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SENATE BILL NO. 492

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 9.1-902 and 9.1-910 of the Code of Virginia, relating to sex offenses requiring registration.

 Patron—Surovell

 Referred to Committee on the Judiciary

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

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

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59 where the perpetrator is more than five years older than the victim, § 18.2-67.1, § 18.2-67.2,
60 § 18.2-67.3, former § 18.1-215 when the complaining witness is under 13 years of age, § 18.2-67.4
61 where the perpetrator is 18 years of age or older and the victim is under the age of six, subsections A
62 and B of § 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 1. Any offense under the laws of any foreign country or any political subdivision thereof or the
79 United States or any political subdivision thereof ~~or (ii) any that is similar to (i) any offense listed in~~
80 ~~subsection B, (ii) criminal homicide as defined in this section, (iii) murder as defined in this section, or~~
81 ~~(iv) a sexually violent offense as defined in this section shall require registration and reregistration in~~
82 ~~accordance with this chapter in a manner consistent with the registration and reregistration obligations~~
83 ~~imposed by the similar offense listed or defined in this section, unless such offense requires more~~
84 ~~stringent registration and reregistration obligations under the laws of the jurisdiction where the offender~~
85 ~~was convicted. In instances where more stringent registration and reregistration obligations are required~~
86 ~~under the laws of the jurisdiction where the offender was convicted, the offender shall register and~~
87 ~~reregister as required by this chapter in a manner most similar with the registration obligations imposed~~
88 ~~under the laws of the jurisdiction where the offender was convicted.~~

89 2. Any offense for which registration in a sex offender and crimes against minors registry is required
90 under the laws of the jurisdiction where the offender was convicted *shall require registration and*
91 *reregistration in accordance with this chapter in the manner most similar with the registration and*
92 *reregistration obligations imposed under the laws of the jurisdiction where the offender was convicted*
93 *unless such offense is similar to (i) any offense listed in subsection B, (ii) criminal homicide as defined*
94 *in this section, (iii) murder as defined in this section, or (iv) a sexually violent offense as defined in this*
95 *section and the registration and reregistration obligations imposed by the similar offense listed or*
96 *defined in this section are more stringent than those registration and reregistration obligations imposed*
97 *under the laws of the jurisdiction where the offender was convicted. In instances where the similar*
98 *offense listed or defined in this section imposes more stringent registration and reregistration*
99 *obligations, the offender shall register and reregister as required by this chapter in a manner consistent*
100 *with the registration and reregistration obligations imposed by the similar offense listed or defined in*
101 *this section.*

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

117 H. Prior to entering judgment of conviction of an offense for which registration is required if the
118 victim of the offense was a minor, physically helpless, or mentally incapacitated, when the indictment,
119 warrant, or information does not allege that the victim of the offense was a minor, physically helpless,
120 or mentally incapacitated, the court shall determine by a preponderance of the evidence whether the

victim of the offense was a minor, physically helpless, or mentally incapacitated, as defined in § 18.2-67.10, and shall also determine the age of the victim at the time of the offense if it determines the victim to be a minor. When such a determination is required, the court shall advise the defendant of its determination and of the defendant's right to make a motion to withdraw a plea of guilty or nolo contendere pursuant to § 19.2-296. If the court grants the defendant's motion to withdraw his plea of guilty or of nolo contendere, his case shall be heard by another judge, unless the parties agree otherwise. Failure to make such determination or so advise the defendant does not otherwise invalidate the underlying conviction.

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

A. Any person required to register, other than a person who has been convicted of any (i) sexually violent offense, (ii) two or more offenses for which registration is required, *provided that such person had been at liberty between such convictions or adjudications*, (iii) a violation of former § 18.2-67.2:1, or (iv) murder, may petition the circuit court in which he was convicted or the circuit 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, or of any similar offense under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof, 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, or of any similar offense under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof, 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.