

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 338**

BY SENATORS TRUMP, KESSLER, WOELFEL, PALUMBO,

ROMANO, STOLLINGS, PLYMALE AND YOST

[Introduced January 21, 2016;

Referred to the Committee on Health and Human

Resources; and then to the Committee on the Judiciary.]

1 A BILL to amend and reenact §61-7A-1, §61-7A-2, §61-7A-3 and §61-7A-4 of the Code of West  
 2 Virginia, 1931, as amended, all relating generally to compiling and maintaining the West  
 3 Virginia Central State Mental Health Registry; clarifying that only certain mental illness  
 4 commitments are to be reported to the registry; and prohibiting reporting children under  
 5 fourteen years of age to registry.

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

1 That §61-7A-1, §61-7A-2, §61-7A-3 and §61-7A-4 of the Code of West Virginia, 1931, as  
 2 amended, be amended and reenacted, all to read as follows;

**ARTICLE 7A. STATE MENTAL HEALTH REGISTRY; REPORTING OF PERSONS  
 PROSCRIBED FROM FIREARM POSSESSION DUE TO MENTAL CONDITION  
 TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM;  
 LEGISLATIVE FINDINGS; DEFINITIONS; REPORTING REQUIREMENTS;  
 REINSTATEMENT OF RIGHTS PROCEDURES.**

**§61-7A-1. Legislative intent.**

1 It is the intention of the Legislature in the enactment of this article to clarify the persons  
 2 whom it intends to proscribe from the possession of firearms due to ~~substance~~ abuse or mental  
 3 illness; establish a process in reporting the names of persons proscribed from possession of  
 4 firearms due to mental illness to the central state mental health registry; authorize reporting by  
 5 registry to the National Instant Criminal Background Check System; and to prescribe a means for  
 6 reinstating one's ability to lawfully possess a firearm.

**§61-7A-2. Definitions.**

1 As used in this article and as the terms are deemed to mean in 18 U.S.C. § 922(g) and  
 2 section seven, article seven of this chapter as each exists as of January 31, 2008:

3 (1) "A person adjudicated as a mental defective" means a person who has been  
 4 determined by a duly authorized court, tribunal, board or other entity to be mentally ill to the point

5 where he or she has been found to be incompetent to stand trial due to mental illness or insanity,  
 6 has been found not guilty in a criminal proceeding by reason of mental illness or insanity or has  
 7 been determined to be unable to handle his or her own affairs due to mental illness or insanity. A  
 8 child under 14 years of age is not considered “a person adjudicated as mental defective” for  
 9 purposes of this article.

10 (2) “Committed to a mental institution” means to have been involuntarily committed for  
 11 treatment pursuant to the provisions of chapter twenty-seven of this code. Children under 14  
 12 years of age are not considered “committed to a mental institution” for purposes of this article.  
 13 “Committed to a mental institution” does not mean voluntary admission for mental health  
 14 treatment.

15 (3) “Mental institution” means any facility or part of a facility used for the treatment of  
 16 persons committed for treatment of mental illness ~~or addiction.~~

**§61-7A-3. Persons whose names are to be supplied to the central state mental health registry.**

1 (a) The Superintendent of the West Virginia State Police and the Secretary of the  
 2 Department of Health and Human Resources, or their designees, shall cooperate with the circuit  
 3 clerk of each county and Administrator of the West Virginia Supreme Court of Appeals in compiling  
 4 and maintaining a database containing the names and identifying information of persons who  
 5 have been adjudicated to be mentally defective or who have been committed to a mental  
 6 institution. ~~for treatment of a mental illness pursuant to the provisions of chapter twenty-seven of~~  
 7 ~~this code~~ The registry shall be maintained by the Administrator of the Supreme Court of Appeals  
 8 or the superintendent of the West Virginia State Police.

9 (b) The name of any person who has been adjudicated to be mentally defective or who  
 10 has been committed to a mental institution ~~for treatment of a mental illness pursuant to the~~  
 11 ~~provisions of chapter twenty-seven of this code which~~ shall be provided to the Administrator of  
 12 the Supreme Court of Appeals or the superintendent of the West Virginia State Police for inclusion

13 in the central state mental health registry. Upon receipt of the information being received by the  
14 central state mental health registry it may be transmitted to the National Instant Criminal  
15 Background Check System and to county sheriffs;

16 (c) The Secretary of Department of Human Resources and the circuit clerk of each county  
17 shall, as soon as practicable after the effective date of this article, supply to the Administrator of  
18 the Supreme Court of Appeals or the superintendent of the West Virginia State Police for inclusion  
19 in the central state mental health registry the name and identifying information required by the  
20 provisions of subsection (d) of this section of all persons covered by the provisions of this article  
21 and shall on an ongoing basis continue to provide such information as it is developed;

22 (d) The central state mental health registry shall contain the name, address at the time of  
23 commitment or adjudication, date of birth, date of commitment or adjudication ~~and~~ of all persons  
24 who have been adjudicated to be mentally defective or who have been committed to a mental  
25 institution ~~for treatment of a mental illness pursuant to the provisions of chapter twenty-seven of~~  
26 ~~this code~~

27 (e) The central state mental health registry shall provide only such information about a  
28 person on the registry to county sheriffs and the National Instant Criminal Background Check  
29 System as is necessary to identify registrants; and

30 (f) On or before January 1, 2010, the central state mental health registry shall contain the  
31 name, address at the time of commitment or adjudication, date of birth, date of commitment or  
32 adjudication and any other identifying characteristics of all persons who have been adjudicated  
33 to be mentally defective or who have been committed to a mental institution ~~for treatment of a~~  
34 ~~mental illness pursuant to the provisions of chapter twenty-seven of this code~~. Under no  
35 circumstances shall the registry contain information relating to any diagnosis or treatment  
36 provided.

**§61-7A-4. Confidentiality; limits on use of registry information.**

1 (a) Notwithstanding any provision of this code to the contrary, the superintendent of the

2 State Police, the Secretary of the Department of Health and Human Resources, ~~and~~ the circuit  
3 clerks, and the Administrator of the Supreme Court of Appeals may provide notice to the central  
4 state mental health registry and the National Instant Criminal Background Check System  
5 established pursuant to Section 103(d) of the Brady Handgun Violence Protection Act, 18 U.S.C.  
6 §922, that a person: (i) Has been involuntarily committed to a mental institution ~~as provided in~~  
7 ~~chapter twenty-seven of this code~~; (ii) has been adjudicated as a mental defective ~~mentally~~  
8 ~~incompetent in a proceeding under article six-a of this chapter~~; or (iii) has regained the ability to  
9 possess a firearm by order of a circuit court in a proceeding under section five of this article.

10 (b) The information contained in the central state mental health registry is to be used solely  
11 for the purpose of records checks related to firearms purchases and for eligibility for a state license  
12 or permit to possess or carry a concealed firearm.

13 (c) Whenever a person's name and other identifying information has been added to the  
14 central state mental health registry, a review of the state concealed handgun registry shall be  
15 undertaken and if such review reveals that the person possesses a current concealed handgun  
16 license, the sheriff of the county issuing the concealed handgun license shall be informed of the  
17 person's change in status.

NOTE: The purpose of this bill is to clarify that only mental illness commitments under chapter 27 of the code are to be included in the registry established for prohibition of firearms; to prohibit reporting of children under the age of 14 to the registry; and clarify reporting provisions.

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