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HOUSE BILL NO. 223

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 1, 2008)

(Patrons Prior to Substitute—Delegates Cosgrove and BaCote [HB 705])

A *BILL to amend and reenact §§ 18.2-10 and 18.2-370.2 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 and 18.2-370.2 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, the sentencing court is authorized to impose the punishment set forth in ~~subsection B~~ of that section 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, 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 day program as defined in § 63.2-100.

60 C. Every adult who is convicted of an offense prohibiting proximity to children when the offense
61 occurred on or after July 1, 2008, shall as part of his sentence be forever prohibited from entering upon
62 or loitering within 100 feet of the premises of any place he knows or has reason to know is a public
63 recreation center or public community center. The provisions of this subsection shall not apply to any
64 parent or legal guardian of a child who is upon or near the premises of a public recreation center or
65 public community center for the purpose of dropping off or picking up the child or who enters upon the
66 premises solely for the purposes of casting his vote.

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

68 For purposes of this section, "public recreation center" means a building or group of buildings
69 owned or operated by a locality and available for public use where members of a neighborhood or
70 community may assemble for recreational and educational activities including, but not limited to,
71 athletic activities, games, arts and crafts programs, dances, musical and dramatic arts presentations,
72 and family-oriented activities. "Public recreation center" shall not include a public library or public
73 museum or any place, location, building or group of buildings such as a theater or coliseum that is
74 primarily used as a venue for the performance of music concerts, professional and collegiate sporting
75 events, ice shows or circuses and for which an admission fee is paid. "Public community center" shall
76 have the same meaning as "public recreation center."

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