

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2161**

BY DELEGATE ROWAN

[Introduced January 9, 2019; Referred  
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §15-12-2 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §62-11D-3 of said code, all relating to sex offenders; prohibiting sexual  
 3 offenders from residing within 1,000 feet of a school or childcare facility; requiring persons,  
 4 as a condition of probation, parole or supervised release, convicted of sexual crimes  
 5 against a minor be subject to global positional system monitoring for life; and providing for  
 6 a felony penalty.

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

**CHAPTER 15. PUBLIC SAFETY.**

**ARTICLE 12. SEX OFFENDER REGISTRATION ACT.**

**§15-12-2. Registration.**

1 ~~(a) The provisions of this~~ This article apply applies 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 this code or under a statutory provision of another state, the  
 5 United States Code or the Uniform Code of Military Justice which requires proof of the same  
 6 essential elements shall register as set forth in §15-12-2(d) of this code and according to the  
 7 internal management rules promulgated by the superintendent under authority of §15-2-25 of this  
 8 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 11 relating to the offense of sexual assault of a spouse, which was repealed by an act of the  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 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 of  
18 this code 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 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) A person 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) 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” 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;

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 this  
95 code, the person shall sign in open court a statement acknowledging that he or she understands  
96 the requirements imposed by this article. The court shall inform the person so convicted of the

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

136 (o) Notwithstanding any other provision of this code to the contrary, a person required to  
137 register under this section may not reside within 1,000 feet of a school or childcare facility. Any  
138 person violating this subsection is guilty of a felony and, upon conviction shall be confined in a  
139 state correctional facility for not less than two years nor more than 10 years.

## CHAPTER 62. CRIMINAL PROCEDURE.

### ARTICLE 11D. HEIGHTENED EXAMINATION AND SUPERVISION FOR CERTAIN SEX OFFENDERS.

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

1 (a) Notwithstanding any provisions of this code to the contrary, any person convicted of  
2 committing a sexual crime against a minor pursuant to §61-18B-1 et seq. of this code, who is on  
3 probation, parole or supervised release, is subject to global positioning system monitoring as a  
4 condition of probation, parole or supervised release for the duration of his or her life. Any person

5 designated as a sexually violent predator pursuant to ~~the provisions of~~ §15-12-2a of this code  
6 who is on probation, parole or supervised release, ~~shall be~~ is subject to electronic monitoring as  
7 a condition of probation, parole or supervised release. A person required to register as a sex  
8 offender pursuant to ~~the provisions of~~ §15-12-1 *et seq.* of this code of this code may, as a condition  
9 of probation, parole or supervised release, be subject to electronic monitoring.

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

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

27 (d) The assessment required by ~~the provisions of~~ §62-11D-3(b) of this code shall be  
28 completed not later than thirty days after the supervised person begins serving probation or parole  
29 or supervised release. Under no circumstances may a person of whom electronic monitoring has



30 been mandated as a condition of supervision be on a type of monitoring less effective than voice  
31 verification with a curfew.

32 (e) Any person who intentionally alters, tampers with, damages or destroys any global  
33 positioning system or electronic monitoring equipment, with the intent to remove the device or  
34 impair its effectiveness, is guilty of a felony and, upon conviction thereof, shall be confined in a  
35 state 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 1,000 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 a heading or the present law and underscoring indicates new language that would be added.