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SENATE BILL NO. 127

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 23, 2012)

(Patrons Prior to Substitute—Senators Stanley and Norment [SB 412])

*A BILL to amend and reenact §§ 9.1-902 and 9.1-913 of the Code of Virginia, relating to sex offender registry; juvenile registration; penalty.***Be it enacted by the General Assembly of Virginia:****1. That §§ 9.1-902 and 9.1-913 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 subdivision 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 described in § 1591 of Title 18, U.S.C.).

F. "Any offense listed in subsection B," "criminal homicide" as defined in this section, "murder" as defined in this section, and "sexually violent offense" as defined in this section includes (i) any similar

60 offense under the laws of any foreign country or any political subdivision thereof, the United States or
61 any political subdivision thereof or (ii) any offense for which registration in a sex offender and crimes
62 against minors registry is required under the laws of the jurisdiction where the offender was convicted.

63 ~~G. Juveniles~~ *Except as otherwise provided in this subsection and subsection G1, juveniles* adjudicated
64 delinquent shall not be required to register; ~~however, where~~ . Where the offender is a juvenile over the
65 age of 13 at the time of the offense who is tried as a juvenile and is adjudicated delinquent on or after
66 July 1, 2005, of any offense for which registration is required, the court may, in its discretion and upon
67 motion of the attorney for the Commonwealth, find that the circumstances of the offense require
68 offender registration. In making its determination, the court shall consider all of the following factors
69 that are relevant to the case: (i) the degree to which the delinquent act was committed with the use of
70 force, threat or intimidation, (ii) the age and maturity of the complaining witness, (iii) the age and
71 maturity of the offender, (iv) the difference in the ages of the complaining witness and the offender, (v)
72 the nature of the relationship between the complaining witness and the offender, (vi) the offender's prior
73 criminal history, and (vii) any other aggravating or mitigating factors relevant to the case.

74 *G1. Any juvenile over the age of 13 at the time of the offense who is adjudicated delinquent on or*
75 *after July 1, 20, 2012, of § 18.2-61, 18.2-67.1, or 18.2-67.2 shall be required to register.*

76 H. Prior to entering judgment of conviction of an offense for which registration is required if the
77 victim of the offense was a minor, physically helpless, or mentally incapacitated, the court shall
78 determine by a preponderance of the evidence whether the victim of the offense was a minor, physically
79 helpless or mentally incapacitated, as defined in § 18.2-67.10, and shall also determine the age of the
80 victim at the time of the offense if it determines the victim to be a minor. Upon such a determination
81 the court shall advise the defendant of its determination and of the defendant's right to withdraw a plea
82 of guilty or nolo contendere. If the defendant chooses to withdraw his plea of guilty or of nolo
83 contendere, his case shall be heard by another judge, unless the parties agree otherwise.

84 § 9.1-913. Public dissemination by means of the Internet.

85 The State Police shall develop and maintain a system for making certain Registry information on
86 persons convicted of an offense for which registration is required publicly available by means of the
87 Internet. The information to be made available shall include the offender's name; all aliases that he has
88 used or under which he may have been known; the date and locality of the conviction and a brief
89 description of the offense; his age, current address and photograph; and such other information as the
90 State Police may from time to time determine is necessary to preserve public safety including but not
91 limited to the fact that an individual is wanted for failing to register or reregister. The system shall be
92 secure and not capable of being altered except by the State Police. The system shall be updated each
93 business day with newly received registrations and reregistrations. The State Police shall remove all
94 information that it knows to be inaccurate from the Internet system.

95 *This section shall not apply to juveniles adjudicated delinquent who are required to register pursuant*
96 *to subsection G or G1 of § 9.1-902.*

97 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
98 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
99 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
100 **890 of the Acts of Assembly of 2011 requires the Virginia Criminal Sentencing Commission to**
101 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
102 **necessary appropriation cannot be determined for periods of commitment to the custody of the**
103 **Department of Juvenile Justice.**