

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 382**

4 (By Senator Unger)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported January 27, 2012.]

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9
10 A BILL to amend and reenact §15-12-2, §15-12-3, §15-12-5 and
11 §15-12-10 of the Code of West Virginia, 1931, as amended, all
12 relating to the sex offender registration generally; requiring
13 persons convicted of offenses relating to distributing obscene
14 matter to minors to register; requiring offenders to provide
15 palm prints; and requiring registration and updating of
16 information only at the State Police detachment covering the
17 offender's county of residence.

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

19 That §15-12-2, §15-12-3, §15-12-5 and §15-12-10 of the Code of
20 West Virginia, 1931, as amended, be amended and reenacted, all to
21 read as follows:

22 **ARTICLE 12. SEX OFFENDER REGISTRATION ACT.**

23 **§15-12-2. Registration.**

24 (a) The provisions of this article apply both retroactively
25 and prospectively.

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

- 11 (1) Article eight-a;
- 12 ~~(1)~~ (2) Article eight-b, including the provisions of former
13 section six of said article, relating to the offense of sexual
14 assault of a spouse, which was repealed by an Act of the
15 Legislature during the year 2000 legislative session;
- 16 ~~(2)~~ (3) Article eight-c;
- 17 ~~(3)~~ (4) Sections five and six, article eight-d;
- 18 ~~(4)~~ (5) Section fourteen, article two;
- 19 ~~(5)~~ (6) Sections six, seven, twelve and thirteen, article
20 eight; or
- 21 ~~(6)~~ (7) Section fourteen-b, article three-c, as it relates to
22 violations of those provisions of chapter sixty-one listed in this
23 subsection.

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

1 article.

2 (d) Persons required to register under the provisions of this
3 article shall register in person at the West Virginia State Police
4 detachment ~~in the~~ responsible for covering the county of his or her
5 residence, ~~the county in which he or she owns or leases habitable~~
6 ~~real property that he or she visits regularly, the county of his or~~
7 ~~her place of employment or occupation and the county in which he or~~
8 ~~she attends school or a training facility,~~ and in doing so, provide
9 or cooperate in providing, at a minimum, the following when
10 registering:

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

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

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

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

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

3 (6) Fingerprints and palm prints;

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

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

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

17 (e) (1) On the date that any person convicted or found not
18 guilty by reason of mental illness, mental retardation or addiction
19 of any of the crimes listed in subsection (b) of this section,
20 hereinafter referred to as a "qualifying offense", including those
21 persons who are continuing under some post-conviction supervisory
22 status, are released, granted probation or a suspended sentence,
23 released on parole, probation, home detention, work release,
24 conditional release or any other release from confinement, the
25 Commissioner of Corrections, regional jail administrator, city
26 official or sheriff operating a jail or Secretary of the Department

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

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

25 (A) His or her sex;

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

1 (C) The relationship between the victim and the perpetrator.
2 The provisions of this paragraph do not relieve a person
3 required to register pursuant to this section from complying with
4 any provision of this article.

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

8 (1) Identifying factors, including physical characteristics;

9 (2) History of the offense; and

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

12 (g) At the time the person is convicted or found not guilty by
13 reason of mental illness, mental retardation or addiction in a
14 court of this state of the crimes set forth in subsection (b) of
15 this section, the person shall sign in open court a statement
16 acknowledging that he or she understands the requirements imposed
17 by this article. The court shall inform the person so convicted of
18 the requirements to register imposed by this article and shall
19 further satisfy itself by interrogation of the defendant or his or
20 her counsel that the defendant has received notice of the
21 provisions of this article and that the defendant understands the
22 provisions. The statement, when signed and witnessed, constitutes
23 prima facie evidence that the person had knowledge of the
24 requirements of this article. Upon completion of the statement,
25 the court shall provide a copy to the registry. Persons who have
26 not signed a statement under the provisions of this subsection and

1 who are subject to the registration requirements of this article
2 must be informed of the requirement by the State Police whenever
3 the State Police obtain information that the person is subject to
4 registration requirements.

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

13 (I) For the purpose of this article, "sexually violent
14 offense" means:

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

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

23 (3) Sexual assault of a spouse as set forth in the former
24 provisions of section six, article eight-b, chapter sixty-one of
25 this code, which was repealed by an Act of the Legislature during
26 the 2000 legislative session, or of a similar provision in another

1 state, federal or military jurisdiction;

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

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

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

15 (l) For purposes of this article, the term "mental
16 abnormality" means a congenital or acquired condition of a person,
17 that affects the emotional or volitional capacity of the person in
18 a manner that predisposes that person to the commission of criminal
19 sexual acts to a degree that makes the person a menace to the
20 health and safety of other persons.

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

25 (n) For the purposes of this article, the term "business days"
26 means days exclusive of Saturdays, Sundays and legal holidays as

1 defined in section one, article two, chapter two of this code.

2 **§15-12-3. Change in registry information.**

3 When any person required to register under this article
4 changes his or her residence, address, place of employment or
5 occupation, motor vehicle, trailer or motor home information
6 required by section two of this article, or school or training
7 facility which he or she is attending, or when any of the other
8 information required by this article changes, he or she shall,
9 within ten business days, inform the West Virginia State Police of
10 the changes in the manner prescribed by the Superintendent of State
11 Police in procedural rules promulgated in accordance with the
12 provisions of article three, chapter twenty-nine-a of this code:
13 *Provided*, That when any person required to register under this
14 article changes his or her residence, place of employment or
15 occupation or school or training facility he or she is attending
16 from one county of this state to another county of this state, he
17 or she shall inform the West Virginia State Police detachment ~~in~~
18 ~~both counties~~ responsible for covering the county of his or her
19 residence within ten business days of the change in the manner
20 prescribed by the superintendent in procedural rules promulgated in
21 accordance with the provisions of article three, chapter
22 twenty-nine-a of this code.

23 **§15-12-5. Distribution and disclosure of information; community**
24 **information programs by prosecuting attorney and**
25 **State Police; petition to circuit court.**

1 (a) Within five business days after receiving any notification
2 as described in this article, the State Police shall distribute a
3 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 city and
6 county where the registrant resides, owns or leases habitable real
7 property that he or she regularly visits, is employed or attends
8 school or a training facility;

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

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

18 (4) All community organizations or religious organizations
19 which regularly provide services to youths in the county where the
20 registrant resides, owns or leases habitable real property that he
21 or she regularly visits, is employed or attends school or a
22 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 incapacitated
26 or infirm persons in the county where the registrant resides, owns

1 or leases habitable real property that he or she regularly visits,
2 is employed or attends school or a training facility; and

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

4 (7) The State Police detachments in the county of the
5 offender's occupation, employment, owned or leased habitable real
6 property and school or training.

7 (b) Information concerning persons whose names are contained
8 in the sex offender registry is not subject to the requirements of
9 the West Virginia Freedom of Information Act, as set forth in
10 chapter twenty-nine-b of this code, and may be disclosed and
11 disseminated only as otherwise provided in this article and as
12 follows:

13 (1) When a person has been determined to be a sexually violent
14 predator under the terms of section two-a of this article, the
15 State Police shall notify the prosecuting attorney of the county in
16 which the person resides, owns or leases habitable real property
17 that he or she regularly visits, is employed or attends a school or
18 training facility. The prosecuting attorney shall cooperate with
19 the State Police in conducting a community notification program
20 which is to include publication of the offender's name, photograph,
21 place of residence, location of regularly visited habitable real
22 property owned or leased by the offender, county of employment and
23 place at which the offender attends school or a training facility,
24 as well as information concerning the legal rights and obligations
25 of both the offender and the community. Information relating to
26 the victim of an offense requiring registration may not be released

1 to the public except to the extent the prosecuting attorney and the
2 State Police consider it necessary to best educate the public as to
3 the nature of sexual offenses: *Provided*, That no victim's name may
4 be released in any public notification pursuant to this subsection.
5 No information relating to telephone or electronic paging device
6 numbers a registrant has or uses may be released to the public with
7 this notification program. The prosecuting attorney and State
8 Police may conduct a community notification program in the county
9 where a person who is required to register for life under the terms
10 of subdivision (2), subsection (a), section four of this article
11 resides, owns or leases habitable real property that he or she
12 regularly visits, is employed or attends a school or training
13 facility. Community notification may be repeated when determined
14 to be appropriate by the prosecuting attorney;

15 (2) The State Police shall maintain and make available to the
16 public at least quarterly the list of all persons who are required
17 to register for life according to the terms of subdivision (2),
18 subsection (a), section four of this article. No information
19 concerning the identity of a victim of an offense requiring
20 registration or telephone or electronic paging device numbers a
21 registrant has or uses may be released with this list. The method
22 of publication and access to this list are to be determined by the
23 superintendent; and

24 (3) A resident of a county may petition the circuit court for
25 an order requiring the State Police to release information about
26 persons that reside or own or lease habitable real property that

1 the persons regularly visit in that county and who are required to
2 register under section two of this article. The court shall
3 determine whether information contained on the list is relevant to
4 public safety and whether its relevance outweighs the importance of
5 confidentiality. If the court orders information to be released,
6 it may further order limitations upon secondary dissemination by
7 the resident seeking the information. In no event may information
8 concerning the identity of a victim of an offense requiring
9 registration or information relating to telephone or electronic
10 paging device numbers a registrant has or uses be released.

11 (c) The State Police may furnish information and documentation
12 required in connection with the registration to authorized law-
13 enforcement, campus police and governmental agencies of the United
14 States and its territories, of foreign countries duly authorized to
15 receive the same, of other states within the United States and of
16 the State of West Virginia upon proper request stating that the
17 records will be used solely for law-enforcement-related purposes.
18 The State Police may disclose information collected under this
19 article to federal, state and local governmental agencies
20 responsible for conducting preemployment checks. The State Police
21 also may disclose information collected under this article to the
22 Division of Motor Vehicles pursuant to the provisions of section
23 three, article two, chapter seventeen-b of this code.

24 (d) An elected public official, public employee or public
25 agency is immune from civil liability for damages arising out of
26 any action relating to the provisions of this section except when

1 the official, employee or agency acted with gross negligence or in
2 bad faith.

3 **§15-12-10. Address and online information verification.**

4 All registrants, including those for whom there has been no
5 change in registration information since their initial registration
6 or previous address verification, must report, in the month of
7 their birth, or in the case of a sexually violent predator in the
8 months of January, April, July and October, to the State Police
9 detachment in responsible for covering their county ~~or counties~~ of
10 registration and must respond to all verification inquiries and
11 informational requests, including, but not limited to, requests for
12 online information made by the State Police pursuant to this
13 section. The State Police shall verify addresses of those persons
14 registered as sexually violent predators every ninety days and all
15 other registered persons once a year. As used in this section, the
16 term "online information" shall mean all information required by
17 subdivision (8), subsection (d), section two, article twelve,
18 chapter fifteen of this code. The State Police may require
19 registrants to periodically submit to new fingerprints and
20 photographs as part of the verification process. The method of
21 verification shall be in accordance with internal management rules
22 pertaining thereto promulgated by the superintendent under
23 authority of section twenty-five, article two, chapter fifteen of
24 this code.