

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2115

BY DELEGATES ROWAN AND SOBONYA

[Introduced February 8, 2017; Referred
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §15-12-2 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §62-11D-3 of said code, all relating to sex offenders; prohibiting sexual
 3 offenders from residing within one thousand feet of a school or childcare facility; requiring
 4 persons, as a condition of probation, parole or supervised release, convicted of sexual
 5 crimes against a minor be subject to global positional system monitoring for life; and
 6 providing for a felony penalty.

Be it enacted by the Legislature of West Virginia:

1 That §15-12-2 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §62-11D-3 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.

3 (a) ~~The provisions of~~ This article ~~apply~~ applies both retroactively and prospectively.

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

11 (1) Article eight-a;

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 13 the offense of sexual assault of a spouse, which was repealed by an Act of the Legislature during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

15 (3) Article eight-c;

- 16 (4) Sections five and six, article eight-d;
- 17 (5) Section fourteen, article two;
- 18 (6) Sections six, seven, twelve and thirteen, article eight; or
- 19 (7) Section fourteen-b, article three-c, as it relates to violations of ~~these provisions of~~
20 chapter sixty-one listed in this subsection.

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

24 (d) Persons required to register under ~~the provisions of~~ this article shall register in person
25 at the West Virginia State Police detachment responsible for covering the county of his or her
26 residence, and in doing so, provide or cooperate in providing, at a minimum, the following when
27 registering:

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

30 (2) The address where the registrant intends to reside or resides at the time of registration,
31 the address of any habitable real property owned or leased by the registrant that he or she
32 regularly visits: *Provided*, That a post office box may not be provided in lieu of a physical
33 residential address, the name and address of the registrant's employer or place of occupation at
34 the time of registration, the names and addresses of any anticipated future employers or places
35 of occupation, the name and address of any school or training facility the registrant is attending
36 at the time of registration and the names and addresses of any schools or training facilities the
37 registrant expects to attend;

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

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

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

41 (6) Fingerprints and palm prints;

42 (7) Information related to any motor vehicle, trailer or motor home owned or regularly
43 operated by a registrant, including vehicle make, model, color and license plate number. *Provided,*
44 ~~That~~ For the purposes of this article, the term "trailer" ~~shall mean~~ means travel trailer, fold-down
45 camping trailer and house trailer as those terms are defined in section one, article one, chapter
46 seventeen-a of this code;

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

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

52 (e) (1) On the date that any person convicted or found not guilty by reason of mental
53 illness, mental retardation or addiction of any of the crimes listed in subsection (b) of this section,
54 hereinafter referred to as a "qualifying offense", including those persons who are continuing under
55 some post-conviction supervisory status, are released, granted probation or a suspended
56 sentence, released on parole, probation, home detention, work release, conditional release or
57 any other release from confinement, the Commissioner of Corrections, regional jail administrator,
58 city official or sheriff operating a jail or Secretary of the Department of Health and Human
59 Resources who releases the person and any parole or probation officer who releases the person
60 or supervises the person following the release, shall obtain all information required by subsection
61 (d) of this section prior to the release of the person, inform the person of his or her duty to register
62 and send written notice of the release of the person to the State Police within three business days
63 of receiving the information. The notice must include the information required by said subsection.
64 Any person having a duty to register for a qualifying offense shall register upon conviction, unless
65 that person is confined or incarcerated, in which case he or she shall register within three business
66 days of release, transfer or other change in disposition status. Any person currently registered
67 who is incarcerated for any offense shall reregister within three business days of his or her
68 release.

69 (2) Notwithstanding any provision of this article to the contrary, a court of this state shall,
70 upon presiding over a criminal matter resulting in conviction or a finding of not guilty by reason of
71 mental illness, mental retardation or addiction of a qualifying offense, cause, within seventy-two
72 hours of entry of the commitment or sentencing order, the transmittal to the sex offender registry
73 for inclusion in the registry all information required for registration by a registrant as well as the
74 following nonidentifying information regarding the victim or victims:

75 (A) His or her sex;

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

77 (C) The relationship between the victim and the perpetrator.

78 ~~The provisions of~~ This paragraph ~~de~~ does not relieve a person required to register
79 pursuant to this section from complying with ~~any provision of~~ this article.

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

82 (1) Identifying factors, including physical characteristics;

83 (2) History of the offense; and

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

86 (g) At the time the person is convicted or found not guilty by reason of mental illness,
87 mental retardation or addiction in a court of this state of the crimes set forth in subsection (b) of
88 this section, the person shall sign in open court a statement acknowledging that he or she
89 understands the requirements imposed by this article. The court shall inform the person so
90 convicted of the requirements to register imposed by this article and shall further satisfy itself by
91 interrogation of the defendant or his or her counsel that the defendant has received notice of the
92 provisions of this article and that the defendant understands the provisions. The statement, when
93 signed and witnessed, constitutes prima facie evidence that the person had knowledge of the
94 requirements of this article. Upon completion of the statement, the court shall provide a copy to
95 the registry. Persons who have not signed a statement under ~~the provisions of~~ this subsection

96 and who are subject to the registration requirements of this article must be informed of the
97 requirement by the State Police whenever the State Police obtain information that the person is
98 subject to registration requirements.

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

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

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

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

109 (3) Sexual assault of a spouse as set forth in the former ~~provisions of~~ section six, article
110 eight-b, chapter sixty-one of this code, which was repealed by an Act of the Legislature during the
111 2000 legislative session, or of a similar provision in another state, federal or military jurisdiction;

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

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

116 (k) For purposes of this article, the term "sexually violent predator" means a person who
117 has been convicted or found not guilty by reason of mental illness, mental retardation or addiction
118 of a sexually violent offense and who suffers from a mental abnormality or personality disorder
119 that makes the person likely to engage in predatory sexually violent offenses.

120 (l) For purposes of this article, the term "mental abnormality" means a congenital or
121 acquired condition of a person, that affects the emotional or volitional capacity of the person in a

122 manner that predisposes that person to the commission of criminal sexual acts to a degree that
 123 makes the person a menace to the health and safety of other persons.

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

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

130 (o) Notwithstanding any other provision of this code to the contrary, a person required to
 131 register under this section may not reside within one thousand feet of a school or childcare facility.
 132 Any person violating this subsection is guilty of a felony and, upon conviction thereof, shall be
 133 confined in a state correctional facility for not less than two years nor more than ten years.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11D. HEIGHTENED EXAMINATION AND SUPERVISION FOR CERTAIN SEX OFFENDERS.

§62-11D-3. Electronic monitoring of certain sex offenders under supervision; tampering with devices; offenses and penalties.

1 (a) Notwithstanding any provisions of this code to the contrary, any person convicted of
 2 committing a sexual crime against a minor pursuant to article eight-b, chapter sixty-one of this
 3 code, who is on probation, parole or supervised release, is subject to global positioning system
 4 monitoring as a condition of probation, parole or supervised release for the duration of his or her
 5 life. Any person designated as a sexually violent predator pursuant to ~~the provisions of~~ section
 6 two-a, article twelve, chapter fifteen who is on probation, parole or supervised release, ~~shall be~~ is
 7 subject to electronic monitoring as a condition of probation, parole or supervised release. A
 8 person required to register as a sex offender pursuant to ~~the provisions of~~ article twelve, chapter

9 fifteen of this code may, as a condition of probation, parole or supervised release, be subject to
10 electronic monitoring.

11 (b) Upon being placed on supervision, a person required to undergo electronic monitoring
12 pursuant to ~~the provisions of this section~~, other than persons convicted of sexual crimes against
13 a minor subjected to global positioning system monitoring in accordance with this section, shall
14 be placed at a minimum on radio frequency monitoring with curfews enforced. Following an
15 assessment designed to determine the level and type of electronic monitoring necessary to
16 effectuate the protection of the public, a supervised person, other than persons convicted of
17 sexual crimes against a minor in accordance with this section, may be placed on a system
18 providing a greater or lesser degree of monitoring.

19 (c) A person subject to ~~the provisions of this section~~ shall be is responsible for the cost of
20 the global positioning system or electronic monitoring. In the event a person required to submit
21 to global positioning system or electronic monitoring as required by ~~the provisions of this section~~
22 is unable to pay for the global positioning system or electronic monitoring, that person may present
23 an affidavit reflecting the inability to pay for ~~such the~~ monitoring to the circuit court of the county
24 of supervision. If it appears to the satisfaction of the court that ~~such the~~ person is in fact financially
25 unable to pay for ~~such the~~ monitoring, the court shall issue an order reflecting ~~such its~~ findings
26 and forward ~~said the~~ order to the supervising entity. Upon receipt of ~~such the~~ order, the
27 supervising entity ~~shall then be~~ is responsible for paying for ~~each testing the~~ monitoring.

28 (d) The assessment required by ~~the provisions of~~ subsection (b) of this section shall be
29 completed not later than thirty days after the supervised person begins serving probation or parole
30 or supervised release. Under no circumstances may a person of whom electronic monitoring has
31 been mandated as a condition of supervision be on a type of monitoring less effective than voice
32 verification with a curfew.

33 (e) Any person who intentionally alters, tampers with, damages or destroys any global
34 positioning system or electronic monitoring equipment, with the intent to remove the device or

35 impair its effectiveness, is guilty of a felony and, upon conviction thereof, shall be confined in a
36 state correctional facility for not less than one year nor more than ten years.

NOTE: The purpose of this bill is to prohibit sexual offenders from residing within one thousand feet of a school or childcare facility. The bill requires persons, as a condition of probation, parole or supervised release, convicted of sexual crimes against a minor be subject to global positional system monitoring for life. The bill also provides for a felony penalty.

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