

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 785

An Act to amend and reenact §§ 19.2-298.1 through 19.2-298.4 and 19.2-390.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-390.2, relating to sex offenders; community notification.

[S 369]

Approved April 22, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-298.1 through 19.2-298.4 and 19.2-390.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-390.2 as follows:

§ 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 *or attempted violation* of ~~or attempts~~ ~~of~~

1. §§ 18.2-63, 18.2-64.1, 18.2-67.2:1, subdivision A 2 of § 18.2-67.3, subsection B of § 18.2-67.5, § 18.2-90 with the intent to commit rape, § 18.2-370, or § 18.2-370.1; ~~or a~~;

2. A "sexually violent offense"; or

3. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation *or attempted 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 *or attempted violation* of:

1. Clause (ii) of § 18.2-48, §§ 18.2-61, 18.2-67.1, 18.2-67.2 ~~or~~, subdivision A 1 of § 18.2-67.3 or subsection A of § 18.2-67.5; or

2. §§ 18.2-63, 18.2-64.1, 18.2-67.2:1, subdivision A 2 of § 18.2-67.3, subsection B of § 18.2-67.5, § 18.2-90 with the intent to commit rape, §§ 18.2-370, 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, a violation *or attempted violation* of subsection A of § 18.2-47, clause (iii) of § 18.2-48, subsection B of § 18.2-361, subsection B of § 18.2-366, or subdivision B 1 of § 18.2-374.1. Conviction of an offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted of any two or more such offenses occurring within a ten-year period, provided that person had been at liberty between such convictions.

B. Every person convicted on or after July 1, 1997, 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 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 *and to promptly provide to the State Police such information as is necessary for any reregistration.*

C. Every person serving a sentence of confinement or under community supervision on July 1, 1997, for 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.

D. Every person required to register shall register within ten days of his release from confinement in a state, local or juvenile correctional facility or, if a sentence of confinement is not imposed, within ten days of suspension of the sentence or in the case of a juvenile, of disposition. In addition, all persons convicted of violations under the laws of the United States or any other state substantially similar to an offense for which registration is required shall 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 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 reregister within 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.

The local law-enforcement agency shall promptly submit to the State Police all necessary information for registrations and reregistrations pursuant to this subsection.

E. The registration shall be maintained in the 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, 1997, for any of the specified offenses or under a substantially similar law of the United States or any other state.

F. Every person required to register under this section, other than a person convicted of a sexually violent offense *but including persons required to register prior to July 1, 1997*, 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, *including persons convicted of a sexually violent offense who were required to register prior to July 1, 1997*, 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 *as provided in § 18.2-472.1*.

Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister, the State Police shall promptly cause a warrant for the arrest of the person to be issued by the jurisdiction in which the offender last registered or reregistered or, if the offender failed to comply with the duty to register, in the jurisdiction in which the offender was last convicted of an offense for which registration or reregistration is required. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the offender's last known residence as shown in the records of the State Police.

Jurisdiction for prosecution of a violation of this section shall lie where the offender last registered or reregistered or, if the offender failed to comply with the duty to register, where the offender was last convicted of an offense for which registration or reregistration is required.

§ 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 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 ~~re-register~~ 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 Registry. A petition may not be filed earlier than ten years after the date of the initial registration *pursuant to subsection D of § 19.2-298.1*. 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 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 *as a sexually violent offender* 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 State Police shall be notified promptly upon entry of an order granting the petition and Registry information on the offender shall be removed from the Internet system developed and maintained by the State Police pursuant to subsection D of § 19.2-390.1.*

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.

§ 19.2-390.1. 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 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 victims of criminal offenders by helping to prevent such individuals from being hired or allowed to volunteer to work directly with children.

The Registry shall include conviction data received from the courts, 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, *whether such requirement arose before, on, or after July 1, 1997.*

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 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 reregistration and *any person who has requested automatic notification pursuant to § 19.2-390.2. The State Police shall 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 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 §§ 19.2-298.3, 19.2-298.4 or § 19.2-392.1.*

B. Except as provided in ~~subsections~~ *subsection A and, C or D,* 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 made directly to the Department of State Police or to the State Police through a local law-enforcement agency. Such information may be disclosed to any person requesting information on a specific individual in accordance with subsection C. The Department of State Police shall make Registry information available, upon request, to criminal justice agencies including local law-enforcement agencies through the Virginia Criminal Information Network (VCIN). 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 or otherwise for the protection of the public in general and children in particular. 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 with the intent to harass or intimidate another 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 Registry shall provide notice that any ~~further or unauthorized dissemination of use of the information with the intent to harass or intimidate another~~ 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 Registry *pursuant to this subsection.* Any fees collected shall be deposited in a special account to be used to offset the costs of administering the Registry.

C. Notwithstanding subsection B, Registry Information regarding a specific person requested pursuant to subsection B shall be disseminated, upon receipt of an official request form, to any person who is seeking child-minding or day-care services which may be submitted directly to the Department of State Police or to the State Police through a local law-enforcement agency. The official request form shall include a statement of the reason for the request; the name and address of the person requesting the information and; the name, address, and, if known, the social security number and signed consent of the person about whom information is sought; and such other information as the State Police may require to ensure reliable identification. Registry information provided under this section shall be used only for the purposes of screening current or prospective employees or volunteers seeking to provide child-minding or day-care services. Further dissemination of such information or Unlawful use of the information for purposes not authorized by this section of intimidating or harassing another is prohibited and a willful violation of this section shall be punished as a Class 1 misdemeanor.

For purposes of this section, the term "day-care services" means provision of supplementary care and protection during a part of the day for the minor child of another, and "child-minding services" means provision of temporary custodial care or supervisory services for the minor child of another.

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.

D. On or before January 1, 1999, the State Police shall develop and maintain a system for making certain Registry information on violent sex offenders publicly available by means of the Internet. The information to be made available shall include the offender's name; all aliases which he has used or under which he may have been known; the date and locality of the conviction and a brief description of the offense; his date of birth, current address and photograph; and such other information as the State Police may from time to time determine is necessary to preserve public safety. The system shall be secure and not capable of being altered except by or through the State Police. The system shall be updated each business day with newly received registrations and reregistrations.

E. 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.

§ 19.2-390.2. Automatic notification of registration to certain entities.

On and after January 1, 1999, any public, parochial, denominational or private elementary or secondary school and any state-regulated or state-licensed child caring institution, child day center, child day program, family day home, foster home or group home may request from the State Police pursuant to this section and, upon compliance with the requirements therefor established by the State Police, shall be eligible to receive from the State Police electronic notice of the registration or reregistration of any sex offender registered pursuant to § 19.2-298.1. Agencies that request and are entitled to this notification, and which do not have the capability of receiving such electronic notice, may register with the Department of State Police to receive written notification of sex offender registration or reregistration.

Within three business days of receipt by the State Police of registration or reregistration pursuant to § 19.2-298.1, the State Police shall electronically or in writing notify an entity which has requested such notification, has complied with the requirements therefor established by the State Police and is located in the same zip code area as the address of the offender as shown on the registration or any contiguous zip code area.

The State Police shall establish reasonable guidelines governing the automatic dissemination of Registry information pursuant to this section, which may include the payment of a fee, whether a one-time fee or a regular assessment, to maintain the electronic access. The fee, if any, shall defray the costs of establishing and maintaining the electronic notification system and notice by mail.