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HOUSE BILL NO. 2263

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact §§ 18.2-370.2, 18.2-370.4, and 18.2-370.5 of the Code of Virginia, relating to sex offenses prohibiting proximity to children and school property; penalty.

Patron—Wilt

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-370.2, 18.2-370.4, and 18.2-370.5 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) clause (iii) of subsection A of § 18.2-61, § 18.2-63 or 18.2-64.1, subdivision A 1 of § 18.2-67.1, subdivision A 1 of § 18.2-67.2, subdivision A 1 or A 4 (a) of § 18.2-67.3, § 18.2-370 or 18.2-370.1, clause (ii) of § 18.2-371, or § 18.2-374.1, 18.2-374.1:1 or 18.2-379. As of July 1, 2006, "offense prohibiting proximity to children" includes a violation of § 18.2-472.1 when the offense requiring registration was one of the foregoing offenses. *As of July 1, 2023, "offense prohibiting proximity to children" also includes a violation or an attempt to commit a violation of clause (i) or (ii) of § 18.2-346.01, § 18.2-348 where the victim was a minor, subdivision (3) or (4) of § 18.2-355, clause (ii) of § 18.2-356, § 18.2-357 where the offense is a Class 3 felony, or subsection C of § 18.2-357.1.*

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 § 22.1-289.02.

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 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, 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 § 22.1-289.02. 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.

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

§ 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, (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, 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 a 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~~ *subsection* 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 (a) subsection A of § 18.2-47 or 18.2-48; (b) § 18.2-89, 18.2-90, or 18.2-91; (c) § 18.2-51.2; or (d) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

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59 B. *Notwithstanding the provisions of subsection A, every adult who has been convicted of an offense*
60 *or an attempt thereof occurring on or after July 1, 2023, of one of the following qualifying offenses: (i)*
61 *subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, § 18.2-348, subsection B of § 18.2-361, or*
62 *subsection B of § 18.2-366, where the victim of any of the foregoing offenses was a minor; (ii) clause*
63 *(iii) of subsection A of § 18.2-61, § 18.2-63 or 18.2-64.1, subdivision A 1 of § 18.2-67.1, subdivision A 1*
64 *of § 18.2-67.2, subdivision A 1 or A 4 a of § 18.2-67.3, clause (i) or (ii) of § 18.2-346.01, subdivision*
65 *(3) or (4) of § 18.2-355, clause (ii) of § 18.2-356, § 18.2-357 where the offense is a Class 3 felony,*
66 *subsection C of § 18.2-357.1, § 18.2-370 or 18.2-370.1, clause (ii) of § 18.2-371, or § 18.2-374.1,*
67 *18.2-374.1:1, or 18.2-379; or (iii) any similar offense under the laws of any foreign country or any*
68 *political subdivision thereof, or the United States or any political subdivision thereof, shall be forever*
69 *prohibited from working or engaging in any volunteer activity on property he knows or has reason to*
70 *know is a public or private elementary or secondary school or child day center property.*

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

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

76 **§ 18.2-370.5. Offenses prohibiting entry onto school or other property; penalty.**

77 A. *Every adult who is convicted of a Tier I or Tier II offense where the victim is a minor and such*
78 *offense occurred on or after July 1, 2023, or a Tier III offense, as such tier offenses are defined in*
79 *§ 9.1-902, shall be prohibited from entering or being present (i) during school hours, and during*
80 *school-related or school-sponsored activities upon any property he knows or has reason to know is a*
81 *public or private elementary or secondary school or child day center property; (ii) on any school bus as*
82 *defined in § 46.2-100; or (iii) upon any property, public or private, during hours when such property is*
83 *solely being used by a public or private elementary or secondary school for a school-related or*
84 *school-sponsored activity.*

85 B. *The provisions of clauses (i) and (iii) of subsection A shall not apply to such adult if (i) he is a*
86 *lawfully registered and qualified voter, and is coming upon such property solely for purposes of casting*
87 *his vote; (ii) he is a student enrolled at the school; or (iii) he has obtained a court order pursuant to*
88 *subsection C allowing him to enter and be present upon such property, has obtained the permission of*
89 *the school board or of the owner of the private school or child day center or their designee for entry*
90 *within all or part of the scope of the lifted ban, and is in compliance with such school board's, school's*
91 *or center's terms and conditions and those of the court order.*

92 C. *Every adult who is prohibited from entering upon school or child day center property pursuant to*
93 *subsection A may after notice to the attorney for the Commonwealth and either (i) the proprietor of the*
94 *child day center, (ii) the Superintendent of Public Instruction and the chairman of the school board of*
95 *the school division in which the school is located, or (iii) the chief administrator of the school if such*
96 *school is not a public school, petition the circuit court in the county or city where the school or child*
97 *day center is located for permission to enter such property. The court shall direct that the petitioner shall*
98 *cause notice of the time and place of the hearing on his petition to be published once a week for two*
99 *successive weeks in a newspaper meeting the requirements of § 8.01-324. The newspaper notice shall*
100 *contain a provision stating that written comments regarding the petition may be submitted to the clerk of*
101 *court at least five days prior to the hearing. For good cause shown, the court may issue an order*
102 *permitting the petitioner to enter and be present on such property, subject to whatever restrictions of*
103 *area, reasons for being present, or time limits the court deems appropriate.*

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

105 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
106 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
107 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
108 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I,**
109 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
110 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
111 **appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile**
112 **Justice.**