

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 586

*An Act to amend and reenact §§ 9.1-901, 9.1-902, and 9.1-903 of the Code of Virginia, relating to judicial discretion to require registration of minor who commits an offense otherwise requiring registration.*

[H 2318]

Approved March 22, 2005

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

**1. That §§ 9.1-901, 9.1-902, and 9.1-903 of the Code of Virginia are amended and reenacted as follows:**

§ 9.1-901. Persons for whom registration required.

A. Every person convicted *on or after July 1, 1994, including a juvenile tried and convicted in the circuit court pursuant to § 16.1-269.1, whether sentenced as an adult or juvenile, on or after July 1, 1994,* of an offense set forth in § 9.1-902 *and every juvenile found delinquent of an offense for which registration is required under subsection C of § 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.

B. *All provisions of the Sex Offender and Crimes Against Minors Registry Act shall apply retroactively except as provided under subsection C of § 9.1-902. This subsection is declaratory of existing law.*

§ 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 (i) § 18.2-67.4, (ii) subsection C of § 18.2-67.5 or (iii) § 18.2-386.1;

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, 18.2-366, or clause (iv) of subsection B of § 18.2-374.3;

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. Sections 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~~ An offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted *or adjudicated delinquent* of any two or more such offenses, provided that person had been at liberty between such convictions *or adjudications*.

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.

C. *Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated delinquent of any offense enumerated in subdivisions A 1 through A 4 on or after July 1, 2005, the court may, in its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the offense require offender registration. In making its determination, the court shall consider all of the following factors that are relevant to the case: (i) the degree to which the delinquent act was committed with the use of force, threat or intimidation, (ii) the age and maturity of the complaining witness, (iii) the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the case.*

§ 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 *and every juvenile found delinquent of an offense for which registration is required under subsection C of § 9.1-902* 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 where he physically resides all information required by the State Police for inclusion in the Registry. The court shall remand the person to the custody of the local law-enforcement agency for the purpose of obtaining the person's fingerprints and photographs of a type and kind specified by the State Police for inclusion in the Registry. The local law-enforcement agency shall forward to the State Police all the necessary registration information within seven days of the date of sentencing.

B. Every person required to register shall register in person within 10 days of his release from confinement in a state, local or juvenile correctional facility, in a state civil commitment program for sexually violent predators or, if a sentence of confinement is not imposed, within 10 days of suspension of the sentence or in the case of a juvenile of disposition. The local law-enforcement agency shall obtain from the person who presents himself for registration or reregistration two sets of fingerprints, proof of residency 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 local law-enforcement agency shall promptly forward to the State Police all necessary registration information.

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

D. Any person required to register shall also reregister in person with the local law-enforcement agency following any change of residence, whether within or without the Commonwealth. If his new residence is within the Commonwealth, the person shall register in person with the local law-enforcement agency where his new residence is located within 10 days following his change in residence. If the new residence is located outside of the Commonwealth, the person shall register in person with the local law-enforcement agency where he previously registered within 10 days prior to his change of residence. 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 10 days of learning of the change of residence. Whenever a person subject to registration changes residence to another state, the State Police shall notify the designated law-enforcement agency of that state.

E. The registration shall be maintained in the Registry and shall include the person's name, all aliases that 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 physical and mailing address and a description of the offense or offenses for which he was convicted. The registration shall also include the locality of the conviction and a description of the offense or offenses for previous convictions for the offenses set forth in § 9.1-902.

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

**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.**