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WEST VIRGINIA
SECRETARY OF STATE

COMMITTEE SUBSTITUTE
FOR

ENROLLED
Senate Bill No. 185

(By SENATORS TOMBLIN, MR. PRESIDENT, AND CARUTH,
By REQUEST OF THE EXECUTIVE)

[Passed March 6, 2008; in effect ninety days from passage.]

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AN ACT to amend and reenact §27-3-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-7-7 of said code; and to amend said code by adding thereto a new article, designated §61-7A-1, §61-7A-2, §61-7A-3, §61-7A-4 and §61-7A-5, all relating to clarifying mental conditions which prohibit firearms' possession and disclosure of prohibited firearm possession; disclosure of confidential information; notice of surrender of firearms under certain conditions; right to petition to regain ability to possess firearms; legislative intent; definitions; requiring state registry of persons precluded firearms' possession due to mental condition; authorizing reporting of information to national registry; limitations on use of information; and

establishing a procedure for petitioning to regain right to possess a firearm.

Be it enacted by the Legislature of West Virginia:

That §27-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §61-7-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §61-7A-1, §61-7A-2, §61-7A-3, §61-7A-4 and §61-7A-5, all to read as follows:

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 3. CONFIDENTIALITY.

§27-3-1. Definition of confidential information; disclosure.

1 (a) Communications and information obtained in the
2 course of treatment or evaluation of any client or
3 patient are confidential information. Such confidential
4 information includes the fact that a person is or has
5 been a client or patient, information transmitted by a
6 patient or client or family thereof for purposes relating
7 to diagnosis or treatment, information transmitted by
8 persons participating in the accomplishment of the
9 objectives of diagnosis or treatment, all diagnoses or
10 opinions formed regarding a client's or patient's
11 physical, mental or emotional condition, any advice,
12 instructions or prescriptions issued in the course of
13 diagnosis or treatment, and any record or
14 characterization of the matters hereinbefore described.
15 It does not include information which does not identify
16 a client or patient, information from which a person
17 acquainted with a client or patient would not recognize
18 such client or patient and uncoded information from
19 which there is no possible means to identify a client or
20 patient.

21 (b) Confidential information shall not be disclosed,
22 except:

23 (1) In a proceeding under section four, article five of
24 this chapter to disclose the results of an involuntary

25 examination made pursuant to section two, three or four
26 of said article;

27 (2) In a proceeding under article six-a of this chapter
28 to disclose the results of an involuntary examination
29 made pursuant thereto;

30 (3) Pursuant to an order of any court based upon a
31 finding that the information is sufficiently relevant to a
32 proceeding before the court to outweigh the importance
33 of maintaining the confidentiality established by this
34 section;

35 (4) To provide notice to the federal National Instant
36 Criminal Background Check System, established
37 pursuant to Section 103(d) of the Brady Handgun
38 Violence Prevention Act, 18 U. S. C. §922, in accordance
39 with article seven-a, chapter sixty-one of this code;

40 (5) To protect against a clear and substantial danger
41 of imminent injury by a patient or client to himself,
42 herself or another;

43 (6) For treatment or internal review purposes, to staff
44 of the mental health facility where the patient is being
45 cared for or to other health professionals involved in
46 treatment of the patient; and

47 (7) Without the patient's consent as provided for
48 under the Privacy Rule of the federal Health Insurance
49 Portability and Accountability Act of 1996, 45 C. F. R.
50 §164.506, for thirty days from the date of admission to
51 a mental health facility if: (i) The provider makes a good
52 faith effort to obtain consent from the patient or legal
53 representative prior to disclosure; (ii) the minimum
54 information necessary is released for a specifically
55 stated purpose; and (iii) prompt notice of the disclosure,
56 the recipient of the information and the purpose of the
57 disclosure is given to the patient or legal representative.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-7. Persons prohibited from possessing firearms; classifications; reinstatement of rights to possess; offenses; penalties.

- 1 (a) Except as provided in this section, no person shall
2 possess a firearm, as such is defined in section two of
3 this article, who:
- 4 (1) Has been convicted in any court of a crime
5 punishable by imprisonment for a term exceeding one
6 year;
- 7 (2) Is habitually addicted to alcohol;
- 8 (3) Is an unlawful user of or habitually addicted to any
9 controlled substance;
- 10 (4) Has been adjudicated as a mental defective or who
11 has been involuntarily committed to a mental
12 institution pursuant to the provisions of chapter
13 twenty-seven of this code: *Provided*, That once an
14 individual has been adjudicated as a mental defective or
15 involuntarily committed to a mental institution, he or
16 she shall be duly notified that they are to immediately
17 surrender any firearms in their ownership or possession:
18 *Provided, however*, That the mental hygiene
19 commissioner or circuit judge shall first make a
20 determination of the appropriate public or private
21 individual or entity to act as conservator for the
22 surrendered property;
- 23 (5) Is an alien illegally or unlawfully in the United
24 States;
- 25 (6) Has been discharged from the armed forces under
26 dishonorable conditions;
- 27 (7) Is subject to a domestic violence protective order
28 that:
- 29 (A) Was issued after a hearing of which such person
30 received actual notice and at which such person had an
31 opportunity to participate;

32 (B) Restrains such person from harassing, stalking or
33 threatening an intimate partner of such person or child
34 of such intimate partner or person, or engaging in other
35 conduct that would place an intimate partner in
36 reasonable fear of bodily injury to the partner or child;
37 and

38 (C)(i) Includes a finding that such person represents a
39 credible threat to the physical safety of such intimate
40 partner or child; or

41 (ii) By its terms explicitly prohibits the use, attempted
42 use or threatened use of physical force against such
43 intimate partner or child that would reasonably be
44 expected to cause bodily injury; or

45 (8) Has been convicted of a misdemeanor offense of
46 assault or battery either under the provisions of section
47 twenty-eight, article two of this chapter or the
48 provisions of subsection (b) or (c), section nine of said
49 article in which the victim was a current or former
50 spouse, current or former sexual or intimate partner,
51 person with whom the defendant has a child in common,
52 person with whom the defendant cohabits or has
53 cohabited, a parent or guardian, the defendant's child or
54 ward or a member of the defendant's household at the
55 time of the offense or has been convicted in any court of
56 any jurisdiction of a comparable misdemeanor crime of
57 domestic violence.

58 Any person who violates the provisions of this
59 subsection shall be guilty of a misdemeanor and, upon
60 conviction thereof, shall be fined not less than one
61 hundred dollars nor more than one thousand dollars or
62 confined in the county jail for not less than ninety days
63 nor more than one year, or both.

64 (b) Notwithstanding the provisions of subsection (a) of
65 this section, any person:

66 (1) Who has been convicted in this state or any other
67 jurisdiction of a felony crime of violence against the
68 person of another or of a felony sexual offense; or

69 (2) Who has been convicted in this state or any other
70 jurisdiction of a felony controlled substance offense
71 involving a Schedule I controlled substance other than
72 marijuana, a Schedule II or a Schedule III controlled
73 substance as such are defined in sections two hundred
74 four, two hundred five and two hundred six, article two,
75 chapter sixty-a of this code and who possesses a firearm
76 as such is defined in section two of this article shall be
77 guilty of a felony and, upon conviction thereof, shall be
78 confined in a state correctional facility for not more
79 than five years or fined not more than five thousand
80 dollars, or both. The provisions of subsection (c) of this
81 section shall not apply to persons convicted of offenses
82 referred to in this subsection or to persons convicted of
83 a violation of this subsection.

84 (c) Any person prohibited from possessing a firearm
85 by the provisions of subsection (a) of this section may
86 petition the circuit court of the county in which he or
87 she resides to regain the ability to possess a firearm and
88 if the court finds by clear and convincing evidence that
89 the person is competent and capable of exercising that
90 responsibility concomitant with the possession of a
91 firearm, the court may enter an order allowing the
92 person to possess a firearm if such possession would not
93 violate any federal law: *Provided*, That a person
94 prohibited from possessing a firearm by the provisions
95 of subdivision (4), subsection (a) of this section may
96 petition to regain the ability to possess a firearm in
97 accordance with the provisions of section five, article
98 seven-a of this chapter.

**ARTICLE 7A. STATE MENTAL HEALTH REGISTRY; REPORTING OF
PERSONS PROSCRIBED FROM FIREARM POSSESSION
DUE TO MENTAL CONDITION TO THE NATIONAL
INSTANT CRIMINAL BACKGROUND CHECK SYSTEM;
LEGISLATIVE FINDINGS; DEFINITIONS; REPORTING
REQUIREMENTS; REINSTATEMENT OF RIGHTS
PROCEDURES.**

§61-7A-1. Legislative intent.

1 It is the intention of the Legislature in the enactment
2 of this article to clarify the persons whom it intends to
3 proscribe from the possession of firearms due to

4 substance abuse or mental illness; establish a process in
5 reporting the names of persons proscribed from
6 possession of firearms due to mental illness to the
7 central state mental health registry; authorize reporting
8 by registry to the National Instant Criminal Background
9 Check System; and to prescribe a means for reinstating
10 one's ability to lawfully possess a firearm.

§61-7A-2. Definitions.

1 As used in this article and as the terms are deemed to
2 mean in 18 U. S. C. §922(g) and section seven, article
3 seven of this chapter as each exists as of the thirty-first
4 day of January, two thousand eight:

5 (1) "A person adjudicated as a mental defective"
6 means a person who has been determined by a duly
7 authorized court, tribunal, board or other entity to be
8 mentally ill to the point where he or she has been found
9 to be incompetent to stand trial due to mental illness or
10 insanity, has been found not guilty in a criminal
11 proceeding by reason of mental illness or insanity or has
12 been determined to be unable to handle his or her own
13 affairs due to mental illness or insanity.

14 (2) "Committed to a mental institution" means to
15 have been involuntarily committed for treatment
16 pursuant to the provisions of chapter twenty-seven of
17 this code.

18 (3) "Mental institution" means any facility or part
19 of a facility used for the treatment of persons committed
20 for treatment of mental illness or addiction.

**§61-7A-3. Persons whose names are to be supplied to the
central state mental health registry.**

1 (a) The Superintendent of the West Virginia State
2 Police and the Secretary of the Department of Health
3 and Human Resources, or their designees, shall
4 cooperate with the circuit clerk of each county and
5 Administrator of the West Virginia Supreme Court of
6 Appeals in compiling and maintaining a database

7 containing the names and identifying information of
8 persons who have been adjudicated to be mentally
9 defective or who have been committed for treatment of
10 a mental illness pursuant to the provisions of chapter
11 twenty-seven of this code. The registry shall be
12 maintained by the Administrator of the Supreme Court
13 of Appeals or the Superintendent of the West Virginia
14 State Police.

15 (b) The name of any person who has been
16 adjudicated to be mentally defective or who has been
17 committed for treatment of a mental illness pursuant to
18 the provisions of chapter twenty-seven of this code
19 which shall be provided to the Superintendent of the
20 West Virginia State Police for inclusion in the central
21 state mental health registry. Upon receipt of the
22 information being received by the central state mental
23 health registry it may be transmitted to the National
24 Instant Criminal Background Check System and to
25 county sheriffs;

26 (c) The Secretary of Department of Human
27 Resources and the circuit clerk of each county shall, as
28 soon as practicable after the effective date of this
29 article, supply to the Superintendent of the West
30 Virginia State Police for inclusion in the central state
31 mental health registry the name and identifying
32 information required by the provisions of subsection (d)
33 of this section of all persons covered by the provisions
34 of this article and shall on an ongoing basis continue to
35 provide such information as it is developed;

36 (d) The central state mental health registry shall
37 contain the name, address at the time of commitment or
38 adjudication, date of birth, date of commitment or
39 adjudication and of all persons who have been
40 adjudicated to be mentally defective or who have been
41 committed for treatment of a mental illness pursuant to
42 the provisions of chapter twenty-seven of this code.

43 (e) The central state mental health registry shall
44 provide only such information about a person on the
45 registry to county sheriffs and the National Instant

46 Criminal Background Check System as is necessary to
47 identify registrants; and

48 (f) On or before the first day of January, two
49 thousand ten, the central state mental health registry
50 shall contain the name, address at the time of
51 commitment or adjudication, date of birth, date of
52 commitment or adjudication and any other identifying
53 characteristics of all persons who have been adjudicated
54 to be mentally defective or who have been committed
55 for treatment of a mental illness pursuant to the
56 provisions of chapter twenty-seven of this code. Under
57 no circumstances shall the registry contain information
58 relating to any diagnosis or treatment provided.

§61-7A-4. Confidentiality; limits on use of registry information.

1 (a) Notwithstanding any provision of this code to
2 the contrary, the Superintendent of the State Police, the
3 Secretary of the Department of Health and Human
4 Resources and the circuit clerks and the Administrator
5 of the Supreme Court of Appeals may provide notice to
6 the central state mental health registry and the National
7 Instant Criminal Background Check System established
8 pursuant to Section 103(d) of the Brady Handgun
9 Violence Protection Act, 18 U. S. C. §922, that a person:
10 (i) Has been involuntarily committed as provided in
11 chapter twenty-seven of this code; (ii) has been
12 adjudicated mentally incompetent in a proceeding
13 under article six-a of this chapter; or (iii) has regained
14 the ability to possess a firearm by order of a circuit
15 court in a proceeding under section five of this article.

16 (b) The information contained in the central state
17 mental health registry is to be used solely for the
18 purpose of records checks related to firearms purchases
19 and for eligibility for a state license or permit to possess
20 or carry a concealed firearm.

21 (c) Whenever a person's name and other identifying
22 information has been added to the central state mental
23 health registry, a review of the state concealed handgun

24 registry shall be undertaken and if such review reveals
25 that the person possesses a current concealed handgun
26 license, the sheriff of the county issuing the concealed
27 handgun license shall be informed of the person's
28 change in status.

§61-7A-5. Petition to regain right to possess firearms.

1 (a) Any person who is prohibited from possessing a
2 firearm pursuant to the provisions of section seven,
3 article seven of this chapter or by provisions of federal
4 law by virtue solely of having previously been
5 adjudicated to be mentally defective or to having a prior
6 involuntary commitment to a mental institution
7 pursuant to chapter twenty-seven of this code may
8 petition the circuit court of the county of his or her
9 residence to regain the ability to lawfully possess a
10 firearm. If the court finds by clear and convincing
11 evidence that the person is competent and capable of
12 exercising the responsibilities concomitant with the
13 possession of a firearm, the court may enter an order
14 allowing the petitioner to possess a firearm.

15 (b) The circuit clerk of each county shall provide the
16 Superintendent of the West Virginia State Police or his
17 or her designee with a certified copy of any order
18 entered pursuant to the provisions of this section. If the
19 order restores the petitioner's ability to possess a
20 firearm, petitioner's name shall be promptly removed
21 from the central state mental health registry and the
22 superintendent shall forthwith inform the Federal
23 Bureau of Investigation or other federal entity operating
24 the National Instant Criminal Background Check
25 System of the court action.

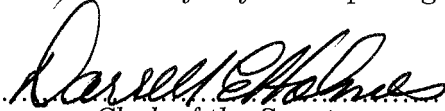
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee



.....
Chairman House Committee


Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is appended this
the 20th Day of May, 2008.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 14 2008

Time 11:25 AM