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HOUSE BILL NO.253

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 7, 2020)

(Patron Prior to Substitute—Delegate Watts)

A BILL to amend and reenact § 9.1-902 of the Code of Virginia, relating to offenses requiring registration under the Sex Offender and Crimes Against Minors Registry Act; unlawful dissemination or sale of images of another.

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 or 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; any felony violation of § 18.2-346; any violation of subdivision (4) of § 18.2-355; any violation of subsection C of § 18.2-357.1; 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; 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, or if the offense was committed on or after July 1, 2020, § 18.2-386.2.

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.

4. If the offense was committed on or after July 1, 2016, and where the perpetrator is 18 years of age or older and the victim is under the age of 13, any violation of § 18.2-51.2.

5. If the offense was committed on or after July 1, 2016, any violation of § 18.2-356 punishable as a Class 3 felony or any violation of § 18.2-357 punishable as a Class 3 felony.

6. If the offense was committed on or after July 1, 2019, any felony violation of § 18.2-348 or 18.2-349.

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,

60 former § 18.1-215 when the complaining witness is under 13 years of age, § 18.2-67.4 where the
61 perpetrator is 18 years of age or older and the victim is under the age of six, subsections A and B of
62 § 18.2-67.5, § 18.2-370, subdivision (1), (2), or (4) of former § 18.1-213, former § 18.1-214,
63 § 18.2-370.1, or § 18.2-374.1;

64 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
65 the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10,
66 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,
67 § 18.2-366, or subsection C of § 18.2-374.1:1. An offense listed under this subdivision shall be deemed
68 a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or
69 more such offenses, provided that person had been at liberty between such convictions or adjudications;

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

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

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

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

96 H. Prior to entering judgment of conviction of an offense for which registration is required if the
97 victim of the offense was a minor, physically helpless, or mentally incapacitated, when the indictment,
98 warrant, or information does not allege that the victim of the offense was a minor, physically helpless,
99 or mentally incapacitated, the court shall determine by a preponderance of the evidence whether the
100 victim of the offense was a minor, physically helpless, or mentally incapacitated, as defined in
101 § 18.2-67.10, and shall also determine the age of the victim at the time of the offense if it determines
102 the victim to be a minor. When such a determination is required, the court shall advise the defendant of
103 its determination and of the defendant's right to make a motion to withdraw a plea of guilty or nolo
104 contendere pursuant to § 19.2-296. If the court grants the defendant's motion to withdraw his plea of
105 guilty or of nolo contendere, his case shall be heard by another judge, unless the parties agree otherwise.
106 Failure to make such determination or so advise the defendant does not otherwise invalidate the
107 underlying conviction.

108 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
109 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
110 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
111 **correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia**
112 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to**
113 **§ 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be**
114 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**