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HOUSE BILL NO. 1333

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on March 11, 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, 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;" ~~or pursuant to~~

6. Criminal homicide in conjunction with a violation of clause (i) of § 18.2-371 or § 18.2-371.1, when the offenses arise out of the same incident.

"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.

3. *If the offense was committed on or after July 1, 2006, a violation or attempted violation of § 18.2-91 with the intent to commit any felony offense listed in this section. 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, (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

60 complaining witness and the offender, (v) the nature of the relationship between the complaining witness
61 and the offender, (vi) the offender's prior criminal history, and (vii) any other aggravating or mitigating
62 factors relevant to the case.

63 § 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima
64 facie evidence.

65 A. Any person subject to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of
66 a sexually violent offense *or murder as defined in § 9.1-902*, who knowingly fails to register or
67 reregister, or who knowingly provides materially false information to the Sex Offender and Crimes
68 Against Minors Registry is guilty of a Class 1 misdemeanor. *A second or subsequent conviction for an*
69 *offense under this subsection is a Class 6 felony.*

70 ~~However, any~~ B. Any person convicted of a sexually violent offense *or murder*, as defined in
71 § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false
72 information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 6 felony. *A*
73 *second or subsequent conviction for an offense under this subsection is a Class 5 felony.*

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

78 D. At any trial pursuant to this section, an affidavit from the State Police issued as required in
79 § 9.1-907 shall be admitted into evidence as prima facie evidence of the failure to comply with the duty
80 to register or reregister and a copy of such affidavit shall be provided to the registrant or his counsel
81 seven days prior to hearing or trial by the attorney for the Commonwealth.

82 E. *For the purposes of this section any conviction for a substantially similar offense under the laws*
83 *of (i) any foreign country or political subdivision thereof, or (ii) any state or territory of the United*
84 *States or any political subdivision thereof, the District of Columbia, or the United States shall be*
85 *considered a prior conviction.*

86 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
87 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is**
88 **\$616, 909 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of**
89 **commitment to the custody of the Department of Juvenile Justice.**