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HOUSE BILL NO. 2361

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact §§ 9.1-902, 18.2-370.5, 22.1-254, 22.1-254.2, 22.1-277.06, and 22.1-277.2:1 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 22.1-277.09, relating to sex offenders; penalty.

Patron—Gilbert

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-902, 18.2-370.5, 22.1-254, 22.1-254.2, 22.1-277.06, and 22.1-277.2:1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 22.1-277.09 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;

4. A sexually violent offense;

5. Any offense similar to those listed in subdivisions 1 through 4 under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof; and

6. 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.

B. The offenses included under this subsection include any violation of, attempted violation of, or conspiracy to violate:

1. § 18.2-63, unless registration is required pursuant to Subsection E.1, § 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape, subsection B or C of § 18.2-374.1:1, former subsection D of § 18.2-374.1:1 as it was in effect from July 1, 1994, through June 30, 2007, former clause (iv) of subsection B of § 18.2-374.3 as it was in effect on June 30, 2007, or subsection B, C, or D of § 18.2-374.3; 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, § 18.2-91 with the intent to commit any felony offense listed in this section; subsection A of § 18.2-374.1:1; or a felony under § 18.2-67.5:1.

2. 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) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, § 18.2-361, or 18.2-366.

3. § 18.2-370.6.

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) and (iii) of § 18.2-48, § 18.2-61, subsection A of § 18.2-63 where the perpetrator is more than five years older than the victim, § 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) 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

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59 violent offense only if the person has been convicted or adjudicated delinquent of any two or more such
60 offenses, provided that the person had been at liberty between such convictions or adjudications; or

61 4. Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as
62 described in § 1591 of Title 18, U.S.C.).

63 F. "Any offense listed in subsection B," "criminal homicide" as defined in this section, "murder" as
64 defined in this section, and "sexually violent offense" as defined in this section includes (i) any similar
65 offense under the laws of any foreign country or any political subdivision thereof, the United States or
66 any political subdivision thereof or (ii) any offense for which registration in a sex offender and crimes
67 against minors registry is required under the laws of the jurisdiction where the offender was convicted.

68 G. Juveniles adjudicated delinquent ~~shall not be required to register; however, where the offender is a~~
69 ~~juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated~~
70 ~~delinquent on or after July 1, 2005, of any offense for which registration is required, the of an offense~~
71 ~~listed in subsection C, D or E shall be required to register. The court may, in its discretion and upon~~
72 ~~motion of the attorney for the Commonwealth, find order the registration of a juvenile who was 13~~
73 ~~years of age or older at the time of the offense, who was tried as a juvenile and adjudicated delinquent~~
74 ~~of an offense listed in subsection B if it finds that the circumstances of the offense require offender~~
75 ~~registration. In making its determination, the court shall consider all of the following factors that are~~
76 ~~relevant to the case: (i) the degree to which the delinquent act was committed with the use of force,~~
77 ~~threat or intimidation, (ii) the age and maturity of the complaining witness, (iii) the age and maturity of~~
78 ~~the offender, (iv) the difference in the ages of the complaining witness and the offender, (v) the nature~~
79 ~~of the relationship between the complaining witness and the offender, (vi) the offender's prior criminal~~
80 ~~history, and (vii) any other aggravating or mitigating factors relevant to the case.~~

81 § 18.2-370.5. Sex offenses prohibiting entry onto school property; penalty.

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

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

98 § 22.1-254. Compulsory attendance required; excuses and waivers; alternative education program
99 attendance; exemptions from article.

100 A. Except as otherwise provided in this article, every parent, guardian, or other person in the
101 Commonwealth having control or charge of any child who will have reached the fifth birthday on or
102 before September 30 of any school year and who has not passed the eighteenth birthday shall, during
103 the period of each year the public schools are in session and for the same number of days and hours per
104 day as the public schools, send such child to a public school or to a private, denominational, or
105 parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board
106 of Education and approved by the division superintendent, or provide for home instruction of such child
107 as described in § 22.1-254.1.

108 As prescribed in the regulations of the Board of Education, the requirements of this section may also
109 be satisfied by sending a child to an alternative program of study or work/study offered by a public,
110 private, denominational, or parochial school or by a public or private degree-granting institution of
111 higher education. Further, in the case of any five-year-old child who is subject to the provisions of this
112 subsection, the requirements of this section may be alternatively satisfied by sending the child to any
113 public educational pre-kindergarten program, including a Head Start program, or in a private,
114 denominational, or parochial educational pre-kindergarten program.

115 Instruction in the home of a child or children by the parent, guardian, or other person having control
116 or charge of such child or children shall not be classified or defined as a private, denominational or
117 parochial school.

118 The requirements of this section shall apply to (i) any child in the custody of the Department of
119 Juvenile Justice or the Department of Corrections who has not passed his eighteenth birthday and (ii)
120 any child whom the division superintendent has required to take a special program of prevention,

intervention, or remediation as provided in subsection C of § 22.1-253.13:1 and in § 22.1-254.01. The requirements of this section shall not apply to (a) any person 16 through 18 years of age who is housed in an adult correctional facility when such person is actively pursuing a general educational development (GED) certificate but is not enrolled in an individual student alternative education plan pursuant to subsection D, and (b) any child who has obtained a high school diploma or its equivalent, a certificate of completion, or a GED certificate, or who has otherwise complied with compulsory school attendance requirements as set forth in this article.

B. A school board shall excuse from attendance at school:

1. Any pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school. For purposes of this subdivision, "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code; and

2. On the recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides and for such period of time as the court deems appropriate, any pupil who, together with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court, upon consideration of the recommendation of the principal and division superintendent, to be justified.

C. A school board may excuse from attendance at school:

1. On recommendation of the principal and the division superintendent and with the written consent of the parent or guardian, any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school; or

2. On recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, any pupil who, in the judgment of such court, cannot benefit from education at such school.

D. Local school boards may allow the requirements of subsection A of this section to be met under the following conditions:

For a student who is at least 16 years of age, there shall be a meeting of the student, the student's parents, and the principal or his designee of the school in which the student is enrolled in which an individual student alternative education plan shall be developed in conformity with guidelines prescribed by the Board, which plan must include:

a. Career guidance counseling;

b. Mandatory enrollment and attendance in a general educational development preparatory program or other alternative education program approved by the local school board with attendance requirements that provide for reporting of student attendance by the chief administrator of such GED preparatory program or approved alternative education program to such principal or his designee;

c. Counseling on the economic impact of failing to complete high school; and

d. Procedures for reenrollment to comply with the requirements of subsection A of this section.

A student for whom an individual student alternative education plan has been granted pursuant to this subsection and who fails to comply with the conditions of such plan shall be in violation of the compulsory school attendance law, and the division superintendent or attendance officer of the school division in which such student was last enrolled shall seek immediate compliance with the compulsory school attendance law as set forth in this article.

Students enrolled with an individual student alternative education plan shall be counted in the average daily membership of the school division.

E. A school board may, in accordance with the procedures set forth in Article 3 (§ 22.1-276.01 et seq.) of Chapter 14 of this title and upon a finding that a school-age child has been (i) charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person; (ii) found guilty or not innocent of a crime that resulted in or could have resulted in injury to others, or of an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G of § 16.1-260; (iii) suspended pursuant to § 22.1-277.05; or (iv) expelled from school attendance pursuant to § 22.1-277.06 or § 22.1-277.07, or 22.1-277.08 or subsection B of § 22.1-277, require the child to attend an alternative education program as provided in § 22.1-209.1:2 or § 22.1-277.2:1.

F. Whenever a court orders any pupil into an alternative education program, including a program of general educational development, offered in the public schools, the local school board of the school division in which the program is offered shall determine the appropriate alternative education placement of the pupil, regardless of whether the pupil attends the public schools it supervises or resides within its school division.

The juvenile and domestic relations district court of the county or city in which a pupil resides or in

182 which charges are pending against a pupil, or any court in which charges are pending against a pupil,
183 may require the pupil who has been charged with (i) a crime that resulted in or could have resulted in
184 injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any
185 offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend
186 an alternative education program, including, but not limited to, night school, adult education, or any
187 other education program designed to offer instruction to students for whom the regular program of
188 instruction may be inappropriate.

189 This subsection shall not be construed to limit the authority of school boards to expel, suspend, or
190 exclude students, as provided in §§ 22.1-277.04, 22.1-277.05, 22.1-277.06, 22.1-277.07, 22.1-277.09, and
191 22.1-277.2. As used in this subsection, the term "charged" means that a petition or warrant has been
192 filed or is pending against a pupil.

193 G. Within one calendar month of the opening of school, each school board shall send to the parents
194 or guardian of each student enrolled in the division a copy of the compulsory school attendance law and
195 the enforcement procedures and policies established by the school board.

196 H. The provisions of this article shall not apply to:

197 1. Children suffering from contagious or infectious diseases while suffering from such diseases;

198 2. Children whose immunizations against communicable diseases have not been completed as
199 provided in § 22.1-271.2;

200 3. Children under 10 years of age who live more than two miles from a public school unless public
201 transportation is provided within one mile of the place where such children live;

202 4. Children between the ages of 10 and 17, inclusive, who live more than 2.5 miles from a public
203 school unless public transportation is provided within 1.5 miles of the place where such children live;
204 and

205 5. Children excused pursuant to subsections B and C of this section.

206 Further, any child who will not have reached his sixth birthday on or before September 30 of each
207 school year whose parent or guardian notifies the appropriate school board that he does not wish the
208 child to attend school until the following year because the child, in the opinion of the parent or
209 guardian, is not mentally, physically, or emotionally prepared to attend school, may delay the child's
210 attendance for one year.

211 The distances specified in subdivisions 3 and 4 of this subsection shall be measured or determined
212 from the child's residence to the entrance to the school grounds or to the school bus stop nearest the
213 entrance to the residence of such children by the nearest practical routes which are usable for walking or
214 riding. Disease shall be established by the certificate of a reputable practicing physician in accordance
215 with regulations adopted by the Board of Education.

216 § 22.1-254.2. Testing for general educational development; eligibility; guidelines.

217 A. The Board of Education shall establish a program of testing for general educational development
218 (GED) through which persons may earn a high school equivalency certificate or a diploma as provided
219 in subsection F of § 22.1-253.13:4. The following persons may participate in the testing program:

220 1. Persons who are at least 18 years of age and not enrolled in public school or not otherwise
221 meeting the school attendance requirements set forth in § 22.1-254;

222 2. Persons 16 years of age or older who have been instructed by their parents in their home pursuant
223 to § 22.1-254.1 and who have completed such home school instruction;

224 3. Persons who have been excused from school attendance pursuant to subsections B and C of
225 § 22.1-254;

226 4. Persons for whom an individual student alternative education plan has been granted pursuant to
227 subsection D of § 22.1-254;

228 5. Persons 16 through 18 years of age who are housed in adult correctional facilities and who are
229 actively pursuing a GED certificate but who are not enrolled in an individual student alternative
230 education plan pursuant to subsection D of § 22.1-254;

231 6. Persons 16 years of age or older who have been expelled from school pursuant to §§ 22.1-277.06
232 through 22.1-277.08 22.1-277.09; and

233 7. Persons required by court order to participate in the testing program.

234 Under no circumstances shall persons under the age of 16 be eligible for the testing program.

235 B. From such funds as may be appropriated for this purpose, local school boards shall implement
236 programs of preparation and testing for general educational development consistent with guidelines to be
237 developed by the Board of Education. Such guidelines shall include a provision that allows preparatory
238 and testing programs to be offered jointly by two or more school boards.

239 § 22.1-277.06. Expulsions; procedures; readmission.

240 A. Pupils may be expelled from attendance at school after written notice to the pupil and his parent
241 of the proposed action and the reasons therefor and of the right to a hearing before the school board or
242 a committee thereof in accordance with regulations of the school board.

243 If the regulations provide for a hearing by a committee of the school board, the regulations shall also

provide that such committee may confirm or disapprove the expulsion of a student. Any such committee of the school board shall be composed of at least three members. If the committee's decision is not unanimous, the pupil or his parent may appeal the committee's decision to the full school board. Such appeal shall be decided by the school board within 30 days.

The regulations shall also provide for subsequent confirmation or disapproval of the proposed expulsion by the school board, or a committee thereof, as may be provided in regulation, regardless of whether the pupil exercised the right to a hearing.

B. The written notice required by this section shall include notification of the length of the expulsion and shall provide information to the parent of the student concerning the availability of community-based educational, training, and intervention programs. Such notice shall state further whether or not the student is eligible to return to regular school attendance, or to attend an appropriate alternative education program approved by the school board, or an adult education program offered by the school division, during or upon the expiration of the expulsion, and the terms or conditions of such readmission. The costs of any community-based educational, training, or intervention program that is not a part of the educational program offered by the school division that the student may attend during his expulsion shall be borne by the parent of the student.

Nothing in this section shall be construed to prohibit the school board from permitting or requiring students expelled pursuant to this section to attend an alternative education program provided by the school board for the term of such expulsion.

If the school board determines that the student is ineligible to return to regular school attendance or to attend during the expulsion an alternative education program or an adult education program in the school division, the written notice shall also advise the parent of such student that the student may petition the school board for readmission to be effective one calendar year from the date of his expulsion, and of the conditions, if any, under which readmission may be granted.

School boards shall establish, by regulation, a schedule pursuant to which such students may apply and reapply for readmission to school. Such schedule shall be designed to ensure that any initial petition for readmission will be reviewed by the school board or a committee thereof, or the division superintendent, and, if granted, would enable the student to resume school attendance one calendar year from the date of the expulsion. If the division superintendent or a committee of the school board denies such petition, the student may petition the school board for review of such denial.

C. Recommendations for expulsion for actions other than those specified in §§ 22.1-277.07 and 22.1-277.08, and 22.1-277.09 shall be based on consideration of the following factors:

1. The nature and seriousness of the violation;
2. The degree of danger to the school community;
3. The student's disciplinary history, including the seriousness and number of previous infractions;
4. The appropriateness and availability of an alternative education placement or program;
5. The student's age and grade level;
6. The results of any mental health, substance abuse, or special education assessments;
7. The student's attendance and academic records; and
8. Such other matters as he deems appropriate.

No decision to expel a student shall be reversed on the grounds that such factors were not considered.

Nothing in this subsection shall be deemed to preclude a school board from considering any of these factors as "special circumstances" for purposes of §§ 22.1-277.07 and 22.1-277.08.

§ 22.1-277.09. *Expulsion of students for certain offenses requiring registration as a sex offender.*

A. School boards shall expel from school attendance any student whom such school board has determined, in accordance with the procedures set forth in this article, to have been convicted or adjudicated delinquent of an offense for which registration as a sex offender is required for an offense listed in subsection C, D or E of § 9.1-902.

§ 22.1-277.2:1. Disciplinary authority of school boards under certain circumstances; alternative education program.

A. A school board may, in accordance with the procedures set forth in this article, require any student who has been (i) charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person; (ii) found guilty or not innocent of an offense relating to the Commonwealth's laws on weapons, alcohol, or drugs, or of a crime that resulted in or could have resulted in injury to others, or of an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G of § 16.1-260; (iii) found to have committed a serious offense or repeated offenses in violation of school board policies; (iv) suspended pursuant to § 22.1-277.05; or (v) expelled pursuant to §§ 22.1-277.06, 22.1-277.07, or § 22.1-277.08, or 22.1-277.09, or subsection B of § 22.1-277, to attend an alternative education program. A school board may require such student to attend such programs

305 regardless of where the crime occurred. School boards may require any student who has been found, in
306 accordance with the procedures set forth in this article, to have been in possession of, or under the
307 influence of, drugs or alcohol on a school bus, on school property, or at a school-sponsored activity in
308 violation of school board policies, to undergo evaluation for drug or alcohol abuse, or both, and, if
309 recommended by the evaluator and with the consent of the student's parent, to participate in a treatment
310 program.

311 As used in this section, the term "charged" means that a petition or warrant has been filed or is
312 pending against a pupil.

313 B. A school board may adopt regulations authorizing the division superintendent or his designee to
314 require students to attend an alternative education program consistent with the provisions of subsection
315 A after (i) written notice to the student and his parent that the student will be required to attend an
316 alternative education program and (ii) notice of the opportunity for the student or his parent to
317 participate in a hearing to be conducted by the division superintendent or his designee regarding such
318 placement. The decision of the superintendent or his designee regarding such alternative education
319 placement shall be final unless altered by the school board, upon timely written petition, as established
320 in regulation, by the student or his parent, for a review of the record by the school board.

321 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
322 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
323 **be determined for periods of imprisonment in state adult correctional facilities and cannot be**
324 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**