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SENATE BILL NO. 590

Offered January 9, 2008

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A BILL to amend and reenact §§ 9.1-902, 9.1-907, 9.1-910, 16.1-269.1, and 18.2-472.1 of the Code of Virginia, relating to sex offenders; registration; penalty.

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-902, 9.1-907, 9.1-910, 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" 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. Subsection B of § 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)2. § 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.

23. 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 Subsection A of § 18.2-47, § 18.2-48, § 18.2-61, subsection A of § 18.2-63, § 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. Subsection B of § 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" includes (i) any similar offense under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof 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.

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

70 § 9.1-907. Procedures upon a failure to register or reregister.

71 A. Whenever it appears from the records of the State Police that a person has failed to comply with
72 the duty to register or reregister, the State Police shall promptly investigate and, if there is probable
73 cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging
74 a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered or, if the
75 person failed to comply with the duty to register, in the jurisdiction in which the person was last
76 convicted of an offense for which registration or reregistration is required or if the person was convicted
77 of an offense requiring registration outside the Commonwealth, in the jurisdiction in which the person
78 resides. The State Police shall forward to the jurisdiction an affidavit signed by the custodian of the
79 records that such person failed to comply with the duty to register or reregister. Such affidavit shall be
80 admitted into evidence as prima facie evidence of the failure to comply with the duty to register or
81 reregister in any trial for the violation of § 18.2-472.1. The State Police shall also promptly notify the
82 local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the
83 records of the State Police.

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

89 C. The State Police shall physically verify or cause to be physically verified the registration
90 information within 30 days of the initial registration and semiannually, *or quarterly if convicted of a*
91 *sexually violent offense*, each year thereafter and within 30 days of a change of address of those persons
92 who are not under the control of the Department of Corrections or Community Supervision as defined
93 by § 53.1-1, who are required to register pursuant to this chapter. Whenever it appears that a person has
94 provided false registration information, the State Police shall promptly investigate and, if there is
95 probable cause to believe that a violation has occurred, obtain a warrant or assist in obtaining an
96 indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or
97 reregistered. The State Police shall forward to the jurisdiction an affidavit signed by the custodian of the
98 records that such person failed to comply with the provisions of this chapter. Such affidavit shall be
99 admitted into evidence as prima facie evidence of the failure to comply with the provisions of this
100 chapter in any trial for the violation of § 18.2-472.1. The State Police shall also promptly notify the
101 local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the
102 records of the State Police.

103 D. The Department of Corrections or Community Supervision as defined by § 53.1-1 shall physically
104 verify the registration information within 30 days of the original registration and semiannually, *or*
105 *quarterly if convicted of a sexually violent offense*, each year thereafter and within 30 days of a change
106 of address of all persons who are under the control of the Department of Corrections or Community
107 Supervision, who are required to register pursuant to this chapter. The Department of Corrections or
108 Community Supervision, upon request, shall provide the State Police the verification information, in an
109 electronic format approved by the State Police, regarding persons under their control who are required to
110 register pursuant to the chapter. Whenever it appears that a person has provided false registration
111 information, the Department of Corrections or Community Supervision shall promptly notify the State
112 Police, who shall investigate and, if there is probable cause to believe that a violation has occurred,
113 obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the
114 jurisdiction in which the person last registered or reregistered. The State Police shall forward to the
115 jurisdiction an affidavit signed by the custodian of the records that such person failed to comply with
116 the provisions of this chapter. Such affidavit shall be admitted into evidence as prima facie evidence of
117 the failure to comply with the provisions of this chapter in any trial for the violation of § 18.2-472.1.
118 The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the
119 person's last known residence as shown in the records of the State Police.

120 § 9.1-910. Removal of name and information from Registry.

121 A. Any person required to register, other than a person who has been convicted of any (i) sexually
 122 violent offense, (ii) two or more offenses for which registration is required, (iii) a violation of former
 123 § 18.2-67.2:1, or (iv) murder, may petition the circuit court in which he was convicted or the circuit
 124 court in the jurisdiction where he then resides for removal of his name and all identifying information
 125 from the Registry. A petition may not be filed earlier than ~~10~~ 15 years, or 25 years for violations of
 126 § 18.2-64.1, § 18.2-374.1, subsection C of § 18.2-374.1:1, or subsection C, D, or E of § 18.2-374.3, after
 127 the date of initial registration nor earlier than ~~10~~ 15 years, or 25 years for violations of § 18.2-64.1,
 128 § 18.2-374.1, subsection C of § 18.2-374.1:1, or subsection C, D, or E of § 18.2-374.3, from the date of
 129 his last conviction for ~~(i)~~ (a) a violation of § 18.2-472.1 or ~~(ii)~~ (b) any felony. A petition may not be
 130 filed until all court ordered treatment, counseling, and restitution has been completed. The court shall
 131 obtain a copy of the petitioner's complete criminal history and registration and reregistration history from
 132 the Registry and then hold a hearing on the petition at which the applicant and any interested persons
 133 may present witnesses and other evidence. The Commonwealth shall be made a party to any action
 134 under this section. If, after such hearing, the court is satisfied that such person no longer poses a risk to
 135 public safety, the court shall grant the petition. In the event the petition is not granted, the person shall
 136 wait at least 24 months from the date of the denial to file a new petition for removal from the Registry.

137 B. The State Police shall remove from the Registry the name of any person and all identifying
 138 information upon receipt of an order granting a petition pursuant to subsection A.

139 § 16.1-269.1. Trial in circuit court; preliminary hearing; direct indictment; remand.

140 A. Except as provided in subsections B and C, if a juvenile fourteen years of age or older at the time
 141 of an alleged offense is charged with an offense which would be a felony if committed by an adult, the
 142 court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold
 143 a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to
 144 the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any
 145 transfer to the appropriate circuit court shall be subject to the following conditions:

146 1. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the juvenile and his parent,
 147 guardian, legal custodian or other person standing in loco parentis; or attorney;

148 2. The juvenile court finds that probable cause exists to believe that the juvenile committed the
 149 delinquent act as alleged or a lesser included delinquent act which would be a felony if committed by
 150 an adult;

151 3. The juvenile is competent to stand trial. The juvenile is presumed to be competent and the burden
 152 is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the
 153 evidence; and

154 4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to
 155 remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person
 156 to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the
 157 following factors:

158 a. The juvenile's age;

159 b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was
 160 committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense
 161 was against persons or property, with greater weight being given to offenses against persons, especially
 162 if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater
 163 than twenty years confinement if committed by an adult; (iv) whether the alleged offense involved the
 164 use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise
 165 employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;

166 c. Whether the juvenile can be retained in the juvenile justice system long enough for effective
 167 treatment and rehabilitation;

168 d. The appropriateness and availability of the services and dispositional alternatives in both the
 169 criminal justice and juvenile justice systems for dealing with the juvenile's problems;

170 e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the
 171 number and nature of previous contacts with juvenile or circuit courts, (ii) the number and nature of
 172 prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional
 173 centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether
 174 previous adjudications and commitments were for delinquent acts that involved the infliction of serious
 175 bodily injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated
 176 offenses;

177 f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional
 178 entity in this or any other jurisdiction;

179 g. The extent, if any, of the juvenile's degree of mental retardation or mental illness;

180 h. The juvenile's school record and education;

181 i. The juvenile's mental and emotional maturity; and

182 j. The juvenile's physical condition and physical maturity.

183 No transfer decision shall be precluded or reversed on the grounds that the court failed to consider
184 any of the factors specified in subdivision A 4 of this section.

185 B. The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age
186 or older is charged with murder in violation of §§ 18.2-31, 18.2-32 or § 18.2-40, or aggravated
187 malicious wounding in violation of § 18.2-51.2.

188 C. The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age
189 or older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of
190 § 18.2-41, abduction in violation of § 18.2-48, malicious wounding in violation of § 18.2-51, malicious
191 wounding of a law-enforcement officer in violation of § 18.2-51.1, felonious poisoning in violation of
192 § 18.2-54.1, adulteration of products in violation of § 18.2-54.2, robbery in violation of § 18.2-58 or
193 carjacking in violation of § 18.2-58.1, rape in violation of § 18.2-61, forcible sodomy in violation of
194 § 18.2-67.1 or, object sexual penetration in violation of § 18.2-67.2, or aggravated sexual battery in
195 violation of § 18.2-67.3, provided the attorney for the Commonwealth gives written notice of his intent
196 to proceed pursuant to this subsection. The notice shall be filed with the court and mailed or delivered
197 to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a
198 parent, guardian or other person standing in loco parentis with respect to the juvenile at least seven days
199 prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, or
200 if he elects to withdraw the notice prior to certification of the charge to the grand jury, he may proceed
201 as provided in subsection A.

202 D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the
203 juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification
204 shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this
205 subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and
206 ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court.

207 If the court does not find probable cause to believe that the juvenile has committed the violent
208 juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by
209 dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the
210 circuit court. If the petition or warrant is terminated by nolle prosequi in the juvenile court, the attorney
211 for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.

212 If the court finds that the juvenile was not fourteen years of age or older at the time of the alleged
213 commission of the offense or that the conditions specified in subdivision 1, 2, or 3 of subsection A have
214 not been met, the case shall proceed as otherwise provided for by law.

215 E. An indictment in the circuit court cures any error or defect in any proceeding held in the juvenile
216 court except with respect to the juvenile's age. If an indictment is terminated by nolle prosequi, the
217 Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

218 § 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima
219 facie evidence.

220 A. Any person subject to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of
221 a sexually violent offense or murder as defined in § 9.1-902, who knowingly fails to register or
222 reregister, or who knowingly provides materially false information to the Sex Offender and Crimes
223 Against Minors Registry is guilty of a ~~Class 4 misdemeanor. A second or subsequent conviction for an~~
224 ~~offense under this subsection is a Class 6 felony.~~

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

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

233 D. At any trial pursuant to this section, an affidavit from the State Police issued as required in
234 § 9.1-907 shall be admitted into evidence as prima facie evidence of the failure to comply with the duty
235 to register or reregister and a copy of such affidavit shall be provided to the registrant or his counsel
236 seven days prior to hearing or trial by the attorney for the Commonwealth.

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

241 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
242 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is**
243 _____ **for periods of imprisonment in state adult correctional facilities and _____ for**

244 periods of commitment to the custody of the Department of Juvenile Justice.

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