

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 382

(SENATOR UNGER, *original sponsor*)

[Passed March 5, 2012; in effect ninety days from passage.]

AN ACT 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 (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17 assault of a spouse, which was repealed by an Act of the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 (3) Article eight-c;

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

21 (5) Section fourteen, article two;

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

24 (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 responsible for covering the county of his
34 or her residence, and in doing so, provide or cooperate in
35 providing, at a minimum, the following when registering:

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

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

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

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

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

55 (6) Fingerprints and palm prints;

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

63 (8) Information relating to any Internet accounts the
64 registrant has and the screen names, user names or aliases
65 the registrant uses on the Internet; and

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

70 (e) (1) On the date that any person convicted or found not
71 guilty by reason of mental illness, mental retardation or
72 addiction of any of the crimes listed in subsection (b) of this
73 section, hereinafter referred to as a “qualifying offense”,
74 including those persons who are continuing under some
75 post-conviction supervisory status, are released, granted
76 probation or a suspended sentence, released on parole,
77 probation, home detention, work release, conditional release
78 or any other release from confinement, the Commissioner of
79 Corrections, regional jail administrator, city official or
80 sheriff operating a jail or Secretary of the Department of
81 Health and Human Resources who releases the person and
82 any parole or probation officer who releases the person or
83 supervises the person following the release, shall obtain all
84 information required by subsection (d) of this section prior
85 to the release of the person, inform the person of his or her
86 duty to register and send written notice of the release of the
87 person to the State Police within three business days of
88 receiving the information. The notice must include the
89 information required by said subsection. Any person having
90 a duty to register for a qualifying offense shall register upon
91 conviction, unless that person is confined or incarcerated, in
92 which case he or she shall register within three business days
93 of release, transfer or other change in disposition status. Any
94 person currently registered who is incarcerated for any
95 offense shall re-register within three business days of his or
96 her release.

97 (2) Notwithstanding any provision of this article to the
98 contrary, a court of this state shall, upon presiding over a
99 criminal matter resulting in conviction or a finding of not
100 guilty by reason of mental illness, mental retardation or
101 addiction of a qualifying offense, cause, within seventy-two
102 hours of entry of the commitment or sentencing order, the
103 transmittal to the sex offender registry for inclusion in the
104 registry all information required for registration by a
105 registrant as well as the following nonidentifying informa-
106 tion regarding the victim or victims:

107 (A) His or her sex;

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

109 (C) The relationship between the victim and the perpe-
110 trator.

111 The provisions of this paragraph do not relieve a person
112 required to register pursuant to this section from complying
113 with any provision of this article.

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

117 (1) Identifying factors, including physical characteristics;

118 (2) History of the offense; and

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

121 (g) At the time the person is convicted or found not guilty
122 by reason of mental illness, mental retardation or addiction
123 in a court of this state of the crimes set forth in subsection
124 (b) of this section, the person shall sign in open court a
125 statement acknowledging that he or she understands the
126 requirements imposed by this article. The court shall inform
127 the person so convicted of the requirements to register
128 imposed by this article and shall further satisfy itself by
129 interrogation of the defendant or his or her counsel that the
130 defendant has received notice of the provisions of this article
131 and that the defendant understands the provisions. The
132 statement, when signed and witnessed, constitutes prima
133 facie evidence that the person had knowledge of the require-
134 ments of this article. Upon completion of the statement, the
135 court shall provide a copy to the registry. Persons who have
136 not signed a statement under the provisions of this subsec-
137 tion and who are subject to the registration requirements of
138 this article must be informed of the requirement by the State
139 Police whenever the State Police obtain information that the
140 person is subject to registration requirements.

141 (h) The State Police shall maintain a central registry of
142 all persons who register under this article and shall release
143 information only as provided in this article. The information
144 required to be made public by the State Police by subdivi-
145 sion (2), subsection (b), section five of this article is to be
146 accessible through the Internet. No information relating to
147 telephone or electronic paging device numbers a registrant
148 has or uses may be released through the Internet.

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

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

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

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

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

168 (j) For purposes of this article, the term “sexually
169 motivated” means that one of the purposes for which a
170 person committed the crime was for any person’s sexual
171 gratification.

172 (k) For purposes of this article, the term “sexually violent
173 predator” means a person who has been convicted or found
174 not guilty by reason of mental illness, mental retardation or
175 addiction of a sexually violent offense and who suffers from

176 a mental abnormality or personality disorder that makes the
177 person likely to engage in predatory sexually violent of-
178 fenses.

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

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

190 (n) For the purposes of this article, the term “business
191 days” means days exclusive of Saturdays, Sundays and legal
192 holidays as defined in section one, article two, chapter two
193 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 responsi-
17 ble for covering the county of his or her residence within ten

18 business days of the change in the manner prescribed by the
19 superintendent in procedural rules promulgated in accor-
20 dance with the provisions of article three, chapter
21 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 incapaci-
26 tated 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 subdi-
66 vision (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 responsible for covering their
7 county of registration and must respond to all verification
8 inquiries and informational requests, including, but not
9 limited to, requests for online information made by the State
10 Police pursuant to this section. The State Police shall verify
11 addresses of those persons registered as sexually violent
12 predators every ninety days and all other registered persons
13 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.

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

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2012.

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Governor