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**HOUSE BILL NO. 1862**

Offered January 14, 2009

Prefiled January 12, 2009

A *BILL to amend and reenact §§ 9.1-902 and 18.2-472.1 of the Code of Virginia, relating to sex offender registry; penalties.*

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Patron—Shannon

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That §§ 9.1-902 and 18.2-472.1 of the Code of Virginia are amended and reenacted as follows:**

§ 9.1-902. Offenses requiring registration.

A. For purposes of this chapter:

"Offense for which registration is required" includes:

1. Any offense listed in subsection B;

2. Criminal homicide;

3. Murder;

4. A sexually violent offense;

5. Any offense similar to those listed in subdivisions 1 through 4 under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof; and

6. Any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

B. The offenses included under this subsection include any violation of, attempted violation of, or conspiracy to violate:

1. § 18.2-63, unless registration is required pursuant to Subsection E.1, § 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape, subsection B or C of § 18.2-374.1:1, former subsection D of § 18.2-374.1:1 as it was in effect from July 1, 1994, through June 30, 2007, former clause (iv) of subsection B of § 18.2-374.3 as it was in effect on June 30, 2007, or subsection B, C, or D of § 18.2-374.3; or a third or subsequent conviction of (i) § 18.2-67.4, (ii) § 18.2-67.4:2, (iii) subsection C of § 18.2-67.5 or (iv) § 18.2-386.1.

If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any felony offense listed in this section; subsection A of § 18.2-374.1:1; or a felony under § 18.2-67.5:1.

2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A of § 18.2-47, clause (i) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, § 18.2-361, or 18.2-366.

3. § 18.2-370.6.

C. "Criminal homicide" means a homicide in conjunction with a violation of, attempted violation of, or conspiracy to violate clause (i) of § 18.2-371 or § 18.2-371.1, when the offenses arise out of the same incident.

D. "Murder" means a violation of, attempted violation of, or conspiracy to violate § 18.2-31 or § 18.2-32 where the victim is (i) under 15 years of age or (ii) where the victim is at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section.

E. "Sexually violent offense" means a violation of, attempted violation of, or conspiracy to violate:

1. Clause (ii) and (iii) of § 18.2-48, § 18.2-61, subsection A of § 18.2-63 where the perpetrator is more than five years older than the victim, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, § 18.2-67.4 where the perpetrator is 18 years of age or older and the victim is under the age of six, subsections A and B of § 18.2-67.5, § 18.2-370, or § 18.2-370.1 or § 18.2-374.1; or

2. § 18.2-63, § 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) of § 18.2-48, § 18.2-361, § 18.2-366 or subsection C of § 18.2-374.1:1. An offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided that person had been at liberty between such convictions or adjudications;

3. If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any felony offense listed in this section. An offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided that the person had been at liberty between such convictions or adjudications; or

4. Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as

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59 described in § 1591 of Title 18, U.S.C.).

60 F. "Any offense listed in subsection B," "criminal homicide" as defined in this section, "murder" as  
61 defined in this section, and "sexually violent offense" as defined in this section includes (i) any similar  
62 offense under the *existing or former* laws of any foreign country or any political subdivision thereof, the  
63 United States or any political subdivision thereof or (ii) any offense for which registration in a sex  
64 offender and crimes against minors registry is required under the laws of the jurisdiction where the  
65 offender was convicted.

66 G. Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a  
67 juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated  
68 delinquent on or after July 1, 2005, of any offense for which registration is required, the court may, in  
69 its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the  
70 offense require offender registration. In making its determination, the court shall consider all of the  
71 following factors that are relevant to the case: (i) the degree to which the delinquent act was committed  
72 with the use of force, threat or intimidation, (ii) the age and maturity of the complaining witness, (iii)  
73 the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the  
74 offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the  
75 offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the  
76 case.

77 § 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima  
78 facie evidence.

79 A. Any person subject to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, ~~other than a person convicted of~~  
80 ~~a sexually violent offense or murder as defined in § 9.1-902,~~ who knowingly fails to register or  
81 reregister, or who knowingly provides materially false information to the Sex Offender and Crimes  
82 Against Minors Registry is guilty of a ~~Class 4 misdemeanor. A second or subsequent conviction for an~~  
83 ~~offense under this subsection is a Class 6 felony.~~

84 B. ~~Any~~ For any person convicted of a sexually violent offense or murder, as defined in § 9.1-902,  
85 ~~who knowingly fails to register or reregister, or who knowingly provides materially false information to~~  
86 ~~the Sex Offender and Crimes Against Minors Registry is guilty of a Class 6 felony. A~~ a second or  
87 subsequent conviction for an offense under this ~~subsection~~ section is a Class 5 felony.

88 C. A prosecution pursuant to this section shall be brought in the city or county where the offender  
89 can be found or where the offender last registered or reregistered or, if the offender failed to comply  
90 with the duty to register, where the offender was last convicted of an offense for which registration or  
91 reregistration is required.

92 D. At any trial pursuant to this section, an affidavit from the State Police issued as required in  
93 § 9.1-907 shall be admitted into evidence as prima facie evidence of the failure to comply with the duty  
94 to register or reregister and a copy of such affidavit shall be provided to the registrant or his counsel  
95 seven days prior to hearing or trial by the attorney for the Commonwealth.

96 E. The accused in any hearing or trial in which an affidavit from the State Police issued as required  
97 in § 9.1-907 is admitted into evidence pursuant to this section shall have the right to call the custodian  
98 of records issuing the affidavit and examine him in the same manner as if he had been called as an  
99 adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.

100 F. For the purposes of this section any conviction for a substantially similar offense under the laws  
101 of (i) any foreign country or any political subdivision thereof, or (ii) any state or territory of the United  
102 States or any political subdivision thereof, the District of Columbia, or the United States shall be  
103 considered a prior conviction.

104 G. *If a person convicted under this section is on probation or parole for (i) an offense for which*  
105 *registration is required as defined in § 9.1-902 or (ii) for a conviction under this section, his probation*  
106 *or parole shall be revoked.*

107 2. That the provisions of this act may result in a net increase in periods of imprisonment or  
108 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at  
109 least \$505,619 for periods of imprisonment in state adult correctional facilities and cannot be  
110 determined for periods of commitment to the custody of the Department of Juvenile Justice.