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HOUSE BILL NO. 1187

Offered January 26, 1998

A BILL to amend and reenact §§ 19.2-298.1 through 19.2-298.4, 19.2-299 and 19.2-390.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 19.2-390.2, 19.2-390.3 and 53.1-145.1, relating to sex offenders; community notification.

Patrons—O'Brien, Drake and Sherwood

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-298.1 through 19.2-298.4, 19.2-299 and 19.2-390.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 19.2-390.2, 19.2-390.3 and 53.1-145.1 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 §§ 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 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 *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 clause (i) or (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. For purposes of the registration requirements of this section through 19.2-298.4, the term includes a violation *or attempted violation* of §§ 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 (ii) or (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, if (i) the person has been convicted of two or more such offenses occurring within a ten-year period, provided that person had been at liberty between each such conviction, and (ii) based upon the assessment conducted pursuant to § 19.2-390.3, the person is classified as a sexually violent offender.

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

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60 person required to register shall also be required to reregister within ten days following any change of
61 residence, whether within or without the Commonwealth. Whenever a person subject to registration
62 changes residence to another state, the State Police shall notify the designated law-enforcement agency
63 of that state.

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

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

73 F. Every person required to register under this section, other than a person convicted of a sexually
74 violent offense *but including persons required to register prior to July 1, 1997*, shall reregister with the
75 State Police on an annual basis from the date of the initial registration. Every person convicted of a
76 sexually violent offense, *including persons convicted of a sexually violent offense who were required to*
77 *register prior to July 1, 1997*, shall reregister with the State Police every ninety days from the date of
78 initial registration. For purposes of this section, reregistration means that the person has notified the
79 State Police, confirmed his then current address and provided such other information, including
80 identifying information, which the State Police may, pursuant to this section and by regulation, require.
81 Upon registration and as may be necessary thereafter, the State Police shall provide the person with an
82 address verification form to be used for reregistration. The form shall contain in bold print a statement
83 indicating that failure to comply with the registration required is punishable as a Class 1 misdemeanor
84 or a Class 6 felony. *Jurisdiction for prosecution of a violation of this section shall lie in the jurisdiction*
85 *where the offender is found, or if he is found outside of the Commonwealth, in the jurisdiction of his*
86 *last known residence in the Commonwealth.*

87 *Whenever it appears from the records of the State Police that a person has failed to comply with the*
88 *duty to register or reregister, the State Police shall promptly cause a warrant for the arrest of the*
89 *person to be issued and shall notify the local law-enforcement agency of the jurisdiction of the*
90 *offender's last known residence as shown in the records of the State Police*

91 § 19.2-298.2. Duration of registration requirement.

92 Any person required by § 19.2-298.1 to register or reregister shall be required to register for a period
93 of ten years from the date of initial registration. However, any person who has been convicted of (i) two
94 or more offenses for which registration is required or (ii) any sexually violent offense, *including any*
95 *such person who has been determined to be a sexually violent offender based upon an assessment*
96 *conducted pursuant to § 19.2-390.3*, shall have a continuing duty to re-register, for life.

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

100 § 19.2-298.3. Expungement from Registry.

101 A. Any person required by § 19.2-298.1 to register, other than a person who has been convicted of
102 two or more offenses for which registration is required or who has been convicted of any sexually
103 violent offense as defined in § 19.2-298.1, may petition the circuit court in which he was convicted or
104 the circuit court in the jurisdiction where he then resides for removal of his name and all identifying
105 information from the Registry. A petition may not be filed earlier than ten years after the date of the
106 initial registration *pursuant to subsection D of § 19.2-298.1*. The court shall hold a hearing on the
107 petition at which the applicant and any interested persons may present witnesses and other evidence. If,
108 after such hearing, the court is satisfied that such person no longer poses a risk to public safety, the
109 court shall grant the petition. In the event the petition is not granted, the person shall wait at least
110 twenty-four months from the date of the denial to file a new petition for removal from the registry. A
111 petition for expungement shall not be granted to any person convicted of two or more offenses for
112 which registration is required or convicted of any sexually violent offense.

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

117 § 19.2-298.4. Relief from registration for sexually violent offenders.

118 A. Upon expiration of three years from the date upon which the duty to register is imposed, any
119 person convicted of a sexually violent offense as defined in § 19.2-298.1 may petition the court in which
120 he was convicted for relief from the requirement to reregister every ninety days. The court shall hold a
121 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.

B. Within thirty days of receipt of notice from the Department of Corrections pursuant to § 19.2-390.3 indicating that a person convicted of an offense for which registration is required has been determined to be a sexually violent offender pursuant to § 19.2-390.3, the person 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 and the Department of Corrections to determine whether, based upon the assessment and such other evidence as may be presented at the hearing, the person has been properly assessed as a sexually violent offender.

C. 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.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. When a person is tried in a circuit court upon a felony charge or upon a charge of assault and battery in violation of §§ 18.2-57, 18.2-57.1 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or maiming or driving while intoxicated in violation of § 18.2-51.4 or § 18.2-266, and is adjudged guilty of such charge, the court may, or on the motion of the defendant shall, before imposing sentence direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, *including but not limited to a violent sex offender assessment*, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be sealed upon the entry of the sentencing order by the court and made available only by court order, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9-169, of this or any other state or of the United States; and to any agency where the accused is referred for treatment by the court or by probation and parole services, and shall be made available to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant

with illicit drug operations or markets.

§ 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 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 electronic 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 subsection A, *C or D,* Registry information shall be disseminated; *only* 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 State Police through a local law-enforcement agency. Such information may be disclosed to (a) any public, parochial, denominational, or private elementary or secondary school and any state regulated or licensed child caring institution, child day caring center, child day care program, family day home, foster home or group home or (b) to any person seeking child minding or day care services requesting information on a specific individual or (c) any other person requesting information on a specific individual.* 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* 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* Information regarding a specific person pursuant to clause (b) of 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 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, social security number, 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 daily 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. Electronic notification of registration to certain entities.

Any public, parochial, denominational or private elementary or secondary school and any state regulated or licensed child caring institution, child day center, child day program, family day home, foster home or group home may register with 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 entitled to this notification 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 day 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 registered for notification and which is located in the same zip code area as the address of the offender as shown on the registration or any numerically contiguous zip code area.

The State Police shall establish reasonable guidelines governing the electronic 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.

§ 19.2-390.3. When certain persons may be registered as sexually violent offenders.

Whenever the Department of Corrections receives a record of conviction for a violation or attempted violation, committed on or after January 1, 1999, of §§ 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 (ii) or (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 and determines through the presentence investigation that (i) the person has previously been convicted of any such offense or of a sexually violent offense as defined in § 19.2-298.1, (ii) such prior offense was committed within the ten years immediately preceding the date of the current offense and (iii) the person was at liberty between each such conviction, the Department shall notify the person convicted and a probation officer of the court in which the most recent conviction was had. The notice to the person shall advise him that based upon an assessment to be conducted by the local probation and parole office, he may be subject to the registration requirements imposed upon sexually violent offenders pursuant to § 19.2-298.1. Upon receipt of the notice, a local probation officer shall conduct an assessment of the offender using the assessment instrument developed by the Department of Corrections pursuant to § 53.1-145.1. The assessment shall be completed and the results sent to the State Police and the person within fourteen business days from the Department of Corrections. If the assessment so indicates, the State Police shall thereafter treat the offender as a sexually violent offender for purposes of §§ 19.2-298.1 through 19.2-298.4, unless relief has been granted pursuant to § 19.2-298.3

§ 53.1 -145.1. Sex offender assessment instrument.

Prior to January 1, 1999, the Department of Corrections shall develop a sexually violent offender assessment instrument and procedure for use by probation and parole officers in determining whether persons convicted of two or more specified sex offenses should be subject to the registration requirements imposed upon sexually violent offenders pursuant to § 19.2-298.1. The assessment shall include an evaluation of the offender's prior criminal history, the nature and circumstances of the offenses and such other information as the Department determines is predictive of the relative threat to public safety.