

**FILED**

2004 DEC -2 P 4: 38

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# **WEST VIRGINIA LEGISLATURE**

THIRD EXTRAORDINARY SESSION, 2004

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**ENROLLED**

## **House Bill No. 304**

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)

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Passed November 16, 2004

In Effect from Passage

FILED

2004 DEC -2 P 4: 38

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**E N R O L L E D**

## **H. B. 304**

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

[Passed November 16, 2004; in effect from passage.]

AN ACT to amend and reenact §15-12-2, §15-12-2a, §15-12-3, §15-12-5, §15-12-6, §15-12-7 and §15-12-8 of the code of West Virginia, 1931, as amended; and further amending said code by adding thereto a new section, designated §15-12-3a, all relating to sex offender registration; adding information related to motor vehicles owned or regularly operated by a registrant to the registry; providing definition of business days; requiring registration upon conviction, release or other disposition status; providing that sexually violent predators may petition for removal from the registry only if an underlying conviction is reversed or vacated; clarifying permissible disclosure of information on the registry; clarifying duties of institution officials and persons required to register; and creating a penalty for any person to knowingly fail to report required information or to knowingly refuse or falsify required information.

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

That §15-12-2, §15-12-2a, §15-12-3, §15-12-5, §15-12-6, §15-12-7 and §15-12-8 of the code of West Virginia, 1931, as

amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §15-12-3a, all to read as follows:

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

**§15-12-2. Registration.**

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

3 (b) Any person who has been convicted of an offense or an  
4 attempted offense or has been found not guilty by reason of  
5 mental illness, mental retardation or addiction of an offense  
6 under any of the following provisions of chapter sixty-one of  
7 this code or under a statutory provision of another state, the  
8 United States code or the uniform code of military justice which  
9 requires proof of the same essential elements shall register as  
10 set forth in subsection (d) of this section and according to the  
11 internal management rules promulgated by the superintendent  
12 under authority of section twenty-five, article two of this  
13 chapter:

14 (1) Article eight-b, including the provisions of former  
15 section six of said article, relating to the offense of sexual  
16 assault of a spouse, which was repealed by an act of the  
17 Legislature during the year two thousand legislative session;

18 (2) Article eight-c;

19 (3) Sections five and six, article eight-d;

20 (4) Section fourteen, article two; or

21 (5) Sections six, seven, twelve and thirteen, article eight.

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

26 (d) Persons required to register under the provisions of this  
27 article shall provide or cooperate in providing, at a minimum,  
28 the following when registering:

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

31 (2) The address where the registrant intends to reside or  
32 resides at the time of registration, the name and address of the  
33 registrant's employer or place of occupation at the time of  
34 registration, the names and addresses of any anticipated future  
35 employers or places of occupation, the name and address of any  
36 school or training facility the registrant is attending at the time  
37 of registration and the names and addresses of any schools or  
38 training facilities the 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  
41 registration;

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

44 (6) Fingerprints;

45 (7) Information related to any motor vehicle owned or  
46 regularly operated by a registrant; and

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

50 (e) On the date that any person convicted or found not  
51 guilty by reason of mental illness, mental retardation or  
52 addiction of any of the crimes listed in subsection (b) of this  
53 section, hereinafter referred to as a "qualifying offense",  
54 including those persons who are continuing under some  
55 post-conviction supervisory status, are released, granted  
56 probation or a suspended sentence, released on parole, proba-

57 tion, home detention, work release, conditional release or any  
58 other release from confinement, the commissioner of correc-  
59 tions, regional jail administrator, city or sheriff operating a jail  
60 or secretary of the department of health and human resources  
61 which releases the person, and any parole or probation officer  
62 who releases the person or supervises the person following the  
63 release, shall obtain all information required by subsection (d)  
64 of this section prior to the release of the person, inform the  
65 person of his or her duty to register and send written notice of  
66 the release of the person to the state police within three business  
67 days of receiving the information. The notice must include the  
68 information required by said subsection. Any person having a  
69 duty to register for a qualifying offense shall register upon  
70 conviction, unless that person is confined or incarcerated, in  
71 which case he or she shall register within three business days of  
72 release, transfer or other change in disposition status.

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

76 (1) Identifying factors, including physical characteristics;

77 (2) History of the offense; and

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

80 (g) At the time the person is convicted or found not guilty  
81 by reason of mental illness, mental retardation or addiction in  
82 a court of this state of the crimes set forth in subsection (b) of  
83 this section, the person shall sign in open court a statement  
84 acknowledging that he or she understands the requirements  
85 imposed by this article. The court shall inform the person so  
86 convicted of the requirements to register imposed by this article  
87 and shall further satisfy itself by interrogation of the defendant  
88 or his or her counsel that the defendant has received notice of  
89 the provisions of this article and that the defendant understands

90 the provisions. The statement, when signed and witnessed,  
91 constitutes prima facie evidence that the person had knowledge  
92 of the requirements of this article. Upon completion of the  
93 statement, the court shall provide a copy to the registry. Persons  
94 who have not signed a statement under the provisions of this  
95 subsection and who are subject to the registration requirements  
96 of this article must be informed of the requirement by the state  
97 police whenever the state police obtain information that the  
98 person is subject to registration requirements.

99 (h) The state police shall maintain a central registry of all  
100 persons who register under this article and shall release  
101 information only as provided in this article. The information  
102 required to be made public by the state police by subdivision  
103 (2), subsection (b), section five of this article is to be accessible  
104 through the internet. No information relating to internet  
105 accounts, screen names, user names or aliases a registrant has  
106 or uses may be released through the internet.

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

109 (1) Sexual assault in the first degree as set forth in section  
110 three, article eight-b, chapter sixty-one of this code or of a  
111 similar provision in another state, federal or military jurisdic-  
112 tion;

113 (2) Sexual assault in the second degree as set forth in  
114 section four, article eight-b, chapter sixty-one of this code or of  
115 a similar provision in another state, federal or military jurisdic-  
116 tion;

117 (3) Sexual assault of a spouse as set forth in the former  
118 provisions of section six, article eight-b, chapter sixty-one of  
119 this code, which was repealed by an act of the Legislature  
120 during the two thousand legislative session, or of a similar  
121 provision in another state, federal or military jurisdiction;

122 (4) Sexual abuse in the first degree as set forth in section  
123 seven, article eight-b, chapter sixty-one of this code or of a  
124 similar provision in another state, federal or military jurisdic-  
125 tion.

126 (j) For purposes of this article, the term “sexually moti-  
127 vated” means that one of the purposes for which a person  
128 committed the crime was for any person’s sexual gratification.

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

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

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

145 (n) For the purposes of this article, the term “business  
146 days”, means days exclusive of Saturdays, Sundays and legal  
147 holidays as defined in section one, article two, chapter two of  
148 this code.

**§15-12-2a. Court determination of sexually violent predator.**

1 (a) The circuit court that has sentenced a person for the  
2 commission of a sexually violent offense or that has entered a  
3 judgment of acquittal of a charge of committing a sexually  
4 violent offense in which the defendant has been found not

5 guilty by reason of mental illness, mental retardation or  
6 addiction shall make a determination whether:

7 (1) A person is a sexually violent predator; or

8 (2) A person is not a sexually violent predator.

9 (b) A hearing to make a determination as provided in  
10 subsection (a) of this section is a summary proceeding, triable  
11 before the court without a jury.

12 (c) A proceeding seeking to establish that a person is a  
13 sexually violent predator is initiated by the filing of a written  
14 pleading by the prosecuting attorney. The pleading shall  
15 describe the record of the judgment of the court on the person's  
16 conviction or finding of not guilty by reason of mental illness,  
17 mental retardation or addiction of a sexually violent offense and  
18 shall set forth a short and plain statement of the prosecutor's  
19 claim that the person suffers from a mental abnormality or  
20 personality disorder that makes the person likely to engage in  
21 predatory sexually violent offenses.

22 (d) Prior to making a determination pursuant to the provi-  
23 sions of this section, the sentencing court may order a psychiat-  
24 ric or other clinical examination and, after examination, may  
25 further order a period of observation in an appropriate facility  
26 within this state designated by the court after consultation with  
27 the director of the division of health.

28 (e) Prior to making a determination pursuant to the provi-  
29 sions of this section, the sentencing court shall request and  
30 receive a report by the board established pursuant to section  
31 two-b of this article. The report shall set forth the findings and  
32 recommendation of the board on the issue of whether the person  
33 is a sexually violent predator.

34 (f) At a hearing to determine whether a person is a sexually  
35 violent predator, the person shall be present and shall have the  
36 right to be represented by counsel, introduce evidence and



37 cross-examine witnesses. The offender shall have access to a  
38 summary of the medical evidence to be presented by the state.  
39 The offender shall have the right to an examination by an  
40 independent expert of his or her choice and testimony from the  
41 expert as a medical witness on his or her behalf. At the termina-  
42 tion of the hearing the court shall make a finding of fact upon  
43 a preponderance of the evidence as to whether the person is a  
44 sexually violent predator.

45 (g) If a person is determined by the circuit court to be a  
46 sexually violent predator, the clerk of the court shall forward a  
47 copy of the order to the state police in the manner promulgated  
48 in accordance with the provisions of article three, chapter  
49 twenty-nine-a of this code.

**§15-12-3. Change in registry information.**

1 When any person required to register under this article  
2 changes his or her residence, address, place of employment or  
3 occupation, vehicle information required by section two of this  
4 article, or school or training facility which he or she is attend-  
5 ing, or when any of the other information required by this  
6 article changes, he or she shall, within ten business days, inform  
7 the West Virginia state police of the changes in the manner  
8 prescribed by the superintendent of state police in procedural  
9 rules promulgated in accordance with the provisions of article  
10 three, chapter twenty-nine-a of this code.

**§15-12-3a. Petition for removal of sexually violent predator designation.**

1 A proceeding seeking to remove a person's designation as  
2 a sexually violent predator may be initiated by the filing of a  
3 petition by the person so designated in the original sentencing  
4 court. The petition shall set forth that the underlying qualifying  
5 conviction has been reversed or vacated. Upon receipt of proof  
6 that no qualifying conviction exists, the court shall enter an  
7 order directing the removal of the designation.

**§15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court.**

1 (a) Within five business days after receiving any notifica-  
2 tion as described in this article, the state police shall distribute  
3 a copy of the notification statement to:

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

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

11 (3) The child protective services office charged with  
12 investigating allegations of child abuse or neglect in the county  
13 where the registrant resides, is employed or attends school or a  
14 training facility;

15 (4) All community organizations or religious organizations  
16 which regularly provide services to youths in the county where  
17 the registrant resides, is employed or attends school or a  
18 training facility;

19 (5) Individuals and organizations which provide day care  
20 services for youths or day care, residential or respite care, or  
21 other supportive services for mentally or physically incapacitated  
22 or infirm persons in the county where the registrant  
23 resides, is employed or attends school or a training facility; and

24 (6) The federal bureau of investigation (FBI).

25 (b) Information concerning persons whose names are  
26 contained in the sexual offender registry is not subject to the  
27 requirements of the West Virginia freedom of information act,  
28 as set forth in chapter twenty-nine-b of this code, and may be

29 disclosed and disseminated only as otherwise provided in this  
30 article and as follows:

31 (1) When a person has been determined to be a sexually  
32 violent predator under the terms of section two-a of this article,  
33 the state police shall notify the prosecuting attorney of the  
34 county in which the person resides, is employed or attends a  
35 school or training facility. The prosecuting attorney shall  
36 cooperate with the state police in conducting a community  
37 notification program which is to include publication of the  
38 offender's name, photograph, place of residence, employment  
39 and education or training, as well as information concerning the  
40 legal rights and obligations of both the offender and the  
41 community. Information relating to the victim of an offense  
42 requiring registration may not be released to the public except  
43 to the extent the prosecuting attorney and the state police  
44 consider it necessary to best educate the public as to the nature  
45 of sexual offenses: *Provided*, That no victim's name may be  
46 released in any public notification pursuant to this subsection.  
47 No information relating to internet accounts, screen names, user  
48 names or aliases a registrant has or uses may be released to the  
49 public with this notification program. The prosecuting attorney  
50 and state police may conduct a community notification program  
51 in the county of residence, employment or where a person is  
52 attending school or a training facility of any person who is  
53 required to register for life under the terms of subdivision (2),  
54 subsection (a), section four of this article. Community notifica-  
55 tion may be repeated when determined to be appropriate by the  
56 prosecuting attorney;

57 (2) The state police shall maintain and make available to  
58 the public at least quarterly the list of all persons who are  
59 required to register for life according to the terms of subdivi-  
60 sion (2), subsection (a), section four of this article. No informa-  
61 tion concerning the identity of a victim of an offense requiring  
62 registration or information relating to internet accounts, screen

63 names, user names or aliases a registrant has or uses may be  
64 released with this list. The method of publication and access to  
65 this list are to be determined by the superintendent; and

66 (3) A resident of a county may petition the circuit court for  
67 an order requiring the state police to release information about  
68 persons residing in that county who are required to register  
69 under section two of this article. The court shall determine  
70 whether information contained on the list is relevant to public  
71 safety and whether its relevance outweighs the importance of  
72 confidentiality. If the court orders information to be released,  
73 it may further order limitations upon secondary dissemination  
74 by the resident seeking the information. In no event may  
75 information concerning the identity of a victim of an offense  
76 requiring registration or information relating to internet  
77 accounts, screen names, user names or aliases a registrant has  
78 or uses be released.

79 (c) The state police may furnish information and documen-  
80 tation required in connection with the registration to authorized  
81 law enforcement, campus police and governmental agencies of  
82 the United States and its territories, of foreign countries duly  
83 authorized to receive the same, of other states within the United  
84 States and of the state of West Virginia upon proper request  
85 stating that the records will be used solely for law enforce-  
86 ment-related purposes. The state police may disclose informa-  
87 tion collected under this article to federal, state and local  
88 governmental agencies responsible for conducting  
89 preemployment checks.

90 (d) An elected public official, public employee or public  
91 agency is immune from civil liability for damages arising out  
92 of any action relating to the provisions of this section except  
93 when the official, employee or agency acted with gross negli-  
94 gence or in bad faith.

**§15-12-6. Duties of institution officials.**

1        In addition to the duties imposed by sections two and four  
2 of this article, the official in charge of the place of confinement  
3 shall inform any person required to register under this article,  
4 before parole or release, of the duty to register. Further, the  
5 official shall obtain the full address of the person and a state-  
6 ment signed by the person acknowledging that the person has  
7 been informed of his or her duty to register.

**§15-12-7. Information shall be released when person moves out of state.**

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

**§15-12-8. Failure to register or provide notice of registration changes; penalty.**

1        (a) Except as provided in this section, any person required  
2 to register under this article who knowingly provides false  
3 information or who refuses to provide accurate information  
4 when so required by terms of this article, or who knowingly  
5 fails to register or knowingly fails to provide a change in any  
6 information as required by this article, is guilty of a misde-  
7 meanor and, upon conviction thereof, shall be fined not less  
8 than two hundred fifty dollars nor more than ten thousand  
9 dollars or imprisoned in the county or regional jail not more

10 than one year, or both: *Provided*, That each time the person has  
11 a change in any of the registration information as required by  
12 this article and fails to register the change or changes, each  
13 failure to register each separate item of information changed  
14 shall constitute a separate offense.

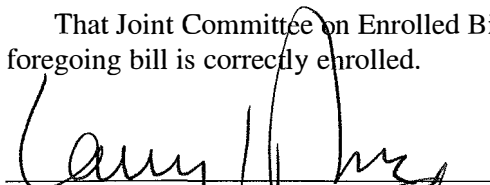
15 (b) Any person required to register under this article who is  
16 convicted of a second or subsequent offense of failing to  
17 register or provide a change in any information as required by  
18 this article or any person who is required to register for life  
19 pursuant to subsection (2), subdivision (a), section four of this  
20 article and who knowingly provides false information or who  
21 refuses to provide accurate information when so required by  
22 terms of this article or who knowingly fails to register or  
23 knowingly fails to provide a change in information as required  
24 by this article is guilty of a felony and, upon conviction thereof,  
25 shall be imprisoned in a state correctional facility for not less  
26 than one year nor more than five years.

27 (c) Any person required to register as a sexual predator who  
28 knowingly provides false information or who refuses to provide  
29 accurate information when so required by terms of this article  
30 or who knowingly fails to register or knowingly fails to provide  
31 a change in any information as required by this article is guilty  
32 of a felony and, upon conviction thereof, shall, for a first  
33 offense, be confined in a state correctional facility not less than  
34 two years nor more than ten years and for a second or subse-  
35 quent offense, is guilty of a felony and shall be confined in a  
36 state correctional facility not less than five years nor more than  
37 twenty years.

38 (d) In addition to any other penalty specified for failure to  
39 register under this article, any person under the supervision of  
40 a probation officer, parole officer or any other sanction short of  
41 confinement in jail or prison who knowingly refuses to register  
42 or who knowingly fails to provide a change in information as  
43 required by this article shall be subject to immediate revocation

44 of probation or parole and returned to confinement for the  
45 remainder of any suspended or unserved portion of his or her  
46 original sentence.

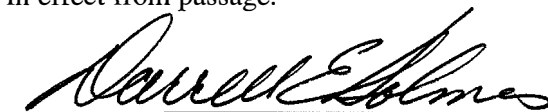
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


  
 Chairman Senate Committee

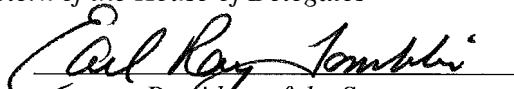
  
 Chairman House Committee

Originating in the House.

In effect from passage.


  
 Clerk of the Senate

  
 Clerk of the House of Delegates

  
 President of the Senate

  
 Speaker of the House of Delegates

The within is approved this the 2nd  
 day of December, 2004.

  
 Governor



PRESENTED TO  
THE GOVERNOR

DATE 11/19/04

TIME 4:20 pm