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HOUSE BILL NO. 1979

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 18.2-60.3 and 18.2-308.1:4 of the Code of Virginia, relating to felony penalty for stalking.

Patron—McClellan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-60.3 and 18.2-308.1:4 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-60.3. Stalking; penalty.

A. Any person, except a law-enforcement officer, as defined in § 9.1-101, and acting in the performance of his official duties, and a registered private investigator, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and acting in the course of his legitimate business, who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor.

B. ~~A third or subsequent conviction occurring~~*Any person who is convicted of a second or subsequent offense in violation of subsection A committed* within five years of a conviction for an offense under this section or for a similar offense under the law of any other jurisdiction ~~shall be~~ *is guilty of* a Class 6 felony.

C. Any person who is convicted of an offense in violation of subsection A when, at the time of the offense, there is in effect any protective order prohibiting contact between the defendant and the victim or the victim's family or household member is guilty of a Class 6 felony.

~~C.~~*D.* A person may be convicted under this section irrespective of the jurisdiction or jurisdictions within the Commonwealth wherein the conduct described in subsection A occurred, if the person engaged in that conduct on at least one occasion in the jurisdiction where the person is tried. Evidence of any such conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution under this section provided that the prosecution is based upon conduct occurring within the Commonwealth.

~~D.~~*E.* Upon finding a person guilty under this section, the court shall, in addition to the sentence imposed, issue an order prohibiting contact between the defendant and the victim or the victim's family or household member.

~~E.~~*F.* The Department of Corrections, sheriff or regional jail director shall give notice prior to the release from a state correctional facility or a local or regional jail of any person incarcerated upon conviction of a violation of this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. The notice shall be given at least ~~fifteen~~ *15* days prior to release of a person sentenced to a term of incarceration of more than ~~thirty~~ *30* days or, if the person was sentenced to a term of incarceration of at least ~~forty-eight~~ *48* hours but no more than ~~thirty~~ *30* days, ~~twenty-four~~ *24* hours prior to release. If the person escapes, notice shall be given as soon as practicable following the escape. The victim shall keep the Department of Corrections, sheriff or regional jail director informed of the current mailing address and telephone number of the person named in the writing submitted to receive notice.

All information relating to any person who receives or may receive notice under this subsection shall remain confidential and shall not be made available to the person convicted of violating this section.

For purposes of this subsection, "release" includes a release of the offender from a state correctional facility or a local or regional jail (i) upon completion of his term of incarceration or (ii) on probation or parole.

No civil liability shall attach to the Department of Corrections nor to any sheriff or regional jail director or their deputies or employees for a failure to comply with the requirements of this subsection.

~~F.~~*G.* For purposes of this section:

"Family or household member" has the same meaning as provided in § 16.1-228.

§ 18.2-308.1:4. Purchase or transportation of firearm by persons subject to protective orders; penalty.

It shall be unlawful for any person who is subject to (i) a protective order entered pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, or § 19.2-152.10; (ii) an order

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issued pursuant to subsection B of § 20-103; (iii) an order entered pursuant to subsection ~~D~~*E* of § 18.2-60.3; or (iv) an order issued by a tribunal of another state, the United States or any of its territories, possessions or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), or (iii) to purchase or transport any firearm while the order is in effect. Any person with a concealed handgun permit shall be prohibited from carrying any concealed firearm, and shall surrender his permit to the court entering the order, for the duration of any protective order referred to herein. A violation of this section is a Class 1 misdemeanor.

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 is $499,965 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.