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HOUSE BILL NO. 1066

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 9.1-909 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-370.02, relating to restrictions on registered sex offenders' proximity to children; penalties.

Patron—Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 9.1-909 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-370.02 as follows:

§ 9.1-909. Relief from registration or reregistration.

A. Upon expiration of three 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 three 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 annually for life. *However, if the person upon whom the original duty to register as a sexually violent offender was imposed was convicted of an offense committed against a child under the age of 15, he shall be under a continuing duty to register semiannually for life.* If the petition is denied, the duty to reregister every 90 days shall continue. An appeal from the denial of a petition shall lie to the Supreme Court.

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

B. The duly appointed guardian of a person convicted of an offense requiring registration or reregistration as either a sex offender or sexually violent offender, who due to a physical condition is incapable of (i) reoffending and (ii) reregistering, may petition the court in which the person was convicted for relief from the requirement to reregister. 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 physical condition that makes the person (i) no longer a menace to the health and safety of others and (ii) incapable of reregistering. Prior to the hearing the court shall order a comprehensive assessment of the applicant by at least two licensed physicians other than the person's primary care physician. 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 due to his physical condition the person (i) no longer poses a menace to the health and safety of others and (ii) is incapable of reregistering, the petition shall be granted and the duty to reregister shall be terminated. However, for a person whose duty to reregister was terminated under this subsection, the Department of State Police shall, annually for sex offenders and quarterly for sexually violent offenders, verify and report to the attorney for the Commonwealth in the jurisdiction in which the person resides that the person continues to suffer from the physical condition that resulted in such termination.

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

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

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

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

73 § 18.2-370.02. *Encountering a child after conviction of certain offenses; penalty.*

74 A. Any person who:

75 1. *Has been convicted of an offense against a child under the age of 15 for which registration is*
76 *required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1; and*

77 2. *Resides in the same dwelling as a child under the age of 15 to whom he is not related, is guilty of*
78 *a Class 6 felony.*

79 B. Any person who:

80 1. *Has been convicted of an offense against a child under the age of 15 for which registration is*
81 *required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1; and*

82 2. *Enters upon the property, including buildings and grounds, of any public or private elementary,*
83 *secondary, or post-secondary school, including a kindergarten, or any child day center or daycare*
84 *facility, is guilty of a Class 6 felony. Any person whose employment requires that he enter upon such*
85 *property may do so without penalty provided no students or children are present at the time of his*
86 *entry.*

87 C. Any parent or guardian of a child who:

88 1. *Knows or has reason to know that another person has been convicted of an offense specified in*
89 *subdivision A 1, and*

90 2. *Allows a child who is not related to the convicted person to reside in the same dwelling as the*
91 *convicted person, is guilty of abuse and neglect of a child.*

92 D. Any person convicted of subsection A or B shall be subject to a mandatory minimum term of
93 confinement of six months and shall, upon his release, be placed on probation for one year during
94 which he shall be supervised under home electronic monitoring.

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