

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 338**

BY SENATORS TRUMP, KESSLER, WOELFEL, PALUMBO,

ROMANO, STOLLINGS, PLYMALE AND YOST,

*original sponsors*

[Passed March 10, 2016; in effect 90 days from passage]



1 AN ACT 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 of West  
3 Virginia Central State Mental Health Registry; clarifying that only certain mental illness  
4 commitments are to be reported to registry; prohibiting reporting children under fourteen  
5 years of age to registry; requiring names to be reported to Administrator of the Supreme  
6 Court of Appeals; and making technical corrections.

*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 mental illness; establish a  
3 process in reporting the names of persons proscribed from possession of firearms due to mental  
4 illness to the central state mental health registry; authorize reporting by registry to the National  
5 Instant Criminal Background Check System; and to prescribe a means for reinstating one's ability  
6 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 fourteen years of age is not considered "a person adjudicated as a mental defective"  
9 for 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  
12 fourteen years of age are not considered "committed to a mental institution" for purposes of this  
13 article. "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.

**§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. The registry shall be maintained by the Administrator of the Supreme Court of Appeals  
7 or the superintendent of the West Virginia State Police.

8 (b) The name of any person who has been adjudicated to be mentally defective or who  
9 has been committed to a mental institution shall be provided to the Administrator of the Supreme  
10 Court of Appeals or the Superintendent of the West Virginia State Police for inclusion in the central

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

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

20 (d) The central state mental health registry shall contain the name, address at the time of  
21 commitment or adjudication, date of birth, date of commitment or adjudication of all persons who  
22 have been adjudicated to be mentally defective or who have been committed to a mental  
23 institution.

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

27 (f) On or before January 1, 2010, the central state mental health registry shall contain the  
28 name, address at the time of commitment or adjudication, date of birth, date of commitment or  
29 adjudication and any other identifying characteristics of all persons who have been adjudicated  
30 to be mentally defective or who have been committed to a mental institution . Under no  
31 circumstances shall the registry contain information relating to any diagnosis or treatment  
32 provided.

33 (g) To the extent the central state mental health registry contains the names of any children  
34 under fourteen years of age on the effective date of this article, the Administrator of the West  
35 Virginia Supreme Court of Appeals shall take whatever steps are necessary to remove those  
36 individuals from the central state mental health registry.

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2016.

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*Governor*