

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 382**

(By Senator Unger)

---

[Originating in the Committee on the Judiciary;  
reported January 27, 2012.]

---

A BILL to amend and reenact §15-12-2, §15-12-3, §15-12-5 and §15-12-10 of the Code of West Virginia, 1931, as amended, all relating to the sex offender registration generally; requiring persons convicted of offenses relating to distributing obscene matter to minors to register; requiring offenders to provide palm prints; and requiring registration and updating of information only at the State Police detachment covering the offender's county of residence.

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

That §15-12-2, §15-12-3, §15-12-5 and §15-12-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

**§15-12-2. Registration.**

1 (a) The provisions of this article apply both retroactively  
2 and prospectively.

3 (b) Any person who has been convicted of an offense or  
4 an attempted offense or has been found not guilty by reason  
5 of mental illness, mental retardation or addiction of an  
6 offense under any of the following provisions of chapter  
7 sixty-one of this code or under a statutory provision of  
8 another state, the United States Code or the Uniform Code  
9 of Military Justice which requires proof of the same essential  
10 elements shall register as set forth in subsection (d) of this  
11 section and according to the internal management rules  
12 promulgated by the superintendent under authority of  
13 section twenty-five, article two of this chapter:

14 (1) Article eight-a;

15 ~~(1)~~ (2) Article eight-b, including the provisions of former  
16 section six of said article, relating to the offense of sexual  
17 assault of a spouse, which was repealed by an Act of the  
18 Legislature during the year 2000 legislative session;

19 ~~(2)~~ (3) Article eight-c;

20 ~~(3)~~ (4) Sections five and six, article eight-d;

21 ~~(4)~~ (5) Section fourteen, article two;

22 ~~(5)~~ (6) Sections six, seven, twelve and thirteen, article  
23 eight; or

24 ~~(6)~~ (7) Section fourteen-b, article three-c, as it relates to  
25 violations of those provisions of chapter sixty-one listed in  
26 this subsection.

27 (c) Any person who has been convicted of a criminal  
28 offense and the sentencing judge made a written finding that  
29 the offense was sexually motivated shall also register as set  
30 forth in this article.

31 (d) Persons required to register under the provisions of  
32 this article shall register in person at the West Virginia State  
33 Police detachment ~~in the~~ responsible for covering the county  
34 of his or her residence, ~~the county in which he or she owns or~~  
35 ~~leases habitable real property that he or she visits regularly,~~  
36 ~~the county of his or her place of employment or occupation~~  
37 ~~and the county in which he or she attends school or a~~  
38 ~~training facility,~~ and in doing so, provide or cooperate in  
39 providing, at a minimum, the following when registering:

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

42 (2) The address where the registrant intends to reside or  
43 resides at the time of registration, the address of any habit-  
44 able real property owned or leased by the registrant that he  
45 or she regularly visits: *Provided*, That a post office box may  
46 not be provided in lieu of a physical residential address, the  
47 name and address of the registrant's employer or place of  
48 occupation at the time of registration, the names and  
49 addresses of any anticipated future employers or places of  
50 occupation, the name and address of any school or training  
51 facility the registrant is attending at the time of registration  
52 and the names and addresses of any schools or training  
53 facilities the registrant expects to attend;

54 (3) The registrant's Social Security number;

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

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

59 (6) Fingerprints and palm prints;

60 (7) Information related to any motor vehicle, trailer or  
61 motor home owned or regularly operated by a registrant,  
62 including vehicle make, model, color and license plate  
63 number: *Provided*, That for the purposes of this article, the

64 term “trailer” shall mean travel trailer, fold-down camping  
65 trailer and house trailer as those terms are defined in section  
66 one, article one, chapter seventeen-a of this code;

67 (8) Information relating to any Internet accounts the  
68 registrant has and the screen names, user names or aliases  
69 the registrant uses on the Internet; and

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

74 (e) (1) On the date that any person convicted or found not  
75 guilty by reason of mental illness, mental retardation or  
76 addiction of any of the crimes listed in subsection (b) of this  
77 section, hereinafter referred to as a “qualifying offense”,  
78 including those persons who are continuing under some  
79 post-conviction supervisory status, are released, granted  
80 probation or a suspended sentence, released on parole,  
81 probation, home detention, work release, conditional release  
82 or any other release from confinement, the Commissioner of  
83 Corrections, regional jail administrator, city official or  
84 sheriff operating a jail or Secretary of the Department of  
85 Health and Human Resources who releases the person and

86 any parole or probation officer who releases the person or  
87 supervises the person following the release, shall obtain all  
88 information required by subsection (d) of this section prior  
89 to the release of the person, inform the person of his or her  
90 duty to register and send written notice of the release of the  
91 person to the State Police within three business days of  
92 receiving the information. The notice must include the  
93 information required by said subsection. Any person having  
94 a duty to register for a qualifying offense shall register upon  
95 conviction, unless that person is confined or incarcerated, in  
96 which case he or she shall register within three business days  
97 of release, transfer or other change in disposition status. Any  
98 person currently registered who is incarcerated for any  
99 offense shall re-register within three business days of his or  
100 her release.

101 (2) Notwithstanding any provision of this article to the  
102 contrary, a court of this state shall, upon presiding over a  
103 criminal matter resulting in conviction or a finding of not  
104 guilty by reason of mental illness, mental retardation or  
105 addiction of a qualifying offense, cause, within seventy-two  
106 hours of entry of the commitment or sentencing order, the  
107 transmittal to the sex offender registry for inclusion in the

108 registry all information required for registration by a  
109 registrant as well as the following nonidentifying informa-  
110 tion regarding the victim or victims:

111 (A) His or her sex;

112 (B) His or her age at the time of the offense; and

113 (C) The relationship between the victim and the perpe-  
114 trator.

115 The provisions of this paragraph do not relieve a person  
116 required to register pursuant to this section from complying  
117 with any provision of this article.

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

121 (1) Identifying factors, including physical characteristics;

122 (2) History of the offense; and

123 (3) Documentation of any treatment received for the  
124 mental abnormality or personality disorder.

125 (g) At the time the person is convicted or found not guilty  
126 by reason of mental illness, mental retardation or addiction  
127 in a court of this state of the crimes set forth in subsection  
128 (b) of this section, the person shall sign in open court a

129 statement acknowledging that he or she understands the

130 requirements imposed by this article. The court shall inform  
131 the person so convicted of the requirements to register  
132 imposed by this article and shall further satisfy itself by  
133 interrogation of the defendant or his or her counsel that the  
134 defendant has received notice of the provisions of this article  
135 and that the defendant understands the provisions. The  
136 statement, when signed and witnessed, constitutes prima  
137 facie evidence that the person had knowledge of the require-  
138 ments of this article. Upon completion of the statement, the  
139 court shall provide a copy to the registry. Persons who have  
140 not signed a statement under the provisions of this subsec-  
141 tion and who are subject to the registration requirements of  
142 this article must be informed of the requirement by the State  
143 Police whenever the State Police obtain information that the  
144 person is subject to registration requirements.

145 (h) The State Police shall maintain a central registry of  
146 all persons who register under this article and shall release  
147 information only as provided in this article. The information  
148 required to be made public by the State Police by subdivi-  
149 sion (2), subsection (b), section five of this article is to be  
150 accessible through the Internet. No information relating to



151 telephone or electronic paging device numbers a registrant  
152 has or uses may be released through the Internet.

153 (i) For the purpose of this article, “sexually violent  
154 offense” means:

155 (1) Sexual assault in the first degree as set forth in  
156 section three, article eight-b, chapter sixty-one of this code  
157 or of a similar provision in another state, federal or military  
158 jurisdiction;

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

163 (3) Sexual assault of a spouse as set forth in the former  
164 provisions of section six, article eight-b, chapter sixty-one of  
165 this code, which was repealed by an Act of the Legislature  
166 during the 2000 legislative session, or of a similar provision  
167 in another state, federal or military jurisdiction;

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

172 (j) For purposes of this article, the term “sexually  
173 motivated” means that one of the purposes for which a  
174 person committed the crime was for any person’s sexual  
175 gratification.

176 (k) For purposes of this article, the term “sexually violent  
177 predator” means a person who has been convicted or found  
178 not guilty by reason of mental illness, mental retardation or  
179 addiction of a sexually violent offense and who suffers from  
180 a mental abnormality or personality disorder that makes the  
181 person likely to engage in predatory sexually violent of-  
182 fenses.

183 (l) For purposes of this article, the term “mental abnor-  
184 mality” means a congenital or acquired condition of a  
185 person, that affects the emotional or volitional capacity of  
186 the person in a manner that predisposes that person to the  
187 commission of criminal sexual acts to a degree that makes  
188 the person a menace to the health and safety of other  
189 persons.

190 (m) For purposes of this article, the term “predatory act”  
191 means an act directed at a stranger or at a person with whom  
192 a relationship has been established or promoted for the  
193 primary purpose of victimization.

194 (n) For the purposes of this article, the term “business  
 195 days” means days exclusive of Saturdays, Sundays and legal  
 196 holidays as defined in section one, article two, chapter two  
 197 of this code.

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

1 When any person required to register under this article  
 2 changes his or her residence, address, place of employment  
 3 or occupation, motor vehicle, trailer or motor home informa-  
 4 tion required by section two of this article, or school or  
 5 training facility which he or she is attending, or when any of  
 6 the other information required by this article changes, he or  
 7 she shall, within ten business days, inform the West Virginia  
 8 State Police of the changes in the manner prescribed by the  
 9 superintendent of State Police in procedural rules promul-  
 10 gated in accordance with the provisions of article three,  
 11 chapter twenty-nine-a of this code: *Provided*, That when any  
 12 person required to register under this article changes his or  
 13 her residence, place of employment or occupation or school  
 14 or training facility he or she is attending from one county of  
 15 this state to another county of this state, he or she shall  
 16 inform the West Virginia State Police detachment ~~in both~~  
 17 ~~counties~~ responsible for covering the county of his or her

18 residence within ten business days of the change in the  
19 manner prescribed by the superintendent in procedural rules  
20 promulgated in accordance with the provisions of article  
21 three, chapter twenty-nine-a of this code.

**§15-12-5. Distribution and disclosure of information; community  
information programs by prosecuting attorney and  
State Police; petition to circuit court.**

1 (a) Within five business days after receiving any notifica-  
2 tion as described in this article, the State Police shall  
3 distribute a copy of the notification statement to:

4 (1) The supervisor of each county and municipal law-  
5 enforcement office and any campus police department in the  
6 city and county where the registrant resides, owns or leases  
7 habitable real property that he or she regularly visits, is  
8 employed or attends school or a training facility;

9 (2) The county superintendent of schools in each county  
10 where the registrant resides, owns or leases habitable real  
11 property that he or she regularly visits, is employed or  
12 attends school or a training facility;

13 (3) The child protective services office charged with  
14 investigating allegations of child abuse or neglect in the  
15 county where the registrant resides, owns or leases habitable

16 real property that he or she regularly visits, is employed or  
17 attends school or a training facility;

18 (4) All community organizations or religious organiza-  
19 tions which regularly provide services to youths in the  
20 county where the registrant resides, owns or leases habitable  
21 real property that he or she regularly visits, is employed or  
22 attends school or a training facility;

23 (5) Individuals and organizations which provide day care  
24 services for youths or day care, residential or respite care, or  
25 other supportive services for mentally or physically incapac-  
26 itated or infirm persons in the county where the registrant  
27 resides, owns or leases habitable real property that he or she  
28 regularly visits, is employed or attends school or a training  
29 facility; and

30 (6) The Federal Bureau of Investigation (FBI).

31 (7) The State police detachments in the county of the  
32 offender's occupation, employment, owned or leased habit-  
33 able real property and school or training.

34 (b) Information concerning persons whose names are  
35 contained in the sex offender registry is not subject to the  
36 requirements of the West Virginia Freedom of Information  
37 Act, as set forth in chapter twenty-nine-b of this code, and

38 may be disclosed and disseminated only as otherwise  
39 provided in this article and as follows:

40 (1) When a person has been determined to be a sexually  
41 violent predator under the terms of section two-a of this  
42 article, the State Police shall notify the prosecuting attorney  
43 of the county in which the person resides, owns or leases  
44 habitable real property that he or she regularly visits, is  
45 employed or attends a school or training facility. The  
46 prosecuting attorney shall cooperate with the State Police in  
47 conducting a community notification program which is to  
48 include publication of the offender's name, photograph,  
49 place of residence, location of regularly visited habitable real  
50 property owned or leased by the offender, county of employ-  
51 ment and place at which the offender attends school or a  
52 training facility, as well as information concerning the legal  
53 rights and obligations of both the offender and the commu-  
54 nity. Information relating to the victim of an offense requir-  
55 ing registration may not be released to the public except to  
56 the extent the prosecuting attorney and the State Police  
57 consider it necessary to best educate the public as to the  
58 nature of sexual offenses: *Provided*, That no victim's name  
59 may be released in any public notification pursuant to this

60 subsection. No information relating to telephone or elec-  
61 tronic paging device numbers a registrant has or uses may be  
62 released to the public with this notification program. The  
63 prosecuting attorney and State Police may conduct a com-  
64 munity notification program in the county where a person  
65 who is required to register for life under the terms of subdivi-  
66 sion (2), subsection (a), section four of this article resides,  
67 owns or leases habitable real property that he or she regu-  
68 larly visits, is employed or attends a school or training  
69 facility. Community notification may be repeated when  
70 determined to be appropriate by the prosecuting attorney;

71 (2) The State Police shall maintain and make available to  
72 the public at least quarterly the list of all persons who are  
73 required to register for life according to the terms of subdivi-  
74 sion (2), subsection (a), section four of this article. No  
75 information concerning the identity of a victim of an offense  
76 requiring registration or telephone or electronic paging  
77 device numbers a registrant has or uses may be released with  
78 this list. The method of publication and access to this list are  
79 to be determined by the superintendent; and

80 (3) A resident of a county may petition the circuit court  
81 for an order requiring the State Police to release information

82 about persons that reside or own or lease habitable real  
83 property that the persons regularly visit in that county and  
84 who are required to register under section two of this article.  
85 The court shall determine whether information contained on  
86 the list is relevant to public safety and whether its relevance  
87 outweighs the importance of confidentiality. If the court  
88 orders information to be released, it may further order  
89 limitations upon secondary dissemination by the resident  
90 seeking the information. In no event may information  
91 concerning the identity of a victim of an offense requiring  
92 registration or information relating to telephone or elec-  
93 tronic paging device numbers a registrant has or uses be  
94 released.

95 (c) The State Police may furnish information and docu-  
96 mentation required in connection with the registration to  
97 authorized law-enforcement, campus police and governmen-  
98 tal agencies of the United States and its territories, of foreign  
99 countries duly authorized to receive the same, of other states  
100 within the United States and of the State of West Virginia  
101 upon proper request stating that the records will be used  
102 solely for law-enforcement-related purposes. The State  
103 Police may disclose information collected under this article



104 to federal, state and local governmental agencies responsible  
105 for conducting preemployment checks. The State Police also  
106 may disclose information collected under this article to the  
107 Division of Motor Vehicles pursuant to the provisions of  
108 section three, article two, chapter seventeen-b of this code.

109 (d) An elected public official, public employee or public  
110 agency is immune from civil liability for damages arising out  
111 of any action relating to the provisions of this section except  
112 when the official, employee or agency acted with gross  
113 negligence or in bad faith.

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

1 All registrants, including those for whom there has been  
2 no change in registration information since their initial  
3 registration or previous address verification, must report, in  
4 the month of their birth, or in the case of a sexually violent  
5 predator in the months of January, April, July and October,  
6 to the State Police detachment ~~in~~ responsible for covering  
7 ~~their county or counties~~ of registration and must respond to  
8 all verification inquiries and informational requests, includ-  
9 ing, but not limited to, requests for online information made  
10 by the State Police pursuant to this section. The State Police  
11 shall verify addresses of those persons registered as sexually

12 violent predators every ninety days and all other registered  
13 persons once a year. As used in this section, the term “online  
14 information” shall mean all information required by subdivi-  
15 sion (8), subsection (d), section two, article twelve, chapter  
16 fifteen of this code. The State Police may require registrants  
17 to periodically submit to new fingerprints and photographs  
18 as part of the verification process. The method of verification  
19 shall be in accordance with internal management rules  
20 pertaining thereto promulgated by the superintendent under  
21 authority of section twenty-five, article two, chapter fifteen  
22 of this code.