

HOUSE BILL NO. 2398

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on _____)

(Patron Prior to Substitute--Delegate Bell)

A BILL to amend and reenact § 9.1-902 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-59.1, relating to sexual extortion; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 9.1-902 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-59.1 as follows:

§ 9.1-902. Offenses requiring registration.

A. For purposes of this chapter:

"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.

"Offense for which registration is required" includes:

- 1. Any Tier I, Tier II, or Tier III offense;
- 2. Murder;
- 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
- 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.

25 "Tier I offense" means (i) any homicide in conjunction with a violation of, attempted violation of,
26 or conspiracy to violate clause (i) of § 18.2-371 or § 18.2-371.1, when the offenses arise out of the same
27 incident, or (ii) any violation of, attempted violation of, or conspiracy to violate:

28 1. § 18.2-59.1; § 18.2-63 unless registration is required pursuant to subdivision 1 of the definition
29 of Tier III offense; former § 18.2-67.2:1; § 18.2-90 with the intent to commit rape; former § 18.1-88 with
30 the intent to commit rape; any former felony violation of § 18.2-346; any felony violation of § 18.2-
31 346.01; any violation of subdivision (4) of § 18.2-355; any violation of subsection C of § 18.2-357.1;
32 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,
33 1994, through June 30, 2007; former clause (iv) of subsection B of § 18.2-374.3 as it was in effect on June
34 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,
35 subsection C of § 18.2-67.5, § 18.2-386.1, or, if the offense was committed on or after July 1, 2020, §
36 18.2-386.2.

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

39 2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in §
40 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, §
41 18.2-361, § 18.2-366, or a felony violation of former § 18.1-191.

42 3. § 18.2-370.6.

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

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

47 6. If the offense was committed on or after July 1, 2019, any felony violation of § 18.2-348 or
48 18.2-349.

49 "Tier II offense" means any violation of, attempted violation of, or conspiracy to violate § 18.2-
50 64.1, subsection C of § 18.2-374.1:1, or subsection C, D, or E of § 18.2-374.3.

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

52 1. Clause (ii) and (iii) of § 18.2-48, former § 18.1-38 with the intent to defile or, for the purpose
53 of concubinage or prostitution, a felony violation of subdivision (2) or (3) of former § 18.1-39 that involves
54 assisting or aiding in such an abduction, § 18.2-61, former § 18.1-44 when such act is accomplished
55 against the complaining witness's will, by force, or through the use of the complaining witness's mental
56 incapacity or physical helplessness, or if the victim is under 13 years of age, subsection A of § 18.2-63
57 where the perpetrator is more than five years older than the victim, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3,
58 former § 18.1-215 when the complaining witness is under 13 years of age, § 18.2-67.4 where the
59 perpetrator is 18 years of age or older and the victim is under the age of six, subsections A and B of §
60 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,
61 or § 18.2-374.1;

62 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
63 the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10,
64 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, §
65 18.2-366, or subsection C of § 18.2-374.1:1. An offense listed under this subdivision shall be deemed a
66 Tier III offense only if the person has been convicted or adjudicated delinquent of any two or more such
67 offenses, provided that person had been at liberty between such convictions or adjudications;

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

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

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

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

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

99 D. Juveniles adjudicated delinquent shall not be required to register; however, where the offender
100 is a juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated
101 delinquent on or after July 1, 2005, of any offense for which registration is required, the court may, in its
102 discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the
103 offense require offender registration. In making its determination, the court shall consider all of the
104 following factors that are relevant to the case: (i) the degree to which the delinquent act was committed

105 with the use of force, threat, or intimidation, (ii) the age and maturity of the complaining witness, (iii) the
106 age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the
107 offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the
108 offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the case.
109 The attorney for the Commonwealth may file such a motion at any time during which the offender is
110 within the jurisdiction of the court for the offense that is the basis for such motion. Prior to any hearing
111 on such motion, the court shall appoint a qualified and competent attorney-at-law to represent the offender
112 unless an attorney has been retained and appears on behalf of the offender or counsel has already been
113 appointed.

114 E. Prior to entering judgment of conviction of an offense for which registration is required if the
115 victim of the offense was a minor, physically helpless, or mentally incapacitated, when the indictment,
116 warrant, or information does not allege that the victim of the offense was a minor, physically helpless, or
117 mentally incapacitated, the court shall determine by a preponderance of the evidence whether the victim
118 of the offense was a minor, physically helpless, or mentally incapacitated, as defined in § 18.2-67.10, and
119 shall also determine the age of the victim at the time of the offense if it determines the victim to be a
120 minor. When such a determination is required, the court shall advise the defendant of its determination
121 and of the defendant's right to make a motion to withdraw a plea of guilty or nolo contendere pursuant to
122 § 19.2-296. If the court grants the defendant's motion to withdraw his plea of guilty or of nolo contendere,
123 his case shall be heard by another judge, unless the parties agree otherwise. Failure to make such
124 determination or so advise the defendant does not otherwise invalidate the underlying conviction.

125 **§ 18.2-59.1. Sexual extortion; penalty.**

126 A. Any person who maliciously disseminates or sells, or maliciously threatens to disseminate or
127 sell, a videographic or still image created by any means whatsoever that depicts the complaining witness
128 or such complaining witness's family or household member, as defined in § 16.1-228, as totally nude, or
129 in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast with the intent to
130 cause the complaining witness to engage in sexual intercourse, cunnilingus, fellatio, anilingus, anal
131 intercourse, inanimate or animate object sexual penetration, or an act of sexual abuse, as defined in § 18.2-

132 67.10, and thereby engages in sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse,
133 inanimate or animate object sexual penetration, or an act of sexual abuse, as defined in § 18.-67.10, is
134 guilty of a Class 5 felony. However, any adult who violates this section with a person under the age of 18
135 is guilty of a felony punishable by confinement in a state correctional facility for a term of not less than
136 one nor more than 20 years and by a fine of not more than \$100,000.

137 B. A prosecution pursuant to this section may be in either the county, city, or town in which the
138 communication was made or received.

139 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
140 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
141 **appropriation is _____ for periods of imprisonment in state adult correctional facilities;**
142 **therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia**
143 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-**
144 **19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is _____ for**
145 **periods of commitment to the custody of the Department of Juvenile Justice.**

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