

1 **H. B. 2478**

2  
3 (By Delegates Sobonya and Border)

4 [Introduced February 15, 2013; referred to the  
5 Committee on the Judiciary.]  
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10 A BILL to amend and reenact §15-12-2 of the Code of West Virginia,  
11 1931, as amended, relating to the Sex Offender Registration  
12 Act; and requiring persons incarcerated for sex offenses to  
13 register as such at the time they are incarcerated.

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

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

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

18 **§15-12-2. Registration.**

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

21 (b) Any person ~~who has been~~ convicted of an offense or an  
22 attempted offense or ~~has been~~ found not guilty by reason of mental  
23 illness, mental retardation or addiction of an offense under ~~any of~~

1 ~~the following provisions of~~ chapter sixty-one of this code or under  
2 a statutory provision of another state, the United States Code or  
3 the Uniform Code of Military Justice which requires proof of the  
4 same essential elements shall register as set forth in subsection  
5 (d) of this section and according to the internal management rules  
6 promulgated by the superintendent under authority of section  
7 twenty-five, article two of this chapter:

8 (1) Article eight-a;

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11 assault of a spouse, which was repealed by an Act of the  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

13 (3) Article eight-c;

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

15 (5) Section fourteen, article two;

16 (6) Sections six, seven, twelve and thirteen, article eight;

17 or

18 (7) Section fourteen-b, article three-c, as it relates to  
19 violations ~~of those provisions~~ of chapter sixty-one listed in this  
20 subsection.

21 (c) Any person who has been convicted of a criminal offense  
22 and the sentencing judge made a written finding that the offense  
23 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 who are not incarcerated shall register in person at the  
4 West Virginia State Police detachment responsible for covering the  
5 county of his or her residence, ~~and in doing so,~~ Notwithstanding  
6 any contrary law, persons sentenced to jail or a correctional  
7 facility shall register at the time they are initially  
8 incarcerated. Registrants shall provide or cooperate in providing,  
9 at a minimum, the following when registering:

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

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

23 (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

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

21 (2) Notwithstanding any contrary provision of this article ~~to~~  
22 ~~the contrary~~, a court of this state shall, upon presiding over a  
23 criminal matter resulting in conviction or a finding of not guilty

1 by reason of mental illness, mental retardation or addiction of a  
2 qualifying offense, cause, within seventy-two hours of entry of the  
3 commitment or sentencing order, the transmittal to the sex offender  
4 registry for inclusion in the registry all information required for  
5 registration by a registrant as well as the following  
6 nonidentifying information regarding the victim or victims:

7 (A) His or her sex;

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

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

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

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

16 (1) Identifying factors, including physical characteristics;

17 (2) History of the offense; and

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

20 (g) At the time the person is convicted or found not guilty by  
21 reason of mental illness, mental retardation or addiction in a  
22 court of this state of the crimes set forth in subsection (b) of  
23 this section, the person shall sign in open court a statement

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

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

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

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

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

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

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

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

23 (k) For purposes of this article, the term "sexually violent



1 predator" means a person who has been convicted or found not guilty  
2 by reason of mental illness, mental retardation or addiction of a  
3 sexually violent offense and who suffers from a mental abnormality  
4 or personality disorder that makes the person likely to engage in  
5 predatory sexually violent offenses.

6 (l) For purposes of this article, the term "mental  
7 abnormality" means a congenital or acquired condition of a person,  
8 that affects the emotional or volitional capacity of the person in  
9 a manner that predisposes that person to the commission of criminal  
10 sexual acts to a degree that makes the person a menace to the  
11 health and safety of other persons.

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

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