

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 404

BY SENATORS WELD AND CLINE

[Introduced January 26, 2018; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §15-12-2 and §15-12-4 of the Code of West Virginia, 1931, as
 2 amended, all relating to the sex offender registry information provided by offenders to be
 3 consistent with criminal code; and clarifying duration of registration for qualifying offenders
 4 as related to perceived minors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2. Registration.

1 (a) The provisions of this article apply both retroactively and prospectively.

2 (b) Any person who has been convicted of an offense or an attempted offense or has been
 3 found not guilty by reason of mental illness, mental retardation or addiction of an offense under
 4 any of the following provisions of ~~chapter sixty-one~~ of this code or under a statutory provision of
 5 another state, the United States Code or the Uniform Code of Military Justice which requires proof
 6 of the same essential elements shall register as set forth in subsection (d) of this section and
 7 according to the internal management rules promulgated by the superintendent under authority
 8 of §15-2-25 of this code:

9 (1) §61-8A-1 *et seq.* of this code;

10 (2) §61-8B-1 *et seq.* of this code, including the provisions of former §61-8B-6 of this code,
 11 relating to the offense of sexual assault of a spouse, which was repealed by an Act of the
 12 Legislature during the year 2000 legislative session;

13 (3) §61-8C-1 *et seq.* of this code;

14 (4) §61-8D-5 and §61-8D-6 of this code;

15 (5) §61-2-14 *et seq.* of this code;

16 (6) §61-8-6, §61-8-7, §61-8-12, and §61-8-13 of this code;

17 (7) §61-3C-14b of this code, as it relates to violations of those provisions of chapter 61
 18 listed in this subsection; or

19 (8) §61-14-2, §61-14-5 and §61-14-6 of this code: *Provided*, That as to §61-14-2 of this
20 code only those violations involving human trafficking for purposes of sexual servitude require
21 registration pursuant to this subdivision.

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

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

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

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

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

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

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

42 (6) Fingerprints and palm prints;

43 (7) Information related to any motor vehicle, trailer or motor home owned or regularly
44 operated by a registrant, including vehicle make, model, color and license plate number: *Provided*,

45 That for the purposes of this article, the term "trailer" ~~shall mean~~ means travel trailer, fold-down
46 camping trailer and house trailer as those terms are defined in §17A-1-1 of this code;

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

49 (9) Information related to any telephone or electronic paging device numbers that the
50 registrant has or uses, including, but not limited to, residential, work and mobile telephone
51 numbers;

52 (10) A photocopy of a valid driver's license or identification card, including a tribal
53 identification card, issued to the sex offender by a jurisdiction;

54 (11) A photocopy of passport and immigration documents; and

55 (12) A photocopy of professional licensing information that authorizes the registrant to
56 engage in an occupation or carry out a trade or business.

57 (e) (1) On the date that any person convicted or found not guilty by reason of mental
58 illness, mental retardation or addiction of any of the crimes listed in subsection (b) of this section,
59 hereinafter referred to as a "qualifying offense", including those persons who are continuing under
60 some post-conviction supervisory status, are released, granted probation or a suspended
61 sentence, released on parole, probation, home detention, work release, conditional release or
62 any other release from confinement, the Commissioner of Corrections, regional jail administrator,
63 city official or sheriff operating a jail or Secretary of the Department of Health and Human
64 Resources who releases the person and any parole or probation officer who releases the person
65 or supervises the person following the release, shall obtain all information required by subsection
66 (d) of this section prior to the release of the person, inform the person of his or her duty to register
67 and send written notice of the release of the person to the State Police within three business days
68 of receiving the information. The notice must include the information required by said subsection.
69 Any person having a duty to register for a qualifying offense shall register upon conviction, unless
70 that person is confined or incarcerated, in which case he or she shall register within three business

71 days of release, transfer or other change in disposition status. Any person currently registered
72 who is incarcerated for any offense shall re-register within three business days of his or her
73 release.

74 (2) Notwithstanding any provision of this article to the contrary, a court of this state shall,
75 upon presiding over a criminal matter resulting in conviction or a finding of not guilty by reason of
76 mental illness, mental retardation or addiction of a qualifying offense, cause, within 72 hours of
77 entry of the commitment or sentencing order, the transmittal to the sex offender registry for
78 inclusion in the registry all information required for registration by a registrant as well as the
79 following nonidentifying information regarding the victim or victims:

80 (A) His or her sex;

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

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

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

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

87 (1) Identifying factors, including physical characteristics;

88 (2) History of the offense; and

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

91 (g) At the time the person is convicted or found not guilty by reason of mental illness,
92 mental retardation or addiction in a court of this state of the crimes set forth in subsection (b) of
93 this section, the person shall sign in open court a statement acknowledging that he or she
94 understands the requirements imposed by this article. The court shall inform the person so
95 convicted of the requirements to register imposed by this article and shall further satisfy itself by
96 interrogation of the defendant or his or her counsel that the defendant has received notice of the

97 provisions of this article and that the defendant understands the provisions. The statement, when
98 signed and witnessed, constitutes prima facie evidence that the person had knowledge of the
99 requirements of this article. Upon completion of the statement, the court shall provide a copy to
100 the registry. Persons who have not signed a statement under the provisions of this subsection
101 and who are subject to the registration requirements of this article must be informed of the
102 requirement by the State Police whenever the State Police obtain information that the person is
103 subject to registration requirements.

104 (h) The State Police shall maintain a central registry of all persons who register under this
105 article and shall release information only as provided in this article. The information required to
106 be made public by the State Police by §15-12-5(b)(2) of this code is to be accessible through the
107 Internet. No information relating to telephone or electronic paging device numbers a registrant
108 has or uses may be released through the Internet.

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

110 (1) Sexual assault in the first degree as set forth in §61-8B-3 of this code or of a similar
111 provision in another state, federal or military jurisdiction;

112 (2) Sexual assault in the second degree as set forth §61-8B-4 of this code or of a similar
113 provision in another state, federal or military jurisdiction;

114 (3) Sexual assault of a spouse as set forth in the former provisions of §61-8B-6 of this
115 code, which was repealed by an Act of the Legislature during the 2000 legislative session, or of
116 a similar provision in another state, federal or military jurisdiction;

117 (4) Sexual abuse in the first degree as set forth in §61-8B-7 of this code or of a similar
118 provision in another state, federal or military jurisdiction;

119 (5) Sexual assault in the third degree of an adult who is incapacitated as set forth in §61-
120 8B-5 of this code or of a similar provision in another state, federal or military jurisdiction;

121 (6) Human trafficking as set forth in §61-2-17 of this code or of a similar provision in
122 another state, federal or military jurisdiction;

123 (7) Criminal invasion of privacy as set forth in §61-8-28 of this code or of a similar provision
124 in another state, federal or military jurisdiction;

125 (8) Indecent exposure as set forth in §61-8-9 of this code or of a similar provision in another
126 state, federal or military jurisdiction; and

127 (9) Conspiracy as set forth in §61-6-7 of this code or of a similar provision in another state,
128 federal or military jurisdiction.

129 (j) For purposes of this article, the term “sexually motivated” means that one of the
130 purposes for which a person committed the crime was for any person’s sexual gratification.

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

135 (l) For purposes of this article, the term “mental abnormality” means a congenital or
136 acquired condition of a person, that affects the emotional or volitional capacity of the person in a
137 manner that predisposes that person to the commission of criminal sexual acts to a degree that
138 makes the person a menace to the health and safety of other persons.

139 (m) For purposes of this article, the term “predatory act” means an act directed at a
140 stranger or at a person with whom a relationship has been established or promoted for the primary
141 purpose of victimization.

142 (n) For the purposes of this article, the term “business days” means days exclusive of
143 Saturdays, Sundays and legal holidays as defined in §2-2-1 of this code.

§15-12-4. Duration.

1 (a) A person required to register under the terms of this article shall continue to comply
2 with this section, except during ensuing periods of incarceration or confinement, until:

3 (1) Ten years have elapsed since the person was released from prison, jail or a mental
4 health facility or 10 years have elapsed since the person was placed on probation, parole or

5 supervised or conditional release. The 10-year registration period ~~shall~~ may not be reduced by
6 the sex offender's release from probation, parole or supervised or conditional release; or

7 (2) For the life of that person if that person: (A) Has one or more prior convictions or has
8 previously been found not guilty by reason of mental illness, mental retardation or addiction for
9 any qualifying offense referred to in this article; (B) has been convicted or has been found not
10 guilty by reason of mental illness, mental retardation or addiction of a qualifying offense as
11 referred to in this article, and upon motion of the prosecuting attorney, the court finds by clear and
12 convincing evidence, that the qualifying offense involved multiple victims or multiple violations of
13 the qualifying offense; (C) has been convicted or has been found not guilty by reason of mental
14 illness, mental retardation or addiction of a sexually violent offense; (D) has been determined
15 pursuant to §15-12-2a of this code to be a sexually violent predator; or (E) has been convicted or
16 has been found not guilty by reason of mental illness, mental retardation or addiction of a
17 qualifying offense as referred to in this article, involving a minor or perceived minor.

18 (b) A person whose conviction is overturned for the offense which required them to register
19 under this article shall, upon petition to the court, have their name removed from the registry.

NOTE: The purpose of this bill is to expand the documentation offenders have to provide to the sex offender registry to be consist with criminal violations and to clarify the duration of registry for qualifying offenders as related to perceived minors.

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