

1 **H. B. 2446**

2
3 (By Delegate Hunt)

4 [Introduced February 14, 2013; referred to the
5 Committee on the Judiciary then Finance.]

6 **FISCAL**
7 **NOTE**

8
9
10 A BILL to amend and reenact §15-12-2 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §49-6-11 of said code;
12 and to amend said code by adding thereto a new section,
13 designated §61-8-17, all relating to the crime of solicitation
14 of a minor; registration as sex offender; and criminal
15 penalties.

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

17 That §15-12-2 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted; that §49-6-11 of said code be amended and
19 reenacted; and that said code be amended by adding thereto a new
20 section, designated §61-8-17, all to read as follows:

21 **CHAPTER 15. PUBLIC SAFETY.**

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

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

13 (1) Article eight-a;

14 (2) 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16 assault of a spouse, which was repealed by an Act of the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 2000 legislative session;

18 (3) Article eight-c;

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

20 (5) Section fourteen, article two;

21 (6) Sections six, seven, twelve, ~~and~~ thirteen and seventeen,
22 article eight; or

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

1 subsection.

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

6 (d) Persons required to register under the provisions of this
7 article shall register in person at the West Virginia State Police
8 detachment responsible for covering the county of his or her
9 residence, and in doing so, provide or cooperate in providing, at
10 a minimum, the following when 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;

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

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

5 (6) Fingerprints and palm prints;

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

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

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

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

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

20 (2) Notwithstanding any provision of this article to the
21 contrary, a court of this state shall, upon presiding over a
22 criminal matter resulting in conviction or a finding of not guilty
23 by reason of mental illness, mental retardation or addiction of a
24 qualifying offense, cause, within seventy-two hours of entry of the

1 commitment or sentencing order, the transmittal to the sex offender
2 registry for inclusion in the registry all information required for
3 registration by a registrant as well as the following
4 nonidentifying information regarding the victim or victims:

5 (A) His or her sex;

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

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

8 The provisions of this paragraph do not relieve a person
9 required to register pursuant to this section from complying with
10 any provision of this article.

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

14 (1) Identifying factors, including physical characteristics;

15 (2) History of the offense; and

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

18 (g) At the time the person is convicted or found not guilty by
19 reason of mental illness, mental retardation or addiction in a
20 court of this state of the crimes set forth in subsection (b) of
21 this section, the person shall sign in open court a statement
22 acknowledging that he or she understands the requirements imposed
23 by this article. The court shall inform the person so convicted of
24 the requirements to register imposed by this article and shall

1 further satisfy itself by interrogation of the defendant or his or
2 her counsel that the defendant has received notice of the
3 provisions of this article and that the defendant understands the
4 provisions. The statement, when signed and witnessed, constitutes
5 prima facie evidence that the person had knowledge of the
6 requirements of this article. Upon completion of the statement,
7 the court shall provide a copy to the registry. Persons who have
8 not signed a statement under the provisions of this subsection and
9 who are subject to the registration requirements of this article
10 must be informed of the requirement by the State Police whenever
11 the State Police obtain information that the person is subject to
12 registration requirements.

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

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

23 (1) Sexual assault in the first degree as set forth in section
24 three, article eight-b, chapter sixty-one of this code or of a

1 similar provision in another state, federal or military
2 jurisdiction;

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

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

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

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

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

1 (1) For purposes of this article, the term "mental
2 abnormality" means a congenital or acquired condition of a person,
3 that affects the emotional or volitional capacity of the person in
4 a manner that predisposes that person to the commission of criminal
5 sexual acts to a degree that makes the person a menace to the
6 health and safety of other persons.

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

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

14 **CHAPTER 49. CHILD WELFARE.**

15 **ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**

16 **§49-6-11. Conviction for offenses against children.**

17 In any case where a person is convicted of an offense
18 described in section twelve or seventeen, article eight, chapter
19 sixty-one of this code or articles eight-b or eight-d of said
20 chapter against a child and the person has custodial, visitation or
21 other parental rights to the child who is the victim of the offense
22 or to any child who resides in the same household as the victim,
23 the court shall, at the time of sentencing, find that the person is

1 an abusing parent within the meaning of this chapter as to the
2 child victim, and may find that the person is an abusing parent as
3 to any child who resides in the same household as the victim, and
4 the court shall take such further steps as are required by this
5 article.

6 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

7 **ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

8 **§61-8-17. Soliciting a minor.**

9 (a) A person over the age of eighteen commits the crime of
10 soliciting a minor if the person knowingly contacts or communicates
11 with or attempts to contact or communicate with a minor at least
12 two years younger than such person, with the intent to persuade,
13 lure, entice, solicit or seduce the minor to:

14 (1) Accompany the person in any manner, including entering
15 into a vehicle, building, dwelling or onto any vessel if such
16 person does not have the express or implied permission of the
17 parent, guardian, or other legal custodian of the child in
18 undertaking the activity: *Provided*, That such person is not a law-
19 enforcement officer, medic, firefighter, or other person who
20 regularly provides emergency services while acting in his or her
21 official capacity, or an employee or agent of, or volunteer acting
22 under the direction of any such person; or

23 (2) Commit any illegal act proscribed by the provisions of

1 article eight, eight-a, eight-b, eight-c or eight-d of this
2 chapter, or any felony offense under section four hundred one,
3 article four, chapter sixty-a of this code.

4 (b) Any person who violates or attempts to violate the
5 provisions of this section is guilty of a felony and, upon
6 conviction thereof, shall be imprisoned in a state correctional
7 facility not less than two nor more than fifteen years, or fined
8 not more than \$10,000, or both confined and fined. For a second
9 offense, the person is guilty of a felony and, upon conviction,
10 shall be imprisoned in a state correctional facility not more than
11 twenty years, or fined not more than \$25,000, or both confined and
12 fined.

13 (c) In any case where the person convicted of an offense under
14 this section is a parent, guardian, or legal custodian of the
15 minor, the court shall find that the person is an abusing parent,
16 guardian or custodian within the meaning of article six, chapter
17 forty-nine of this code, and shall take such further action in
18 accordance with the provisions of that article.

NOTE: The purpose of this bill is to create the crime of soliciting a minor; provide penalties; and require that the offender register on the sex offender registry.

Strike-throughs in §15-12-2 and §49-6-11 indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§61-8-17 is new; therefore, it has been completely

underscored.