

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 532

FISCAL
NOTE

By Senators Hunt, Azinger, Chapman, Deeds,
Hamilton, Maynard, Plymale, Roberts, Rucker, Stover,
Stuart, Taylor, Smith, Karnes, Grady, Trump, Martin,
and Barrett

[Introduced January 31, 2023; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §15-12-2 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §49-6-609 of said code; and to amend said code by adding thereto a new
 3 section, designated §61-8-32, all relating to the crime of solicitation of a minor; requiring
 4 registration as a sex offender for those convicted of offense; and establishing criminal
 5 penalties.

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 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 §15-12-2(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 11 relating to the offense of sexual assault of a spouse, which was repealed by an act of the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, and §61-8-32 of this code;

17 (7) §61-3C-14b of this code, as it relates to violations of those provisions of chapter 61
18 listed in this subsection; or

19 (8) §61-14-2, §61-14-5, and §61-14-6 of this code: *Provided*, That as to §61-14-2 of this
20 code only those violations involving human trafficking for purposes of sexual servitude require
21 registration pursuant to this subdivision.

22 (c) Any person who has been convicted of a criminal offense where the sentencing judge
23 made a written finding that the offense was sexually motivated shall also register as set forth in this
24 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 of
36 occupation, the name and address of any school or training facility the registrant is attending at the
37 time of registration and the names and addresses of any schools or training facilities the registrant
38 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 to
56 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 any
64 other release from confinement, the Commissioner of Corrections, regional jail administrator, city
65 official, or sheriff operating a jail or Secretary of the Department of Health and Human Resources
66 who releases the person and any parole or probation officer who releases the person or
67 supervises the person following the release shall obtain all information required by §15-12-2(d) of
68 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 or
75 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 §15-
88 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 the
98 defendant or his or her counsel that the defendant has received notice of the provisions of this
99 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 of
101 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 be
108 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 or
110 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 that
126 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.

CHAPTER 49. CHILD WELFARE.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-4-609. Conviction for offenses against children.

1 In any case where a person is convicted of an offense against a child described in §61-8-
2 12 and §61-8-32 of this code or §61-8B-1 *et seq.* or §61-8D-1 *et seq.* and the person has custodial,
3 visitation or other parental rights to the child who is the victim of the offense or to any child who
4 resides in the same household as the victim, the court shall, at the time of sentencing, find that the
5 person is an abusing parent within the meaning of this chapter as to the child victim, and may find
6 that the person is an abusing parent as to any child who resides in the same household as the
7 victim, and the court shall take further steps as are required by this article.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.****§61-8-32. Soliciting a minor.**

1 (a) A person over the age of 18 commits the crime of soliciting a minor if the person
2 knowingly contacts or communicates with or attempts to contact or communicate with a minor at
3 least four years younger than such person, with the intent to persuade, lure, entice, solicit or
4 seduce the minor to:

5 (1) Accompany the person in any manner, including entering into a vehicle, building,
6 dwelling or onto any vessel if such person does not have the express or implied permission of the
7 parent, guardian, or other legal custodian of the child in undertaking the activity: *Provided*, That
8 such person is not a law-enforcement officer, medic, firefighter, or other person who regularly
9 provides emergency services while acting in his or her official capacity, or an employee or agent of,
10 or volunteer acting under the direction of any such person; or

11 (2) Commit any illegal act proscribed by the provisions of §61-8-1 et seq., §61-8A-1 et seq.,
12 §61-8B-1 et seq., §61-8C-1 et seq., or §61-8D-1 et seq. of this code, or any felony offense under
13 §60A-4-401 et seq. of this code.

14 (b) Any person who violates or attempts to violate the provisions of this section is guilty of a
15 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than
16 two nor more than 15 years, or fined not more than \$10,000, or both confined and fined. For a
17 second offense, the person is guilty of a felony and, upon conviction, shall be imprisoned in a state
18 correctional facility not more than 20 years, or fined not more than \$25,000, or both confined and
19 fined.

20 (c) In any case where the person convicted of an offense under this section is a parent,
21 guardian, or legal custodian of the minor, the court shall find that the person is an abusing parent,
22 guardian or custodian within the meaning of §49-6-204 of this code, and shall take such further

23 action in accordance with the provisions of that article.

NOTE: The purpose of this bill is to create the crime of soliciting a minor; provide penalties; and require that the offender register on the sex offender 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.