

25100232D

INTRODUCED

HB2224

HOUSE BILL NO. 2224

Offered January 13, 2025

Prefiled January 7, 2025

A BILL to amend and reenact § 9.1-902 of the Code of Virginia, relating to Sex Offender and Crimes Against Minors Registry; offenses requiring registration; purchase or sale of minors; penalty.

7 Patron—Cherry

8 Referred to Committee for Courts of Justice

9

Be it enacted by the General Assembly of Virginia:10 **1. That § 9.1-902 of the Code of Virginia is amended and reenacted as follows:****11 § 9.1-902. Offenses requiring registration.**

12 A. For purposes of this chapter:

13 "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 or a violation of former § 18.1-21 where the victim is (a) under 15 years of age or (b) at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section.

14 "Offense for which registration is required" includes:

15 1. Any Tier I, Tier II, or Tier III offense;

16 2. Murder;

17 3. Any offense similar to a Tier I, Tier II, or Tier III offense under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof; and

18 4. 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.

19 "Tier I offense" means (i) any 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, or (ii) any violation of, attempted violation of, or conspiracy to violate:

20 1. § 18.2-63 unless registration is required pursuant to subdivision 1 of the definition of Tier III offense; former § 18.2-67.2:1; § 18.2-90 with the intent to commit rape; former § 18.1-88 with the intent to commit rape; any former felony violation of § 18.2-346; any felony violation of § 18.2-346.01; any violation of subdivision (4) of § 18.2-355; any violation of subsection C of § 18.2-357.1; subsection B 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; subsection B of § 18.2-374.3; or a third or subsequent conviction of § 18.2-67.4, § 18.2-67.4:2, subsection C of § 18.2-67.5, § 18.2-386.1, or, if the offense was committed on or after July 1, 2020, § 18.2-386.2.

21 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.

22 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, § 18.2-366, or a felony violation of former § 18.1-191.

23 3. § 18.2-370.6.

24 4. If the offense was committed on or after July 1, 2016, and where the perpetrator is 18 years of age or older and the victim is under the age of 13, any violation of § 18.2-51.2.

25 5. If the offense was committed on or after July 1, 2016, any violation of § 18.2-356 punishable as a Class 3 felony or any violation of § 18.2-357 punishable as a Class 3 felony.

26 6. If the offense was committed on or after July 1, 2019, any felony violation of § 18.2-348 or 18.2-349.

27 7. *If the offense was committed on or after July 1, 2025, any violation of § 18.2-356.1.*

28 "Tier II offense" means any violation of, attempted violation of, or conspiracy to violate § 18.2-64.1, subsection C of § 18.2-374.1:1, or subsection C, D, or E of § 18.2-374.3.

29 "Tier III offense" means a violation of, attempted violation of, or conspiracy to violate:

30 1. Clause (ii) and (iii) of § 18.2-48, former § 18.1-38 with the intent to defile or, for the purpose of concubinage or prostitution, a felony violation of subdivision (2) or (3) of former § 18.1-39 that involves assisting or aiding in such an abduction, § 18.2-61, former § 18.1-44 when such act is accomplished against the complaining witness's will, by force, or through the use of the complaining witness's mental incapacity or physical helplessness, or if the victim is under 13 years of age, 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, former § 18.1-215 when the complaining witness is under 13 years of age, § 18.2-67.4 where the perpetrator is 18

59 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, subdivision (1), (2), or (4) of former § 18.1-213, former § 18.1-214, § 18.2-370.1, or § 18.2-374.1;

60 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
61 victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A
62 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
63 subsection C of § 18.2-374.1:1. An offense listed under this subdivision shall be deemed a Tier III offense
64 only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided
65 that person had been at liberty between such convictions or adjudications;

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

70 4. Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as
71 described in § 1591 of Title 18, U.S.C.).

72 B. "Tier I offense" as defined in this section, "Tier II offense" as defined in this section, "Tier III offense"
73 as defined in this section, and "murder" as defined in this section includes any similar offense under the laws
74 of any foreign country or any political subdivision thereof or the United States or any political subdivision
75 thereof.

76 C. 1. Any offense under the laws of any foreign country or any political subdivision thereof or the United
77 States or any political subdivision thereof that is similar to (i) any Tier I, II, or III offense or (ii) murder as
78 defined in this section shall require registration and reregistration in accordance with this chapter in a manner
79 consistent with the registration and reregistration obligations imposed by the similar offense listed or defined
80 in this section, unless such offense requires more stringent registration and reregistration obligations under
81 the laws of the jurisdiction where the offender was convicted. In instances where more stringent registration
82 and reregistration obligations are required under the laws of the jurisdiction where the offender was
83 convicted, the offender shall register and reregister as required by this chapter in a manner most similar with
84 the registration obligations imposed under the laws of the jurisdiction where the offender was convicted.

85 2. Any offense for which registration in a sex offender and crimes against minors registry is required
86 under the laws of the jurisdiction where the offender was convicted shall require registration and
87 reregistration in accordance with this chapter in the manner most similar with the registration and
88 reregistration obligations imposed under the laws of the jurisdiction where the offender was convicted unless
89 such offense is similar to (i) any Tier I, II, or III offense or (ii) murder as defined in this section and the
90 registration and reregistration obligations imposed by the similar offense listed or defined in this section are
91 more stringent than those registration and reregistration obligations imposed under the laws of the jurisdiction
92 where the offender was convicted. In instances where the similar offense listed or defined in this section
93 imposes more stringent registration and reregistration obligations, the offender shall register and reregister as
94 required by this chapter in a manner consistent with the registration and reregistration obligations imposed by
95 the similar offense listed or defined in this section.

96 D. Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a
97 juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated delinquent
98 on or after July 1, 2005, of any offense for which registration is required, the court may, in its discretion and
99 upon motion of the attorney for the Commonwealth, find that the circumstances of the offense require
100 offender registration. In making its determination, the court shall consider all of the following factors that are
101 relevant to the case: (i) the degree to which the delinquent act was committed with the use of force, threat, or
102 intimidation, (ii) the age and maturity of the complaining witness, (iii) the age and maturity of the offender,
103 (iv) the difference in the ages of the complaining witness and the offender, (v) the nature of the relationship
104 between the complaining witness and the offender, (vi) the offender's prior criminal history, and (vii) any
105 other aggravating or mitigating factors relevant to the case. The attorney for the Commonwealth may file
106 such a motion at any time during which the offender is within the jurisdiction of the court for the offense that
107 is the basis for such motion. Prior to any hearing on such motion, the court shall appoint a qualified and
108 competent attorney-at-law to represent the offender unless an attorney has been retained and appears on
109 behalf of the offender or counsel has already been appointed.

110 E. Prior to entering judgment of conviction of an offense for which registration is required if the victim of
111 the offense was a minor, physically helpless, or mentally incapacitated, when the indictment, warrant, or
112 information does not allege that the victim of the offense was a minor, physically helpless, or mentally
113 incapacitated, the court shall determine by a preponderance of the evidence whether the victim of the offense
114 was a minor, physically helpless, or mentally incapacitated, as defined in § 18.2-67.10, and shall also
115 determine the age of the victim at the time of the offense if it determines the victim to be a minor. When such
116 a determination is required, the court shall advise the defendant of its determination and of the defendant's
117 right to make a motion to withdraw a plea of guilty or nolo contendere pursuant to § 19.2-296. If the court
118 grants the defendant's motion to withdraw his plea of guilty or of nolo contendere, his case shall be heard by

119

120 another judge, unless the parties agree otherwise. Failure to make such determination or so advise the
121 defendant does not otherwise invalidate the underlying conviction.

122 **2. That the provisions of this act may result in a net increase in periods of imprisonment or
123 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary
124 appropriation cannot be determined for periods of imprisonment in state adult correctional facilities;
125 therefore, Chapter 2 of the Acts of Assembly of 2024, Special Session I, requires the Virginia Criminal
126 Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the
127 Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for
128 periods of commitment to the custody of the Department of Juvenile Justice.**

INTRODUCED

HB2224