

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 404

BY SENATORS WELD AND CLINE

[Originating in the Committee on the Judiciary;

reported on February 6, 2018]

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 generally to the sex offender registry; adding required information to
3 be provided to the registry by offenders; and clarifying the duration of registration for
4 qualifying offenders as related to offenses involving perceived minors is life.

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 §15-12-2(d) of this code and according
7 to the internal management rules promulgated by the superintendent under authority of §15-2-25
8 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11 relating to the offense of sexual assault of a spouse, which was repealed by an act of the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(a) 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 where ~~and~~ the sentencing
23 judge made a written finding that the offense was sexually motivated shall also register as set
24 forth in this article.

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

45 *Provided*, That for the purposes of this article, the term “trailer” ~~shall mean~~ means travel trailer,
46 fold-down 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 government-issued identification card,
53 including a tribal identification card;

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

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

57 (13) Any identifying information, including make, model, serial number, and photograph,
58 regarding any unmanned aerial vehicle owned or operated by a registrant.

59 (e) (1) On the date that any person convicted or found not guilty by reason of mental
60 illness, mental retardation, or addiction of any of the crimes listed in §15-12-2(b) of this code,
61 hereinafter referred to as a “qualifying offense”, including those persons who are continuing under
62 some post-conviction supervisory status, are released, granted probation or a suspended
63 sentence, released on parole, probation, home detention, work release, conditional release or
64 any other release from confinement, the Commissioner of Corrections, regional jail administrator,
65 city official, or sheriff operating a jail or Secretary of the Department of Health and Human
66 Resources who releases the person and any parole or probation officer who releases the person
67 or supervises the person following the release shall obtain all information required by §15-12-2(d)
68 of this code prior to the release of the person, inform the person of his or her duty to register, and
69 send written notice of the release of the person to the State Police within three business days of
70 receiving the information. The notice must include the information required by §15-12-2(d) of this

71 code. Any person having a duty to register for a qualifying offense shall register upon conviction,
72 unless that person is confined or incarcerated, in which case he or she shall register within three
73 business days of release, transfer, or other change in disposition status. Any person currently
74 registered who is incarcerated for any offense shall re-register within three business days of his
75 or her release.

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

- 82 (A) His or her sex;
- 83 (B) His or her age at the time of the offense; and
- 84 (C) The relationship between the victim and the perpetrator.

85 The provisions of this subdivision do not relieve a person required to register pursuant to
86 this section from complying with any provision of this article.

87 (f) For any person determined to be a sexually violent predator, the notice required by
88 §15-12-2(d) of this code must also include:

- 89 (1) Identifying factors, including physical characteristics;
- 90 (2) History of the offense; and
- 91 (3) Documentation of any treatment received for the mental abnormality or personality
92 disorder.

93 (g) At the time the person is convicted or found not guilty by reason of mental illness,
94 mental retardation, or addiction in a court of this state of the crimes set forth in §15-12-2 (b) of
95 this code, the person shall sign in open court a statement acknowledging that he or she
96 understands the requirements imposed by this article. The court shall inform the person so

97 convicted or adjudicated of the requirements to register imposed by this article and shall further
98 satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received
99 notice of the provisions of this article and that the defendant understands the provisions. The
100 statement, when signed and witnessed, constitutes prima facie evidence that the person had
101 knowledge of the requirements of this article. Upon completion of the statement, the court shall
102 provide a copy to the registry. Persons who have not signed a statement under the provisions of
103 this subsection and who are subject to the registration requirements of this article must be
104 informed of the requirement by the State Police whenever the State Police obtain information that
105 the person is subject to registration requirements.

106 (h) The State Police shall maintain a central registry of all persons who register under this
107 article and shall release information only as provided in this article. The information required to
108 be made public by the State Police by §15-12-5(b)(2) of this code is to be accessible through the
109 Internet. Information relating to telephone or electronic paging device numbers a registrant has
110 or uses may not be released through the Internet.

111 (i) For the purpose of this article, “sexually violent offense” means:

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

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

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

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

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

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

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

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

134 (n) For the purposes of this article, the term “business days” means days exclusive of
135 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; ~~or~~ (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; ~~or~~ (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; ~~or~~ (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 a person believed or perceived
18 by the registrant to be a minor.

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