

COMMITTEE SUBSTITUTE

FOR

**H. B. 4459**

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(BY DELEGATES REYNOLDS, FRAZIER, MARCUM, HALL, HUNT,  
MANCHIN, PINO, FERRO AND SOBONYA)

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(Originating in the Committee on Finance)  
[February 24, 2012]

A BILL to amend and reenact §15-12-2, §15-12-5 and §15-12-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-5-13b of said code, all relating to authorizing a court to require a convicted juvenile sex offender whose underlying offense constitutes a first or second degree sexual assault and who is sixteen years of age or older to register as a sex offender; and maintaining confidentiality of juvenile sex offender registration information except for disclosure to law enforcement, school administration and counsel until the juvenile attains the age of eighteen years.

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

That §15-12-2, §15-12-5 and §15-12-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-5-13b of said code be amended and reenacted, all to read as follows:

**CHAPTER 15. PUBLIC SAFETY.**

**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 of  
9 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 section  
13 twenty-five, article two of this chapter:

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16 assault of a spouse, which was repealed by an Act of the  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

18 (2) Article eight-c;

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

20 (4) Section fourteen, article two;

21 (5) Sections six, seven, twelve and thirteen, article eight; or

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

25 (c) Any person who:

26 (1) Has been convicted of a criminal offense and the  
27 sentencing judge made a written finding that the offense was  
28 sexually motivated; or

29 (2) Is required to register by a court order issued pursuant  
30 to subdivision (5), subsection (a), section thirteen-b, article  
31 five, chapter forty-nine of this code, shall also register as set  
32 forth in this article.

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

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

44 (2) The address where the registrant intends to reside or  
45 resides at the time of registration, the address of any habitable  
46 real property owned or leased by the registrant that he or she  
47 regularly visits: *Provided*, That a post office box may not be  
48 provided in lieu of a physical residential address, the name  
49 and address of the registrant's employer or place of  
50 occupation at the time of registration, the names and  
51 addresses of any anticipated future employers or places of

52 occupation, the name and address of any school or training  
53 facility the registrant is attending at the time of registration  
54 and the names and addresses of any schools or training  
55 facilities the registrant expects to attend;

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

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

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

61 (6) Fingerprints;

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

69 (8) Information relating to any Internet accounts the

70 registrant has and the screen names, user names or aliases the  
71 registrant uses on the Internet; ~~and~~

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

76 (10) If the registrant is a juvenile, the physical address  
77 and telephone of the registrant's parent(s) or legal guardian(s)  
78 and any other relative or person with whom the registrant  
79 regularly engages in overnight visits.

80 (e) (1) On the date that any person convicted or found not  
81 guilty by reason of mental illness, mental retardation or  
82 addiction of any of the crimes listed in subsection (b) of this  
83 section, hereinafter referred to as a "qualifying offense",  
84 including those persons who are continuing under some post-  
85 conviction supervisory status, are released, granted probation  
86 or a suspended sentence, released on parole, probation, home  
87 detention, work release, conditional release, inpatient  
88 treatment facility or juvenile detention facility or any other

89 release from confinement, the Commissioner of Corrections,  
90 regional jail administrator, city official or sheriff operating a  
91 jail, administrator of the treatment or juvenile detention  
92 facility or Secretary of the Department of Health and Human  
93 Resources who releases the person and any parole or  
94 probation officer who releases the person or supervises the  
95 person following the release, shall obtain all information  
96 required by subsection (d) of this section prior to the release  
97 of the person, inform the person of his or her duty to register  
98 and send written notice of the release of the person to the  
99 State Police within three business days of receiving the  
100 information. The notice must include the information  
101 required by said subsection. Any person having a duty to  
102 register for a qualifying offense shall register upon  
103 conviction, unless that person is confined or incarcerated, in  
104 which case he or she shall register within three business days  
105 of release, transfer or other change in disposition status.

106 (2) Notwithstanding any provision of this article to the  
107 contrary, a court of this state shall, upon presiding over a

108 criminal matter resulting in conviction, a disposition under  
109 subdivision (5), subsection (a), section thirteen-b, article five,  
110 chapter forty-nine of this code or a finding of not guilty by  
111 reason of mental illness, mental retardation or addiction of a  
112 qualifying offense, cause, within seventy-two hours of entry  
113 of the commitment or sentencing order, the transmittal to the  
114 sex offender registry for inclusion in the registry all  
115 information required for registration by a registrant as well as  
116 the following non-identifying information regarding the  
117 victim or victims:

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

121 The provisions of this paragraph do not relieve a person  
122 required to register pursuant to this section from complying  
123 with any provision of this article.

- 124 (f) For any person determined to be a sexually violent  
125 predator, the notice required by subsection (d) of this section  
126 must also include:



- 127 (1) Identifying factors, including physical characteristics;  
128 (2) History of the offense; and  
129 (3) Documentation of any treatment received for the  
130 mental abnormality or personality disorder.

131 (g) At the time the person is convicted, required to  
132 register pursuant to an order entered under subdivision (5),  
133 subsection (a), section thirteen-b, article five, chapter forty-  
134 nine of this code, or found not guilty by reason of mental  
135 illness, mental retardation or addiction in a court of this state  
136 of the crimes set forth in subsection (b) of this section, the  
137 person shall sign in open court a statement acknowledging  
138 that he or she understands the requirements imposed by this  
139 article. The court shall inform the person so convicted of the  
140 requirements to register imposed by this article and shall  
141 further satisfy itself by interrogation of the defendant or his  
142 or her counsel that the defendant has received notice of the  
143 provisions of this article and that the defendant understands  
144 the provisions. The statement, when signed and witnessed,  
145 constitutes prima facie evidence that the person had

146 knowledge of the requirements of this article. Upon  
147 completion of the statement, the court shall provide a copy to  
148 the registry. Persons who have not signed a statement under  
149 the provisions of this subsection and who are subject to the  
150 registration requirements of this article must be informed of  
151 the requirement by the State Police whenever the State Police  
152 obtain information that the person is subject to registration  
153 requirements.

154 (h) (1) The State Police shall maintain a central registry  
155 of all persons who register under this article and shall release  
156 information only as provided in this article.

157 (2) Information maintained on juveniles required to  
158 register by a court order issued under subdivision (5),  
159 subsection (a), section thirteen-b, article five, chapter forty-  
160 nine of this code, shall be confidential and may be disclosed  
161 only as authorized under section five of this article.

162 (3) Notwithstanding any other provision of this code to  
163 the contrary, the provisions of this article with respect to  
164 special reporting requirements, confidentiality and disclosure

165 are not applicable on or after that juvenile attains the age of  
166 eighteen years. Upon the date the juvenile attains the age of  
167 eighteen years, he or she shall thereafter be subject to each  
168 and every provision of this article as if he or she had been  
169 convicted of a violation of section three or four, article eight-  
170 b, chapter sixty-one of this code. Notwithstanding any  
171 provision of article five, chapter forty-nine of this code, on  
172 and after the date the juvenile attains the age of eighteen  
173 years, upon request of the West Virginia State Police, the  
174 circuit clerk of the court in which the the order was issued  
175 under subdivision (5), subsection (a), section thirteen-b,  
176 article five, chapter forty-nine of this code shall deliver to the  
177 West Virginia State Police a copy of the records of the  
178 juvenile proceeding in which the order was issued without  
179 cost and without order of the court. Those records may be  
180 used for all purposes under the provisions of this article to the  
181 extent that the same would otherwise be used if they were a  
182 courts records of the proceedings under he or she had been an

183 adult and convicted of a violation of section three or four,

184 article eight-b, chapter sixty-one of this code.

185 (3) The information required to be made public by the

186 State Police by subdivision (2), subsection (b), section five of

187 this article is to be accessible through the Internet.

188 (4) No information relating to telephone or electronic

189 paging device numbers a registrant has or uses may be

190 released through the Internet.

191 (i) For the purpose of this article, “sexually violent

192 offense” means:

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

194 three, article eight-b, chapter sixty-one of this code or of a

195 similar provision in another state, federal or military

196 jurisdiction;

197 (2) Sexual assault in the second degree as set forth in

198 section four, article eight-b, chapter sixty-one of this code or

199 of a similar provision in another state, federal or military

200 jurisdiction;

201 (3) Sexual assault of a spouse as set forth in the former  
202 provisions of section six, article eight-b, chapter sixty-one of  
203 this code, which was repealed by an Act of the Legislature  
204 during the two thousand legislative session, or of a similar  
205 provision in another state, federal or military jurisdiction;

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

210 (j) For purposes of this article, the term “sexually  
211 motivated” means that one of the purposes for which a person  
212 committed the crime was for any person’s sexual  
213 gratification.

214 (k) For purposes of this article, the term “sexually violent  
215 predator” means a person who has been convicted or found not  
216 guilty by reason of mental illness, mental retardation or  
217 addiction of a sexually violent offense and who suffers from a  
218 mental abnormality or personality disorder that makes the  
219 person likely to engage in predatory sexually violent offenses.

220 (l) For purposes of this article, the term “mental  
221 abnormality” means a congenital or acquired condition of a  
222 person, that affects the emotional or volitional capacity of the  
223 person in a manner that predisposes that person to the  
224 commission of criminal sexual acts to a degree that makes the  
225 person a menace to the health and safety of other persons.

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

230 (n) For the purposes of this article, the term “business  
231 days”, means days exclusive of Saturdays, Sundays and legal  
232 holidays as defined in section one, article two, chapter two of  
233 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) In the case of all persons required to register pursuant  
2 to section two of this article, except juveniles required to

3 register by a court order issued under subdivision (5),  
4 subsection (a), section thirteen-b, article five, chapter forty-  
5 nine of this code, within five business days after receiving  
6 any notification as described in this article, the State Police  
7 shall distribute a copy of the notification statement to:

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

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

17 (3) The child protective services office charged with  
18 investigating allegations of child abuse or neglect in the  
19 county where the registrant resides, owns or leases habitable  
20 real property that he or she regularly visits, is employed or  
21 attends school or a training facility;

22 (4) All community organizations or religious  
23 organizations which regularly provide services to youths in  
24 the county where the registrant resides, owns or leases  
25 habitable real property that he or she regularly visits, is  
26 employed or attends school or a training facility;

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

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

35 (b)(1) In the case of juveniles required to register by a  
36 court order issued under subdivision (5), subsection (a),  
37 section thirteen-b, article five, chapter forty-nine of this code,  
38 within five business days after receiving any notification as  
39 described in this article, the State Police shall distribute a  
40 copy of the notification statement only to:



41 (A) The superintendent of the county school system  
42 where the juvenile attends school or intends to attend school;

43 (B) The administrator of a training facility where the  
44 juvenile is enrolled or intends to enroll; and

45 (C) Counsel for the juvenile, upon request.

46 (2) Notification pursuant to this subsection shall inform  
47 the recipient that the information contained in the notification  
48 may be disclosed to the school or training facility, upon  
49 request, and is strictly confidential.

50 (c) Information concerning persons whose names are  
51 contained in the sex offender registry is not subject to the  
52 requirements of the West Virginia Freedom of Information  
53 Act, as set forth in chapter twenty-nine-b of this code, and  
54 may be disclosed and disseminated only as otherwise  
55 provided in this article and as follows:

56 (1) When a person has been determined to be a sexually  
57 violent predator under the terms of section two-a of this  
58 article, the State Police shall notify the prosecuting attorney  
59 of the county in which the person resides, owns or leases

60 habitable real property that he or she regularly visits, is  
61 employed or attends a school or training facility. The  
62 prosecuting attorney shall cooperate with the State Police in  
63 conducting a community notification program which is to  
64 include publication of the offender's name, photograph, place  
65 of residence, location of regularly visited habitable real  
66 property owned or leased by the offender, county of  
67 employment and place at which the offender attends school  
68 or a training facility, as well as information concerning the  
69 legal rights and obligations of both the offender and the  
70 community. Information relating to the victim of an offense  
71 requiring registration may not be released to the public except  
72 to the extent the prosecuting attorney and the State Police  
73 consider it necessary to best educate the public as to the  
74 nature of sexual offenses: *Provided*, That no victim's name  
75 may be released in any public notification pursuant to this  
76 subsection. No information relating to telephone or electronic  
77 paging device numbers a registrant has or uses may be  
78 released to the public with this notification program. The

79 prosecuting attorney and State Police may conduct a  
80 community notification program in the county where a person  
81 who is required to register for life under the terms of  
82 subdivision (2), subsection (a), section four of this article  
83 resides, owns or leases habitable real property that he or she  
84 regularly visits, is employed or attends a school or training  
85 facility. Community notification may be repeated when  
86 determined to be appropriate by the prosecuting attorney;

87 (2) The State Police shall maintain and make available to  
88 the public at least quarterly the list of all persons who are  
89 required to register for life according to the terms of  
90 subdivision (2), subsection (a), section four of this article.

91 No information concerning the identity of a victim of an  
92 offense requiring registration or telephone or electronic  
93 paging device numbers a registrant has or uses may be  
94 released with this list. The method of publication and access  
95 to this list are to be determined by the superintendent; and

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

98 about persons that reside or own or lease habitable real  
99 property that the persons regularly visit in that county and  
100 who are required to register under section two of this article.

101 The court shall determine whether information contained on  
102 the list is relevant to public safety and whether its relevance  
103 outweighs the importance of confidentiality. If the court  
104 orders information to be released, it may further order  
105 limitations upon secondary dissemination by the resident  
106 seeking the information. In no event may information  
107 concerning the identity of a victim of an offense requiring  
108 registration or information relating to telephone or electronic  
109 paging device numbers a registrant has or uses be released.

110 ~~(e)~~ (d) The State Police may furnish information and  
111 documentation required in connection with the registration to  
112 authorized law-enforcement, campus police and  
113 governmental agencies of the United States and its territories,  
114 of foreign countries duly authorized to receive the same, of  
115 other states within the United States and of the State of West  
116 Virginia upon proper request stating that the records will be

117 used solely for law-enforcement-related purposes. The State  
118 Police may disclose information collected under this article  
119 to federal, state and local governmental agencies responsible  
120 for conducting preemployment checks. The State Police also  
121 may disclose information collected under this article to the  
122 Division of Motor Vehicles pursuant to the provisions of  
123 section three, article two, chapter seventeen-b of this code.

124 ~~(d)~~ (e) An elected public official, public employee or  
125 public agency is immune from civil liability for damages  
126 arising out of any action relating to the provisions of this  
127 section except when the official, employee or agency acted  
128 with gross negligence or in bad faith.

**§15-12-8. Failure to register or provide notice of registration changes; penalty; penalty for aiding and abetting.**

1 (a) Each time a person has a change in any of the  
2 registration information as required by this article and  
3 knowingly fails to register the change or changes, each  
4 failure to register each separate item of information changed  
5 shall constitute a separate offense under this section.

6 (b) Except as provided in this section, any person  
7 required to register for ten years pursuant to subdivision (1),  
8 subsection (a), section four of this article who knowingly  
9 provides materially false information or who refuses to  
10 provide accurate information when so required by the terms  
11 of this article, or who knowingly fails to register or  
12 knowingly fails to provide a change in any required  
13 information as required by this article, is guilty of a  
14 misdemeanor and, upon conviction thereof, shall be fined not  
15 less than two hundred fifty dollars nor more than ten  
16 thousand dollars or confined in jail not more than one year,  
17 or both. Any person convicted of a second offense under this  
18 subsection is guilty of a felony and, upon conviction thereof,  
19 shall be imprisoned in a state correctional facility for not less  
20 than one year nor more than five years. Any person  
21 convicted of a third or subsequent offense under this  
22 subsection is guilty of a felony and, upon conviction thereof,  
23 shall be imprisoned in a state correctional facility for not less  
24 than five nor more than twenty-five years.

25 (c) Any person required to register for life pursuant to  
26 this article who knowingly provides materially false  
27 information or who refuses to provide accurate information  
28 when so required by the terms of this article, or who  
29 knowingly fails to register or knowingly fails to provide a  
30 change in any required information as required by this article,  
31 is guilty of a felony and, upon conviction thereof, shall be  
32 imprisoned in a state correctional facility for not less than one  
33 year nor more than five years. Any person convicted of a  
34 second or subsequent offense under this subsection is guilty  
35 of a felony and, upon conviction thereof, shall be imprisoned  
36 in a state correctional facility for not less than ten nor more  
37 than twenty-five years.

38 (d) In addition to any other penalty specified for failure  
39 to register under this article, any person under the supervision  
40 of a probation officer, parole officer or any other sanction  
41 short of confinement in jail or prison who knowingly refuses  
42 to register or who knowingly fails to provide a change in  
43 information as required by this article shall be subject to

44 immediate revocation of probation or parole and returned to  
45 confinement for the remainder of any suspended or unserved  
46 portion of his or her original sentence.

47 (e) Notwithstanding the provisions of subsection (c) of  
48 this section, any person required to register as a sexually  
49 violent predator pursuant to this article who knowingly  
50 provides materially false information or who refuses to  
51 provide accurate information when so required by terms of  
52 this article or who knowingly fails to register or knowingly  
53 fails to provide a change in any required information as  
54 required by this article is guilty of a felony and, upon  
55 conviction thereof, shall, for a first offense, be confined in a  
56 state correctional facility not less than two nor more than ten  
57 years and for a second or subsequent offense, is guilty of a  
58 felony and shall be confined in a state correctional facility not  
59 less than fifteen nor more than thirty-five years.

60 (f) Any person who knows or who has reason to know  
61 that a sex offender is not complying, or has not complied,  
62 with the requirements of this section and who, with the intent



63 to assist the sex offender in eluding a law-enforcement  
64 agency that is seeking to find the sex offender to question the  
65 sex offender about, or to arrest the sex offender for, his or her  
66 noncompliance with the requirements of this section:

67 (1) Withholds information from, the law-enforcement  
68 agency about the sex offender's noncompliance with the  
69 requirements of this section and, if known, the whereabouts  
70 of the sex offender; or

71 (2) Harbors, or attempts to harbor, or assists another person  
72 in harboring or attempting to harbor, the sex offender; or

73 (3) Conceals or attempts to conceal, or assists another person  
74 in concealing or attempting to conceal, the sex offender; or

75 (4) Provides information to the law-enforcement agency  
76 regarding the sex offender which the person knows to be  
77 false information is guilty of a misdemeanor and, upon  
78 conviction thereof, shall be fined not less than two hundred  
79 fifty dollars nor more than ten thousand dollars or confined  
80 in jail not more than one year, or both: *Provided*, That where  
81 the person assists or seeks to assist a sex offender whose

82 violation of this section would constitute a felony, the person  
83 shall be guilty of a felony and, upon conviction thereof, shall  
84 be imprisoned in a state correctional facility for not less than  
85 one year nor more than five years.

86 (g) The State Police shall notify the court of the failure of  
87 any juvenile to register as required by an order issued under  
88 subdivision (5), subsection (a), section thirteen-b, article five,  
89 chapter forty-nine of this code, within five business days  
90 following the last day upon which the juvenile had the duty  
91 to register. In addition to notifying the court of the juvenile's  
92 failure to register, the State Police shall send a copy of this  
93 notice, by certified mail, to the juvenile, the juvenile's  
94 parents and legal counsel.

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 5. JUVENILE PROCEEDINGS.**

#### **§49-5-13b. Authority of the courts to order fines; revocation of vehicle privileges and restitution; and juvenile sex offender registration.**

1 (a) In addition to the methods of disposition provided in  
2 section thirteen of this article, the court may enter an order

3 imposing one or more of the following penalties, conditions  
4 and limitations:

5 (1) Impose a fine not to exceed \$100 upon ~~such~~ the child;

6 (2) Require the child to make restitution or reparation to  
7 the aggrieved party or parties for actual damages or loss  
8 caused by the offense for which the child was found to be  
9 delinquent, or if the child does not make full restitution,  
10 require the custodial parent or parents, as defined in section  
11 two, article seven-a, chapter fifty-five, of the child to make  
12 partial or full restitution to the victim to the extent the child  
13 fails to make full restitution;

14 (3) Require the child to participate in a public service  
15 project under ~~such~~ conditions as the court prescribes,  
16 including participation in the litter control program  
17 established pursuant to the authority of section three, article  
18 fifteen-a, chapter twenty-two of this code;

19 (4) When the child is fifteen years of age or younger and  
20 has been adjudged delinquent, the court may order that the  
21 child is not eligible to be issued a junior probationary

22 operator's license or when the child is between the ages of  
23 sixteen and eighteen years and has been adjudged delinquent,  
24 the court may order that the child is not eligible to operate a  
25 motor vehicle in this state and any junior or probationary  
26 operator's license shall be surrendered to the court. ~~Such~~ The  
27 child's driving privileges shall be suspended for a period not  
28 to exceed two years and the clerk of the court shall notify the  
29 Commissioner of the Division of Motor Vehicles of ~~such~~ the  
30 order;

31 (5) When the child is sixteen years of age or older and is  
32 adjudicated delinquent for violation of section three or four,  
33 article eight-b, chapter sixty-one of this code, the court may  
34 enter an order requiring the child to register as a sex offender  
35 pursuant to article twelve, chapter fifteen of this code. The  
36 order shall be delivered to the West Virginia State Police and  
37 shall be confidential and may be disclosed only as authorized  
38 under section five, article twelve, chapter fifteen of this code.

39 ~~(b) Nothing herein stated shall~~ This section does not limit  
40 the discretion of the court in disposing of a juvenile case

41 ~~*Provided, except*~~ that the juvenile shall not be denied court  
42 may not deny probation or any other disposition pursuant to  
43 this article because the juvenile is financially unable to pay a  
44 fine or make restitution or reparation ~~*Provided, however, and*~~  
45 that all penalties, conditions and limitations imposed under  
46 this section shall be based upon a consideration by the court  
47 of the seriousness of the offense, the child's ability to pay and  
48 a program of rehabilitation consistent with the best interests  
49 of the child.

50 (c) Notwithstanding any other provisions of this code to  
51 the contrary, in the event a child charged with delinquency  
52 under this chapter is transferred to adult jurisdiction and there  
53 convicted, the court may nevertheless, in lieu of sentencing  
54 such person as an adult, make its disposition in accordance  
55 with this section.