

H. B. 2501

(By Delegates Rowan, L. Phillips, Border, Campbell, Arvon,
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[Introduced January 29, 2015; referred to the
Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend and reenact §15-12-2 of the Code of West Virginia, 1931, as amended; and to
amend and reenact §62-11D-3 of said code, all relating to sex offenders; prohibiting sexual
offenders from residing within one thousand feet of a school or childcare facility; requiring
persons, as a condition of probation, parole or supervised release, convicted of sexual crimes
against a minor be subject to global positional system monitoring for life; and providing for
a felony penalty.

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;
and that §62-11D-3 of said code be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

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

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

7 (1) Article eight-a;

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9 the offense of sexual assault of a spouse, which was repealed by an Act of the Legislature during the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

11 (3) Article eight-c;

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

13 (5) Section fourteen, article two;

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

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

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

19 (d) Persons required to register under ~~the provisions of~~ this article shall register in person at
20 the West Virginia State Police detachment responsible for covering the county of his or her
21 residence, and in doing so, provide or cooperate in providing, at a minimum, the following when
22 registering:

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

3 (2) The address where the registrant intends to reside or resides at the time of registration,
4 the address of any habitable real property owned or leased by the registrant that he or she regularly
5 visits: *Provided*, That a post office box may not be provided in lieu of a physical residential address,
6 the name and address of the registrant's employer or place of occupation at the time of registration,
7 the names and addresses of any anticipated future employers or places of occupation, the name and
8 address of any school or training facility the registrant is attending at the time of registration and the
9 names and addresses of any schools or training facilities the registrant expects to attend;

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

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

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

13 (6) Fingerprints and palm prints;

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

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

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

1 (e) (1) On the date that any person convicted or found not guilty by reason of mental illness,
2 mental retardation or addiction of any of the crimes listed in subsection (b) of this section,
3 hereinafter referred to as a "qualifying offense", including those persons who are continuing under
4 some post-conviction supervisory status, are released, granted probation or a suspended sentence,
5 released on parole, probation, home detention, work release, conditional release or any other release
6 from confinement, the Commissioner of Corrections, regional jail administrator, city official or
7 sheriff operating a jail or Secretary of the Department of Health and Human Resources who releases
8 the person and any parole or probation officer who releases the person or supervises the person
9 following the release, shall obtain all information required by subsection (d) of this section prior to
10 the release of the person, inform the person of his or her duty to register and send written notice of
11 the release of the person to the State Police within three business days of receiving the information.
12 The notice must include the information required by said subsection. Any person having a duty to
13 register for a qualifying offense shall register upon conviction, unless that person is confined or
14 incarcerated, in which case he or she shall register within three business days of release, transfer or
15 other change in disposition status. Any person currently registered who is incarcerated for any
16 offense shall reregister within three business days of his or her release.

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

1 (A) His or her sex;

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

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

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

6 (f) For any person determined to be a sexually violent predator, the notice required by
7 subsection (d) of this section 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 abnormality or personality
11 disorder.

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

1 State Police obtain information that the person is subject to registration requirements.

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

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

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

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

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

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

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

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

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

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

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

10 (o) Notwithstanding any other provision of this code to the contrary, a person required to
11 register under this section may not reside within one thousand feet of a school or childcare facility.
12 Any person violating this subsection is guilty of a felony and, upon conviction thereof, shall be
13 imprisoned in a state correctional facility for not less than two years nor more than ten years.

14 **CHAPTER 62. CRIMINAL PROCEDURE.**

15 **ARTICLE 11D. HEIGHTENED EXAMINATION AND SUPERVISION FOR CERTAIN**
16 **SEX OFFENDERS.**

17 **§62-11D-3. Electronic monitoring of certain sex offenders under supervision; tampering with**
18 **devices; offenses and penalties.**

19 (a) Notwithstanding any provisions of this code to the contrary, any person convicted of
20 committing a sexual crime against a minor pursuant to article eight-b, chapter sixty-one of this code,
21 who is on probation, parole or supervised release, is subject to global positioning system monitoring
22 as a condition of probation, parole or supervised release for the duration of his or her life. Any

1 person designated as a sexually violent predator pursuant to ~~the provisions of~~ section two-a, article
2 twelve, chapter fifteen who is on probation, parole or supervised release, ~~shall be~~ is subject to
3 electronic monitoring as a condition of probation, parole or supervised release. A person required
4 to register as a sex offender pursuant to ~~the provisions of~~ article twelve, chapter fifteen of this code
5 may, as a condition of probation, parole or supervised release, be subject to electronic monitoring.

6 (b) Upon being placed on supervision, a person required to undergo electronic monitoring
7 pursuant to ~~the provisions of~~ this section, other than persons convicted of sexual crimes against a
8 minor subjected to global positioning system monitoring in accordance with this section, shall be
9 placed at a minimum on radio frequency monitoring with curfews enforced. Following an assessment
10 designed to determine the level and type of electronic monitoring necessary to effectuate the
11 protection of the public, a supervised person, other than persons convicted of sexual crimes against
12 a minor in accordance with this section, may be placed on a system providing a greater or lesser
13 degree of monitoring.

14 (c) A person subject to ~~the provisions of~~ this section ~~shall be~~ is responsible for the cost of the
15 global positioning system or electronic monitoring. In the event a person required to submit to
16 global positioning system or electronic monitoring as required by ~~the provisions of~~ this section is
17 unable to pay for the global positioning system or electronic monitoring, that person may present an
18 affidavit reflecting the inability to pay for ~~such the~~ monitoring to the circuit court of the county of
19 supervision. If it appears to the satisfaction of the court that ~~such the~~ person is in fact financially
20 unable to pay for ~~such the~~ monitoring, the court shall issue an order reflecting ~~such its~~ findings and
21 forward ~~said the~~ order to the supervising entity. Upon receipt of ~~such the~~ order, the supervising
22 entity ~~shall then be~~ is responsible for paying for ~~each testing~~ the monitoring.

1 (d) The assessment required by ~~the provisions of~~ subsection (b) of this section shall be
2 completed not later than thirty days after the supervised person begins serving probation or parole
3 or supervised release. Under no circumstances may a person of whom electronic monitoring has
4 been mandated as a condition of supervision be on a type of monitoring less effective than voice
5 verification with a curfew.

6 (e) Any person who intentionally alters, tampers with, damages or destroys any global
7 positioning system or electronic monitoring equipment, with the intent to remove the device or
8 impair its effectiveness, is guilty of a felony and, upon conviction thereof, shall be confined in a state
9 correctional facility for not less than one year nor more than ten years.

NOTE: The purpose of this bill is to prohibit sexual offenders from residing within one thousand feet of a school or childcare facility. The bill requires persons, as a condition of probation, parole or supervised release, convicted of sexual crimes against a minor be subject to global positional system monitoring for life. The bill also provides for a felony penalty.

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