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HOUSE BILL NO. 523

House Amendments in [] — February 10, 2014

A BILL to amend and reenact §§ 9.1-902 and 9.1-910 of the Code of Virginia, relating to Sex Offenders and Crimes Against Minors Registry; registration of juveniles; petition for removal from Registry.

Patron Prior to Engrossment—Delegate Albo

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-902 and [~~9.2-910~~ 9.1-910] 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; former § 18.1-88 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, § 18.2-366, or a felony violation of former § 18.1-191.

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 or a violation of former § 18.1-21 where the victim is (a) under 15 years of age or (b) 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, former § 18.1-38 with the intent to defile or, for the purpose of concubinage or prostitution, a felony violation of subdivision (2) or (3) of former § 18.1-39 that involves assisting or aiding in such an abduction, § 18.2-61, former § 18.1-44 when such act is accomplished against the complaining witness's will, by force, or through the use of the complaining witness's mental incapacity or physical helplessness, or if the victim is under 13 years of age, 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, former § 18.1-215 when the complaining witness is under 13 years of age, § 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, subdivision (1), (2), or (4) of former § 18.1-213, former § 18.1-214, 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,

ENGROSSED

HB523E

59 § 18.2-366, or subsection C of § 18.2-374.1:1. An offense listed under this subdivision shall be deemed
60 a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or
61 more such offenses, provided that person had been at liberty between such convictions or adjudications;

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

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

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

73 G. ~~Juveniles~~ *Except as otherwise provided in this subsection and subsection G1, juveniles* adjudicated
74 delinquent shall not be required to register; ~~however, where~~ *Where* the offender is a juvenile over the
75 age of 13 at the time of the offense who is tried as a juvenile and is adjudicated delinquent on or after
76 July 1, 2005, of any offense for which registration is required, the court may, in its discretion and upon
77 motion of the attorney for the Commonwealth, find that the circumstances of the offense require
78 offender registration. In making its determination, the court shall consider all of the following factors
79 that are relevant to the case: (i) the degree to which the delinquent act was committed with the use of
80 force, threat or intimidation, (ii) the age and maturity of the complaining witness, (iii) the age and
81 maturity of the offender, (iv) the difference in the ages of the complaining witness and the offender, (v)
82 the nature of the relationship between the complaining witness and the offender, (vi) the offender's prior
83 criminal history, and (vii) any other aggravating or mitigating factors relevant to the case. The attorney
84 for the Commonwealth may file such a motion at any time during which the offender is within the
85 jurisdiction of the court for the offense that is the basis for such motion. Prior to any hearing on such
86 motion, the court shall appoint a qualified and competent attorney-at-law to represent the offender unless
87 an attorney has been retained and appears on behalf of the offender or counsel has already been
88 appointed.

89 *G1. Any juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is*
90 *adjudicated delinquent on or after July 1, 2014, of a violation of § 18.2-61, 18.2-67.1, or 18.2-67.2 shall*
91 *be required to register.*

92 *G2. Any juvenile adjudicated delinquent and required to register under this section is eligible to*
93 *petition the circuit court in the jurisdiction in which he was adjudicated, or in the jurisdiction where he*
94 *then resides, for the removal of his name and information from the registry 10 years after the date of*
95 *the initial registration or the date of his last conviction or adjudication for (i) a violation of*
96 *§ 18.2-472.1 or (ii) any offense for which registration is required, whichever date is later. A petition*
97 *may not be filed until all court ordered treatment, counseling, and restitution has been completed. The*
98 *court shall obtain a copy of the petitioner's complete criminal history and registration and reregistration*
99 *history from the Registry and then hold a hearing on the petition at which the applicant and any*
100 *interested persons may present witnesses and other evidence. The Commonwealth shall be made a party*
101 *to any action under this subsection. If, after such hearing, the court is satisfied that such person no*
102 *longer poses a risk to public safety, the court shall grant the petition. The court may defer a decision*
103 *until the report of a mental examination by a person qualified to perform such evaluations can be*
104 *secured to guide the court in its determination and may, as a condition of granting the petition, require*
105 *the petitioner to be subject to such conditions and limitations as the court may order. In the event the*
106 *petition is not granted, the person shall wait at least 24 months from the date of the denial to file a new*
107 *petition for removal from the Registry.*

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

116 **§ 9.1-910. Removal of name and information from Registry.**

117 A. Any person required to register, other than a person who has been convicted of any (i) sexually
118 violent offense, (ii) two or more offenses for which registration is required, (iii) a violation of former
119 § 18.2-67.2:1, or (iv) murder, may petition the circuit court in which he was convicted or the circuit
120 court in the jurisdiction where he then resides for removal of his name and all identifying information

from the Registry. A petition may not be filed earlier than 15 years, or 25 years for violations of § 18.2-64.1, subsection C of § 18.2-374.1:1, or subsection C, D, or E of § 18.2-374.3, after the date of initial registration nor earlier than 15 years, or 25 years for violations of § 18.2-64.1, subsection C of § 18.2-374.1:1, or subsection C, D, or E of § 18.2-374.3, from the date of his last conviction for (a) a violation of § 18.2-472.1 or (b) any felony. A petition may not be filed until all court ordered treatment, counseling, and restitution has been completed. The court shall obtain a copy of the petitioner's complete criminal history and registration and reregistration history from the Registry and then hold a hearing on the petition at which the applicant and any interested persons may present witnesses and other evidence. The Commonwealth shall be made a party to any action under this section. If, after such hearing, the court is satisfied that such person no longer poses a risk to public safety, the court shall grant the petition. In the event the petition is not granted, the person shall wait at least 24 months from the date of the denial to file a new petition for removal from the Registry.

B. The State Police shall remove from the Registry the name of any person and all identifying information upon receipt of an order granting a petition pursuant to subsection A.

C. The provisions of this section shall not apply to juveniles adjudicated delinquent of an offense for which registration is required under subsection G or G1 of § 9.1-902.

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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the Acts of Assembly of 2013 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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HB523E