sex offender. Entities that request and are entitled to this notification, and that do not have the capability of receiving such electronic notice, may register with the State Police to receive written notification of sex offender registration or reregistration.

Within 3 business days of receipt by the State Police of registration or reregistration, the State Police shall electronically or in writing notify an entity that has requested such notification, has complied with the requirements established by the State Police and is located in the same or a contiguous zip code area as the address of the offender as shown on the registration.

The State Police shall establish reasonable guidelines governing the automatic dissemination of Registry information, which may include the payment of a fee, whether a one-time fee or a regular assessment, to maintain the electronic access. The fee, if any, shall defray the costs of establishing and maintaining the electronic notification system and notice by mail.

For the purposes of this section, "day-care service" means provision of supplementary care and protection during a part of the day for the minor child of another; "child-minding service" means provision of temporary custodial care or supervisory services for the minor child of another; and "school" means any public, parochial, denominational or private educational institution, including any preschool, elementary school, secondary school, post-secondary school, trade or professional institution, or institution of higher education.

§ 9.1-915. Regulations.

The Superintendent of State Police shall promulgate regulations and develop forms to implement and enforce this chapter; including the operation and maintenance of the Registry and the removal of records on persons who are deceased, whose convictions have been reversed or who have been pardoned, and those for whom an order of removal or relief from frequent registration has been entered. Such regulations and forms shall not be subject to the provisions of Article 2 (§2.2-4006 et seq.) of the Administrative Process Act.

§ 9.1-916. Limitation on liability.

No liability shall be imposed upon any law-enforcement official who disseminates information or fails to disseminate information in good faith compliance with the requirements of this chapter, but this

provision shall not be construed to grant immunity for gross negligence or willful misconduct.

§ 9.1-917. Misuse of registry information; penalty.

Use of registry information for purposes not authorized by this chapter is prohibited, the unlawful use of the information contained in or derived from the Registry for purposes of intimidating or harassing another is prohibited, and a willful violation of this chapter is a Class 1 misdemeanor.

§ 9.1-918. Severability; liberal construction.

The provisions of this chapter are severable, and if any of its provisions shall be declared unconstitutional or invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other provisions of this chapter. This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes hereof.

§ 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, for that offense and for all ancillary crimes the court may order that (i) the juvenile serve a portion of the sentence as a serious juvenile offender under § 16.1-285.1 and the remainder of such sentence in the same manner as provided for adults; (ii) the juvenile serve the entire sentence in the same manner as provided for adults; or (iii) the portion of the sentence to be served in the same manner as provided for adults 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, 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 and Crimes Against Minors Registry established pursuant to ~~§ 19.2-390.1~~ Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

§ 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima facie evidence.

Any person subject to ~~§ 19.2-298.1~~ Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of a sexually violent offender offense, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry ~~shall be~~ is guilty of a Class 1 misdemeanor. However, any person convicted of a sexually violent offense, as defined in ~~§ 19.2-298.1~~ 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry established pursuant to ~~§ 19.2-390.1~~ shall be is guilty of a Class 6 felony.

A prosecution pursuant to this section shall be brought in the city or county where the registrant offender can be found or where the offender last registered or reregistered or, if the offender failed to comply with the duty to register, where the offender was last convicted of an offense for which registration or reregistration is required.

At any trial pursuant to this section, an affidavit from the State Police issued as required in subsection H of ~~§ 19.2-298.1~~ § 9.1-907 shall be admitted into evidence as prima facie evidence of the failure to comply with the duty to register or reregister and a copy of such affidavit shall be provided to the registrant or his counsel seven 7 days prior to hearing or trial by the attorney for the Commonwealth.

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks

of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on *capias* or warrant for failure to appear, and the service of a warrant for another jurisdiction, on any of the following charges:

- a. Treason;
- b. Any felony;
- c. Any offense punishable as a misdemeanor under Title 54.1; or
- d. Any misdemeanor punishable by confinement in jail under Title 18.2 or 19.2, except an arrest for a violation of § 18.2-119, Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2, Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or any similar ordinance of any county, city or town.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to § 18.2-251; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

B. Within ~~seventy-two~~ 72 hours following the receipt of (i) a warrant or *capias* for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or *capias* may transfer information electronically into VCIN. When the information is electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or *capias* to the local police department or sheriff's office. When criminal process has been ordered destroyed pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC systems.

C. The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, *nolle prosequi*, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A, including any action which may have resulted from an indictment, presentment or information, and (ii) any adjudication of delinquency based upon an act which, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. In the case of offenses not required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § ~~19.2-298.1~~ 9.1-902, the clerk shall within ~~seven~~ 7 days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, last known address, and specific reference to the offense for which he was convicted. No report

of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN system.

D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than thirty days after occurrence of the disposition or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

As used in this section, the term "chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

§ 19.2-390.1. Sex Offender and Crimes Against Minors Registry; maintenance; access.

A. The Department of State Police shall keep and maintain a Sex Offender and Crimes Against Minors Registry, separate and apart from all other records maintained by it. The purpose of the Registry shall be to assist the efforts of law-enforcement agencies to protect their communities from repeat sex offenders and to protect children from becoming victims of criminal offenders by helping to prevent such individuals from being hired or allowed to volunteer to work directly with children.

The Registry shall include conviction data received from the courts, including the disposition records for juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, on convictions for offenses for which registration is required as defined in § 19.2-298.1 and registrations and reregistrations received from persons required to do so by § 19.2-298.1, whether such requirement arose before, on, or after July 1, 1997.

The Registry shall also include a separate indication that a person has been convicted of a sexually violent offense.

Upon receipt of a registration or reregistration pursuant to § 19.2-298.1 the State Police shall forthwith notify the chief law-enforcement officer of the county, city or town of the locality listed as the person's address on the registration or reregistration and any person who has requested automatic notification pursuant to § 19.2-390.2. The State Police shall forthwith transmit the appropriate information as required by the Federal Bureau of Investigation for inclusion in the National Sex Offender Registry. The State Police shall promulgate regulations governing the giving of notice to the chief local law-enforcement officer, the operation and maintenance of the Registry and the expungement of records on persons who are deceased, whose convictions have been reversed or who have been pardoned, and those for whom an order of expungement or relief from frequent registration has been entered pursuant to §§ 19.2-298.3, 19.2-298.4 or § 19.2-392.1.

B. Except as provided in subsection A, C or D, Registry information shall be disseminated upon request made directly to the Department of State Police or to the State Police through a local law-enforcement agency. Such information may be disclosed to any person requesting information on a specific individual in accordance with subsection C. The Department of State Police shall make Registry information available, upon request, to criminal justice agencies including local law-enforcement



agencies through the Virginia Criminal Information Network (VCIN). Registry information provided under this section shall be used for the purposes of the administration of criminal justice, for the screening of current or prospective employees or volunteers or otherwise for the protection of the public in general and children in particular. Use of the information for purposes not authorized by this section is prohibited and a willful violation of this section with the intent to harass or intimidate another shall be punished as a Class 1 misdemeanor.

The VCIN and any form or document used by the Department of State Police to disseminate information from the Registry shall provide notice that any unauthorized use of the information with the intent to harass or intimidate another is a crime punishable as a Class 1 misdemeanor. The Department of State Police may by regulation establish a fee not to exceed fifteen dollars for responding to requests for information from the Registry pursuant to this subsection. Any fees collected shall be deposited in a special account to be used to offset the costs of administering the Registry.

C. Information regarding a specific person requested pursuant to subsection B shall be disseminated upon receipt of an official request form which may be submitted directly to the Department of State Police or to the State Police through a local law-enforcement agency. The official request form shall include a statement of the reason for the request; the name and address of the person requesting the information; the name, address and, if known, the social security number of the person about whom information is sought; and such other information as the State Police may require to ensure reliable identification. Unlawful use of the information for purposes of intimidating or harassing another is prohibited and a willful violation of this section shall be punished as a Class 1 misdemeanor.

D. On or before January 1, 1999, the State Police shall develop and maintain a system for making certain Registry information on violent sex offenders publicly available by means of the Internet. The information to be made available shall include the offender's name; all aliases which he has used or under which he may have been known; the date and locality of the conviction and a brief description of the offense; his date of birth, current address and photograph; and such other information as the State Police may from time to time determine is necessary to preserve public safety. The system shall be secure and not capable of being altered except by the State Police. The system shall be updated each business day with newly received registrations and reregistrations. The State Police shall remove all information which it knows to be inaccurate from the Internet system.

E. No liability shall be imposed upon any law-enforcement official who disseminates information or fails to disseminate information in good faith compliance with the requirements of this section, but this provision shall not be construed to grant immunity for gross negligence or willful misconduct.

§ 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 ~~§ 46.2-298.1~~ Chapter 9 (§ 9.1-900 *et seq.*) of Title 9.1, if the applicant has been convicted of 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.

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

554 D. Notwithstanding the provisions of § 46.2-334, every applicant for a driver's license who is under  
555 ~~nineteen~~ 19 years of age shall furnish the Department with satisfactory proof of his successful  
556 completion of a driver education program approved by the State Department of Education.

557 § 53.1-116.1. Jailer to give notice of release of certain prisoners.

558 Prior to the release or discharge of any prisoner serving a sentence ~~upon a conviction of~~ for an  
559 offense for which registration *with the Sex Offender and Crimes Against Minors Registry* is required as  
560 defined in ~~§ 19.2-298.1 pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1~~, the sheriff, jail  
561 superintendent or other jail administrator shall give notice to the prisoner of his duty to register with the  
562 State Police in accordance with ~~§ 19.2-298.1~~. The sheriff, jail superintendent or other jail administrator  
563 shall also obtain from that person all necessary registration information, including fingerprints and  
564 photographs of a type and kind approved by the Department of State Police; inform the person of his  
565 duties regarding reregistration and change of address; and inform the person of his duty to register ~~under~~  
566 this section. The sheriff, jail superintendent or other jail administrator shall forward the registration  
567 information to the Department of State Police within ~~seven~~ 7 days of receipt.

568 § 53.1-160.1. Department to give notice of release of certain prisoners.

569 Prior to the release or discharge of any prisoner serving a sentence ~~upon a conviction of~~ for an  
570 offense for which registration *with the Sex Offender and Crimes Against Minors Registry* is required as  
571 defined in ~~§ 19.2-298.1 pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1~~, the Department shall give  
572 notice to the prisoner of his duty to register with the State Police in accordance with ~~§ 19.2-298.1~~. The  
573 Department shall also obtain from that person all necessary registration information, including  
574 fingerprints and photographs of a type and kind approved by the Department of State Police, inform the  
575 person of his duties regarding reregistration and change of address, and inform the person of his duty to  
576 register ~~under this section~~. The Department shall forward the registration information to the Department  
577 of State Police within 7 days of receipt.

578 2. That §§ 19.2-298.1 through 19.2-298.4 and 19.2-390.2 of the Code of Virginia are repealed.