

H. B. 2656

(By Delegates Sobonya, Longstreth, Sumner,
Rowan, C. Miller and Reynolds)

[Introduced January 20, 2011; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §15-12-2 of the Code of West Virginia,
1931, as amended, relating to the Sex Offender Registration
Act; and requiring persons incarcerated for sex offenses to
register as such at the time they are incarcerated.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2. Registration.

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

(b) Any person ~~who has been~~ convicted of an offense or an
attempted offense or ~~has been~~ found not guilty by reason of mental
illness, mental retardation or addiction of an offense under ~~any of~~
~~the following provisions of~~ chapter sixty-one of this code or under
a statutory provision of another state, the United States Code or

1 the Uniform Code of Military Justice which requires proof of the
2 same essential elements shall register as set forth in subsection
3 (d) of this section and according to the internal management rules
4 promulgated by the superintendent under authority of section
5 twenty-five, article two of this chapter:

6 (1) Article eight-b, including ~~the provisions of~~ former
7 section six of said article, relating to the offense of sexual
8 assault of a spouse, which was repealed by an act of the
9 Legislature during the year 2000 legislative session;

10 (2) Article eight-c;

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

12 (4) Section fourteen, article two;

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

14 or

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

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

22 (d) Persons required to register under ~~the provisions of~~ this
23 article who are not incarcerated shall register in person at the
24 West Virginia State Police detachment in the county of his or her

1 residence, the county in which he or she owns or leases habitable
2 real property that he or she visits regularly, the county of his or
3 her place of employment or occupation and the county in which he or
4 she attends school or a training facility. ~~and in doing so,~~
5 Notwithstanding any contrary law, persons sentenced to jail or a
6 correctional facility shall register at the time they are initially
7 incarcerated. Registrants shall provide or cooperate in providing,
8 at a minimum, the following when registering:

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

11 (2) The address where the registrant intends to reside or
12 resides at the time of registration, the address of any habitable
13 real property owned or leased by the registrant that he or she
14 regularly visits. ~~Provided, That~~ However, a post office box may
15 not be provided in lieu of a physical residential address, the name
16 and address of the registrant's employer or place of occupation at
17 the time of registration, the names and addresses of any
18 anticipated future employers or places of occupation, the name and
19 address of any school or training facility the registrant is
20 attending at the time of registration and the names and addresses
21 of any schools or training facilities the registrant expects to
22 attend;

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

24 (4) A full-face photograph of the registrant at the time of

1 registration;

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

4 (6) Fingerprints;

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

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

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

18 (e) (1) On the date that any person convicted or found not
19 guilty by reason of mental illness, mental retardation or addiction
20 of any of the crimes listed in subsection (b) of this section,
21 hereinafter referred to as a "qualifying offense", including those
22 persons who are continuing under some post-conviction supervisory
23 status, are released, granted probation or a suspended sentence,
24 released on parole, probation, home detention, work release,

1 conditional release or any other release from confinement, the
2 Commissioner of Corrections, regional jail administrator, city
3 official or sheriff operating a jail or Secretary of the Department
4 of Health and Human Resources who releases the person and any
5 parole or probation officer who releases the person or supervises
6 the person following the release, shall obtain all information
7 required by subsection (d) of this section prior to the release of
8 the person, inform the person of his or her duty to register and
9 send written notice of the release of the person to the State
10 Police within three business days of receiving the information.
11 The notice must include the information required by said
12 subsection. Any person having a duty to register for a qualifying
13 offense shall register upon conviction, unless that person is
14 confined or incarcerated, in which case he or she shall register
15 within three business days of release, transfer or other change in
16 disposition status.

17 (2) Notwithstanding any contrary provision of this article ~~to~~
18 ~~the contrary~~, a court of this state shall, upon presiding over a
19 criminal matter resulting in conviction or a finding of not guilty
20 by reason of mental illness, mental retardation or addiction of a
21 qualifying offense, cause, within seventy-two hours of entry of the
22 commitment or sentencing order, the transmittal to the sex offender
23 registry for inclusion in the registry all information required for
24 registration by a registrant as well as the following

1 nonidentifying information regarding the victim or victims:

2 (A) His or her sex;

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

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

5 ~~The provisions of~~ This paragraph ~~do~~ does not relieve a person
6 required to register pursuant to this section from complying with
7 ~~any provision of~~ this article.

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

11 (1) Identifying factors, including physical characteristics;

12 (2) History of the offense; and

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

15 (g) At the time the person is convicted or found not guilty by
16 reason of mental illness, mental retardation or addiction in a
17 court of this state of the crimes set forth in subsection (b) of
18 this section, the person shall sign in open court a statement
19 acknowledging that he or she understands the requirements imposed
20 by this article. The court shall inform the person so convicted of
21 the requirements to register imposed by this article and shall
22 further satisfy itself by interrogation of the defendant or his or
23 her counsel that the defendant has received notice of ~~the~~
24 ~~provisions of~~ this article and that the defendant understands ~~the~~

1 its provisions. The statement, when signed and witnessed,
2 constitutes prima facie evidence that the person had knowledge of
3 the requirements of this article. Upon completion of the
4 statement, the court shall provide a copy to the registry. Persons
5 who have not signed a statement under ~~the provisions of~~ this
6 subsection and who are subject to the registration requirements of
7 this article must be informed of the requirement by the State
8 Police whenever the State Police obtain information that the person
9 is subject to registration requirements.

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

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

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

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

1 section four, article eight-b, chapter sixty-one of this code, or
2 of a similar provision in another state, federal or military
3 jurisdiction;

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to require persons
incarcerated for sex offenses to register as such at the time they
are incarcerated.

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