

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3316

FISCAL
NOTE

By Delegates Heckert, Foggin, Anderson, Hott, Riley,
Zatezalo, Hillenbrand, Adkins, Marple, and Cooper

[Introduced February 07, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §15-15-1, §15-15-2, §15-15-3, §15-15-4, §15-15-5, §15-15-6, §15-15-7, §15-
3 15-8, §15-15-9, §15-15-10, §15-15-11, and §15-15-12, all relating to the creation of a
4 Domestic Violence Registry.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. DOMESTIC VIOLENCE REGISTRY.

§15-15-1. Intent of this Article.

1 (a) It is the intent of this article to assist law-enforcement agencies' efforts to protect the
2 public from domestic violence offenders by requiring offenders to register with the State Police
3 detachment in the county where he or she shall reside and by making certain information about the
4 offenders available to the public as provided in this article. It is not the intent of the Legislature that
5 the information be used to inflict retribution or additional punishment on any person convicted of
6 any offense requiring registration under this article. This article is intended to be regulatory in
7 nature and not penal.

8 (b) The Legislature finds and declares that there is a compelling and necessary public
9 interest that the public have information concerning persons convicted of domestic violence
10 offenses in order to allow members of the public to adequately protect themselves and their
11 children from these persons.

12 (c) The Legislature also finds and declares that persons required to register as domestic
13 violence offenders pursuant to this article have a reduced expectation of privacy because of the
14 state's interest in public safety.

§15-15-2. Definitions.

1 The following terms when used in this article have meanings ascribed to them in this
2 section, except in those instances where the context clearly indicates a different meaning:

3 (a) "Domestic violence registry" or "registry" means the registry created by this article
4 which contains the names of individuals who have been charged, indicted, or convicted of a felony

5 or a misdemeanor offense constituting domestic violence.

6 (b) "Domestic violence" is a set of crimes that are described in §61-2-28 and §61-2-9d of
7 this code:

8 (1) *Domestic battery.* - Any person who unlawfully and intentionally makes physical contact
9 of an insulting or provoking nature with his or her family or household member, or unlawfully and
10 intentionally causes physical harm to his or her family or household member is guilty of a
11 misdemeanor.

12 (2) *Domestic assault.* - Any person who unlawfully attempts to commit a violent injury
13 against his or her family or household member, or unlawfully commits an act that places his or her
14 family or household member in reasonable apprehension of immediately receiving a violent injury,
15 is guilty of a misdemeanor.

16 (3) *Strangulation.* - Any person who strangles, suffocates, or asphyxiates another without
17 that person's consent and thereby causes the other person bodily injury or loss of consciousness
18 is guilty of a felony: *Provided*, That the victim of the strangulation is a household member or
19 another group included in the domestic violence definitions of this code.

20 (4) *Intimate Partner.* - Means a current or former spouse, a person with whom one shares a
21 child in common, a person with whom one is cohabiting or has cohabited, or a person with whom
22 one is or has been in a relationship of a romantic or intimate nature.

§15-15-3. 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 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 §15-15-3 of this code and according to the internal
7 management rules promulgated by the superintendent under authority of §15-2-25 of this code:

8 (1) §61-2-28 of this code; and

9 (2) §61-2-9d of this code;

10 (3) Either of the crimes outlined in the section above where the crime was committed
11 against an "intimate partner."

12 (c) Any person who has been convicted of a criminal offense where the sentencing judge
13 made a written finding that the offense was found to be domestic violence shall also register as set
14 forth in this article.

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

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

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

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

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

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

32 (6) The registrant's fingerprints and palm prints;

33 (7) Information related to any motor vehicle, trailer, or motor home owned or regularly

operated by a registrant, including vehicle make, model, color, and license plate number:
Provided, That for the purposes of this article, the term "trailer" means travel trailer, fold-down
camping trailer, and house trailer as those terms are defined in §17A-1-1 of this code;

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

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

(10) A photocopy of a valid driver's license or government-issued identification card,
including a tribal identification card;

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

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

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

(e) On the date that any person convicted or found not guilty by reason of mental illness,
mental retardation, or addiction of any of the crimes listed in §15-15-3 of this code, hereinafter
referred to as a "qualifying offense", including those persons who are continuing under some post-
conviction supervisory status, are released, granted probation or a suspended sentence, released
on parole, probation, home detention, work release, conditional release or any other release from
confinement, the Commissioner of Corrections, regional jail administrator, city official, or sheriff
operating a jail or Secretary of the Department of Health and Human Resources who releases the
person and any parole or probation officer who releases the person or supervises the person
following the release shall obtain all information required by §15-15-3 of this code prior to the
release of the person, inform the person of his or her duty to register, and send written notice of the
release of the person to the State Police within three business days of receiving the information.

The notice must include the information required by §15-15-3(d) of this code. Any person having a duty to register for a qualifying offense shall register upon conviction, unless that person is confined or incarcerated, in which case he or she shall register within three business days of release, transfer, or other change in disposition status. Any person currently registered who is incarcerated for any offense shall re-register within three business days of his or her release.

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

(A) His or her sex;

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

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

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

(f) For any person determined to be a physically violent abuser, the notice required by §15-15-3(d) of this code must also include:

(1) Identifying factors, including physical characteristics;

(2) History of the offense; and

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

(g) At the time the person is convicted or found not guilty by reason of mental illness, mental retardation, or addiction in a court of this state of the crimes set forth in §15-15-3(b) of this code, the person shall sign in open court a statement acknowledging that he or she understands the requirements imposed by this article. The court shall inform the person so convicted of the

86 requirements to register imposed by this article and shall further satisfy itself by interrogation of the
87 defendant or his or her counsel that the defendant has received notice of the provisions of this
88 article and that the defendant understands the provisions. The statement, when signed and
89 witnessed, constitutes prima facie evidence that the person had knowledge of the requirements of
90 this article. Upon completion of the statement, the court shall provide a copy to the registry.
91 Persons who have not signed a statement under the provisions of this subsection and who are
92 subject to the registration requirements of this article must be informed of the requirement by the
93 State Police whenever the State Police obtain information that the person is subject to registration
94 requirements.

95 (h) The State Police shall maintain a central registry of all persons who register under this
96 article and shall release information only as provided in this article. The information required to be
97 made public by the State Police by the provisions of this code is to be accessible through the
98 Internet. Information relating to telephone or electronic paging device numbers a registrant has or
99 uses may not be released through the Internet.

100 (i) For the purposes of this article, the term "business days" means days exclusive of
101 Saturdays, Sundays, and legal holidays as defined in §2-2-1 of this code.

§15-15-4. Change in Registry Information.

1 When any person required to register under this article changes his or her residence,
2 address, place of employment or occupation, motor vehicle, trailer or motor home information
3 required by §15-15-3 of this code, or school or training facility which he or she is attending, or when
4 any of the other information required by this article changes, he or she shall, within 10 business
5 days, inform the West Virginia State Police of the changes in the manner prescribed by the
6 Superintendent of State Police in procedural rules promulgated in accordance with the provisions
7 of §29A-3-1 et seq. of this code: *Provided*, That when any person required to register under this
8 article changes his or her residence, place of employment or occupation or school or training
9 facility he or she is attending from one county of this state to another county of this state, he or she

shall inform the West Virginia State Police detachment responsible for covering the county of his or her residence within 10 business days of the change in the manner prescribed by the superintendent in procedural rules promulgated in accordance with the provisions of § 29A-3-1 *et seq.* of this code.

§15-15-5. Duration.

(a) A person required to register pursuant to the provisions of this article shall continue to comply with this section, except during ensuing periods of incarceration or confinement, until 10 years have elapsed since the person was released from prison, jail or a mental health facility or 10 years have elapsed since the person was placed on probation, parole or supervised or conditional release. The 10-year registration period shall not be reduced by the offender's release from probation, parole or supervised or conditional release.

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

§15-15-6. Distribution and disclosure of information.

(a) Within five business days after receiving any notification as described in this article, the State Police shall distribute a copy of the notification statement to:

(1) The supervisor of each county and municipal law-enforcement office and any campus police department in the city and county where the registrant resides, is employed or attends school or a training facility;

(2) The county superintendent of schools where the registrant resides, is employed or attends school or a training facility; and

(3) The Child Protective Services office charged with investigating allegations of child abuse or neglect in the county where the registrant resides, is employed or attends school or a training facility.

(4) All community organizations or religious organizations which regularly provide services to victims of domestic violence in the county where the registrant resides, owns or leases habitable

real property that he or she regularly visits, is employed or attends school or a training facility;

(5) The Federal Bureau of Investigation (FBI).

(6) The State Police detachments in the county of the offender's occupation, employment, owned or leased habitable real property and school or training.

(b) Information concerning persons whose names are contained in the domestic violence offender registry is not subject to the requirements of the West Virginia Freedom of Information Act, as set forth in §29B-1-1 et seq. of this code, and may be disclosed and disseminated only as otherwise provided in this article and as follows:

(1) When a person has been convicted of a domestic violence offense, the prosecuting attorney shall cooperate with the State Police in conducting a community notification program which is to include publication of the offender's name, photograph, place of residence, location of regularly visited habitable real property owned or leased by the offender, county of employment and place at which the offender attends school or a training facility, as well as information concerning the legal rights and obligations of both the offender and the community. Information relating to the victim of an offense requiring registration may not be released to the public except to the extent the prosecuting attorney and the State Police consider it necessary to best educate the public as to the nature of domestic violence offenses: *Provided*, That no victim's name may be released in any public notification pursuant to this subsection. No information relating to telephone or electronic paging device numbers a registrant has or uses may be released to the public with this notification program. The prosecuting attorney and State Police may conduct a community notification program in the county where a person who is required to register;

(2) The State Police shall maintain and make available to the public at least quarterly the list of all persons who are required to register. No information concerning the identity of a victim of an offense requiring registration or telephone or electronic paging device numbers a registrant has or uses may be released with this list. The method of publication and access to this list are to be determined by the superintendent; and

39 (3) A resident of a county may petition the circuit court for an order requiring the State
40 Police to release information about persons that reside or own or lease habitable real property that
41 the persons regularly visit in that county and who are required to register under the provisions of
42 this article. The court shall determine whether information contained on the list is relevant to public
43 safety and whether its relevance outweighs the importance of confidentiality. If the court orders
44 information to be released, it may further order limitations upon secondary dissemination by the
45 resident seeking the information. In no event may information concerning the identity of a victim of
46 an offense requiring registration or information relating to telephone or electronic paging device
47 numbers a registrant has or uses be released.

48 (c) The State Police may furnish information and documentation required in connection
49 with the registration to authorized law-enforcement, campus police and governmental agencies of
50 the United States and its territories, of foreign countries duly authorized to receive the same, of
51 other states within the United States and of the State of West Virginia upon proper request stating
52 that the records will be used solely for law-enforcement-related purposes. The State Police may
53 disclose information collected under this article to federal, state and local governmental agencies
54 responsible for conducting preemployment checks. The State Police also may disclose
55 information collected under this article to the Division of Motor Vehicles pursuant to the provisions
56 of §17B-2-3 of this code.

57 (d) An elected public official, public employee or public agency is immune from civil liability
58 for damages arising out of any action relating to the provisions of this section except when the
59 official, employee or agency acted with gross negligence or in bad faith.

§15-15-7. Duties of institution officials.

1 The official in charge of the place of confinement of any person required to register under
2 this article shall, before the person is paroled or released, inform that person of his or her duty to
3 register. Further, the official shall obtain the full address of the person and a statement signed by
4 the person acknowledging that the person has been informed of his or her duty to register.

§15-15-8. Release of Information to the Domestic Violence Registry.

1 Upon the request of the West Virginia State Police, agencies in possession of records
2 produced in conjunction with investigation, prosecution, adjudication, incarceration, probation,
3 parole or presentence review of a domestic violence offender and any other records produced in
4 conjunction with a domestic violence offense shall provide those records to the State Police.

§15-15-9. Information shall be released when person moves out of state.

1 A person who is required to register pursuant to the provisions of this article, who intends to
2 move to another state or country shall at least ten business days prior to such move notify the
3 State Police of his or her intent to move and of the location to which he or she intends to move, or if
4 that person is incarcerated he or she shall notify correctional officials of his or her intent to reside in
5 some other state or country upon his or her release, and of the location to which he or she intends
6 to move. Upon such notification, the State Police shall notify law-enforcement officials of the
7 jurisdiction where the person indicates he or she intends to reside of the information provided by
8 the person under the provisions of this article.

§15-15-10. Failure to register or provide notice of registration changes; penalty; penalty for aiding and abetting.

1 (a) Each time a person has a change in any of the registration information as required by
2 this article and knowingly fails to register the change or changes, each failure to register each
3 separate item of information changed shall constitute a separate offense under this section.

4 (b) Except as provided in this section, any person required to register for 10 years who
5 knowingly provides materially false information or who refuses to provide accurate information
6 when so required by the terms of this article, or who knowingly fails to register or knowingly fails to
7 provide a change in any required information as required by this article, is guilty of a misdemeanor
8 and, upon conviction thereof, shall be fined not less than \$250 nor more than \$10,000 or confined
9 in jail not more than one year, or both. Any person convicted of a second offense under this
10 subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state

correctional facility for not less than one year nor more than five years. Any person convicted of a third or subsequent offense under this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more than 25 years.

(c) In addition to any other penalty specified for failure to register under this article, any person under the supervision of a probation officer, parole officer or any other sanction short of confinement in jail or prison who knowingly refuses to register or who knowingly fails to provide a change in information as required by this article shall be subject to immediate revocation of probation or parole and returned to confinement for the remainder of any suspended or unserved portion of his or her original sentence.

(d) Any person who knows or who has reason to know that a domestic violence offender is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the domestic violence offender in eluding a law-enforcement agency that is seeking to find the sex offender to question the domestic violence offender about, or to arrest the domestic violence offender for, his or her noncompliance with the requirements of this section:

(1) Withholds information from, the law-enforcement agency about the domestic violence offender's noncompliance with the requirements of this section and, if known, the whereabouts of the domestic violence offender; or

(2) Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the domestic violence offender; or

(3) Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the domestic violence offender; or

(4) Provides information to the law-enforcement agency regarding the domestic violence offender which the person knows to be false information is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$250 nor more than \$10,000 or confined in jail not more than one year, or both: *Provided*, That where the person assists or seeks to assist a domestic violence offender whose violation of this section would constitute a felony, the person

37 shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional
38 facility for not less than one year nor more than five years.

§15-15-11. Registration of out-of-state offenders.

1 (a) When any probation or parole officer accepts supervision of and has legal authority
2 over any person required to register under this article from another state under the terms and
3 conditions of the uniform act for out-of-state parolee supervision established under §28-6-1 et seq.
4 of this code, the officer shall give the person written notice of the registration requirements of this
5 section and obtain a signed statement from the person required to register acknowledging the
6 receipt of the notice. The officer shall obtain and submit to the State Police the information
7 required in this section.

8 (b) Any person:

9 (1) Who resides in another state or federal or military jurisdiction;

10 (2) Who is employed, carries on a vocation, is a student in this state, is a visitor to this state
11 for a period of more than 15 continuous days or owns or leases habitable real property in this state
12 that he or she regularly visits; and

13 (3) Who is required by the state, federal or military jurisdiction in which he or she resides to
14 register in that state, federal or military jurisdiction as a domestic violence offender, or has been
15 convicted of a violation in that state, federal or military jurisdiction that is similar to a violation in this
16 article requiring registration as a domestic violence offender in this state, shall register in this state
17 and otherwise comply with the provisions of this article.

18 (c) Any person changing residence to this state from another state or federal or military
19 jurisdiction who is required to register as a domestic violence offender under the laws of that state
20 or federal or military jurisdiction shall register as a domestic violence offender in this state.

§15-15-12. Address and online information verification.

1 All registrants, including those for whom there has been no change in registration
2 information since their initial registration or previous address verification, must report, in the month

3 of their birth, to the State Police detachment responsible for covering their county of registration
4 and must respond to all verification inquiries and informational requests, including, but not limited
5 to, requests for online information made by the State Police pursuant to this section. As used in
6 this section, the term "online information" shall mean all information required by this article. The
7 State Police may require registrants to periodically submit to new fingerprints and photographs as
8 part of the verification process. The method of verification shall be in accordance with internal
9 management rules pertaining thereto promulgated by the superintendent under authority of this
10 article.

NOTE: The purpose of this bill is to create a Domestic Violence Registry.

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