

080264248

SENATE BILL NO. 590

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice on January 30, 2008)

(Patron Prior to Substitute—Senator Howell)

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

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-902, 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;

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.

4. Subsection A of § 18.2-63 unless otherwise required to register under subsection H.

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, 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.

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 for which registration is required, the court may, in

SENATE SUBSTITUTE

SB590S1

60 its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the
61 offense require offender registration. In making its determination, the court shall consider all of the
62 following factors that are relevant to the case: (i) the degree to which the delinquent act was committed
63 with the use of force, threat or intimidation, (ii) the age and maturity of the complaining witness, (iii)
64 the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the
65 offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the
66 offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the
67 case.

68 *H. A person required to register for violating, attempting to violate, or conspiracy to violate*
69 *subsection A of § 18.2-63 may petition the circuit court in which he was convicted or the circuit court*
70 *in the jurisdiction where he resides to be exempt from the sexually violent offense registration*
71 *requirements if the person required to register was under the age of 21 at the time of the offense, five*
72 *years or less older than the victim, and the person has never been convicted of any other offense for*
73 *which registration is required. If the petition is granted, the person shall register if required under*
74 *subsection B.*

75 § 9.1-910. Removal of name and information from Registry.

76 A. Any person required to register, other than a person who has been convicted of any (i) sexually
77 violent offense, (ii) two or more offenses for which registration is required, (iii) a violation of former
78 § 18.2-67.2:1, or (iv) murder, may petition the circuit court in which he was convicted or the circuit
79 court in the jurisdiction where he then resides for removal of his name and all identifying information
80 from the Registry. A petition may not be filed earlier than ~~40~~ 15 years, *or 25 years for violations of*
81 *§ 18.2-64.1, subsection C of § 18.2-374.1:1, or subsection C, D, or E of § 18.2-374.3*, after the date of
82 initial registration nor earlier than ~~40~~ 15 years, *or 25 years for violations of § 18.2-64.1, subsection C*
83 *of § 18.2-374.1:1, or subsection C, D, or E of § 18.2-374.3*, from the date of his last conviction for ~~(i)~~
84 ~~(a)~~ a violation of § 18.2-472.1 or ~~(ii)~~ ~~(b)~~ any felony. A petition may not be filed until all court ordered
85 treatment, counseling, and restitution has been completed. The court shall obtain a copy of the
86 petitioner's complete criminal history and registration and reregistration history from the Registry and
87 then hold a hearing on the petition at which the applicant and any interested persons may present
88 witnesses and other evidence. The Commonwealth shall be made a party to any action under this
89 section. If, after such hearing, the court is satisfied that such person no longer poses a risk to public
90 safety, the court shall grant the petition. In the event the petition is not granted, the person shall wait at
91 least 24 months from the date of the denial to file a new petition for removal from the Registry.

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

94 § 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima
95 facie evidence.

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

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

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

109 D. At any trial pursuant to this section, an affidavit from the State Police issued as required in
110 § 9.1-907 shall be admitted into evidence as prima facie evidence of the failure to comply with the duty
111 to register or reregister and a copy of such affidavit shall be provided to the registrant or his counsel
112 seven days prior to hearing or trial by the attorney for the Commonwealth.

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

117 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
118 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at**
119 **least \$351,376 for periods of imprisonment in state adult correctional facilities and cannot be**
120 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**