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SENATE BILL NO. 114

Offered January 9, 2008

Prefiled January 3, 2008

A *BILL to amend and reenact §§ 9.1-902, 18.2-370.2, 18.2-370.3, 18.2-370.4, and 18.2-370.5 of the Code of Virginia, relating to application of sex offender prohibitions to out-of-state violators.*

Patron—McDougle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-902, 18.2-370.2, 18.2-370.3, 18.2-370.4, and 18.2-370.5 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" 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. § 18.2-63, § 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape, or subsection B or C of § 18.2-374.1:1; or a third or subsequent conviction of (i) § 18.2-67.4, (ii) § 18.2-67.4:2, (iii) subsection C of § 18.2-67.5 or (iv) § 18.2-386.1;

If the offense was committed on or after July 1, 2006, (i) § 18.2-91 with the intent to commit any felony offense listed in this section; (ii) subsection A of § 18.2-374.1:1; or (iii) a felony under § 18.2-67.5:1.

2. Subsection C 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, 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.

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 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. § 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, 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 subsection C of § 18.2-374.1:1. 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, § 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.).

F. ~~"Offense for which registration is required"~~ Any offense listed in subsection B, criminal homicide as defined in this section, murder as defined in this section, and sexually violent offense as defined in this section also includes (i) any similar *such* offense under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof or (ii) any *such* offense for which registration in a sex offender and crimes against minors registry is required under the

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59 laws of the jurisdiction where the offender was convicted.

60 G. Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a
61 juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated
62 delinquent on or after July 1, 2005, of any offense for which registration is required, the court may, in
63 its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the
64 offense require offender registration. In making its determination, the court shall consider all of the
65 following factors that are relevant to the case: (i) the degree to which the delinquent act was committed
66 with the use of force, threat or intimidation, (ii) the age and maturity of the complaining witness, (iii)
67 the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the
68 offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the
69 offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the
70 case.

71 § 18.2-370.2. Sex offenses prohibiting proximity to children; penalty.

72 A. "Offense prohibiting proximity to children" means a violation or an attempt to commit a violation
73 of (i) subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361, or
74 subsection B of § 18.2-366, where the victim of one of the foregoing offenses was a minor, or (ii)
75 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
76 § 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
77 § 18.2-371, §§ 18.2-374.1, 18.2-374.1:1 or § 18.2-379. As of July 1, 2006, "offense prohibiting
78 proximity to children" shall include a violation of § 18.2-472.1, when the offense requiring registration
79 was one of the foregoing offenses.

80 B. Every adult who is convicted of an offense prohibiting proximity to children when the offense
81 occurred on or after July 1, 2000, shall as part of his sentence be forever prohibited from loitering
82 within 100 feet of the premises of any place he knows or has reason to know is a primary, secondary or
83 high school. In addition, every adult who is convicted of an offense prohibiting proximity to children
84 when the offense occurred on or after July 1, 2006, shall as part of his sentence be forever prohibited
85 from loitering within 100 feet of the premises of any place he knows or has reason to know is a child
86 day program as defined in § 63.2-100.

87 C. *An offense prohibiting proximity to children, under conditions as described in subsection A,*
88 *includes (i) any similar such offense under the laws of any foreign country or any political subdivision*
89 *thereof, the United States or any political subdivision thereof or (ii) any such offense for which*
90 *registration in a sex offender and crimes against minors registry is required under the laws of the*
91 *jurisdiction where the offender was convicted.*

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

93 § 18.2-370.3. Sex offenses prohibiting residing in proximity to children; penalty.

94 A. Every adult who is convicted of an offense occurring on or after July 1, 2006, where the offender
95 is more than three years older than the victim, of one of the following qualifying offenses: (i) clause
96 (iii) of subsection A of § 18.2-61, (ii) subdivision A 1 of § 18.2-67.1, or (iii) subdivision A 1 of
97 § 18.2-67.2, shall be forever prohibited from residing within 500 feet of the premises of any place he
98 knows or has reason to know is a child day center as defined in § 63.2-100, or a primary, secondary, or
99 high school. A violation of this section is a Class 6 felony. The provisions of this section shall only
100 apply if the qualifying offense was done in the commission of, or as a part of the same course of
101 conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or
102 18.2-48, (ii) § 18.2-89, 18.2-90 or 18.2-91, or (iii) § 18.2-51.2.

103 B. An adult who is convicted of an offense as specified in subsection A of this section and has
104 established a lawful residence shall not be in violation of this section if a child day center or a primary,
105 secondary, or high school is established within 500 feet of his residence subsequent to his conviction.

106 C. *An offense prohibiting residing within 500 feet of the premises of a child day center as defined in*
107 *§ 63.2-100, or a primary, secondary, or high school, under conditions as described in subsection A,*
108 *includes (i) any similar such offense under the laws of any foreign country or any political subdivision*
109 *thereof, the United States or any political subdivision thereof or (ii) any such offense for which*
110 *registration in a sex offender and crimes against minors registry is required under the laws of the*
111 *jurisdiction where the offender was convicted.*

112 § 18.2-370.4. Sex offenses prohibiting working on school property; penalty.

113 A. Every adult who has been convicted of an offense occurring on or after July 1, 2006, where the
114 offender is more than three years older than the victim, of one of the following qualifying offenses: (i)
115 clause (iii) of subsection A of § 18.2-61, (ii) subdivision A 1 of § 18.2-67.1, or (iii) subdivision A 1 of
116 § 18.2-67.2, shall be forever prohibited from working or engaging in any volunteer activity on property
117 he knows or has reason to know is public or private elementary or secondary school or child day center
118 property. A violation of this section is punishable as a Class 6 felony. The provisions of this section
119 shall only apply if the qualifying offense was done in the commission of, or as a part of the same
120 course of conduct of, or as part of a common scheme or plan as a violation of (i) subsection A of

§ 18.2-47 or 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2.

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

C. *An offense prohibiting work or volunteer activity on the property of a public or private elementary or secondary school or child day center property, under conditions as described in subsection A, includes (i) any similar such offense under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof or (ii) any such 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.*

§ 18.2-370.5. Sex offenses prohibiting entry onto school property; penalty.

A. Every adult who is convicted of a sexually violent offense, as defined in § 9.1-902, shall be prohibited from entering and being present, during school hours, upon any property he knows or has reason to know is a public or private elementary or secondary school or child day center property, unless (i) he is a lawfully registered and qualified voter, and is coming upon such property solely for purposes of casting his vote; (ii) he is a student enrolled at the school; or (iii) he has obtained a court order allowing him to enter and be present upon such property, and is in compliance with terms and conditions of the order. A violation of this section is punishable as a Class 6 felony.

B. Every adult who is prohibited from entering upon school or child day center property pursuant to subsection A may after notice to the attorney for the Commonwealth and either (i) the proprietor of the child day center, (ii) the superintendent of public instruction of the school division in which the school is located, or (iii) the chief administrator of the school if such school is not a public school, petition the juvenile and domestic relations district court or the circuit court in the county or city where the school or child day center is located for permission to enter such property. For good cause shown, the court may issue an order permitting the petitioner to enter and be present on such property, subject to whatever restrictions of area, reasons for being present, or time limits the court deems appropriate.

C. *An offense prohibiting entering and being present, during school hours, upon any property of a public or private elementary or secondary school or child day center property, under conditions as described in subsection A, includes (i) any similar such offense under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof or (ii) any such 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.*

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.