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SENATE BILL NO. 180

Offered January 13, 2016

Prefiled January 4, 2016

A BILL to amend and reenact §§ 9.1-902, 18.2-67.7, 18.2-346, and 19.2-305.1 of the Code of Virginia and to amend the Code of Virginia by adding in Article 8 of Chapter 2 of Title 2.2 a section numbered 2.2-224.2, by adding a section numbered 8.01-42.4, and by adding in Chapter 1.1 of Title 19.2 a section numbered 19.2-11.5, relating to trafficking in persons; penalties.

Patrons—Edwards and Ebbin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-902, 18.2-67.7, 18.2-346, and 19.2-305.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 8 of Chapter 2 of Title 2.2 a section numbered 2.2-224.2, by adding a section numbered 8.01-42.4, and by adding in Chapter 1.1 of Title 19.2 a section numbered 19.2-11.5 as follows:

§ 2.2-224.2. Secretary of Public Safety and Homeland Security to convene an anti-trafficking committee.

The Secretary of Public Safety and Homeland Security, in collaboration with other Cabinet Secretaries, shall convene an Anti-Human Trafficking Coordinating Committee (the Committee) composed of representatives of the Departments of Agriculture and Consumer Services, Alcoholic Beverage Control, Behavioral Health and Developmental Services, Criminal Justice Services, Education, Health, Health Professions, Social Services, State Police, Professional and Occupational Regulation, and Transportation, the Virginia Employment Commission, the Indigent Defense Commission, the Commonwealth's Attorneys' Services Council, the Criminal Injuries Compensation Fund, and the Office of the Attorney General. Other agencies and parties with interest and expertise may be invited to participate in the work of the Committee. The Committee shall meet regularly to review and coordinate the agencies' work to identify and implement additional actions and strategies to further strengthen the Commonwealth's responses to human trafficking, including whether state agencies can broaden the availability of information and materials related to human trafficking via their websites, and to examine areas of public access to determine whether posting notices regarding the National Runaway Safeline and the National Human Trafficking Hotline would provide useful information to the public and, if so, to post such notices. The Committee shall review existing funding programs for barriers that may prohibit human trafficking victims from accessing services, including emergency and transitional housing, mental health and substance abuse, victim advocacy, and transportation assistance and shall seek potential solutions to any such barriers. The Committee shall annually report by December 1 to the Governor, the Chairmen of the House and Senate Committees for Courts of Justice, the Senate Committee on Finance, and the House Committee on Appropriations on its activities, accomplishments, and recommendations.

§ 8.01-42.4. Civil action for trafficking in persons.

A. As used in this section:

"Compensatory damages" includes damages for all of the defendant's acts prohibited under a felony provision of § 18.2-346, or under § 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, or 18.2-368.

"Victim" means a person who was subjected to conduct that constituted trafficking in persons under a felony violation of § 18.2-346, or under § 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, or 18.2-368, regardless of whether the perpetrator is identified, apprehended, prosecuted, or convicted.

B. A victim has a civil cause of action against the perpetrator of conduct that is prohibited under a felony violation of § 18.2-346, or under § 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, or 18.2-368, whether or not the perpetrator has been charged or convicted for the alleged violation, for the compensatory damages incurred by the victim as a result of that conduct, in addition to the attorney fees and costs for bringing the action. If compensatory damages are awarded, a victim may also be awarded punitive damages.

C. No action shall be commenced under this section more than seven years after the later of the date on which the victim (i) was no longer subject to conduct prohibited by a felony provision of § 18.2-346, or under § 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, or 18.2-368, or (ii) attained 18 years of age.

INTRODUCED

SB180

59 § 9.1-902. Offenses requiring registration.**60** A. For purposes of this chapter:**61** "Offense for which registration is required" includes:**62** 1. Any offense listed in subsection B;**63** 2. Criminal homicide;**64** 3. Murder;**65** 4. A sexually violent offense;**66** 5. Any offense similar to those listed in subdivisions 1 through 4 under the laws of any foreign
67 country or any political subdivision thereof, the United States or any political subdivision thereof; and**68** 6. Any offense for which registration in a sex offender and crimes against minors registry is required
69 under the laws of the jurisdiction where the offender was convicted.**70** B. The offenses included under this subsection include any violation of, attempted violation of, or
71 conspiracy to violate:**72** 1. § 18.2-63 unless registration is required pursuant to subdivision E 1; § 18.2-64.1; former
73 § 18.2-67.2:1; § 18.2-90 with the intent to commit rape; former § 18.1-88 with the intent to commit
74 rape; any felony violation of § 18.2-346; any violation of subdivision (4) of § 18.2-355; *any Class 3*
75 *felony violation of § 18.2-356 or 18.2-357*; any violation of subsection C of § 18.2-357.1; subsection B
76 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,
77 through June 30, 2007; former clause (iv) of subsection B of § 18.2-374.3 as it was in effect on June
78 30, 2007; subsection B, C, or D of § 18.2-374.3; or a third or subsequent conviction of (i) § 18.2-67.4,
79 (ii) § 18.2-67.4:2, (iii) subsection C of § 18.2-67.5, or (iv) § 18.2-386.1.**80** If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any
81 felony offense listed in this section; subsection A of § 18.2-374.1:1; or a felony under § 18.2-67.5:1.**82** 2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in
83 § 18.2-67.10, subsection A of § 18.2-47, clause (i) of § 18.2-48, § 18.2-67.4, subsection C of
84 § 18.2-67.5, § 18.2-361, § 18.2-366, or a felony violation of former § 18.1-191.**85** 3. § 18.2-370.6.**86** C. "Criminal homicide" means a homicide in conjunction with a violation of, attempted violation of,
87 or conspiracy to violate clause (i) of § 18.2-371 or § 18.2-371.1, when the offenses arise out of the same
88 incident.**89** D. "Murder" means a violation of, attempted violation of, or conspiracy to violate § 18.2-31 or
90 § 18.2-32 where the victim is (i) under 15 years of age or (ii) where the victim is at least 15 years of
91 age but under 18 years of age and the murder is related to an offense listed in this section or a violation
92 of former § 18.1-21 where the victim is (a) under 15 years of age or (b) at least 15 years of age but
93 under 18 years of age and the murder is related to an offense listed in this section.**94** E. "Sexually violent offense" means a violation of, attempted violation of, or conspiracy to violate:**95** 1. Clause (ii) and (iii) of § 18.2-48, former § 18.1-38 with the intent to defile or, for the purpose of
96 concubinage or prostitution, a felony violation of subdivision (2) or (3) of former § 18.1-39 that involves
97 assisting or aiding in such an abduction, § 18.2-61, former § 18.1-44 when such act is accomplished
98 against the complaining witness's will, by force, or through the use of the complaining witness's mental
99 incapacity or physical helplessness, or if the victim is under 13 years of age, subsection A of § 18.2-63
100 where the perpetrator is more than five years older than the victim, § 18.2-67.1, § 18.2-67.2,
101 § 18.2-67.3, former § 18.1-215 when the complaining witness is under 13 years of age, § 18.2-67.4
102 where the perpetrator is 18 years of age or older and the victim is under the age of six, subsections A
103 and B of § 18.2-67.5, § 18.2-370, subdivision (1), (2), or (4) of former § 18.1-213, former § 18.1-214,
104 § 18.2-370.1, or § 18.2-374.1; or**105** 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
106 the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10,
107 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,
108 § 18.2-366, or subsection C of § 18.2-374.1:1. An offense listed under this subdivision shall be deemed
109 a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or
110 more such offenses, provided that person had been at liberty between such convictions or adjudications;**111** 3. If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any
112 felony offense listed in this section. An offense listed under this subdivision shall be deemed a sexually
113 violent offense only if the person has been convicted or adjudicated delinquent of any two or more such
114 offenses, provided that the person had been at liberty between such convictions or adjudications; or**115** 4. Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as
116 described in § 1591 of Title 18, U.S.C.).**117** F. "Any offense listed in subsection B," "criminal homicide" as defined in this section, "murder" as
118 defined in this section, and "sexually violent offense" as defined in this section includes (i) any similar
119 offense under the laws of any foreign country or any political subdivision thereof, the United States or
120 any political subdivision thereof or (ii) any offense for which registration in a sex offender and crimes

121 against minors registry is required under the laws of the jurisdiction where the offender was convicted.

122 G. Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a
123 juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated
124 delinquent on or after July 1, 2005, of any offense for which registration is required, the court may, in
125 its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the
126 offense require offender registration. In making its determination, the court shall consider all of the
127 following factors that are relevant to the case: (i) the degree to which the delinquent act was committed
128 with the use of force, threat or intimidation, (ii) the age and maturity of the complaining witness, (iii)
129 the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the
130 offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the
131 offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the
132 case. The attorney for the Commonwealth may file such a motion at any time during which the offender
133 is within the jurisdiction of the court for the offense that is the basis for such motion. Prior to any
134 hearing on such motion, the court shall appoint a qualified and competent attorney-at-law to represent
135 the offender unless an attorney has been retained and appears on behalf of the offender or counsel has
136 already been appointed.

137 H. Prior to entering judgment of conviction of an offense for which registration is required if the
138 victim of the offense was a minor, physically helpless, or mentally incapacitated, when the indictment,
139 warrant, or information does not allege that the victim of the offense was a minor, physically helpless,
140 or mentally incapacitated, the court shall determine by a preponderance of the evidence whether the
141 victim of the offense was a minor, physically helpless, or mentally incapacitated, as defined in
142 § 18.2-67.10, and shall also determine the age of the victim at the time of the offense if it determines
143 the victim to be a minor. When such a determination is required, the court shall advise the defendant of
144 its determination and of the defendant's right to make a motion to withdraw a plea of guilty or nolo
145 contendere pursuant to § 19.2-296. If the court grants the defendant's motion to withdraw his plea of
146 guilty or of nolo contendere, his case shall be heard by another judge, unless the parties agree otherwise.
147 Failure to make such determination or so advise the defendant does not otherwise invalidate the
148 underlying conviction.

149 **§ 18.2-67.7. Admission of evidence (Supreme Court Rule 2:412 derived from this section).**

150 A. In prosecutions under this article, ~~or~~ under clause (iii) or (iv) of § 18.2-48, *or under § 18.2-356,*
151 18.2-370, 18.2-370.01, or 18.2-370.1, general reputation or opinion evidence of the complaining
152 witness's unchaste character or prior sexual conduct shall not be admitted. Unless the complaining
153 witness voluntarily agrees otherwise, evidence of specific instances of his or her prior sexual conduct
154 shall be admitted only if it is relevant and is:

155 1. Evidence offered to provide an alternative explanation for physical evidence of the offense charged
156 which is introduced by the prosecution, limited to evidence designed to explain the presence of semen,
157 pregnancy, disease, or physical injury to the complaining witness's intimate parts; or

158 2. Evidence of sexual conduct between the complaining witness and the accused offered to support a
159 contention that the alleged offense was not accomplished by force, threat or intimidation or through the
160 use of the complaining witness's mental incapacity or physical helplessness, provided that the sexual
161 conduct occurred within a period of time reasonably proximate to the offense charged under the
162 circumstances of this case; or

163 3. Evidence offered to rebut evidence of the complaining witness's prior sexual conduct introduced
164 by the prosecution.

165 B. Nothing contained in this section shall prohibit the accused from presenting evidence relevant to
166 show that the complaining witness had a motive to fabricate the charge against the accused. If such
167 evidence relates to the past sexual conduct of the complaining witness with a person other than the
168 accused, it shall not be admitted and may not be referred to at any preliminary hearing or trial unless
169 the party offering same files a written notice generally describing the evidence prior to the introduction
170 of any evidence, or the opening statement of either counsel, whichever first occurs, at the preliminary
171 hearing or trial at which the admission of the evidence may be sought.

172 C. Evidence described in subsections A and B of this section shall not be admitted and may not be
173 referred to at any preliminary hearing or trial until the court first determines the admissibility of that
174 evidence at an evidentiary hearing to be held before the evidence is introduced at such preliminary
175 hearing or trial. The court shall exclude from the evidentiary hearing all persons except the accused, the
176 complaining witness, other necessary witnesses, and required court personnel. If the court determines
177 that the evidence meets the requirements of subsections A and B of this section, it shall be admissible
178 before the judge or jury trying the case in the ordinary course of the preliminary hearing or trial. If the
179 court initially determines that the evidence is inadmissible, but new information is discovered during the
180 course of the preliminary hearing or trial which may make such evidence admissible, the court shall
181 determine in an evidentiary hearing whether such evidence is admissible.

182 § 18.2-346. Prostitution; commercial sexual conduct; commercial exploitation of a minor;
183 penalties.

184 A. Any person who, for money or its equivalent, (i) commits adultery, fornication, or any act in
185 violation of § 18.2-361, performs cunnilingus, fellatio, or anilingus upon or by another person, or
186 engages in anal intercourse or (ii) offers to commit adultery, fornication, or any act in violation of
187 § 18.2-361, perform cunnilingus, fellatio, or anilingus upon or by another person, or engage in anal
188 intercourse and thereafter does any substantial act in furtherance thereof is guilty of prostitution, which
189 is punishable as a Class 1 misdemeanor.

190 B. Any person who offers money or its equivalent to another for the purpose of engaging in sexual
191 acts as enumerated in subsection A and thereafter does any substantial act in furtherance thereof is
192 guilty of solicitation of prostitution, which is punishable as a Class 1 misdemeanor. However, any
193 person who solicits prostitution from a minor (i) 16 years of age or older is guilty of a Class 6 felony
194 or (ii) younger than 16 years of age is guilty of a Class 5 felony.

195 C. *In any delinquency proceeding under subsection A involving a juvenile where the juvenile*
196 *expresses a willingness to participate in specialized services for those engaged in commercial sexual*
197 *conduct, the court may continue the case and provide notice of the charge and the time and place for*
198 *the next hearing to the local department of social services. A child in need of services petition may be*
199 *filed on the juvenile's behalf pursuant to § 16.1-260. If a child in need of services petition is filed and*
200 *the court finds that the juvenile is willing to participate in specialized services for those engaged in*
201 *commercial sexual conduct, the court may proceed pursuant to § 16.1-278.4 and order specialized*
202 *services for the juvenile. Such specialized services may include, but are not limited to, specialized*
203 *housing, case management, integrated mental health and chemical dependency, educational assistance,*
204 *and any other available programs or services that, in the opinion of the court, may be best suited to the*
205 *needs of the juvenile. In any instance where the court proceeds on a child in need of services petition,*
206 *the court shall dismiss the delinquency petition.*

207 § 19.2-11.5. Victims of commercial sex trafficking; law-enforcement protocol.

208 A. *On request from an individual who a law-enforcement officer reasonably believes is a victim of*
209 *§ 18.2-357.1 or a criminal offense required for the individual to qualify for a nonimmigrant T or U visa*
210 *under 8 U.S.C. § 1101(a)(15)(T) or 8 U.S.C. § 1101(a)(15)(U), or for continued presence under 22*
211 *U.S.C. § 7105(c)(3), the law-enforcement officer, as soon as practicable after receiving the request, shall*
212 *complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the U.S.*
213 *Citizenship and Immigration Services on its website and ask a federal law-enforcement officer to request*
214 *continued presence.*

215 *For the purposes of this section, "law-enforcement officer" means any full-time or part-time employee*
216 *of a police department or sheriff's office that is a part of or administered by the Commonwealth or any*
217 *political subdivision thereof who is responsible for the prevention and detection of crime and the*
218 *enforcement of the penal, traffic, or highway laws of the Commonwealth.*

219 B. *If the law-enforcement agency determines that an individual does not meet the requirements for*
220 *the agency to comply with subsection A, the agency shall inform the individual of the reason and that*
221 *the individual may make another request under subsection A and submit additional evidence satisfying*
222 *the requirements.*

223 § 19.2-305.1. Restitution for property damage or loss; community service.

224 A. Notwithstanding any other provision of law, no person convicted of a crime in violation of any
225 provision in Title 18.2, which resulted in property damage or loss, shall be placed on probation or have
226 his sentence suspended unless such person shall make at least partial restitution for such property
227 damage or loss, or shall be compelled to perform community services, or both, or shall submit a plan
228 for doing that which appears to the court to be feasible under the circumstances.

229 B. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits,
230 and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial
231 restitution for any property damage or loss caused by the crime or for any medical expenses or expenses
232 directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be
233 compelled to perform community services and, if the court so orders, shall submit a plan for doing that
234 which appears to be feasible to the court under the circumstances.

235 B1. Notwithstanding any other provision of law, any person, who on or after July 1, 2005 commits
236 and is convicted of a crime in violation of § 18.2-248 involving the manufacture of any controlled
237 substance, may be ordered, upon presentation of suitable evidence of such costs, by the court to
238 reimburse the Commonwealth or the locality for the costs incurred by the jurisdiction, as the case may
239 be, for the removal and remediation associated with the illegal manufacture of any controlled substance
240 by the defendant.

241 B2. Notwithstanding any other provision of law, any person who, on or after July 1, 2015, commits
242 and is convicted of a violation of § 18.2-138 for damage to the Capitol or any building, monument,
243 statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the

244 Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages.
 245 Any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-405,
 246 18.2-407, or 18.2-408 in Capitol Square, or at any other property assigned to the Capitol Police, shall be
 247 ordered to pay restitution to the Commonwealth for the full amount of damages to the Capitol or any
 248 building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property
 249 assigned to the Capitol Police, to which damage is caused during such riot or unlawful assembly. In any
 250 prosecution under § 18.2-138, 18.2-405, 18.2-407, or 18.2-408, testimony of the Division of Engineering
 251 and Buildings of the Department of General Services or the Division of Risk Management shall be
 252 admissible as evidence of value or extent of damages or cost of repairs to the Capitol or any building,
 253 monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned
 254 to the Capitol Police. For the purposes of this subsection, "Capitol Square" means the grounds and the
 255 interior and exterior of all buildings in that area in the City of Richmond bounded by Bank, Governor,
 256 Broad, and Ninth Streets. "Capitol Square" includes the exterior of all state buildings that are at least 50
 257 years old and bordering the boundary streets.

258 C. At or before the time of sentencing, the court shall receive and consider any plan for making
 259 restitution submitted by the defendant. The plan shall include the defendant's home address, place of
 260 employment and address, social security number and bank information. If the court finds such plan to be
 261 reasonable and practical under the circumstances, it may consider probation or suspension of whatever
 262 portion of the sentence that it deems appropriate. By order of the court incorporating the defendant's
 263 plan or a reasonable and practical plan devised by the court, the defendant shall make restitution while
 264 he is free on probation or work release or following his release from confinement. Additionally, the
 265 court may order that the defendant make restitution during his confinement, if feasible, based upon both
 266 his earning capacity and net worth as determined by the court at sentencing.

267 D. At the time of sentencing, the court shall determine the amount to be repaid by the defendant and
 268 the terms and conditions thereof. If community service work is ordered, the court shall determine the
 269 terms and conditions upon which such work shall be performed. The court shall include such findings in
 270 the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk,
 271 who shall disburse such sums as the court may, by order, direct. Any court desiring to participate in the
 272 Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or
 273 providing restitution shall, at the time of sentencing, obtain the social security number of each
 274 defendant.

275 E. Unreasonable failure to execute the plan by the defendant shall result in revocation of the
 276 probation or imposition of the suspended sentence. A hearing shall be held in accordance with the
 277 provisions of this Code relating to revocation of probation or imposition of a suspended sentence before
 278 either such action is taken.

279 E1. A defendant convicted of an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 shall be
 280 ordered to pay mandatory restitution to the victim of the offense in an amount as determined by the
 281 court. For purposes of this subsection, "victim" means a person who is depicted in a still or
 282 videographic image involved in an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

283 The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1,
 284 18.2-374.1:1, or 18.2-374.3.

285 *E2. A defendant convicted of an offense under § 18.2-357.1 shall be ordered to pay mandatory*
 286 *restitution to the victim of the offense in an amount equal to \$58 per day for each day the victim was*
 287 *subjected to the conduct that constituted the offense under § 18.2-357.1.*

288 F. If restitution is ordered to be paid by the defendant to the victim of a crime and the victim can no
 289 longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal
 290 Injuries Compensation Fund for the benefit of crime victims. The administrator shall reserve a sum
 291 sufficient in the Fund from which he shall make prompt payment to the victim for any proper claims.
 292 Before making the deposit he shall record the name, last known address and amount of restitution due
 293 each victim appearing from the clerk's report to be entitled to restitution.

294 G. If restitution pursuant to § 19.2-305 or this section is ordered to be paid by the defendant to the
 295 victim of a crime or other entity, and the Criminal Injuries Compensation Fund has made any payments
 296 to or on behalf of the victim for any loss, damage, or expenses included in the restitution order, then
 297 upon presentation by the Fund of a written request that sets forth the amount of payments made by the
 298 Fund to the victim or on the victim's behalf, the entity collecting restitution shall pay to the Fund as
 299 much of the restitution collected as will reimburse the Fund for its payments made to the victim or on
 300 the victim's behalf.

301 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
 302 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
 303 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
 304 **665 of the Acts of Assembly of 2015 requires the Virginia Criminal Sentencing Commission to**

305 assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the
306 necessary appropriation cannot be determined for periods of commitment to the custody of the
307 Department of Juvenile Justice.