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HOUSE BILL NO. 2175

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 23, 2007)

(Patron Prior to Substitute—Delegate BaCote)

A BILL to amend and reenact §§ 18.2-10, 18.2-370.2, 18.2-370.3 and 18.2-370.4 of the Code of Virginia, relating to sex offenses prohibiting proximity to children; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-10, 18.2-370.2, 18.2-370.3 and 18.2-370.4 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-10. Punishment for conviction of felony; penalty.

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, death, if the person so convicted was 18 years of age or older at the time of the offense and is not determined to be mentally retarded pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000. If the person was under 18 years of age at the time of the offense or is determined to be mentally retarded pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.

(b) For Class 2 felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than \$100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

For a felony offense prohibiting proximity to children as described in ~~subsection A of~~ §§ 18.2-370.2, 18.2-370.3, and 18.2-370.4, the sentencing court is authorized to impose the punishment set forth in ~~subsection B of that section~~ those sections in addition to any other penalty provided by law.

§ 18.2-370.2. Sex offenses prohibiting proximity to children; penalty.

A. "Offense prohibiting proximity to children" means a violation or an attempt to commit a violation of (i) subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361, or subsection B of § 18.2-366, where the victim of one of the foregoing offenses was a minor, or (ii) subsection A (iii) of § 18.2-61, §§ 18.2-63, 18.2-64.1, subdivision A 1 of § 18.2-67.1, subdivision A 1 of § 18.2-67.2, or subdivision A 1 or A 4 (a) of § 18.2-67.3, or §§ 18.2-370, 18.2-370.1, clause (ii) of § 18.2-371, §§ 18.2-374.1, 18.2-374.1:1 or § 18.2-379. As of July 1, 2006, "offense prohibiting proximity to children" shall include a violation of § 18.2-472.1, when the offense requiring registration was one of the foregoing offenses.

B. Every adult who is convicted of an offense prohibiting proximity to children when the offense occurred on or after July 1, 2000, shall as part of his sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a primary, or secondary or high school. In addition, every adult who is convicted of an offense prohibiting proximity to children when the offense occurred on or after July 1, 2006, shall as part of his sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a child

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60 day ~~program~~ center as defined in § 63.2-100. Further, every adult who is convicted of an offense
61 prohibiting proximity to children when the offense occurred on or after July 1, 2007, shall as part of his
62 sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or
63 has reason to know is a child day program as defined in § 63.2-100, or a publicly operated recreation
64 center or community center facility serving children.

65 A violation of this section is punishable as a Class 6 felony.

66 § 18.2-370.3. Sex offenses prohibiting residing in proximity to children; penalty.

67 A. Every adult who is convicted of an offense occurring on or after July 1, 2006, where the offender
68 is more than three years older than the victim, of one of the following qualifying offenses: (i) clause
69 (iii) of subsection A of § 18.2-61, (ii) subdivision A 1 of § 18.2-67.1, or (iii) subdivision A 1 of
70 § 18.2-67.2, shall be forever prohibited from residing within 500 feet of the premises of any place he
71 knows or has reason to know is a child day center as defined in § 63.2-100, or a primary; or secondary;
72 or high school. A violation of this section is a Class 6 felony. The provisions of this section shall only
73 apply if the qualifying offense was done in the commission of, or as a part of the same course of
74 conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or
75 18.2-48, (ii) § 18.2-89, 18.2-90 or 18.2-91, or (iii) § 18.2-51.2.

76 B. An adult who is convicted of an offense as specified in subsection A of this section and has
77 established a lawful residence shall not be in violation of this section if a child day center, *publicly*
78 *operated recreation center or community center serving children*, or a primary; or secondary; or high
79 school is established within 500 feet of his residence subsequent to his conviction.

80 § 18.2-370.4. Sex offenses prohibiting working on school property; penalty.

81 A. Every adult who has been convicted of an offense occurring on or after July 1, 2006, where the
82 offender is more than three years older than the victim, of one of the following qualifying offenses: (i)
83 clause (iii) of subsection A of § 18.2-61, (ii) subdivision A 1 of § 18.2-67.1, or (iii) subdivision A 1 of
84 § 18.2-67.2, shall be forever prohibited from working or engaging in any volunteer activity on property
85 he knows or has reason to know is public or private elementary or secondary school or child day center
86 property. A violation of this section is punishable as a Class 6 felony. The provisions of this section
87 shall only apply if the qualifying offense was done in the commission of, or as a part of the same
88 course of conduct of, or as part of a common scheme or plan as a violation of (i) subsection A of
89 § 18.2-47 or 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2.

90 B. An employer of a person who violates this section, or any person who procures volunteer activity
91 by a person who violates this section, and the school, *public recreation center, community center*, or
92 child day center where the violation of this section occurred, are immune from civil liability unless they
93 had actual knowledge that such person had been convicted of an offense listed in subsection A.

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