

# VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

## CHAPTER 747

*An Act to amend and reenact §§ 18.2-47, 18.2-48, 19.2-298.1, 19.2-298.2, 19.2-298.3, 19.2-390, 19.2-390.1, 53.1-116.1, and 53.1-160.1 of the Code of Virginia, to amend the Code of Virginia by adding in Article 6 of Chapter 10 of Title 18.2 a section numbered 18.2-472.1, and by adding a section numbered 19.2-298.4, relating to crimes against minors; registration and tracking of sexual offenders; penalties.*

[S 746]

Approved March 22, 1997

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-47, 18.2-48, 19.2-298.1, 19.2-298.2, 19.2-298.3, 19.2-390, 19.2-390.1, 53.1-116.1, and 53.1-160.1 of the Code of Virginia are amended and reenacted, that the Code of Virginia is amended by adding in Article 6 of Chapter 10 of Title 18.2 a section numbered 18.2-472.1, and by adding a section numbered 19.2-298.4 as follows:**

§ 18.2-47. Abduction and kidnapping defined; punishment.

A. Any person, who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes the person of another, with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge, shall be deemed guilty of "abduction"; but the provisions of this section shall not apply to any law-enforcement officer in the performance of his duty. The terms "abduction" and "kidnapping" shall be synonymous in this Code. Abduction for which no punishment is otherwise prescribed shall be punished as a Class 5 felony; ~~provided, however, that such offense, if~~

*B. If such offense is committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending, shall be a Class 1 misdemeanor in addition to being punishable as contempt of court. Provided further, however, that such offense, if committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending and the person abducted is removed from the Commonwealth by the abducting parent, shall be a Class 6 felony in addition to being punishable as contempt of court.*

§ 18.2-48. Abduction with intent to extort money or for immoral purpose.

Abduction (i) with the intent to extort money, or pecuniary benefit, ~~abduction~~ (ii) of any person with intent to defile such person, ~~and abduction~~, or (iii) of any child under sixteen years of age for the purpose of concubinage or prostitution, shall be a Class 2 felony.

§ 18.2-472.1. *Providing false information or failing to provide registration information; penalty.*

*Any person subject to § 19.2-298.1, other than a sexually violent offender, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry shall be guilty of a Class 1 misdemeanor. However, any person convicted of a sexually violent offense, as defined in § 19.2-298.1, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Registry established pursuant to § 19.2-390.1 shall be guilty of a Class 6 felony.*

*A prosecution pursuant to this section shall be brought in the city or county where the registrant can be found.*

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

A. *For purposes of this section:*

*"Offense for which registration is required" means a violation of or attempts of §§ 18.2-63, 18.2-64.1, 18.2-370, 18.2-370.1, or a "sexually violent offense," or where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation of 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, or subdivision B 1 of § 18.2-374.1*

*"Sexually violent offense" means a violation of §§ 18.2-61, 18.2-67.1, 18.2-67.2 or subdivision A 1 of § 18.2-67.3*

~~A. B. Every person convicted on or after July 1, 1994 1997, 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, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269, whether sentenced as adults or juveniles, of an offense for which registration is required shall be required as a part of the sentence imposed upon conviction to register and reregister with the Department of State Police as provided in this section. The order shall also impose a duty to keep the registration current in accordance with this section. The court shall remand the person to the custody of the local law-enforcement agency of the county or city for the purpose of~~

obtaining the person's fingerprints and photographs of a type and kind specified by the Department of State Police for inclusion in the Sex Offender and Crimes Against Minors Registry established pursuant to § 19.2-390.1. The court shall order the person to provide to the local law-enforcement agency all information required by the State Police for inclusion in the Registry. It shall be the duty of the local law-enforcement agency to forward to the State Police all the necessary registration information within seven days of the date of sentencing.

~~B.~~ C. Every person serving a sentence of confinement or under community supervision on July 1, 1994 1997, for a ~~felony covered by this section~~ an offense for which registration is required 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.~~ D. ~~The~~ Every person required to register shall register within ~~thirty~~ ten days of his release from confinement in a state or, local or juvenile correctional facility or, if a sentence of confinement is not imposed, within ~~thirty~~ ten days of suspension of the sentence or in the case of a juvenile, of disposition. 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, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, an offense for which registration is required shall be required to register with the Department of State Police obtain from the local law-enforcement agency of the jurisdiction in which he has established residence two sets of fingerprints and two photographs of a type and kind specified by the State Police for inclusion in the Registry and shall provide to the local agency all necessary information for inclusion in the Registry within ~~thirty~~ ten days of establishing a residence within the Commonwealth. The local law-enforcement agency shall advise the person of his duties regarding reregistration, and shall promptly submit all necessary registration information to the State Police. Any person required to register shall also be required to ~~re-register~~ reregister within ~~thirty~~ ten days following any change of residence, whether within or without the Commonwealth. Whenever a person subject to registration changes residence to another state, the State Police shall notify the designated law-enforcement agency of that state.

~~D.~~ E. The registration shall be maintained in the ~~Sex Offender~~ Registry established pursuant to § 19.2-390.1 and shall include the person's name, all aliases which he has used or under which he may have been known, the date and locality of the conviction for which registration is required, his fingerprints and a photograph of a type and kind specified by the State Police, his date of birth, social security number, current address and a description of the offense or offenses for which he was convicted and shall, if applicable, provide the same information on convictions prior to July 1, 1994 1997, for any of the specified offenses or under a substantially similar law of the United States or any other state.

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

F. Every person required to register under this section, other than a person convicted of a sexually violent offense, shall reregister with the State Police on an annual basis from the date of the initial registration. Every person convicted of a sexually violent offense shall reregister with the State Police every ninety days from the date of initial registration. For purposes of this section, reregistration means that the person has notified the State Police, confirmed his then current address and provided such other information, including identifying information, which the State Police may, pursuant to this section and by regulation, require. Upon registration and as may be necessary thereafter, the State Police shall provide the person with an address verification form to be used for reregistration. The form shall contain in bold print a statement indicating that failure to comply with the registration required is punishable as a Class 1 misdemeanor or a Class 6 felony.

#### § 19.2-298.2. Duration of registration requirement.

Any person required by § 19.2-298.1 to register or reregister shall be required to register for a period of ~~fifteen years after sentencing~~ if not confined to a state or local correctional facility, hospital or any other institution or facility and, if confined, for a period of fifteen years after parole, discharge or release from any such facility, provided that such person is not convicted of an offense during that period for which registration is required under ~~§ 19.2-298.1~~ ten years from the date of initial registration. However, any person who has been convicted of (i) two or more offenses for which registration is required or (ii) any sexually violent offense shall have a continuing duty to reregister, for life.

Any period of confinement in a state or local correctional facility, hospital or any other institution or facility during the otherwise applicable ten-year period shall toll the registration period and the duty to reregister shall be extended.

#### § 19.2-298.3. Expungement from Registry.

A. Any person required by § 19.2-298.1 to register, other than a person who has been convicted of two or more offenses for which registration is required or who has been convicted of any sexually violent offense as defined in § 19.2-298.1, 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 ~~Sex Offender~~ Registry. *A petition may not be filed earlier than ten years after the date of the initial registration.* The court shall hold a hearing on the petition at which the applicant and any interested persons may present witnesses and other evidence. 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 twenty-four months from the date of the denial to file a new petition for removal from the registry. *A petition for expungement shall not be granted to any person convicted of two or more offenses for which registration is required or convicted of any sexually violent offense.*

B. The name of any person required to register under § 19.2-298.1 and all identifying information shall be removed from the ~~Sex Offender~~ Registry by the Department of State Police upon receipt of an order granting a petition pursuant to subsection A or at the end of the period for which the person is required to register under § 19.2-298.2.

§ 19.2-298.4. *Relief from registration for sexually violent offenders.*

*Upon expiration of three years from the date upon which the duty to register is imposed, any person convicted of a sexually violent offense as defined in § 19.2-298.1 may petition the court in which he was convicted for relief from the requirement to reregister every ninety days. The court shall hold a hearing on the petition, on notice to the attorney for the Commonwealth, to determine whether the person suffers from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or significantly impairs his ability to control his sexual behavior. Prior to the hearing the court shall order a comprehensive assessment of the applicant by a panel of three certified sex offender treatment providers as defined in § 54.1-3600. A report of the assessment shall be filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of the proceeding.*

*If, after consideration of the report and such other evidence as may be presented at the hearing, the court finds by clear and convincing evidence that the person does not suffer from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or significantly impairs his ability to control his sexual behavior, the petition shall be granted and the duty to reregister every ninety days shall be terminated. The person shall, however, be under a continuing duty to register annually in accordance with subsection F of § 19.2-298.1. If the petition is denied, the duty to reregister every ninety days shall continue. An appeal from the denial of a petition shall lie to the Supreme Court.*

*A petition for relief pursuant to this section may not be filed within three years from the date on which any previous petition for such relief was denied.*

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

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on capias or warrant for failure to appear, and the service of a warrant for another jurisdiction, on any of the following charges:

- a. Treason;
- b. Any felony;
- c. Any offense punishable as a misdemeanor under Title 54.1; or
- d. Any misdemeanor punishable by confinement in jail under Title 18.2 or 19.2, except an arrest for a violation of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2, for violation of Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or § 18.2-119 or any similar ordinance of any county, city or town.

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

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

Mental Retardation and Substance Abuse Services.

B. Within seventy-two hours following the receipt of a warrant or capias for the arrest of any person on a charge of a felony, the law-enforcement agency which received the charge shall enter the accused's name and other appropriate information required by the Department of State Police into the "information system", known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. The report shall include the person's name, date of birth, social security number and such other known information which the State Police may require. Any unexecuted criminal process which has been entered into the VCIN system shall be removed forthwith by the entering law-enforcement agency when the criminal process has been ordered destroyed pursuant to § 19.2-76.1.

C. The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A of this section, including any action which may have resulted from an indictment, presentment or information, and (ii) any adjudication of delinquency based upon an act which, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. 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, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, any person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § 19.2-298.1, the clerk shall also within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors 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 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. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN system.

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, sheriffs, and jail superintendents of regional jails, 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. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. 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.

H. 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 and Crimes Against Minors Registry; maintenance; access.

A. The Department of State Police shall keep and maintain a Sex Offender *and Crimes Against Minors* Registry, separate and apart from all other records maintained by it. The purpose of the ~~Sex Offender~~ Registry shall be to assist the efforts of law-enforcement agencies to protect their communities from repeat sex offenders and to protect children from becoming the victims of ~~repeat sex criminal~~ offenders by helping to prevent such individuals from being hired or allowed to volunteer to work directly with children. The ~~Sex Offender~~ Registry shall include conviction data received from the courts pursuant to ~~§ 19.2-390 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, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, including the disposition records for juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, on convictions for offenses for which registration is required as defined in § 19.2-298.1 and registrations and reregistrations received from persons required to do so by § 19.2-298.1. Promptly upon~~

*The Registry shall also include a separate indication that a person has been convicted of a sexually violent offense.*

*Upon receipt of a registration or re-registration reregistration pursuant to § 19.2-298.1 the State Police shall forthwith notify the chief law-enforcement officer of the county, city or town of the locality listed as the person's address on the registration or re-registration reregistration and forthwith transmit the appropriate information as required by the Federal Bureau of Investigation for the inclusion in the National Sex Offender Registry.* The State Police shall promulgate regulations governing the giving of notice to the chief local law-enforcement officer, 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 *or relief from frequent registration* has been entered pursuant to ~~§§ 19.2-298.2 19.2-298.3, 19.2-298.4 or § 19.2-392.1.~~

B. Except as provided in subsection A, ~~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. The Department of State Police shall make ~~Sex Offender~~ Registry information available, upon request, to criminal justice agencies including local law-enforcement agencies through the Virginia Criminal Information Network (VCIN). ~~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. The VCIN and any form or document used by the Department of State Police to disseminate information from the ~~Sex Offender~~ Registry shall provide notice that any further or unauthorized dissemination of the information is a crime punishable as a Class 1 misdemeanor. The Department of State Police may by regulation establish a fee not to exceed fifteen dollars for responding to requests for information from the ~~Sex Offender~~ Registry. Any fees collected shall be deposited in a special account to be used to offset the costs of administering the Registry.

*No liability shall be imposed upon any law-enforcement official who disseminates information or fails to disseminate information in good faith compliance with the requirements of this section, but this provision shall not be construed to grant immunity for gross negligence or willful misconduct.*

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

Prior to the release or discharge of any prisoner serving a sentence upon a 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, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 and subsection B of § 18.2-366, an offense for which registration is required as defined in § 19.2-298.1,~~ the sheriff, jail superintendent or other jail administrator shall give notice to the prisoner of his duty to register with the State Police in accordance with § 19.2-298.1. *The sheriff, jail superintendent or other jail administrator shall also obtain from that person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police; inform the person of his duties regarding reregistration and change of address; and inform the person of his duty to register under this section. The sheriff, jail superintendent or other jail administrator shall forward the registration information to the Department of State Police within seven days of receipt.*

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

Prior to the release or discharge of any prisoner serving a sentence upon a 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, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, an offense for which registration is required as defined in § 19.2-298.1,~~ the Department shall give notice to the prisoner of his duty to register with the State Police in accordance with § 19.2-298.1. *The Department shall also*

*obtain from that person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police, inform the person of his duties regarding reregistration and change of address, and inform the person of his duty to register under this section. The Department shall forward the registration information to the Department of State Police within seven days of receipt.*

**2. That, prior to July 1, 1997, or as soon thereafter as is reasonably practicable, the Department of State Police shall promulgate regulations consistent with and necessary for implementation of the requirements of this act and 42 U.S.C. § 14071.**

**3. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$62,500.**

**4. That the provisions of this act shall not become effective unless the estimated amount required by § 30-19.1:4 is provided by appropriations ending June 30, 1998.**