

VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

CHAPTER 845

An Act to amend and reenact §§ 18.2-472.1, 19.2-298.1, 19.2-298.4, 19.2-390.2 and 53.1-1 of the Code of Virginia, relating to sex offender registration and community notification; penalty.

[S 760]

Approved March 29, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-472.1, 19.2-298.1, 19.2-298.4, 19.2-390.2 and 53.1-1 of the Code of Virginia are amended and reenacted as follows:

§ 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 *or 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.*

§ 19.2-298.1. 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:

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, *a third or subsequent conviction of § 18.2-67.4 or of subsection C of § 18.2-67.5;*

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 (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, ~~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 *as defined in § 53.1-1* 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 *obtain from the person who presents himself for registration or reregistration, two sets of fingerprints and two photographs of a type and kind specified by the State Police for inclusion in the Registry* and advise the person of his duties regarding reregistration. 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~~ *between July 1, 1994, and 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~~ *between July 1, 1994, and 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.

G. *Nonresident offenders entering the Commonwealth for employment, to carry on a vocation, or as a student attending school who are required to register in their state of residence or who would be required to register under this section if a resident of the Commonwealth shall, within ten days of accepting employment or enrolling in school in the Commonwealth, be required to register and reregister pursuant to this section. For purposes of this section, "employment" and "carry on a vocation" include employment that is full-time or part-time for a period of time exceeding fourteen days or for an aggregate period of time exceeding thirty days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. For purposes of this section "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.*

H. 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 *charging a violation of § 18.2-472.1* 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.~~

§ 19.2-298.4. Relief from registration or reregistration.

A. 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~~ subsection may not be filed within three years from the date on which any previous petition for such relief was denied.

B. The duly appointed guardian of a person convicted of an offense requiring registration or reregistration as either a sex offender or sexually violent offender under § 19.2-298.1, who due to a physical condition is incapable of (i) reoffending and (ii) reregistering, may petition the court in which the person was convicted for relief from the requirement to reregister. 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 physical condition that makes the person (i) no longer a menace to the health and safety of others and (ii) incapable of reregistering. Prior to the hearing the court shall order a comprehensive assessment of the applicant by at least two licensed physicians other than the person's primary care physician. 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 due to his physical condition the person (i) no longer poses a menace to the health and safety of others and (ii) is incapable of reregistering, the petition shall be granted and the duty to reregister 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.

If the petition is denied, the duty to reregister shall continue. An appeal from the denial of a petition shall be to the Virginia Supreme Court.

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

The Department of State Police shall annually verify and report to the attorney for the Commonwealth in the jurisdiction in which the person resides that a person whose obligation to reregister was terminated under this section continues to suffer from the physical condition that resulted in such termination.

If, at any time, the person's physical condition changes so that he is capable of reoffending or reregistering, the attorney for the Commonwealth shall file a petition with the circuit court in the jurisdiction where the person resides and the court shall hold a hearing on the petition, with notice to the person and his guardian, to determine whether the person still suffers from a physical condition that makes the person (i) no longer a menace to the health and safety of others and (ii) incapable of reregistering. Prior to the hearing the court shall order a comprehensive assessment of the applicant by at least two licensed physicians other than the person's primary care physician. 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.

§ 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, day-care service and child-minding service, and any state-regulated or state-licensed child caring institution, child day center, child day program, family day home, foster home or group home as defined in § 63.1-195 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.

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

§ 53.1-1. Definitions.

As used in this title unless the context requires otherwise or it is otherwise provided:

"Board" or "State Board" means the State Board of Corrections.

"Community correctional facility" means any group home, halfway house or other physically unrestricting facility used for the housing, treatment or care of adult offenders established or operated with funds appropriated to the Department of Corrections from the state treasury and maintained or operated by any political subdivision, combination of political subdivisions or privately operated agency within the Commonwealth.

"Community supervision" means probation, parole, post-release supervision, programs authorized under the Comprehensive Community Corrections Act for local responsible offenders, and programs authorized under Article 7 (§ 53.1-128 et seq.) of Chapter 3 of this title.

"Correctional officer" means a duly sworn employee of the Department of Corrections whose normal duties relate to maintaining immediate control, supervision and custody of prisoners confined in any state correctional facility.

"Department" means the Department of Corrections.

"Deputy sheriff" means a duly sworn officer appointed by a sheriff pursuant to § 15.2-1603 whose normal duties include, but are not limited to, maintaining immediate control, supervision and custody of prisoners confined in any local correctional facility and may include those duties of a jail officer.

"Director" means the Director of the Department of Corrections.

"Jail officer" means a duly sworn employee of a local correctional facility, except for deputy sheriffs, whose normal duties relate to maintaining immediate control, supervision and custody of prisoners confined in any local correctional facility. This definition in no way limits any authority otherwise granted to a duly sworn deputy sheriff whose duties may include those of a jail officer.

"Local correctional facility" means any jail, jail farm or other place used for the detention or incarceration of adult offenders, excluding a lock-up, which is owned, maintained or operated by any political subdivision or combination of political subdivisions of the Commonwealth.

"Lock-up" means a facility whose primary use is to detain persons for a short period of time as determined by the Board.

"State correctional facility" means any correctional center or correctional field unit used for the incarceration of adult offenders established and operated by the Department of Corrections. This term shall include "penitentiary" whenever used in this title or other titles of the Code.

2. That the Virginia Department of State Police shall promulgate such regulations as are necessary to carry out the provisions of this act.

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 \$0 in FY 2009.