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SENATE BILL NO. 1409

Offered January 18, 2011

A *BILL to amend and reenact §§ 9.1-902, 9.1-903, 9.1-904, 9.1-913, and 18.2-361 of the Code of Virginia, relating to sex offender registration.*

Patron—Stanley

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-902, 9.1-903, 9.1-904, 9.1-913, and 18.2-361 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;

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 subdivision 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) *clause (ii) of § 18.2-371*, or (v) § 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, *subsection A and subdivision B 1 of § 18.2-361*, or § 18.2-366.

3. § 18.2-370.6.

4. *18 U.S.C. § 1801 of the United States Code.*

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, *subdivision B 2 of § 18.2-361*, § 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, *subsection A and subdivision B 1 of § 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

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59 offenses, provided that the person had been at liberty between such convictions or adjudications; or

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

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

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

78 H. Prior to entering judgment of conviction of an offense for which registration is required if the
79 victim of the offense was a minor, physically helpless, or mentally incapacitated, the court shall
80 determine by a preponderance of the evidence whether the victim of the offense was a minor, physically
81 helpless or mentally incapacitated, as defined in § 18.2-67.10, and shall also determine the age of the
82 victim at the time of the offense if it determines the victim to be a minor. Upon such a determination
83 the court shall advise the defendant of its determination and of the defendant's right to withdraw a plea
84 of guilty or nolo contendere. If the defendant chooses to withdraw his plea of guilty or of nolo
85 contendere, his case shall be heard by another judge, unless the parties agree otherwise.

86 § 9.1-903. Registration procedures.

87 A. Every person convicted, including juveniles tried and convicted in the circuit courts pursuant to
88 § 16.1-269.1, whether sentenced as an adult or juvenile, of an offense for which registration is required
89 and every juvenile found delinquent of an offense for which registration is required under subsection G
90 of § 9.1-902 shall be required upon conviction to register and reregister with the Department of State
91 Police. The court shall order the person to provide to the local law-enforcement agency of the county or
92 city where he physically resides all information required by the State Police for inclusion in the
93 Registry. The court shall immediately remand the person to the custody of the local law-enforcement
94 agency for the purpose of obtaining the person's fingerprints and photographs of a type and kind
95 specified by the State Police for inclusion in the Registry. Upon conviction, the local law-enforcement
96 agency shall forthwith forward to the State Police all the necessary registration information.

97 B. Every person required to register shall register in person within three days of his release from
98 confinement in a state, local or juvenile correctional facility, in a state civil commitment program for
99 sexually violent predators or, if a sentence of confinement is not imposed, within three days of
100 suspension of the sentence or in the case of a juvenile of disposition. A person required to register shall
101 register, and as part of the registration shall submit to be photographed, submit to have a sample of his
102 blood, saliva, or tissue taken for DNA (deoxyribonucleic acid) analysis and submission to the DNA
103 databank to determine identification characteristics specific to the person, provide electronic mail address
104 information, any instant message, chat or other Internet communication name or identity information that
105 the person uses or intends to use, submit to have his fingerprints and palm prints taken, provide
106 information regarding his place of employment, *provide passport and immigration information*, and
107 provide motor vehicle, watercraft and aircraft registration information for all motor vehicles, watercraft
108 and aircraft owned by him. The local law-enforcement agency shall obtain from the person who presents
109 himself for registration or reregistration one set of fingerprints, electronic mail address information, any
110 instant message, chat or other Internet communication name or identity information that the person uses
111 or intends to use, one set of palm prints, place of employment information, *passport and immigration*
112 *information*, motor vehicle, watercraft and aircraft registration information for all motor vehicles,
113 watercraft and aircraft owned by the registrant, proof of residency and a photograph of a type and kind
114 specified by the State Police for inclusion in the Registry and advise the person of his duties regarding
115 reregistration. The local law-enforcement agency shall obtain from the person who presents himself for
116 registration a sample of his blood, saliva or tissue taken for DNA (deoxyribonucleic acid) analysis to
117 determine identification characteristics specific to the person. If a sample has been previously taken from
118 the person, as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken.
119 The local law-enforcement agency shall forthwith forward to the State Police all necessary registration
120 information.

C. To establish proof of residence in Virginia, a person who has a permanent physical address shall present one photo-identification form issued by a governmental agency of the Commonwealth which contains the person's complete name, gender, date of birth and complete physical address. The local law-enforcement agency shall forthwith forward to the State Police a copy of the identification presented by the person required to register.

D. Any person required to register shall also reregister in person with the local law-enforcement agency following any change of name or any change of residence, whether within or without the Commonwealth. If his new residence is within the Commonwealth, the person shall register in person with the local law-enforcement agency where his new residence is located within three days following his change in residence. If the new residence is located outside of the Commonwealth, the person shall register in person with the local law-enforcement agency where he previously registered within 10 days prior to his change of residence. If a probation or parole officer becomes aware of a change of name or residence for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith of learning of the change. Whenever a person subject to registration changes residence to another state, the State Police shall notify the designated law-enforcement agency of that state.

E. Any person required to register shall reregister in person with the local law-enforcement agency where his residence is located within three days following any change of the place of employment, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of the place of employment for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change of the person's place of employment. Whenever a person subject to registration changes his place of employment to another state, the State Police shall notify the designated law-enforcement agency of that state.

F. Any person required to register shall reregister in person with the local law-enforcement agency where his residence is located within three days following any change of owned motor vehicle, watercraft and aircraft registration information, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of owned motor vehicle, watercraft and aircraft registration information for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change of the person's owned motor vehicle, watercraft and aircraft registration information. Whenever a person required to register changes his owned motor vehicle, watercraft and aircraft registration information to another state, the State Police shall notify the designated law-enforcement agency of that state.

G. Any person required to register shall reregister either in person or electronically with the local law-enforcement agency where his residence is located within 30 minutes following any change of the electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of the electronic mail address information, any instant message, chat or other Internet communication name or identity information for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change.

H. The registration shall be maintained in the Registry and shall include the person's name, all aliases that he has used or under which he may have been known, the date and locality of the conviction for which registration is required, his fingerprints and a photograph of a type and kind specified by the State Police, his date of birth, social security number, current physical and mailing address, *passport and immigration information*, and a description of the offense or offenses for which he was convicted. The registration shall also include the locality of the conviction and a description of the offense or offenses for previous convictions for the offenses set forth in § 9.1-902.

I. The local law-enforcement agency shall forthwith forward to the State Police all necessary registration or reregistration information received by it. Upon receipt of registration or reregistration information the State Police shall forthwith notify the chief law-enforcement officer of the locality listed as the person's address on the registration and reregistration.

J. If a person required to register does not have a legal residence, such person shall designate a location that can be located with reasonable specificity where he resides or habitually locates himself. For the purposes of this section, "residence" shall include such a designated location. If the person wishes to change such designated location, he shall do it pursuant to the terms of this section.

§ 9.1-904. Reregistration.

A. Every person required to register, other than a person convicted of a sexually violent offense or murder, shall reregister with the State Police on an annual basis from the date of the initial registration. Every person convicted of a sexually violent offense or murder shall reregister with the State Police every 90 days from the date of initial registration. Reregistration means that the person has notified the

182 State Police, confirmed his current physical and mailing address and electronic mail address information,
183 any instant message, chat or other Internet communication name or identity information that he uses or
184 intends to use, *and passport and immigration information*, and provided such other information,
185 including identifying information, which the State Police may require. Upon registration and as may be
186 necessary thereafter, the State Police shall provide the person with an address verification form to be
187 used for reregistration. The form shall contain in bold print a statement indicating that failure to comply
188 with the registration required is punishable as provided in § 18.2-472.1. Upon registration and as may be
189 necessary thereafter, the person shall likewise be required to execute a consent form consistent with
190 applicable law that authorizes a business or organization that offers electronic communications or remote
191 computer services to provide to the Department of State Police any information pertaining to that person
192 necessary to determine the veracity of his electronic identity information in the registry.

193 B. Any person convicted of a violation of § 18.2-472.1, other than a person convicted of a sexually
194 violent offense or murder, shall reregister with the State Police every 180 days from the date of such
195 conviction. Any person convicted of a violation of § 18.2-472.1, in which such person was included on
196 the Registry for a conviction of a sexually violent offense or murder, shall reregister with the State
197 Police every 30 days from the date of conviction. Reregistration means the person has notified the State
198 Police, confirmed his current physical and mailing address and electronic mail address information, any
199 instant message, chat or other Internet communication name or identity information that he uses or
200 intends to use, and provided such other information, including identifying information, which the State
201 Police may require. Upon registration and as may be necessary thereafter, the State Police shall provide
202 the person with an address verification form to be used for reregistration. The form shall state the
203 registration requirements and contain in bold print a statement indicating that failure to comply with the
204 registration requirements is punishable as provided in § 18.2-472.1.

205 C. Every person required to register pursuant to this chapter shall submit to be photographed by a
206 ~~local law-enforcement agency every two years commencing with the date of initial registration at the~~
207 ~~time of physical verification pursuant to subdivisions C and D of § 9.1-907.~~ Photographs shall be in
208 color, be taken with the registrant facing the camera, and clearly show the registrant's face and shoulders
209 only. No person other than the registrant may appear in the photograph submitted. The photograph shall
210 indicate the registrant's full name, date of birth and the date the photograph was taken. The local
211 law-enforcement agency shall forthwith forward the photograph and the registration form to the State
212 Police. Where practical, the local law-enforcement agency may electronically transfer a digital
213 photograph containing the required information to the Sex Offender and Crimes Against Minors Registry
214 within the State Police.

215 § 9.1-913. Public dissemination by means of the Internet.

216 The State Police shall develop and maintain a system for making certain Registry information on
217 persons convicted of an offense for which registration is required publicly available by means of the
218 Internet. The information to be made available shall include the offender's name; all aliases that he has
219 used or under which he may have been known; the date and locality of the conviction and a brief
220 description of the offense; his age, current address and photograph; and such other information as the
221 State Police may from time to time determine is necessary to preserve public safety including but not
222 limited to the fact that an individual is wanted for failing to register or reregister. The system shall be
223 secure and not capable of being altered except by the State Police. The system shall be updated each
224 business day with newly received registrations and reregistrations. The State Police shall remove all
225 information that it knows to be inaccurate from the Internet system.

226 *This section shall not apply to juveniles adjudicated delinquent who are required to register pursuant*
227 *to subsection G of § 9.1-902.*

228 § 18.2-361. Crimes against nature; penalty.

229 A. If any person carnally knows in any manner any brute animal, or carnally knows any male or
230 female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, he
231 or she shall be guilty of a Class 6 felony, except as provided in subsection B.

232 B. 1. Any person who performs or causes to be performed cunnilingus, fellatio, anilingus or anal
233 intercourse upon or by his daughter or granddaughter, son or grandson, brother or sister, or father or
234 mother is guilty of a Class 5 felony.

235 2. ~~However, if a~~ Any parent or grandparent ~~commits any such act with~~ *who performs or causes to be*
236 *performed cunnilingus, fellatio, anilingus or anal intercourse upon or by his child or grandchild and*
237 *such child or grandchild is at least 13 but less than 18 years of age at the time of the offense, such*
238 *parent or grandparent is guilty of a Class 3 felony.*

239 C. For the purposes of this section, parent includes step-parent, grandparent includes
240 step-grandparent, child includes step-child and grandchild includes step-grandchild.

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 cannot**
243 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**

244 874 of the Acts of Assembly of 2010 requires the Virginia Criminal Sentencing Commission to
245 assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the
246 necessary appropriation is \$0 for periods of commitment to the custody of the Department of
247 Juvenile Justice.

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