

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2756

(By Delegates Laird, Mahan and Staton)



Passed April 12, 1997

In Effect Ninety Days From Passage

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COMMITTEE SUBSTITUTE
FOR
H. B. 2756

(BY DELEGATES LAIRD, MAHAN AND STATON)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article eight-f, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section ten; and to amend and reenact section two, article twelve, chapter sixty-two of said code, all relating to modifying registration requirements for persons convicted of acts causing the person to be registered under provisions of the sex offender registration act; adding definitions and reporting requirements associated with the sex offender registration act; and including these requirements for offenders released on probation.

Be it enacted by the Legislature of West Virginia:

That section two, article eight-f, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section ten; and that section two, article twelve, chapter sixty-two of said code be amended and reenacted, all to read as follows:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8F. SEX OFFENDER REGISTRATION ACT.

§61-8F-2. Registration.

1 (a) Any person who has been convicted of a violation
2 of the provisions of article eight-b, eight-c or eight-d of
3 this chapter, or of section fourteen, article two, or of sec-
4 tion thirteen, article eight of this chapter, or of a similar
5 provision in another jurisdiction shall be required to be
6 registered as set forth in this article. Any person who has
7 been convicted of an attempt to commit any of the offens-
8 es set forth in this section shall also be required to register
9 as set forth in this article.

10 (b) On the date that any person convicted of the
11 crimes listed herein is released, is granted probation, is
12 granted a suspended sentence, is released on parole or
13 probation, or is ordered to be placed on home detention,
14 the commissioner of corrections, regional jail supervisor
15 or city or sheriff operating a jail which releases such per-
16 son and any parole or probation officer who releases such
17 person or supervises such person following the release
18 shall obtain all information required by this subsection
19 prior to the release of the person and shall send written
20 notice of the release of the person to the state police within
21 three days of receiving the information. The notice shall
22 include:

23 (1) The full name of the person;

24 (2) The address where the person shall reside;

25 (3) The person's social security number;

26 (4) A recent photograph of the person;

27 (5) A brief description of the crime for which the
28 person was convicted;

29 (6) Fingerprints; and

30 (7) For any person determined to be a sexually vio-
31 lent predator, the notice shall also include:

32 (i) Identifying factors, including physical characteris-
33 tics;

34 (ii) History of the offense; and

35 (iii) Documentation of any treatment received for the
36 mental abnormality or personality disorder.

37 (c) At the time the person is convicted of the crimes
38 set forth in subsection (a) of this section, the person shall
39 sign in open court, a statement acknowledging that he or
40 she understands the requirements imposed by this article.
41 The court shall inform the person so convicted of the
42 requirements to register imposed by this article and shall
43 further satisfy itself by interrogation of the defendant or
44 his or her counsel that the defendant has received notice
45 of the provisions of this article and that the defendant
46 understands such provisions. Such statement, when signed
47 and witnessed shall constitute prima facie evidence that the
48 person had knowledge of the requirements of this article.

49 (d) When a person required to register under this
50 article is released following incarceration, the commission-
51 er of corrections, the regional jail supervisor or the city or
52 sheriff or any other person supervising the operation of
53 the place of confinement shall, within three days, inform
54 the state police of such release and provide such further
55 information as is required by this article.

56 (e) The state police shall maintain a central registry
57 of all persons who register under this article and shall
58 release information only as provided in this article.

59 (f) For the purposes of this article, sexually violent
60 offenses shall be defined as any criminal offenses set forth
61 in article eight-b of this chapter which include forcible
62 compulsion, bodily injury or the use of deadly weapons.

63 (g) A person is defined as a sexually violent predator
64 when the person is convicted of a sexually violent offense
65 and who suffers from a mental abnormality or personality
66 disorder a symptom of which includes a likelihood of
67 engaging in predatory sexually violent behavior.

68 (h) A person is defined as having a mental abnormal-
69 ity if the person has a disorder that makes the person like-
70 ly to engage in predatory sexually violent offenses.

71 (i) The term “predatory act” as defined in this arti-
72 cle means an act directed at a stranger or at a person with
73 whom a relationship has been established or promoted for
74 the primary purpose of victimization.

75 (j) Determining if the offender is a sexually violent
76 predator shall be the responsibility of the person or per-
77 sons conducting the offender’s psychiatric study and
78 diagnosis required for probation eligibility as set forth in
79 section two, article twelve of chapter sixty-two of this code.

§61-8F-10. Address Verification.

1 The state police shall verify addressees of those per-
2 sons registered as sexually violent predators every ninety
3 days and all other registered persons once a year.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

1 (a) All persons who are found guilty of or plead
2 guilty to any felony, the maximum penalty for which is
3 less than life imprisonment, and all persons who are found
4 guilty of or plead guilty to any misdemeanor, shall be
5 eligible for probation, notwithstanding the provisions of
6 sections eighteen and nineteen, article eleven, chapter
7 sixty-one of this code.

8 (b) The provisions of subsection (a) of this section to
9 the contrary notwithstanding, any person who commits or
10 attempts to commit a felony with the use, presentment or
11 brandishing of a firearm shall be ineligible for probation.
12 Nothing in this section shall apply to an accessory before
13 the fact or a principal in the second degree who has been
14 convicted as if he or she were a principal in the first de-
15 gree if, in the commission of or in the attempted commis-
16 sion of the felony, only the principal in the first degree
17 used, presented or brandished a firearm.

18 (c)(1) The existence of any fact which would make
19 any person ineligible for probation under subsection (b)
20 of this section because of the commission or attempted
21 commission of a felony with the use, presentment or bran-

22 dishing of a firearm shall not be applicable unless such
23 fact is clearly stated and included in the indictment or
24 presentment by which such person is charged and is ei-
25 ther: (i) Found by the court upon a plea of guilty or nolo
26 contendere; or (ii) found by the jury, if the matter be tried
27 before a jury, upon submitting to such jury a special inter-
28 rogatory for such purpose; or (iii) found by the court, if
29 the matter be tried by the court, without a jury.

30 (2) The amendments to this subsection adopted in
31 the year one thousand nine hundred eighty-one:

32 (A) Shall apply to all applicable offenses occurring
33 on or after the first day of August of that year;

34 (B) Shall apply with respect to the contents of any
35 indictment or presentment returned on or after the first
36 day of August of that year irrespective of when the of-
37 fense occurred;

38 (C) Shall apply with respect to the submission of a
39 special interrogatory to the jury and the finding to be
40 made thereon in any case submitted to such jury on or
41 after the first day of August of that year or to the requisite
42 findings of the court upon a plea of guilty or in any case
43 tried without a jury: *Provided*, That the state shall give
44 notice in writing of its intent to seek such finding by the
45 jury or court, as the case may be, which notice shall state
46 with particularity the grounds upon which such finding
47 shall be sought as fully as such grounds are otherwise
48 required to be stated in an indictment, unless the grounds
49 therefor are alleged in the indictment or presentment upon
50 which the matter is being tried;

51 (D) Shall not apply with respect to cases not affected
52 by such amendment and in such cases the prior provisions
53 of this section shall apply and be construed without refer-
54 ence to such amendment; and

55 Insofar as such amendments relate to mandatory
56 sentences without probation, all such matters requiring
57 such sentence shall be proved beyond a reasonable doubt
58 in all cases tried by the jury or the court.

59 (d) For the purpose of this section, the term "fire-

60 arm” shall mean any instrument which will, or is designed
61 to, or may readily be converted to, expel a projectile by
62 the action of an explosive, gunpowder, or any other simi-
63 lar means.

64 (e) In the case of any person who has been found
65 guilty of, or pleaded guilty to, a felony or misdemeanor
66 under the provisions of section twelve or twenty-four,
67 article eight of chapter sixty-one, or under the provisions
68 of article eight-c or eight-b, both of chapter sixty-one, all
69 of this code, such person shall only be eligible for proba-
70 tion after undergoing a physical, mental and psychiatric
71 study and diagnosis which shall include an on-going treat-
72 ment plan requiring active participation in sexual abuse
73 counseling at a mental health facility or through some
74 other approved program: *Provided*, That nothing dis-
75 closed by the person during such study or diagnosis shall
76 be made available to any law enforcement agency, or
77 other party without that person’s consent, or admissible in
78 any court of this state, unless such information disclosed
79 shall indicate the intention or plans of the probationer to
80 do harm to any person, animal, institution, or property, in
81 which case such information may be released only to such
82 persons as might be necessary for protection of the said
83 person, animal, institution, or property.

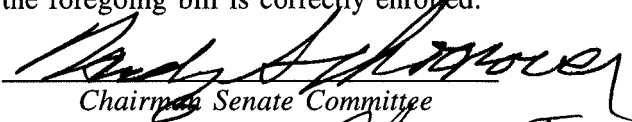
84 (f) Any person who has been convicted of a violation
85 of the provisions of article eight-b, eight-c or eight-d,
86 chapter sixty-one of this code, or of section fourteen,
87 article two, or of section thirteen, article eight, all of chap-
88 ter sixty-one of this code, or of a similar provision in an-
89 other jurisdiction shall be required to be registered upon
90 release on probation. Any person who has been convicted
91 of an attempt to commit any of the offenses set forth in
92 this subsection shall also be registered upon release on
93 probation.

94 (g) The probation officer shall within three days of
95 release of the offender, send written notice to the state
96 police of the release of the offender. The notice shall
97 include:

98 (1) The full name of the person;

- 99 (2) The address where the person shall reside;
- 100 (3) The person's social security number;
- 101 (4) A recent photograph of the person;
- 102 (5) A brief description of the crime for which the
103 person was convicted;
- 104 (6) Fingerprints; and
- 105 (7) For any person determined to be a sexually vio-
106 lent predator as defined in section two, article eight-f,
107 chapter sixty- one of this code, the notice shall also in-
108 clude:
- 109 (i) Identifying factors, including physical characteris-
110 tics;
- 111 (ii) History of the offense; and
- 112 (iii) Documentation of any treatment received for the
113 mental abnormality or personality disorder.

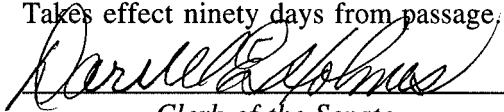
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

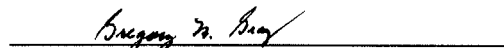

Chairman Senate Committee

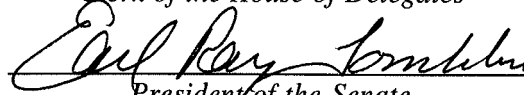

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

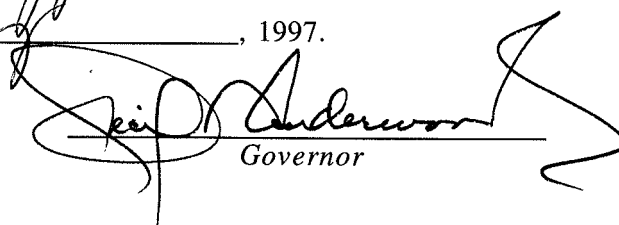

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 18th
day of May, 1997.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/28/97

Time 2:17pm