

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 718

An Act to amend and reenact §§ 9.1-901, 9.1-902, 9.1-903, 9.1-907, 9.1-908, 9.1-910, and 18.2-63 of the Code of Virginia, relating to sex offender registration; penalty.

[S 1065]

Approved March 21, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-901, 9.1-902, 9.1-903, 9.1-907, 9.1-908, 9.1-910, and 18.2-63 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, of an offense set forth in § 9.1-902 and every juvenile found delinquent of an offense for which registration is required under subsection ~~E~~ *G* 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~~ *Unless a specific effective date is otherwise provided, all* provisions of the Sex Offender and Crimes Against Minors Registry Act shall apply retroactively ~~except as provided under subsection E 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~~ *includes*:

1. Any offense listed in subsection B;
2. Criminal homicide;
3. Murder; and
4. A sexually violent offense.

B. *The offenses included under this subsection include any violation of, attempted violation of, or conspiracy to violate:*

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; (ii) a violation or attempted violation of subsection A of § 18.2-374.1:1; or (iii) a felony violation under § 18.2-67.5:1.~~

2. 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;~~

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";~~

5. ~~"Murder"; or~~

6. ~~C. "Criminal homicide" means a homicide in conjunction with a violation of, attempted violation of, or conspiracy to violate clause (i) of § 18.2-371 or § 18.2-371.1, when the offenses arise out of the same incident.~~

D. "Murder" means a violation of, *attempted violation of, or conspiracy to violate* § 18.2-31 or 18.2-32 where the victim is (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.

E. "Sexually violent offense" means a violation ~~or~~ *of, attempted violation of, or conspiracy to violate:*

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 § 18.2-374.1; 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, or § 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; ~~or~~

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 the person had been at liberty between such convictions or adjudications; *or*

4. *Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as described in § 1591 of Title 18, U.S.C.).*

B F. "Offense for which registration is required" and ~~"sexually violent offense"~~ shall also include includes (i) 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 or~~ (ii) any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

C G. 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 *on or after July 1, 2005*, of any offense ~~enumerated in subdivisions A 1 through A 4 on or after July 1, 2005 for which registration is required~~, 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 ~~EG~~ 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 immediately 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. Upon conviction, the local law-enforcement agency shall forthwith forward to the State Police all the necessary registration information.

B. Every person required to register shall register in person within three 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 three days of suspension of the sentence or in the case of a juvenile of disposition. A person required to register shall register, *and as part of the registration shall submit to be photographed as part of the registration, and submit to have a sample of his blood, saliva, or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person, and submit to have his fingerprints and palm prints taken, provide information regarding his place of employment, and provide vehicle registration information for all vehicles owned by him.* The local law-enforcement agency shall obtain from the person who presents himself for registration or reregistration one set of fingerprints, *one set of palm prints*, place of employment information, *vehicle registration information for all vehicles owned by the registrant*, proof of residency and a photograph 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 obtain from the person who presents himself for registration a sample of his blood, saliva or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. If a sample has been previously taken from the person, as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken. The local law-enforcement agency shall forthwith 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 physical address. *The local law-enforcement agency shall forthwith forward to the State Police a copy of the identification presented by the person required to register.*

D. Any person required to register shall also reregister in person with the local law-enforcement agency following *any change of name or 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 three 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 *name or* residence for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith 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. Any person required to register shall reregister in person with the local law-enforcement agency where his residence is located within three days following any change of the place of employment, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of the place of employment for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change of the person's place of employment. Whenever a person subject to registration changes his place of employment to another state, the State Police shall notify the designated law-enforcement agency of that state.

F. *Any person required to register shall reregister in person with the local law-enforcement agency where his residence is located within three days following any change of owned vehicle registration information, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of owned vehicle registration information for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change of the person's owned vehicle registration information. Whenever a person required to register changes his owned vehicle registration information to another state, the State Police shall notify the designated law-enforcement agency of that state.*

G. 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.

G H. The local law-enforcement agency shall forthwith 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.

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

A. 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 or assist in obtaining an indictment 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 or if the person was convicted of an offense requiring registration outside the Commonwealth, in the jurisdiction in which the person resides. The State Police shall forward to the jurisdiction 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.

B. Nothing in this section shall prohibit a law-enforcement officer employed by a sheriff's office or police department of a locality from enforcing the provisions of this chapter, including obtaining a warrant, or assisting in obtaining an indictment for a violation of § 18.2-472.1. The local law-enforcement agency shall notify the State Police forthwith of such actions taken pursuant to this chapter or under the authority granted pursuant to this section.

C. The State Police shall physically verify or cause to be physically verified the registration information within 30 days of the initial registration and semiannually each year thereafter and within 30 days of a change of address of those persons who are not under the control of the Department of Corrections or Community Supervision as defined by § 53.1-1, who are required to register pursuant to this chapter. Whenever it appears that a person has provided false registration information, the State Police shall promptly investigate and, if there is probable cause to believe that a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered. The State Police shall forward to the jurisdiction an affidavit signed by the custodian of the records that such person failed to comply with the provisions of this chapter. Such affidavit shall be admitted into evidence as prima facie evidence of the failure to comply with the provisions of this chapter 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.

D. The Department of Corrections *or Community Supervision as defined by § 53.1-1* shall physically verify the registration information within 30 days of the original registration and semiannually each year thereafter and within 30 days of a change of address of all persons who are under the control of the Department of Corrections *or Community Supervision as defined by § 53.1-1*, who are required to register pursuant to this chapter. The Department of Corrections *or Community Supervision*, upon request, shall provide the State Police the verification information, in an electronic format approved by the State Police, regarding persons under their control who are required to register pursuant to the chapter. Whenever it appears that a person has provided false registration information, the Department of Corrections *or Community Supervision* shall promptly notify the State Police, who shall investigate and, if there is probable cause to believe that a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered. The State Police shall forward to the jurisdiction an affidavit signed by the custodian of the records that such person failed to comply with the provisions of this chapter. Such affidavit shall be admitted into evidence as prima facie evidence of the failure to comply with the provisions of this chapter 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 or for a period of 10 years from the date of his last conviction for a violation of § 18.2-472.1, whichever is longer until the duty to register and reregister is terminated by a court order as set forth in § 9.1-910~~, except that any person who has been convicted of (i) any sexually violent offense, (ii) murder or (iii) former § 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.

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

A. Any person required to register, other than a person who has been convicted of any (i) sexually violent offense, (ii) two or more offenses for which registration is required, (iii) a violation of former § 18.2-67.2:1, or (iv) murder, may petition the circuit court in which he was convicted or the circuit court in the jurisdiction where he then resides for removal of his name and all identifying information from the Registry. A petition may not be filed earlier than 10 years after the date of initial registration nor earlier than 10 years from the date of his last conviction for (i) a violation of § 18.2-472.1 or (ii) any felony. *A petition may not be filed until all court ordered treatment, counseling, and restitution has been completed.* The court shall *obtain a copy of the petitioner's complete criminal history and registration and reregistration history from the Registry and then* hold a hearing on the petition at which the applicant and any interested persons may present witnesses and other evidence. *The Commonwealth shall be made a party to any action under this section.* If, after such hearing, the court is satisfied that such person no longer poses a risk to public safety, the court shall grant the petition. In the event the petition is not granted, the person shall wait at least 24 months from the date of the denial to file a new petition for removal from the Registry.

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

§ 18.2-63. Carnal knowledge of child between thirteen and fifteen years of age.

A. If any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age, such person shall be guilty of a Class 4 felony.

~~However, if such~~ B. If any person carnally knows, without the use of force, a child is thirteen years of age or older but under fifteen years of age ~~and who~~ consents to sexual intercourse and the accused is a minor and such consenting child is three years or more the accused's junior, the accused shall be guilty of a Class 6 felony. If such consenting child is less than three years the accused's junior, the accused shall be guilty of a Class 4 misdemeanor.

In calculating whether such child is three years or more a junior of the accused minor, the actual dates of birth of the child and the accused, respectively, shall be used.

C. For the purposes of this section, (i) a child under the age of thirteen years shall not be considered a consenting child and (ii) "carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, ~~analingus~~ *anilingus*, anal intercourse, and animate and inanimate object sexual penetration.

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.