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HOUSE BILL NO. 1862

Offered January 9, 2013

Prefiled January 8, 2013

A *BILL to amend and reenact § 9.1-902 of the Code of Virginia, relating to the Sex Offender and Crimes Against Minors Registry Act; offenses requiring registration.*

Patrons—Sherwood and Bell, Robert B.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 9.1-902 of the Code of Virginia is 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) § 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 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

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59 described in § 1591 of Title 18, U.S.C.).

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

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
77 case. The attorney for the Commonwealth may file such a motion at any time during which the offender
78 is within the jurisdiction of the court for the offense that is the basis for such motion. Prior to any
79 hearing on such motion, the court shall appoint a qualified and competent attorney-at-law to represent
80 the offender unless an attorney has been retained and appears on behalf of the offender or counsel has
81 already been appointed.

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