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HOUSE BILL NO. 1198

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 9.1-902, 9.1-907, 9.1-908, 53.1-116.1, and 53.1-160.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 9 of Title 37.2 a section numbered 37.2-921, relating to sex offender registration.

Patrons—Iaquinto, Athey, Cole, Hugo, Lohr and Villanueva

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-902, 9.1-907, 9.1-908, 53.1-116.1, and 53.1-160.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9 of Title 37.2 a section numbered 37.2-921 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~~ Regardless of any other provision in this chapter, any offense for which registration is not otherwise required pursuant to this chapter but where registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted or where the offender was initially required to register regardless of whether adjudication was withheld.

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;

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59 3. If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any
60 felony offense listed in this section. An offense listed under this subdivision shall be deemed a sexually
61 violent offense only if the person has been convicted or adjudicated delinquent of any two or more such
62 offenses, provided that the person had been at liberty between such convictions or adjudications; or

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

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

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

81 *H. For offenses under this section that require, as a condition of registration, that the victim be a*
82 *minor, be physically helpless, or be mentally incapacitated as defined in § 18.2-67.10, the age,*
83 *helplessness, or incapacity of the victim may, but need not be, alleged in the charging instrument or set*
84 *forth in the order of conviction. In any subsequent or collateral proceeding after a conviction for an*
85 *offense listed in subdivisions B 2 and E2, the subsequent or collateral forum shall hold an evidentiary*
86 *hearing to determine the age, helplessness, or incapacity of the victim if the age, helplessness, or*
87 *incapacity of the victim is at issue and the charging instrument or order of conviction is silent to the*
88 *matter.*

89 § 9.1-907. Procedures upon a failure to register or reregister.

90 A. Whenever it appears from the records of the State Police that a person has failed to comply with
91 the duty to register or reregister, the State Police shall promptly investigate and, if there is probable
92 cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging
93 a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered or, if the
94 person failed to comply with the duty to register, in the jurisdiction in which the person was last
95 convicted of an offense for which registration or reregistration is required or if the person was convicted
96 of an offense requiring registration outside the Commonwealth, in the jurisdiction in which the person
97 resides. The State Police shall forward to the jurisdiction an affidavit signed by a custodian of the
98 records that such person failed to comply with the duty to register or reregister. If such affidavit is
99 admitted into evidence, it shall constitute prima facie evidence of the failure to comply with the duty to
100 register or reregister in any trial or hearing for the violation of § 18.2-472.1, provided that in a trial or
101 hearing other than a preliminary hearing, the requirements of subsection G of § 18.2-472.1 have been
102 satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H of
103 § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency of the
104 jurisdiction of the person's last known residence as shown in the records of the State Police.

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

110 C. The State Police shall physically verify or cause to be physically verified the registration
111 information within 30 days of the initial registration and semiannually each year thereafter and within 30
112 days of a change of address of those persons who are not under the control of the Department of
113 Corrections or Community Supervision as defined by § 53.1-1, who are required to register pursuant to
114 this chapter. Whenever it appears that a person has provided false registration information, the State
115 Police shall promptly investigate and, if there is probable cause to believe that a violation has occurred,
116 obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the
117 jurisdiction in which the person last registered or reregistered. The State Police shall forward to the
118 jurisdiction an affidavit signed by a custodian of the records that such person failed to comply with the
119 provisions of this chapter. If such affidavit is admitted into evidence, it shall constitute prima facie
120 evidence of the failure to comply with the provisions of this chapter in any trial or hearing for the

violation of § 18.2-472.1, provided that in a trial or hearing other than a preliminary hearing, the requirements of subsection G of § 18.2-472.1 have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

D. The Department of Corrections or Community Supervision as defined by § 53.1-1 shall physically verify the registration information within 30 days of the original registration and semiannually each year thereafter and within 30 days of a change of address of all persons who are under the control of the Department of Corrections or Community Supervision, *and those who are under supervision pursuant to § 37.2-919*, who are required to register pursuant to this chapter. The Department of Corrections or Community Supervision, upon request, shall provide the State Police the verification information, in an electronic format approved by the State Police, regarding persons under their control who are required to register pursuant to the chapter. Whenever it appears that a person has provided false registration information, the Department of Corrections or Community Supervision shall promptly notify the State Police, who shall investigate and, if there is probable cause to believe that a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered. The State Police shall forward to the jurisdiction an affidavit signed by a custodian of the records that such person failed to comply with the provisions of this chapter. If such affidavit is admitted into evidence, it shall constitute prima facie evidence of the failure to comply with the provisions of this chapter in any trial or hearing for the violation of § 18.2-472.1, provided that in a trial or hearing other than a preliminary hearing, the requirements of subsection G of § 18.2-472.1 have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

§ 9.1-908. Duration of registration requirement.

Any person required to register or reregister shall be required to register until the duty to register and reregister is terminated by a court order as set forth in § 9.1-910, except that any person who has been convicted of (i) any sexually violent offense, (ii) murder or (iii) former § 18.2-67.2:1 shall have a continuing duty to reregister for life.

Any period of confinement in a federal, state or local correctional facility, hospital or any other institution or facility during the otherwise applicable period shall toll the registration period and the duty to reregister shall be extended. Persons confined in a federal, state, or local correctional facility shall not be required to reregister until released from custody. *Persons civilly committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 shall not be required to reregister until released from custody.*

§ 37.2-921. *Department to give notice of Sex Offender and Crimes Against Minors Registry requirements to certain prisoners.*

A. *Prior to the release or discharge of any committed respondent for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the Department shall give notice to the committed respondent of his duty to register with the State Police. A person required to register shall register, submit to be photographed as part of the registration, and provide information regarding place of employment, if available, to the Department. The Department shall also obtain from that person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police, inform the person of his duties regarding reregistration and change of address, and inform the person of his duty to register. The Department shall forward the registration information to the Department of State Police on the date of the committed respondent's release or discharge.*

B. *Whenever a person required to register has failed to comply with the provisions of subsection A, the Department shall promptly investigate or request the State Police promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person was released or discharged. The Department shall notify the State Police forthwith of such actions taken pursuant to this section.*

C. *Within 12 hours of discovering the escape of any committed respondent for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the Department shall give notice to the State Police.*

§ 53.1-116.1. Jailer to give notice of release of certain prisoners.

A. Prior to the release or discharge of any prisoner for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the sheriff, jail superintendent or other jail administrator shall give notice to the prisoner of his duty to register with the State Police. A person required to register shall register, submit to be photographed as

182 part of the registration, and provide information regarding place of employment, if available, to the
183 sheriff, jail superintendent or other jail administrator. The sheriff, jail superintendent or other jail
184 administrator shall also obtain from that person all necessary registration information, including
185 fingerprints and photographs of a type and kind approved by the Department of State Police; inform the
186 person of his duties regarding reregistration and change of address; and inform the person of his duty to
187 register. The sheriff, jail superintendent or other jail administrator shall forthwith forward the registration
188 information to the Department of State Police on the date of the prisoner's release.

189 B. Whenever a person required to register has failed to comply with the provisions of subsection A,
190 the sheriff, jail superintendent or other jail administrator shall promptly investigate or request the State
191 Police to promptly investigate and, if there is probable cause to believe a violation has occurred, obtain
192 a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in
193 which the person was discharged. The sheriff, jail superintendent or other jail administrator shall notify
194 the State Police forthwith of such actions taken pursuant to this section.

195 C. *Within 12 hours of discovering the escape of any prisoner for whom registration with the Sex*
196 *Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of*
197 *Title 9.1, the sheriff, jail superintendent, or other jail administrator shall give notice to the State Police.*

198 § 53.1-160.1. Department to give notice of Sex Offender and Crimes Against Minors Registry
199 requirements to certain prisoners.

200 A. Prior to the release or discharge of any prisoner for whom registration with the Sex Offender and
201 Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the
202 Department shall give notice to the prisoner of his duty to register with the State Police. A person
203 required to register shall register, submit to be photographed as part of the registration, and provide
204 information regarding place of employment, if available, to the Department. The Department shall also
205 obtain from that person all necessary registration information, including fingerprints and photographs of
206 a type and kind approved by the Department of State Police, inform the person of his duties regarding
207 reregistration and change of address, and inform the person of his duty to register. The Department shall
208 forward the registration information to the Department of State Police on the date of the prisoner's
209 release or discharge.

210 B. Whenever a person required to register has failed to comply with the provisions of subsection A,
211 the Department shall promptly investigate or request the State Police promptly investigate and, if there is
212 probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment
213 charging a violation of § 18.2-472.1 in the jurisdiction in which the person was released or discharged.
214 The Department shall notify the State Police forthwith of such actions taken pursuant to this section.

215 C. *Within 12 hours of discovering the escape of any prisoner for whom registration with the Sex*
216 *Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of*
217 *Title 9.1, the Department shall give notice to the State Police.*

218 2. That the provisions of this act may result in a net increase in periods of imprisonment or
219 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
220 be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter
221 781 of the Acts of Assembly of 2009 requires the Virginia Criminal Sentencing Commission to
222 assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the
223 necessary appropriation is \$0 for periods of commitment to the custody of the Department of
224 Juvenile Justice.