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HOUSE BILL NO. 1485

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice on February 13, 2017)

(Patron Prior to Substitute—Delegate Bell, Richard P.)

A BILL to amend and reenact §§ 18.2-370.2, 18.2-370.3, and 18.2-370.4 of the Code of Virginia, relating to sex offenses prohibiting proximity to children; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-370.2, 18.2-370.3, and 18.2-370.4 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-370.2. Sex offenses prohibiting proximity to children; penalty.

A. "Offense prohibiting proximity to children" means a violation or an attempt to commit a violation of (i) subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361, or subsection B of § 18.2-366, where the victim of one of the foregoing offenses was a minor, or (ii) subsection A (iii) of § 18.2-61, §§ 18.2-63, 18.2-64.1, subdivision A 1 of § 18.2-67.1, subdivision A 1 of § 18.2-67.2, or subdivision A 1 or A 4 (a) of § 18.2-67.3, or §§ 18.2-370, 18.2-370.1, clause (ii) of § 18.2-371, §§ 18.2-374.1, 18.2-374.1:1 or § 18.2-379. As of July 1, 2006, "offense prohibiting proximity to children" ~~shall include~~ *includes* a violation of § 18.2-472.1, when the offense requiring registration was one of the foregoing offenses.

B. Every adult who is convicted of an offense prohibiting proximity to children when the offense occurred on or after July 1, 2000, shall as part of his sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a primary, secondary or high school. In addition, every adult who is convicted of an offense prohibiting proximity to children when the offense occurred on or after July 1, 2006, shall as part of his sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a child day program as defined in § 63.2-100.

C. Every adult who is convicted of an offense prohibiting proximity to children, when the offense occurred on or after July 1, 2008, shall as part of his sentence be forever prohibited from going, for the purpose of having any contact whatsoever with children ~~that~~ *who* are not in his custody, within 100 feet of the premises of any place owned or operated by a locality that he knows or should know is a playground, athletic field or facility, or gymnasium.

D. Any person convicted of an offense under the laws of any foreign country or any political subdivision thereof, any Native American tribe or band that is recognized by federal law, or the United States or any political subdivision thereof similar to any offense set forth in subsection A shall be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a primary, secondary, or high school or any place he knows or has reason to know is a child day program as defined in § 63.2-100. In addition, he shall be forever prohibited from going, for the purpose of having any contact whatsoever with children who are not in his custody, within 100 feet of the premises of any place owned or operated by a locality that he knows or has reason to know is a playground, athletic field or facility, or gymnasium.

A violation of this section is punishable as a Class 6 felony.

§ 18.2-370.3. Sex offenses prohibiting residing in proximity to children; penalty.

A. Every adult who is convicted of an offense occurring on or after July 1, 2006, where the offender is more than three years older than the victim, of one of the following qualifying offenses: (i) clause (iii) of subsection A of § 18.2-61, (ii) subdivision A 1 of § 18.2-67.1, ~~or~~ (iii) subdivision A 1 of § 18.2-67.2, *or (iv) any similar offense under the laws of any foreign country or any political subdivision thereof, any Native American tribe or band that is recognized by federal law, or the United States or any political subdivision thereof,* shall be forever prohibited from residing within 500 feet of the premises of any place he knows or has reason to know is a child day center as defined in § 63.2-100, or a primary, secondary, or high school. A violation of this section is a Class 6 felony. The provisions of this section shall only apply if the qualifying offense was done in the commission of, or as a part of the same course of conduct as, or as part of a common scheme or plan as a violation of ~~(i)~~ *(a)* subsection A of § 18.2-47 or § 18.2-48, ~~(ii)~~ *(b)* § 18.2-89, 18.2-90, or 18.2-91, ~~or~~ ~~(iii)~~ *(c)* § 18.2-51.2*, or (d) any similar offense under the laws of any foreign country or any political subdivision thereof, any Native American tribe or band that is recognized by federal law, or the United States or any political subdivision thereof.*.

B. An adult who is convicted of an offense as specified in subsection A ~~of this section~~ and has established a lawful residence shall not be in violation of this section if a child day center or a primary, secondary, or high school is established within 500 feet of his residence subsequent to his conviction.

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C. Every adult who is convicted of an offense occurring on or after July 1, 2008, where the offender is more than three years older than the victim, of one of the following qualifying offenses: (i) clause (iii) of subsection A of § 18.2-61, (ii) subdivision A 1 of § 18.2-67.1, ~~or~~ (iii) subdivision A 1 of § 18.2-67.2, *or (iv) any similar offense under the laws of any foreign country or any political subdivision thereof, any Native American tribe or band that is recognized by federal law, or the United States or any political subdivision thereof,* shall be forever prohibited from residing within 500 feet of the boundary line of any place he knows is a public park when such park ~~(i)~~ *(a)* is owned and operated by a county, city or town, ~~(ii)~~ *(b)* shares a boundary line with a primary, secondary, or high school and ~~(iii)~~ *(c)* is regularly used for school activities. A violation of this section is a Class 6 felony. The provisions of this section shall only apply if the qualifying offense was done in the commission of, or as a part of the same course of conduct as, or as part of a common scheme or plan as a violation of ~~(i)~~ *(1)* subsection A of § 18.2-47 or § 18.2-48~~,~~ ~~(ii)~~*; (2)* § 18.2-89, 18.2-90, or 18.2-91~~,~~ ~~or~~ ~~(iii)~~*; (3)* § 18.2-51.2*; or (4) any similar offense under the laws of any foreign country or any political subdivision thereof, any Native American tribe or band that is recognized by federal law, or the United States or any political subdivision thereof.*

D. An adult who is convicted of an offense as specified in subsection C and has established a lawful residence shall not be in violation of this section if a public park that (i) is owned and operated by a county, city or town, (ii) shares a boundary line with a primary, secondary, or high school, and (iii) is regularly used for school activities, is established within 500 feet of his residence subsequent to his conviction.

E. The prohibitions in this section predicated upon an offense similar to any offense set forth in this section under the laws of any foreign country or any political subdivision thereof, any Native American tribe or band that is recognized by federal law, or the United States or any political subdivision thereof shall apply only to residences established on and after July 1, 2017.

§ 18.2-370.4. Sex offenses prohibiting working on school property; penalty.

A. Every adult who has been convicted of an offense occurring on or after July 1, 2006, where the offender is more than three years older than the victim, of one of the following qualifying offenses: (i) clause (iii) of subsection A of § 18.2-61, (ii) subdivision A 1 of § 18.2-67.1, ~~or~~ (iii) subdivision A 1 of § 18.2-67.2, *or (iv) any similar offense under the laws of any foreign country or any political subdivision thereof, any Native American tribe or band that is recognized by federal law, or the United States or any political subdivision thereof,* shall be forever prohibited from working or engaging in any volunteer activity on property he knows or has reason to know is public or private elementary or secondary school or child day center property. A violation of this section is punishable as a Class 6 felony. The provisions of this section shall only apply if the qualifying offense was done in the commission of, or as a part of the same course of conduct of, or as part of a common scheme or plan as a violation of ~~(i)~~ *(a)* subsection A of § 18.2-47 or 18.2-48~~,~~ ~~(ii)~~*; (b)* § 18.2-89, 18.2-90, or 18.2-91~~,~~ ~~or~~ ~~(iii)~~*; (c)* § 18.2-51.2*; or (d) any similar offense under the laws of any foreign country or any political subdivision thereof, any Native American tribe or band that is recognized by federal law, or the United States or any political subdivision thereof.*

B. An employer of a person who violates this section, or any person who procures volunteer activity by a person who violates this section, and the school or child day center where the violation of this section occurred, are immune from civil liability unless they had actual knowledge that such person had been convicted of an offense listed in subsection A.

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 780 of the Acts of Assembly of 2016 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 is $0 for periods of commitment to the custody of the Department of Juvenile Justice.