

1 **ENGROSSED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 4459**

5 (By Delegates Reynolds, Frazier, Marcum, Hall, Hunt,  
6 Manchin, Pino, Ferro and Sobonya)

7 (Originating in the Committee on Finance)

8 [February 24, 2012]

9

10

11 A BILL to amend and reenact §15-12-2, §15-12-5 and §15-12-8 of the  
12 Code of West Virginia, 1931, as amended; and to amend and  
13 reenact §49-5-13b of said code, all relating to authorizing a  
14 court to require a convicted juvenile sex offender whose  
15 underlying offense constitutes a first or second degree sexual  
16 assault and who is sixteen years of age or older to register  
17 as a sex offender; and maintaining confidentiality of juvenile  
18 sex offender registration information except for disclosure to  
19 law enforcement, school administration and counsel until the  
20 juvenile attains the age of eighteen years.

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

22 That §15-12-2, §15-12-5 and §15-12-8 of the Code of West  
23 Virginia, 1931, as amended, be amended and reenacted; and that §49-  
24 5-13b of said code be amended and reenacted, all to read as  
25 follows:

26

**CHAPTER 15. PUBLIC SAFETY.**

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

2 **§15-12-2. Registration.**

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

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

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17 assault of a spouse, which was repealed by an Act of the  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

19 (2) Article eight-c;

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

21 (4) Section fourteen, article two;

22 (5) Sections six, seven, twelve and thirteen, article eight;

23 or

24 (6) Section fourteen-b, article three-c, as it relates to  
25 violations of those provisions of chapter sixty-one listed in this  
26 subsection.

1 (c) Any person who:

2 (1) Has been convicted of a criminal offense and the  
3 sentencing judge made a written finding that the offense was  
4 sexually motivated; or

5 (2) Is required to register by a court order issued pursuant  
6 to subdivision (5), subsection (a), section thirteen-b, article  
7 five, chapter forty-nine of this code,

8 shall also register as set forth in this article.

9 (d) Persons required to register under the provisions of this  
10 article shall register in person at the West Virginia State Police  
11 detachment in the county of his or her residence, the county in  
12 which he or she owns or leases habitable real property that he or  
13 she visits regularly, the county of his or her place of employment  
14 or occupation and the county in which he or she attends school or  
15 a training facility, and in doing so, provide or cooperate in  
16 providing, at a minimum, the following when registering:

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

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

1 any school or training facility the registrant is attending at the  
2 time of registration and the names and addresses of any schools or  
3 training facilities the registrant expects to attend;

4 (3) The registrant's social security number;

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

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

9 (6) Fingerprints;

10 (7) Information related to any motor vehicle, trailer or motor  
11 home owned or regularly operated by a registrant, including vehicle  
12 make, model, color and license plate number: *Provided*, That for  
13 the purposes of this article, the term "trailer" shall mean travel  
14 trailer, fold-down camping trailer and house trailer as those terms  
15 are defined in section one, article one, chapter seventeen-a of  
16 this code;

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

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

23 (10) If the registrant is a juvenile, the physical address and  
24 telephone of the registrant's parent(s) or legal guardian(s) and  
25 any other relative or person with whom the registrant regularly  
26 engages in overnight visits.

1 (e) (1) On the date that any person convicted or found not  
2 guilty by reason of mental illness, mental retardation or addiction  
3 of any of the crimes listed in subsection (b) of this section,  
4 hereinafter referred to as a "qualifying offense", including those  
5 persons who are continuing under some post-conviction supervisory  
6 status, are released, granted probation or a suspended sentence,  
7 released on parole, probation, home detention, work release,  
8 conditional release, inpatient treatment facility or juvenile  
9 detention facility or any other release from confinement, the  
10 Commissioner of Corrections, regional jail administrator, city  
11 official or sheriff operating a jail, administrator of the  
12 treatment or juvenile detention facility or Secretary of the  
13 Department of Health and Human Resources who releases the person  
14 and any parole or probation officer who releases the person or  
15 supervises the person following the release, shall obtain all  
16 information required by subsection (d) of this section prior to the  
17 release of the person, inform the person of his or her duty to  
18 register and send written notice of the release of the person to  
19 the State Police within three business days of receiving the  
20 information. The notice must include the information required by  
21 said subsection. Any person having a duty to register for a  
22 qualifying offense shall register upon conviction, unless that  
23 person is confined or incarcerated, in which case he or she shall  
24 register within three business days of release, transfer or other  
25 change in disposition status.

26 (2) Notwithstanding any provision of this article to the

1 contrary, a court of this state shall, upon presiding over a  
2 criminal matter resulting in conviction, a disposition under  
3 subdivision (5), subsection (a), section thirteen-b, article five,  
4 chapter forty-nine of this code or a finding of not guilty by  
5 reason of mental illness, mental retardation or addiction of a  
6 qualifying offense, cause, within seventy-two hours of entry of the  
7 commitment or sentencing order, the transmittal to the sex offender  
8 registry for inclusion in the registry all information required for  
9 registration by a registrant as well as the following non-  
10 identifying information regarding the victim or victims:

11 (A) His or her sex;

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

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

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

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

20 (1) Identifying factors, including physical characteristics;

21 (2) History of the offense; and

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

24 (g) At the time the person is convicted, required to register  
25 pursuant to an order entered under subdivision (5), subsection (a),  
26 section thirteen-b, article five, chapter forty-nine of this code,

1 or found not guilty by reason of mental illness, mental retardation  
2 or addiction in a court of this state of the crimes set forth in  
3 subsection (b) of this section, the person shall sign in open court  
4 a statement acknowledging that he or she understands the  
5 requirements imposed by this article. The court shall inform the  
6 person so convicted of the requirements to register imposed by this  
7 article and shall further satisfy itself by interrogation of the  
8 defendant or his or her counsel that the defendant has received  
9 notice of the provisions of this article and that the defendant  
10 understands the provisions. The statement, when signed and  
11 witnessed, constitutes prima facie evidence that the person had  
12 knowledge of the requirements of this article. Upon completion of  
13 the statement, the court shall provide a copy to the registry.  
14 Persons who have not signed a statement under the provisions of  
15 this subsection and who are subject to the registration  
16 requirements of this article must be informed of the requirement by  
17 the State Police whenever the State Police obtain information that  
18 the person is subject to registration requirements.

19 (h) (1) The State Police shall maintain a central registry of  
20 all persons who register under this article and shall release  
21 information only as provided in this article.

22 (2) Information maintained on juveniles required to register  
23 by a court order issued under subdivision (5), subsection (a),  
24 section thirteen-b, article five, chapter forty-nine of this code,  
25 shall be confidential and may be disclosed only as authorized under  
26 section five of this article.

1       (3) Notwithstanding any other provision of this code to the  
2 contrary, the provisions of this article with respect to special  
3 reporting requirements, confidentiality and disclosure are not  
4 applicable on or after the juvenile attains the age of eighteen  
5 years. Upon the date the juvenile attains the age of eighteen  
6 years, he or she shall thereafter be subject to each provision of  
7 this article as if he or she had been an adult when the crime was  
8 committed and therefor convicted of a violation of section three or  
9 four, article eight-b, chapter sixty-one of this code.  
10 Notwithstanding any provision of article five, chapter forty-nine  
11 of this code to the contrary, on and after the date the juvenile  
12 attains the age of eighteen years, upon request of the West  
13 Virginia State Police, the circuit clerk of the court in which the  
14 order was issued under subdivision (5), subsection (a), section  
15 thirteen-b, article five, chapter forty-nine of this code shall  
16 deliver to the West Virginia State Police a copy of the records of  
17 the juvenile proceeding in which the order was issued without cost  
18 and without order of the court. Those records may be used for all  
19 purposes under the provisions of this article to the extent that  
20 the same would otherwise be used if they were a court's records of  
21 the proceedings under which he or she had been an adult when the  
22 crime was committed and therefor convicted of a violation of  
23 section three or four, article eight-b, chapter sixty-one of this  
24 code.

25       (4) The information required to be made public by the State  
26 Police by subdivision (2), subsection (b), section five of this



1 article is to be accessible through the Internet.

2       (5) No information relating to telephone or electronic paging  
3 device numbers a registrant has or uses may be released through the  
4 Internet.

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

7       (1) Sexual assault in the first degree as set forth in section  
8 three, article eight-b, chapter sixty-one of this code or of a  
9 similar provision in another state, federal or military  
10 jurisdiction;

11       (2) Sexual assault in the second degree as set forth in  
12 section four, article eight-b, chapter sixty-one of this code or of  
13 a similar provision in another state, federal or military  
14 jurisdiction;

15       (3) Sexual assault of a spouse as set forth in the former  
16 provisions of section six, article eight-b, chapter sixty-one of  
17 this code, which was repealed by an Act of the Legislature during  
18 the two thousand legislative session, or of a similar provision in  
19 another state, federal or military jurisdiction;

20       (4) Sexual abuse in the first degree as set forth in section  
21 seven, article eight-b, chapter sixty-one of this code or of a  
22 similar provision in another state, federal or military  
23 jurisdiction.

24       (j) For purposes of this article, the term "sexually  
25 motivated" means that one of the purposes for which a person  
26 committed the crime was for any person's sexual gratification.

1 (k) For purposes of this article, the term "sexually violent  
2 predator" means a person who has been convicted or found not guilty  
3 by reason of mental illness, mental retardation or addiction of a  
4 sexually violent offense and who suffers from a mental abnormality  
5 or personality disorder that makes the person likely to engage in  
6 predatory sexually violent offenses.

7 (l) For purposes of this article, the term "mental  
8 abnormality" means a congenital or acquired condition of a person,  
9 that affects the emotional or volitional capacity of the person in  
10 a manner that predisposes that person to the commission of criminal  
11 sexual acts to a degree that makes the person a menace to the  
12 health and safety of other persons.

13 (m) For purposes of this article, the term "predatory act"  
14 means an act directed at a stranger or at a person with whom a  
15 relationship has been established or promoted for the primary  
16 purpose of victimization.

17 (n) For the purposes of this article, the term "business  
18 days", means days exclusive of Saturdays, Sundays and legal  
19 holidays as defined in section one, article two, chapter two of  
20 this code.

21 **§15-12-5. Distribution and disclosure of information; community**  
22 **information programs by prosecuting attorney and State**  
23 **Police; petition to circuit court.**

24 (a) In the case of all persons required to register pursuant  
25 to section two of this article, except juveniles required to

1 register by a court order issued under subdivision (5), subsection  
2 (a), section thirteen-b, article five, chapter forty-nine of this  
3 code, within five business days after receiving any notification as  
4 described in this article, the State Police shall distribute a copy  
5 of the notification statement to:

6 (1) The supervisor of each county and municipal  
7 law-enforcement office and any campus police department in the city  
8 and county where the registrant resides, owns or leases habitable  
9 real property that he or she regularly visits, is employed or  
10 attends school or a training facility;

11 (2) The county superintendent of schools in each county where  
12 the registrant resides, owns or leases habitable real property that  
13 he or she regularly visits, is employed or attends school or a  
14 training facility;

15 (3) The child protective services office charged with  
16 investigating allegations of child abuse or neglect in the county  
17 where the registrant resides, owns or leases habitable real  
18 property that he or she regularly visits, is employed or attends  
19 school or a training facility;

20 (4) All community organizations or religious organizations  
21 which regularly provide services to youths in the county where the  
22 registrant resides, owns or leases habitable real property that he  
23 or she regularly visits, is employed or attends school or a  
24 training facility;

25 (5) Individuals and organizations which provide day care  
26 services for youths or day care, residential or respite care, or

1 other supportive services for mentally or physically incapacitated  
2 or infirm persons in the county where the registrant resides, owns  
3 or leases habitable real property that he or she regularly visits,  
4 is employed or attends school or a training facility; and

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

6 (b) (1) In the case of juveniles required to register by a  
7 court order issued under subdivision (5), subsection (a), section  
8 thirteen-b, article five, chapter forty-nine of this code, within  
9 five business days after receiving any notification as described in  
10 this article, the State Police shall distribute a copy of the  
11 notification statement only to:

12 (A) The superintendent of the county school system where the  
13 juvenile attends school or intends to attend school;

14 (B) The administrator of a training facility where the  
15 juvenile is enrolled or intends to enroll; and

16 (C) Counsel for the juvenile, upon request.

17 (2) Notification pursuant to this subsection shall inform the  
18 recipient that the information contained in the notification may be  
19 disclosed to the school or training facility, upon request, and is  
20 strictly confidential.

21 (c) Information concerning persons whose names are contained  
22 in the sex offender registry is not subject to the requirements of  
23 the West Virginia Freedom of Information Act, as set forth in  
24 chapter twenty-nine-b of this code, and may be disclosed and  
25 disseminated only as otherwise provided in this article and as  
26 follows:

1           (1) When a person has been determined to be a sexually violent  
2 predator under the terms of section two-a of this article, the  
3 State Police shall notify the prosecuting attorney of the county in  
4 which the person resides, owns or leases habitable real property  
5 that he or she regularly visits, is employed or attends a school or  
6 training facility. The prosecuting attorney shall cooperate with  
7 the State Police in conducting a community notification program  
8 which is to include publication of the offender's name, photograph,  
9 place of residence, location of regularly visited habitable real  
10 property owned or leased by the offender, county of employment and  
11 place at which the offender attends school or a training facility,  
12 as well as information concerning the legal rights and obligations  
13 of both the offender and the community. Information relating to  
14 the victim of an offense requiring registration may not be released  
15 to the public except to the extent the prosecuting attorney and the  
16 State Police consider it necessary to best educate the public as to  
17 the nature of sexual offenses: Provided, That no victim's name may  
18 be released in any public notification pursuant to this subsection.  
19 No information relating to telephone or electronic paging device  
20 numbers a registrant has or uses may be released to the public with  
21 this notification program. The prosecuting attorney and State  
22 Police may conduct a community notification program in the county  
23 where a person who is required to register for life under the terms  
24 of subdivision (2), subsection (a), section four of this article  
25 resides, owns or leases habitable real property that he or she  
26 regularly visits, is employed or attends a school or training

1 facility. Community notification may be repeated when determined  
2 to be appropriate by the prosecuting attorney;

3 (2) The State Police shall maintain and make available to the  
4 public at least quarterly the list of all persons who are required  
5 to register for life according to the terms of subdivision (2),  
6 subsection (a), section four of this article. No information  
7 concerning the identity of a victim of an offense requiring  
8 registration or telephone or electronic paging device numbers a  
9 registrant has or uses may be released with this list. The method  
10 of publication and access to this list are to be determined by the  
11 superintendent; and

12 (3) A resident of a county may petition the circuit court for  
13 an order requiring the State Police to release information about  
14 persons that reside or own or lease habitable real property that  
15 the persons regularly visit in that county and who are required to  
16 register under section two of this article. The court shall  
17 determine whether information contained on the list is relevant to  
18 public safety and whether its relevance outweighs the importance of  
19 confidentiality. If the court orders information to be released,  
20 it may further order limitations upon secondary dissemination by  
21 the resident seeking the information. In no event may information  
22 concerning the identity of a victim of an offense requiring  
23 registration or information relating to telephone or electronic  
24 paging device numbers a registrant has or uses be released.

25 ~~(c)~~ (d) The State Police may furnish information and  
26 documentation required in connection with the registration to

1 authorized law-enforcement, campus police and governmental agencies  
2 of the United States and its territories, of foreign countries duly  
3 authorized to receive the same, of other states within the United  
4 States and of the State of West Virginia upon proper request  
5 stating that the records will be used solely for  
6 law-enforcement-related purposes. The State Police may disclose  
7 information collected under this article to federal, state and  
8 local governmental agencies responsible for conducting  
9 preemployment checks. The State Police also may disclose  
10 information collected under this article to the Division of Motor  
11 Vehicles pursuant to the provisions of section three, article two,  
12 chapter seventeen-b of this code.

13 ~~(d)~~ (e) An elected public official, public employee or public  
14 agency is immune from civil liability for damages arising out of  
15 any action relating to the provisions of this section except when  
16 the official, employee or agency acted with gross negligence or in  
17 bad faith.

18 **§15-12-8. Failure to register or provide notice of registration**  
19 **changes; penalty; penalty for aiding and abetting.**

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

25 (b) Except as provided in this section, any person required to  
26 register for ten years pursuant to subdivision (1), subsection (a),

1 section four of this article who knowingly provides materially  
2 false information or who refuses to provide accurate information  
3 when so required by the terms of this article, or who knowingly  
4 fails to register or knowingly fails to provide a change in any  
5 required information as required by this article, is guilty of a  
6 misdemeanor and, upon conviction thereof, shall be fined not less  
7 than two hundred fifty dollars nor more than ten thousand dollars  
8 or confined in jail not more than one year, or both. Any person  
9 convicted of a second offense under this subsection is guilty of a  
10 felony and, upon conviction thereof, shall be imprisoned in a state  
11 correctional facility for not less than one year nor more than five  
12 years. Any person convicted of a third or subsequent offense under  
13 this subsection is guilty of a felony and, upon conviction thereof,  
14 shall be imprisoned in a state correctional facility for not less  
15 than five nor more than twenty-five years.

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



1 than ten nor more than twenty-five years.

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

11 (e) Notwithstanding the provisions of subsection (c) of this  
12 section, any person required to register as a sexually violent  
13 predator pursuant to this article who knowingly provides materially  
14 false information or who refuses to provide accurate information  
15 when so required by terms of this article or who knowingly fails to  
16 register or knowingly fails to provide a change in any required  
17 information as required by this article is guilty of a felony and,  
18 upon conviction thereof, shall, for a first offense, be confined in  
19 a state correctional facility not less than two nor more than ten  
20 years and for a second or subsequent offense, is guilty of a felony  
21 and shall be confined in a state correctional facility not less  
22 than fifteen nor more than thirty-five years.

23 (f) Any person who knows or who has reason to know that a sex  
24 offender is not complying, or has not complied, with the  
25 requirements of this section and who, with the intent to assist the  
26 sex offender in eluding a law-enforcement agency that is seeking to

1 find the sex offender to question the sex offender about, or to  
2 arrest the sex offender for, his or her noncompliance with the  
3 requirements of this section:

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

8 (2) Harbors, or attempts to harbor, or assists another person  
9 in harboring or attempting to harbor, the sex offender; or

10 (3) Conceals or attempts to conceal, or assists another person  
11 in concealing or attempting to conceal, the sex offender; or

12 (4) Provides information to the law-enforcement agency  
13 regarding the sex offender which the person knows to be false  
14 information is guilty of a misdemeanor and, upon conviction  
15 thereof, shall be fined not less than two hundred fifty dollars nor  
16 more than ten thousand dollars or confined in jail not more than  
17 one year, or both: Provided, That where the person assists or  
18 seeks to assist a sex offender whose violation of this section  
19 would constitute a felony, the person shall be guilty of a felony  
20 and, upon conviction thereof, shall be imprisoned in a state  
21 correctional facility for not less than one year nor more than five  
22 years.

23 (g) The State Police shall notify the court of the failure of  
24 any juvenile to register as required by an order issued under  
25 subdivision (5), subsection (a), section thirteen-b, article five,  
26 chapter forty-nine of this code, within five business days

1 following the last day upon which the juvenile had the duty to  
2 register. In addition to notifying the court of the juvenile's  
3 failure to register, the State Police shall send a copy of this  
4 notice, by certified mail, to the juvenile, the juvenile's parents  
5 and legal counsel.

6 **CHAPTER 49. CHILD WELFARE.**

7 **ARTICLE 5. JUVENILE PROCEEDINGS.**

8 **§49-5-13b. Authority of the courts to order fines; revocation of**  
9 **vehicle privileges and restitution; and juvenile sex**  
10 **offender registration.**

11 (a) In addition to the methods of disposition provided in  
12 section thirteen of this article, the court may enter an order  
13 imposing one or more of the following penalties, conditions and  
14 limitations:

15 (1) Impose a fine not to exceed \$100 upon ~~such~~ the child;

16 (2) Require the child to make restitution or reparation to the  
17 aggrieved party or parties for actual damages or loss caused by the  
18 offense for which the child was found to be delinquent, or if the  
19 child does not make full restitution, require the custodial parent  
20 or parents, as defined in section two, article seven-a, chapter  
21 fifty-five, of the child to make partial or full restitution to the  
22 victim to the extent the child fails to make full restitution;

23 (3) Require the child to participate in a public service  
24 project under ~~such~~ conditions as the court prescribes, including  
25 participation in the litter control program established pursuant to

1 the authority of section three, article fifteen-a, chapter  
2 twenty-two of this code;

3 (4) When the child is fifteen years of age or younger and has  
4 been adjudged delinquent, the court may order that the child is not  
5 eligible to be issued a junior probationary operator's license or  
6 when the child is between the ages of sixteen and eighteen years  
7 and has been adjudged delinquent, the court may order that the  
8 child is not eligible to operate a motor vehicle in this state and  
9 any junior or probationary operator's license shall be surrendered  
10 to the court. ~~Such~~ The child's driving privileges shall be  
11 suspended for a period not to exceed two years and the clerk of the  
12 court shall notify the Commissioner of the Division of Motor  
13 Vehicles of ~~such~~ the order;

14 (5) When the child is sixteen years of age or older and is  
15 adjudicated delinquent for violation of section three or four,  
16 article eight-b, chapter sixty-one of this code, the court may  
17 enter an order requiring the child to register as a sex offender  
18 pursuant to article twelve, chapter fifteen of this code. The  
19 order shall be delivered to the West Virginia State Police and  
20 shall be confidential and may be disclosed only as authorized under  
21 section five, article twelve, chapter fifteen of this code.

22 (b) ~~Nothing herein stated shall~~ This section does not limit  
23 the discretion of the court in disposing of a juvenile case  
24 ~~Provided, except that the juvenile shall not be denied~~ court may  
25 not deny probation or any other disposition pursuant to this  
26 article because the juvenile is financially unable to pay a fine or

1 make restitution or reparation ~~Provided, however,~~ and that all  
2 penalties, conditions and limitations imposed under this section  
3 shall be based upon a consideration by the court of the seriousness  
4 of the offense, the child's ability to pay and a program of  
5 rehabilitation consistent with the best interests of the child.

6 (c) Notwithstanding any other provisions of this code to the  
7 contrary, in the event a child charged with delinquency under this  
8 chapter is transferred to adult jurisdiction and there convicted,  
9 the court may nevertheless, in lieu of sentencing such person as an  
10 adult, make its disposition in accordance with this section.