

**Selected Acts of the 2011
Virginia General Assembly
Relating to the
*Virginia Crimes Against Minors and Sex Offender Registry***



*Compiled by
The Virginia Department of State Police*

This volume of Selected Acts is in addition to the Selected Acts 2011 criminal and traffic laws volume and contains legislation passed by the 2011 Session of the Virginia General Assembly that is relevant to the administration and enforcement of the Virginia *Crimes Against Minors and Sex Offender Registry*, Chapter 900 of Title 9.1 of the *Code of Virginia*. Additionally, summaries of less relevant, but important legislation are found in the back of this volume. These summaries will not be covered in class, but are there for your personal study.

EXPLANATIONS WHICH MAY BE HELPFUL IN STUDYING THESE ACTS:

1. Underlined words indicate new language.
2. ~~Lined through~~ words indicate language that has been removed.
3. Emergency Acts - All Acts with an emergency clause were effective when signed by the Governor. Generally the emergency clause appears as the last sentence of the Act.
4. Effective date - All Acts, other than those containing an emergency clause or those specifying a delayed effective date, become law as of the first moment of July 1, 2011. Different portions of a bill may carry different effective dates.
5. A brief summary outlining changes appears at the beginning of the bill. You are cautioned that the summary is not intended to be complete; it is merely an overview of the bill. Before taking enforcement action, carefully read the entire bill. The bill summaries were provided by the Division of Legislative Services.
6. The table of contents contains a bill description which is not necessarily the same as the short title.
7. Questions regarding information contained in this book may be directed to Lieutenant Colonel Robert Kemmler (804) 674-4606 or Legal Specialist Thomas Lambert (804) 674-2212.
8. Legislation information may be found at: <http://legis.state.va.us/> and the Virginia State Police website may be found at: <http://www.vsp.state.va.us/>

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VIRGINIA SEX OFFENDER AND CRIMES AGAINST MINORS REGISTRY

Offense Coverage effective **1 July 2011**

"**Offense for which registration is required**" means a violation of, attempted violation of, or conspiracy to violate:

- **18.2-31**, Murder 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.
- **18.2-32**, Murder 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.
- **18.2-63**, Carnal knowledge – victim age 13 or 14 – **unless** perpetrator is more than five years older than victim (use actual dates of birth) See violent below.
- **18.2-64.1**, Carnal knowledge – minor victim 15 and older, Supervisory relationship
- Former **18.2-67.2:1**, Marital sexual assault (Repealed in 2005)
- **18.2-90**, Burglary with the intent to commit rape
- **18.2-370.6**, Penetration of mouth of child under 13 by tongue with lascivious intent
- **18.2-374.1:1 (B) or (C)**, Possess/Reproduce/Distribute – Child Pornography
- Former **18.2-374.1:1 (D)**, Possession of child pornography, second offense. (as it was in effect between July 1, 1994 and June 30, 2007)
- **18.2-374.3 (B),(C), or (D)**, Use of communication system to solicit a person under 15 years or who the defendant believes is less than 15 years, with lascivious intent, to commit specified acts.
- Former **18.2-374.3 (B)(iv)**, Use of communication system to solicit a person under 15 years or who the defendant believes is less than 15 years, with lascivious intent, to commit specified acts (as it was in effect on Jun 30, 2007)

- a third or subsequent conviction of § **18.2-67.4**, Sexual battery
- a third or subsequent conviction of § **18.2-67.4:2**, Sexual abuse victim 13 or 14 years of age
- a third or subsequent conviction of § **18.2-67.5(C)**, Attempted Sexual Battery
- a third or subsequent conviction of § **18.2-386.1**, Unlawful filming, videotaping or photographing of another

OR

If the offense is committed **on or after July1, 2006**

- **18.2-67.5:1**, conviction of third misdemeanor offense **of** 18.2-67.4 (sexual battery), 18.2-67.5 (C) (attempted sexual battery), 18.2-371 (contributing to delinquency of a minor involving consensual intercourse, 18.2-387 (indecent exposure), or 18.2-130 (peeping). Must be convicted under 18.2-67.5:1 to qualify.

- **18.2-91**, burglary with the intent to commit any felony offense listed in this section
- **18.2-374.1:1 (A)**, possession of child pornography

OR

2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10:

- **18.2-47(A)**, Abduction
- **18.2-48 (i)** Abduction with intent to Extort
- **18.2-67.4**, Sexual battery
- **18.2-67.5 (C)**, Attempted sexual battery
- **18.2-361**, Crimes against nature (sodomy)
- **18.2-366**, Incest

OR

- ***Any criminal homicide*** in conjunction with a violation of clause (i) of § **18.2-371** (Contributing to the delinquency) or § **18.2-371.1** (abuse and neglect of children) when the offenses arise out of the same incident

OR

Any offense for which registration in a sex offender and crimes against minor registry is required under the laws of the jurisdiction where the offender was convicted which would not otherwise require registration under this Act.

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

- **18.2-48(ii) or (iii)**, Abduction with (ii) intent to defile, (iii) of Vic under 16 for prostitution
- **18.2-61**, Rape
- **18.2-63**, Carnal knowledge – victim age 13 or 14 where perpetrator is more than five years older than victim (use actual dates of birth).
- **18.2-67.1**, Forcible sodomy
- **18.2-67.2**, Object sexual penetration
- **18.2-67.3**, Aggravated sexual battery
- **18.2-67.4**, Sexual battery where the perpetrator is 18 years of age or older and the victim is under the age of six

- **18.2-67.5 (A) or (B)**, Attempted rape and aggravated sexual battery
- **18.2-370**, Indecent liberties with minor
- **18.2-370.1**, Indecent liberties with minor, Supervisory relationship
- **18.2-374.1**, Production, distribution, financing etc. of Child Pornography

OR

- any person convicted under Chapter 17 (**18 U.S. Code §§ 2421 – 2428**)
- any person convicted for Sex trafficking (**18 U.S. Code § 1591**)

OR

A second or subsequent conviction, where the individual was a liberty between such convictions, of the following

- **18.2-63**, Carnal knowledge – victim age 13 or 14
- **18.2-64.1**, Carnal knowledge – minor victim 15 years or older, Supervisory relationship
- Former **18.2-67.2:1**, Marital sexual assault (Repealed in 2005)
- **18.2-90** Burglary with the intent to commit rape

A second or subsequent conviction, where the individual was a liberty between such convictions, and 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:

- **18.2-47(A)**, Abduction
- **18.2-67.4**, Sexual Battery
- **18.2-67.5(C)**, Attempted sexual battery
- **18.2-48 (i)** Abduction with intent to extort
- **18.2-361**, Crimes against nature (sodomy)
- **18.2-366**, Incest
- **18.2-374.1:1 (C)**, Possession of Child Pornography subsequent offense

If the offense was committed **on or after July 1, 2006, and** 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:

- **18.2-91**, burglary with the intent to commit any felony offense listed in this section.

"Offense for which registration is required" *includes*:

- Any offense similar to those listed in subdivisions 1 through 4 of § 9.1-902 under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof; **and**

- 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.

CHAPTER 285
Senate Bill 927

Sex offender registry; affidavits. Clarifies several provisions regarding the use of an affidavit in a criminal proceeding for failure to register as a sex offender. The bill makes it clear that the Melendez-Diaz procedures do not have to be followed for a preliminary hearing and that in preliminary hearings the Commonwealth is not responsible for summoning the custodian of the records issuing the affidavit.

CHAPTER 285

An Act to amend and reenact §§ 18.2-472.1 and 19.2-188.3 of the Code of Virginia, relating to sex offender registry; affidavits.

[S 927]

Approved March 18, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-472.1 and 19.2-188.3 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; prima facie evidence.

A. Any person subject to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of a sexually violent offense or murder as defined in § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 1 misdemeanor. A second or subsequent conviction for an offense under this subsection is a Class 6 felony.

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

C. A prosecution pursuant to this section shall be brought in the city or county where the offender 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.

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

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

F. At any trial or hearing other than a preliminary hearing conducted pursuant to this section, an affidavit from the State Police issued as required in § 9.1-907 shall constitute prima facie evidence of the failure to comply with the duty to register or reregister, provided the requirements of subsection G have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H.

G. If the attorney for the Commonwealth intends to offer the affidavit into evidence in lieu of testimony at a trial or hearing, other than a preliminary hearing, he shall:

1. Provide by mail, delivery, or otherwise, a copy of the affidavit to counsel of record for the accused, or to the accused if he is proceeding pro se, at no charge, no later than 28 days prior to the hearing or trial;
2. Provide simultaneously with the copy of the affidavit so provided under subdivision 1 a notice to the accused of his right to object to having the affidavit admitted without the presence and testimony of a custodian of the records; and
3. File a copy of the affidavit and notice with the clerk of the court hearing the matter on the day that the affidavit and notice are provided to the accused.

H. ~~The~~ ***In any trial or hearing, other than a preliminary hearing, the*** accused may object in writing to admission of the affidavit, in lieu of testimony, as evidence of the facts stated therein. Such objection shall be filed with the court hearing the matter, with a copy to the attorney for the Commonwealth, no more than 14 days after the affidavit and notice were filed with the clerk by the attorney for the Commonwealth, or the objection shall be deemed waived. If timely objection is made, the affidavit shall not be admissible into evidence unless (i) the objection is waived by the accused or his counsel in writing or before the court, or (ii) the parties stipulate before the court to the admissibility of the affidavit.

I. Where a custodian of the records is not available for hearing or trial and the attorney for the Commonwealth has used due diligence to secure the presence of the person, the court shall order a continuance. Any continuances ordered pursuant to this subsection shall total not more than 90 days if the accused has been held continuously in custody and not more than 180 days if the accused has not been held continuously in custody.

J. Any objection by counsel for the accused, or the accused if he is proceeding pro se, to timeliness of the receipt of notice required by subsection G shall be made before hearing or trial upon his receipt of actual notice unless the accused did not receive actual notice prior to hearing or trial. A showing by the Commonwealth that the notice was mailed, delivered, or otherwise provided in compliance with the time requirements

of this section shall constitute prima facie evidence that the notice was timely received by the accused. If the court finds upon the accused's objection made pursuant to this subsection, that he did not receive timely notice pursuant to subsection G, the accused's objection shall not be deemed waived and if the objection is made prior to hearing or trial, a continuance shall be ordered if requested by either party. Any continuance ordered pursuant to this subsection shall be subject to the time limitations set forth in subsection I.

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

§ 19.2-188.3. Admissibility of affidavits by government officials regarding a search of government records.

In any hearing or trial, an affidavit signed by a government official who is competent to testify, deemed to have custody of an official record, or signed by his designee, stating that after a diligent search, no record or entry of such record is found to exist among the records in his custody, is admissible as evidence that his office has no such record or entry, provided that, **if the hearing or trial is a proceeding other than a preliminary hearing**, the procedures set forth in subsection G of § 18.2-472.1 for admission of an affidavit have been satisfied, mutatis mutandis, and the accused has not objected to the admission of the affidavit pursuant to the procedures set forth in subsection H of § 18.2-472.1, mutatis mutandis. Nothing in this section shall be construed to affect the admissibility of affidavits in civil cases under § 8.01-390.

CHAPTER 648
Senate Bill 1318

Sex offenders on school property; penalty. Clarifies that a sex offender is prohibited from entering or being present on school property during school-related or school-sponsored events.

CHAPTER 648

An Act to amend and reenact § 18.2-370.5 of the Code of Virginia, relating to sex offenses; prohibiting entry onto school property; penalty.

[S 1318]

Approved March 26, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-370.5 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-370.5. Sex offenses; prohibiting entry onto school property; penalty.

A. Every adult who is convicted of a sexually violent offense, as defined in § 9.1-902, shall be prohibited from entering **and or** being present, during school hours, and **shall be prohibited from entering or being present** during school-related **and-or** school-sponsored activities, upon any property he knows or has reason to know is a public or private elementary or secondary school or child day center property, unless (i) he is a lawfully registered and qualified voter, and is coming upon such property solely for purposes of casting his vote; (ii) he is a student enrolled at the school; or (iii) he has obtained a court order allowing him to enter and be present upon such property, has obtained the permission of the school board or of the owner of the private school or child day center or their designee for entry within all or part of the scope of the lifted ban, and is in compliance with such school board's, school's or center's terms and conditions and those of the court order. A violation of this section is punishable as a Class 6 felony.

B. Every adult who is prohibited from entering upon school or child day center property pursuant to subsection A may after notice to the attorney for the Commonwealth and either (i) the proprietor of the child day center, (ii) the superintendent of public instruction of the school division in which the school is located, or (iii) the chief administrator of the school if such school is not a public school, petition the circuit court in the county or city where the school or child day center is located for permission to enter such property. For good cause shown, the court may issue an order permitting the petitioner to enter and be present on such property, subject to whatever restrictions of area, reasons for being present, or time limits the court deems appropriate.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

CHAPTERS 796 and 855
House Bill 2066 Senate Bill 1185

Sex offenses prohibiting entry onto school or other property; penalty. Expands the prohibition on entry onto school grounds by any adult convicted of a sexually violent offense to include any school bus as defined in § 46.2-100 and any property, public or private, during hours when such property is being used solely by a public or private elementary or secondary school for a school-related or school-sponsored activity. A violation is punishable as a Class 6 felony.

CHAPTER 796

An Act to amend and reenact § 18.2-370.5 of the Code of Virginia, relating to sex offenses prohibiting entry onto school or other property; penalty.

[H 2066]

Approved April 6, 2011

CHAPTER 855

An Act to amend and reenact § 18.2-370.5 of the Code of Virginia, relating to sex offenses prohibiting entry onto school or other property; penalty.

[S 1185]

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-370.5 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-370.5. Sex offenses prohibiting entry onto school or other property; penalty.

A. Every adult who is convicted of a sexually violent offense, as defined in § 9.1-902, shall be prohibited from entering and being present, **(i)** during school hours and during school-related and school-sponsored activities, upon any property he knows or has reason to know is a public or private elementary or secondary school or child day center property, ~~unless~~; **(ii) on any school bus as defined in § 46.2-100; or (iii) upon any property, public or private, during hours when such property is solely being used by a public or private elementary or secondary school for a school-related or school-sponsored activity.**

B. The provisions of clauses (i) and (iii) of subsection A shall not apply to such adult if (i) he is a lawfully registered and qualified voter, and is coming upon such property solely for purposes of casting his vote; (ii) he is a student enrolled at the school; or (iii) he has obtained a court order **pursuant to subsection C** allowing him to enter and be present upon such property, has obtained the permission of the school board or of the owner of the private school or child day center or their designee for entry within all or part of the scope of the lifted ban, and is in compliance with such school

board's, school's or center's terms and conditions and those of the court order. ~~**A violation of this section is punishable as a Class 6 felony.**~~

B C. Every adult who is prohibited from entering upon school or child day center property pursuant to subsection A may after notice to the attorney for the Commonwealth and either (i) the proprietor of the child day center, (ii) the superintendent of public instruction of the school division in which the school is located, or (iii) the chief administrator of the school if such school is not a public school, petition the circuit court in the county or city where the school or child day center is located for permission to enter such property. For good cause shown, the court may issue an order permitting the petitioner to enter and be present on such property, subject to whatever restrictions of area, reasons for being present, or time limits the court deems appropriate.

D. A violation of this section is punishable as a Class 6 felony.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 874 of the Acts of Assembly of 2010 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

BILL SUMMARIES

None this year

How 18.2-370.5 will look on July 1, 2011 following the enactment of the three applicable Chapters

§ 18.2-370.5. Sex offenses prohibiting entry onto school or other property; penalty.

A. Every adult who is convicted of a sexually violent offense, as defined in § 9.1-902, shall be prohibited from entering or being present (i) during school hours and shall be prohibited from entering or being present during school-related or school-sponsored activities upon any property he knows or has reason to know is a public or private elementary or secondary school or child day center property; (ii) on any school bus as defined in § 46.2-100; or (iii) upon any property, public or private, during hours when such property is solely being used by a public or private elementary or secondary school for a school-related or school-sponsored activity.

B. The provisions of clauses (i) and (iii) of subsection A shall not apply to such adult if (i) he is a lawfully registered and qualified voter, and is coming upon such property solely for purposes of casting his vote; (ii) he is a student enrolled at the school; or (iii) he has obtained a court order pursuant to subsection C allowing him to enter and be present upon such property, has obtained the permission of the school board or of the owner of the private school or child day center or their designee for entry within all or part of the scope of the lifted ban, and is in compliance with such school board's, school's or center's terms and conditions and those of the court order.

C. Every adult who is prohibited from entering upon school or child day center property pursuant to subsection A may after notice to the attorney for the Commonwealth and either (i) the proprietor of the child day center, (ii) the superintendent of public instruction of the school division in which the school is located, or (iii) the chief administrator of the school if such school is not a public school, petition the circuit court in the county or city where the school or child day center is located for permission to enter such property. For good cause shown, the court may issue an order permitting the petitioner to enter and be present on such property, subject to whatever restrictions of area, reasons for being present, or time limits the court deems appropriate.

D. A violation of this section is punishable as a Class 6 felony.