

LD1324685

SENATE BILL NO. 455

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 8, 1994)

(Patron Prior to Substitute—Senator Houck)

A BILL to amend and reenact §§ 16.1-272, as it is currently effective and as it may become effective, 19.2-390 and 46.2-323 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 19.2-298.1, 19.2-298.2, 19.2-390.1, 53.1-116.1 and 53.1-160.1, relating to Sex Offender Registry; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-272, as it is currently effective and as it may become effective, 19.2-390 and 46.2-323 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 19.2-298.1, 19.2-298.2, 19.2-390.1, 53.1-116.1 and 53.1-160.1 as follows:

§ 16.1-272. (For effective date - See note) Power of circuit court over juvenile offender.

A. In the hearing and disposition of felony cases properly before a circuit court having criminal jurisdiction of such offenses if committed by an adult, the court, after giving the juvenile the right to a trial by jury on the issue of guilt or innocence and upon a finding of guilty, may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this law for the hearing and disposition of cases in the juvenile court.

B. If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile court and places the child on probation, the child may be supervised by a juvenile probation officer.

C. Whether the court sentences and commits the child as a juvenile under this chapter or under the criminal law, in cases where the juvenile is convicted of a felony in violation of § 18.2-61, § 18.2-63, § 18.2-64.1, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, § 18.2-67.5, § 18.2-361B, § 18.2-366, § 18.2-370 or § 18.2-370.1, the clerk shall make the report required by § 19.2-390 to the Sex Offender Registry established pursuant to § 19.2-390.1.

§ 16.1-272. (Delayed effective date - See notes) Power of circuit court over juvenile offender.

A. In the hearing and disposition of felony cases properly before a circuit court having criminal jurisdiction of such offenses if committed by an adult, the court, after giving the juvenile the right to a trial by jury on the issue of guilt or innocence and upon a finding of guilty, may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this law for the hearing and disposition of cases in the family court.

B. If the circuit court decides to deal with the juvenile in the same manner as a case in the family court and places the child on probation, the child may be supervised by a juvenile probation officer of the family court.

C. Whether the court sentences and commits the child as a juvenile under this chapter or under the criminal law, in cases where the juvenile is convicted of a felony in violation of § 18.2-61, § 18.2-63, § 18.2-64.1, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, § 18.2-67.5, § 18.2-361B, § 18.2-366, § 18.2-370 or § 18.2-370.1, the clerk shall make the report required by § 19.2-390 to the Sex Offender Registry established pursuant to § 19.2-390.1.

§ 19.2-298.1. Registration required of persons convicted of certain offenses.

A. Every person convicted on or after July 1, 1994, for a felony in violation of § 18.2-61, § 18.2-63, § 18.2-64.1, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, § 18.2-67.5, § 18.2-361B, § 18.2-366, § 18.2-370 or § 18.2-370.1, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269, whether sentenced as adults or juveniles, shall be required as a part of the sentence imposed upon conviction to register with the Department of State Police. The order shall also impose a duty to keep the registration current in accordance with this section.

B. Every person serving a sentence of confinement or under community supervision on July 1, 1994, for a felony covered by this section shall be required to register with the Department of State Police and shall be given notice of the duty to register pursuant to § 53.1-116.1 or § 53.1-160.1 as appropriate.

C. The person shall register within thirty days of his release from confinement in a state or local correctional facility or, if a sentence of confinement is not imposed, within thirty days of suspension of the sentence. In addition, all persons convicted of felony violations under the laws of the United States or any other state substantially similar to § 18.2-61, § 18.2-63, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, § 18.2-67.5, § 18.2-361B, § 18.2-366, § 18.2-370 or § 18.2-370.1 shall be required to register with the

60 Department of State Police within thirty days of establishing a residence within the Commonwealth. Any
61 person required to register shall also be required to re-register within thirty days following any change
62 of residence.

63 D. The registration shall be maintained in the Sex Offender Registry established pursuant to
64 § 19.2-390.1 and shall include the person's name, all aliases which he has used or under which he may
65 have been known, the date and locality of the conviction for which registration is required, his date of
66 birth, social security number, current address and a description of the offense or offenses for which he
67 was convicted and shall, if applicable, provide the same information on convictions prior to July 1,
68 1994, for any of the specified offenses or under a substantially similar law of the United States or any
69 other state.

70 E. The knowing and intentional failure to register as provided in this section or knowingly providing
71 materially false information to the Registry shall be punishable as a Class 1 misdemeanor.

72 § 19.2-298.2. Expungement from Registry.

73 Any person required by § 19.2-298.1 to register, upon the expiration of ten years from the date of
74 the last conviction for which registration is required and notice to the attorney for the Commonwealth,
75 may petition the circuit court in which he was convicted or the circuit court in the jurisdiction where he
76 then resides for removal of his name and all identifying information from the Sex Offender Registry. The
77 court shall hold a hearing on the petition at which the applicant and any interested persons may present
78 witnesses and other evidence. If, after such hearing, the court is satisfied that such person no longer
79 poses a risk to public safety, the court shall grant the petition. In the event the petition is not granted,
80 the person shall wait at least twenty-four months from the date of the denial to file a new petition for
81 removal from the registry.

82 § 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace and
83 clerks of court to State Police; material submitted by other agencies.

84 A. Every state official or agency having the power to arrest, the sheriffs of counties, the police
85 officials of cities and towns, and any other local law-enforcement officer or conservator of the peace
86 having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange,
87 on forms provided by it, of any arrest on any of the following charges:

88 1. Treason;

89 2. Any felony;

90 3. Any offense punishable as a misdemeanor under Title 54.1; or

91 4. Any misdemeanor punishable by confinement in jail under Title 18.2 or 19.2, except an arrest for
92 a violation of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2, for violation of Article 2
93 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or § 18.2-119 or any similar ordinance of any county,
94 city or town.

95 The reports shall contain such information as is required by the Exchange and shall be accompanied
96 by fingerprints of the individual arrested. Fingerprint cards prepared by a law-enforcement agency for
97 inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the
98 appropriate bureau.

99 For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not
100 be required until (i) after a conviction is entered and no appeal is noted or if an appeal is noted, the
101 conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses
102 the proceeding pursuant to § 18.2-251; or (iii) after a verdict of acquittal by reason of insanity pursuant
103 to § 19.2-182.2. Upon such conviction or acquittal, the court shall remand the individual to the custody
104 of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief
105 law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is
106 completed after a determination of guilt or acquittal by reason of insanity. The court shall require the
107 officer to complete the report immediately following his conviction or acquittal, and the individual shall
108 be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him
109 or ordered him committed to the custody of the Commissioner of the Department of Mental Health,
110 Mental Retardation and Substance Abuse Services.

111 B. Within seventy-two hours following the receipt of a warrant or capias for the arrest of any person
112 on a charge of a felony, the law-enforcement agency which received the charge shall enter the accused's
113 name and other appropriate information required by the Department of State Police into the information
114 system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title
115 52. The report shall include the person's name, date of birth, social security number and such other
116 known information which the State Police may require.

117 C. The clerk of each circuit court and district court shall make a report to the Central Criminal
118 Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due
119 to mental incompetency, nolle prosequi, acquittal, or conviction of, or failure of a grand jury to return a
120 true bill as to, any person charged with an offense listed in subsection A of this section, (ii) any
121 unexecuted criminal process for which a report was made pursuant to subsection B which is ordered

destroyed pursuant to § 19.2-76.1 and (iii) any adjudication of delinquency based upon an act which would be a felony if committed by an adult, provided fingerprints and photographs of the juvenile were required to be taken pursuant to subsection A of § 16.1-299. In the case of offenses not required to be reported to the Exchange by subsection A of this section, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.1-135.1. *Upon conviction of a felony in violation of § 18.2-61, § 18.2-63, § 18.2-64.1, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, § 18.2-67.5, § 18.2-361B, § 18.2-366, § 18.2-370 or § 18.2-370.1, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269, whether sentenced as adults or juveniles, the clerk shall also submit a report to the Sex Offender Registry. The report to the Sex Offender Registry shall include the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, last known address, and specific reference to the offense for which he was convicted.* No such report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry, and each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported to the Exchange. For each such report made by a clerk of a circuit court, he shall be allowed a fee of fifty cents to be paid from the appropriation for criminal charges.

D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

E. Corrections officials responsible for maintaining correctional status information, as required by the rules and regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange.

F. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, *including those reports made to the Sex Offender Registry*, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than thirty days after occurrence of the disposition or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

G. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

As used in this section, the term "chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

§ 19.2-390.1. Sex Offender Registry; maintenance; access.

A. The Department of State Police shall keep and maintain a Sex Offender Registry, separate and apart from all other records maintained by it. The Sex Offender Registry shall include conviction data received from the courts pursuant to § 19.2-290 for felony violations of § 18.2-61, § 18.2-63, § 18.2-64.1, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, § 18.2-67.5, § 18.2-361B, § 18.2-366, § 18.2-370 or § 18.2-370.1, including the disposition records for juveniles tried and convicted in the circuit courts pursuant to § 16.1-269, and registrations received from persons required to do so by § 19.2-298.1. The State Police shall promulgate regulations governing the operation and maintenance of the Sex Offender Registry and the expungement of records on persons who are deceased, whose convictions have been reversed or who have been pardoned, and those for whom an order of expungement has been entered pursuant to § 19.2-298.2 or § 19.2-392.1.

B. Sex Offender Registry information shall be disseminated, upon request, only to authorized officers or employees of (i) a criminal justice agency, as defined by § 9-169; (ii) a public school division; (iii) a private, denominational or parochial school; or (iv) a child-welfare agency or a registered or unregistered small family day-care home as defined in § 63.1-195. Sex Offender Registry information provided under this section shall be used only for the purposes of the administration of criminal justice or for the screening of current or prospective employees or volunteers. Further dissemination of such information or use of the information for purposes not authorized by this section is prohibited and a willful violation of this section shall be punished as a Class 1 misdemeanor. Any form or document used by the Department of State Police to disseminate information from the Sex Offender Registry shall

183 provide notice that any further or unauthorized dissemination of the information is a crime punishable
184 as a Class 1 misdemeanor. The Department of State Police may by regulation establish a fee not to
185 exceed fifteen dollars for responding to requests for information from the Sex Offender Registry. Any
186 fees collected shall be deposited in a special account to be used to offset the costs of administering the
187 Registry.

188 § 46.2-323. (Effective July 1, 1994) Application for driver's license; proof of completion of driver
189 education program; penalty.

190 A. Every application for a driver's license, temporary driver's permit, or learner's permit shall be
191 made on a form prescribed by the Department and the applicant shall write his usual signature in ink in
192 the space provided on the form. *The form shall include notice to the applicant of the duty to register*
193 *with the Department of State Police as provided in § 19.2-298.1, if the applicant has been convicted of*
194 *a felony in violation of § 18.2-61, § 18.2-63, § 18.2-64.1, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3,*
195 *§ 18.2-67.5, § 18.2-361B, § 18.2-366, § 18.2-370 or § 18.2-370.1, including juveniles tried and convicted*
196 *in the circuit courts pursuant to § 16.1-269 whether sentenced as adults or juveniles, or a felony under*
197 *a substantially similar law of the United States or any other state.*

198 B. Every application shall state the name, year, month and date of birth, social security number, sex,
199 and residence address of the applicant; whether or not the applicant has previously been licensed as a
200 driver and, if so, when and by what state, and whether or not his license has ever been suspended or
201 revoked and, if so, the date of and reason for such suspension or revocation. The Department, as a
202 condition for the issuance of any driver's license, temporary driver's permit, or learner's permit, may
203 require the surrender of any driver's license issued by another state and held by the applicant. The
204 applicant shall also answer any questions on the application form or otherwise propounded by the
205 Department incidental to the examination. The applicant may also be required to present to the person
206 conducting the examination a birth certificate or other evidence, reasonably acceptable to the
207 Department, of his name and date of birth.

208 The applicant shall also certify that he is a resident of the Commonwealth by signing a certification
209 statement, on a form prescribed by the Commissioner, and by providing satisfactory proof that he is a
210 resident of the Commonwealth. The Commissioner may adopt regulations to determine the process by
211 which applicants prove that they are residents of the Commonwealth.

212 If the applicant either (i) fails or refuses to sign the certification statement or (ii) fails to follow the
213 process determined by the Commissioner for proving residency, the Department shall not issue the
214 applicant a driver's license, temporary driver's permit, or learner's permit.

215 Any applicant who knowingly makes a false certification of Virginia residency or supplies false or
216 fictitious evidence of Virginia residency shall be punished as provided in § 46.2-348.

217 The Commissioner may, on a case-by-case basis, waive any provision of such regulations for good
218 cause shown.

219 C. Every application for a driver's license shall include a color photograph of the applicant supplied
220 under arrangements made by the Department. The photograph shall be processed by the Department so
221 that the photograph can be made part of the issued license. Photographs, for applicants under twenty-one
222 years of age, shall be profile photographs; such photographs, for applicants twenty-one years of age and
223 older, shall be front face view photographs.

224 D. Notwithstanding the provisions of subsection C, the first and subsequent photographs for persons
225 under twenty-one years of age shall be profile photographs until the original issued license has expired.

226 E. Notwithstanding the provisions of § 46.2-334, every unlicensed applicant for a driver's license who
227 is under nineteen years of age shall furnish the Department with satisfactory proof of his successful
228 completion of a driver education program approved by the State Department of Education.

229 § 53.1-116.1. Jailer to give notice of release of certain prisoners.

230 Prior to the release or discharge of any prisoner serving a sentence upon a conviction of a felony in
231 violation of § 18.2-61, § 18.2-63, § 18.2-64.1, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, § 18.2-67.5,
232 § 18.2-361, § 18.2-370 or § 18.2-370.1, the sheriff, jail superintendent or other jail administrator shall
233 give notice to the prisoner of his duty to register with the State Police in accordance with § 19.2-298.1.

234 § 53.1-160.1. Department to give notice of release of certain prisoners.

235 Prior to the release or discharge of any prisoner serving a sentence upon a conviction of a felony in
236 violation of § 18.2-61, § 18.2-63, § 18.2-64.1, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, § 18.2-67.5,
237 § 18.2-361, § 18.2-370 or § 18.2-370.1, the Department shall give notice to the prisoner of his duty to
238 register with the State Police in accordance with § 19.2-298.1.

239 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
240 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
241 **is \$250,000 in FY 2004.**