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H. B. 4485

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(By Delegates Miley, Lawrence, Caputo and Poore)

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[By Request of the State Police]

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6 [Introduced February 9, 2012; referred to the Committee on the
7 Judiciary.]

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10 A BILL to amend and reenact §15-12-2, §15-12-3 and §15-12-10 of the
11 Code of West Virginia, 1931, as amended, all relating to the
12 sex offender registration; requiring registration and updating
13 of information in the offender's county of residence; and
14 adding an internal code reference.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §15-12-2, §15-12-3 and §15-12-10 of the Code of West
17 Virginia, 1931, as amended, be amended and reenacted, all to read
18 as follows:

19 **ARTICLE 12. SEX OFFENDER REGISTRATION ACT.**

20 **§15-12-2. Registration.**

21 (a) The provisions of this article apply both retroactively
22 and prospectively.

23 (b) Any person who has been convicted of an offense or an
24 attempted offense or has been found not guilty by reason of mental

1 illness, mental retardation or addiction of an offense under any of
2 the following provisions of chapter sixty-one of this code or under
3 a statutory provision of another state, the United States Code or
4 the Uniform Code of Military Justice which requires proof of the
5 same essential elements shall register as set forth in subsection
6 (d) of this section and according to the internal management rules
7 promulgated by the superintendent under authority of section
8 twenty-five, article two of this chapter:

9 (1) Article eight-a;

10 (1) (2) Article eight-b, including the provisions of former
11 section six of said article, relating to the offense of sexual
12 assault of a spouse, which was repealed by an act of the
13 Legislature during the year 2000 legislative session;

14 (2) (3) Article eight-c;

15 (3) (4) Sections five and six, article eight-d;

16 (4) (5) Section fourteen, article two;

17 (5) (6) Sections six, seven, twelve and thirteen, article
18 eight; or

19 (6) (7) Section fourteen-b, article three-c, as it relates to
20 violations of those provisions of chapter sixty-one listed in this
21 subsection.

22 (c) Any person who has been convicted of a criminal offense
23 and the sentencing judge made a written finding that the offense
24 was sexually motivated shall also register as set forth in this

1 article.

2 (d) Persons required to register under the provisions of this
3 article shall register in person at the West Virginia State Police
4 detachment in the county of his or her residence, ~~the county in~~
5 ~~which he or she owns or leases habitable real property that he or~~
6 ~~she visits regularly, the county of his or her place of employment~~
7 ~~or occupation and the county in which he or she attends school or~~
8 ~~a training facility, any habitable real property that he or she~~
9 owns or leases, any habitable real property that he or she visits
10 regularly, the county of his or her place of employment or
11 occupation, and the county in which he or she attends school or a
12 training facility, and in doing so, provide or cooperate in
13 providing, at a minimum, the following when registering:

14 (1) The full name of the registrant, including any aliases,
15 nicknames or other names used by the registrant;

16 (2) The address where the registrant intends to reside or
17 resides at the time of registration, the address of any habitable
18 real property owned or leased by the registrant that he or she
19 regularly visits: *Provided*, That a post office box may not be
20 provided in lieu of a physical residential address, the name and
21 address of the registrant's employer or place of occupation at the
22 time of registration, the names and addresses of any anticipated
23 future employers or places of occupation, the name and address of
24 any school or training facility the registrant is attending at the

1 time of registration and the names and addresses of any schools or
2 training facilities the registrant expects to attend;

3 (3) The registrant's social security number;

4 (4) A full-face photograph of the registrant at the time of
5 registration;

6 (5) A brief description of the crime or crimes for which the
7 registrant was convicted;

8 (6) Fingerprints;

9 (7) Information related to any motor vehicle, trailer or motor
10 home owned or regularly operated by a registrant, including vehicle
11 make, model, color and license plate number: *Provided*, That for
12 the purposes of this article, the term "trailer" shall mean travel
13 trailer, fold-down camping trailer and house trailer as those terms
14 are defined in section one, article one, chapter seventeen-a of
15 this code;

16 (8) Information relating to any Internet accounts the
17 registrant has and the screen names, user names or aliases the
18 registrant uses on the Internet; and

19 (9) Information related to any telephone or electronic paging
20 device numbers that the registrant has or uses, including, but not
21 limited to, residential, work and mobile telephone numbers.

22 (e) (1) On the date that any person convicted or found not
23 guilty by reason of mental illness, mental retardation or addiction
24 of any of the crimes listed in subsection (b) of this section,

1 hereinafter referred to as a "qualifying offense", including those
2 persons who are continuing under some post-conviction supervisory
3 status, are released, granted probation or a suspended sentence,
4 released on parole, probation, home detention, work release,
5 conditional release or any other release from confinement, the
6 Commissioner of Corrections, regional jail administrator, city
7 official or sheriff operating a jail or Secretary of the Department
8 of Health and Human Resources who releases the person and any
9 parole or probation officer who releases the person or supervises
10 the person following the release, shall obtain all information
11 required by subsection (d) of this section prior to the release of
12 the person, inform the person of his or her duty to register and
13 send written notice of the release of the person to the State
14 Police within three business days of receiving the information.
15 The notice must include the information required by said
16 subsection. Any person having a duty to register for a qualifying
17 offense shall register upon conviction, unless that person is
18 confined or incarcerated, in which case he or she shall register
19 within three business days of release, transfer or other change in
20 disposition status.

21 (2) Notwithstanding any provision of this article to the
22 contrary, a court of this state shall, upon presiding over a
23 criminal matter resulting in conviction or a finding of not guilty
24 by reason of mental illness, mental retardation or addiction of a

1 qualifying offense, cause, within seventy-two hours of entry of the
2 commitment or sentencing order, the transmittal to the sex offender
3 registry for inclusion in the registry all information required for
4 registration by a registrant as well as the following
5 nonidentifying information regarding the victim or victims:

- 6 (A) His or her sex;
7 (B) His or her age at the time of the offense; and
8 (C) The relationship between the victim and the perpetrator.

9 The provisions of this paragraph do not relieve a person
10 required to register pursuant to this section from complying with
11 any provision of this article.

12 (f) For any person determined to be a sexually violent
13 predator, the notice required by subsection (d) of this section
14 must also include:

- 15 (1) Identifying factors, including physical characteristics;
16 (2) History of the offense; and
17 (3) Documentation of any treatment received for the mental
18 abnormality or personality disorder.

19 (g) At the time the person is convicted or found not guilty by
20 reason of mental illness, mental retardation or addiction in a
21 court of this state of the crimes set forth in subsection (b) of
22 this section, the person shall sign in open court a statement
23 acknowledging that he or she understands the requirements imposed
24 by this article. The court shall inform the person so convicted of

1 the requirements to register imposed by this article and shall
2 further satisfy itself by interrogation of the defendant or his or
3 her counsel that the defendant has received notice of the
4 provisions of this article and that the defendant understands the
5 provisions. The statement, when signed and witnessed, constitutes
6 prima facie evidence that the person had knowledge of the
7 requirements of this article. Upon completion of the statement,
8 the court shall provide a copy to the registry. Persons who have
9 not signed a statement under the provisions of this subsection and
10 who are subject to the registration requirements of this article
11 must be informed of the requirement by the State Police whenever
12 the State Police obtain information that the person is subject to
13 registration requirements.

14 (h) The State Police shall maintain a central registry of all
15 persons who register under this article and shall release
16 information only as provided in this article. The information
17 required to be made public by the State Police by subdivision (2),
18 subsection (b), section five of this article is to be accessible
19 through the Internet. No information relating to telephone or
20 electronic paging device numbers a registrant has or uses may be
21 released through the Internet.

22 (i) For the purpose of this article, "sexually violent
23 offense" means:

24 (1) Sexual assault in the first degree as set forth in section

1 three, article eight-b, chapter sixty-one of this code or of a
2 similar provision in another state, federal or military
3 jurisdiction;

4 (2) Sexual assault in the second degree as set forth in
5 section four, article eight-b, chapter sixty-one of this code or of
6 a similar provision in another state, federal or military
7 jurisdiction;

8 (3) Sexual assault of a spouse as set forth in the former
9 provisions of section six, article eight-b, chapter sixty-one of
10 this code, which was repealed by an act of the Legislature during
11 the 2000 legislative session, or of a similar provision in another
12 state, federal or military jurisdiction;

13 (4) Sexual abuse in the first degree as set forth in section
14 seven, article eight-b, chapter sixty-one of this code or of a
15 similar provision in another state, federal or military
16 jurisdiction.

17 (j) For purposes of this article, the term "sexually
18 motivated" means that one of the purposes for which a person
19 committed the crime was for any person's sexual gratification.

20 (k) For purposes of this article, the term "sexually violent
21 predator" means a person who has been convicted or found not guilty
22 by reason of mental illness, mental retardation or addiction of a
23 sexually violent offense and who suffers from a mental abnormality
24 or personality disorder that makes the person likely to engage in

1 predatory sexually violent offenses.

2 (1) For purposes of this article, the term "mental
3 abnormality" means a congenital or acquired condition of a person,
4 that affects the emotional or volitional capacity of the person in
5 a manner that predisposes that person to the commission of criminal
6 sexual acts to a degree that makes the person a menace to the
7 health and safety of other persons.

8 (m) For purposes of this article, the term "predatory act"
9 means an act directed at a stranger or at a person with whom a
10 relationship has been established or promoted for the primary
11 purpose of victimization.

12 (n) For the purposes of this article, the term "business
13 days", means days exclusive of Saturdays, Sundays and legal
14 holidays as defined in section one, article two, chapter two of
15 this code.

16 **§15-12-3. Change in registry information.**

17 When any person required to register under this article
18 changes his or her residence, address, place of employment or
19 occupation, motor vehicle, trailer or motor home information
20 required by section two of this article, or school or training
21 facility which he or she is attending, or when any of the other
22 information required by this article changes, he or she shall,
23 within ten business days, inform the West Virginia State Police of
24 the changes in the manner prescribed by the Superintendent of State

1 Police in procedural rules promulgated in accordance with the
2 provisions of article three, chapter twenty-nine-a of this code:
3 *Provided*, That when any person required to register under this
4 article changes his or her residence, place of employment or
5 occupation or school or training facility he or she is attending
6 from one county of this state to another county of this state, he
7 or she shall inform the West Virginia State Police detachment in
8 ~~both counties~~ the county of his or her residence within ten
9 business days of the change in the manner prescribed by the
10 superintendent in procedural rules promulgated in accordance with
11 the provisions of article three, chapter twenty-nine-a of this
12 code.

13 **§15-12-10. Address and online information verification.**

14 All registrants, including those for whom there has been no
15 change in registration information since their initial registration
16 or previous address verification, must report, in the month of
17 their birth, or in the case of a sexually violent predator in the
18 months of January, April, July and October, to the State Police
19 detachment in their county ~~or counties of registration of~~ residence
20 and must respond to all verification inquiries and informational
21 requests, including, but not limited to, requests for online
22 information made by the State Police pursuant to this section. The
23 State Police shall verify addresses of those persons registered as
24 sexually violent predators every ninety days and all other

1 registered persons once a year. As used in this section, the term
2 "online information" shall mean all information required by
3 subdivision (8), subsection (d), section two, article twelve,
4 chapter fifteen of this code. The State Police may require
5 registrants to periodically submit to new fingerprints and
6 photographs as part of the verification process. The method of
7 verification shall be in accordance with internal management rules
8 pertaining thereto promulgated by the superintendent under
9 authority of section twenty-five, article two, chapter fifteen of
10 this code.

NOTE: The purpose of this bill is clarify that a sex offender must register with the State Police in the county of his or her residence and keep the State Police informed of any change to the required registration information. The sex offender registry is now computerized so offenders no longer have to register in every county they visit, work or attend school.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.