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HOUSE BILL NO. 1333

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 6, 2006)

(Patron Prior to Substitute—Delegate Bell)

A BILL to amend and reenact §§ 9.1-902 and 18.2-472.1 of the Code of Virginia, relating to sex offender registration; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-902 and 18.2-472.1 of the Code of Virginia are amended and reenacted as follows:

§ 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, former § 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;

If the offense was committed on or after July 1, 2006, (i) a violation or attempted violation of § 18.2-91 with the intent to commit any felony offense listed in this section or (ii) a violation or attempted violation of subsection A of § 18.2-374.1:1.

2. ~~Where Clause (iv) of subsection B of § 18.2-374.3 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 (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 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;

4. A "sexually violent offense"; or

5. "Murder." ~~pursuant to~~

"Murder" means a violation of § 18.2-31 or 18.2-32 where the victim is a ~~minor~~ (i) under 15 years of age or (ii) where the victim is at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section.

"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, § 18.2-67.4 where the perpetrator is 18 years of age or older and the victim is under the age of six, 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, former § 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.

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 (i) any foreign country or any political subdivision thereof, or (ii) the United States or any political subdivision thereof and any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the ~~political subdivision jurisdiction~~ where the offender was convicted.

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.

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

A. Any person subject to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of a sexually violent offense or murder as defined in § 9.1-902, who knowingly fails to register or

60 reregister, or who knowingly provides materially false information to the Sex Offender and Crimes
61 Against Minors Registry is guilty of a Class 1 misdemeanor. *Any person previously convicted under this*
62 *subsection who knowingly provides materially false information to the Sex Offender and Crimes Against*
63 *Minors Registry is guilty of a Class 6 felony.*

64 ~~However, any~~ B. Any person convicted of a sexually violent offense *or murder*, as defined in
65 § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false
66 information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 6 felony. *Any*
67 *person previously convicted under this subsection who knowingly provides materially false information*
68 *to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 5 felony.*

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

73 D. At any trial pursuant to this section, an affidavit from the State Police issued as required in
74 § 9.1-907 shall be admitted into evidence as prima facie evidence of the failure to comply with the duty
75 to register or reregister and a copy of such affidavit shall be provided to the registrant or his counsel
76 seven days prior to hearing or trial by the attorney for the Commonwealth.

77 E. *For the purposes of this section any conviction for a substantially similar offense under the laws*
78 *of another state or territory of the United States, the District of Columbia, or the United States shall be*
79 *considered a prior conviction.*

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