

# **WEST VIRGINIA LEGISLATURE**

**2025 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 121**

BY SENATORS WELD, WOELFEL, AND WILLIS

[Reported March 5, 2025, from the Committee on the  
Judiciary]



1 A BILL to amend and reenact §15-12-2, §61-8-9, and §61-11-18 of the Code of West Virginia,  
2 1931, as amended, requiring registration as sex offender for those convicted of newly  
3 created felony offense of indecent exposure to certain minors; declaring that indecent  
4 exposure requires exposing one's nude penis, vagina, or anus; authorizing a person  
5 convicted of third offense indecent exposure for purposes of sexual gratification to be both  
6 fined and imprisoned; creating enhanced penalties for second and subsequent violations;  
7 creating the criminal offense of indecent exposure in front of minors; removing breast-  
8 feeding exemption as unnecessary due to definition clarification; defining terms;  
9 establishing criminal penalties for the new offense; and declaring that the felony offenses  
10 of indecent exposure are qualifying offenses for the purpose of recidivist sentencing  
11 enhancements.

*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11 relating to the offense of sexual assault of a spouse, which was repealed by an act of the  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, §61-8-9(d), §61-8-12, and §61-8-13 of this code;

17 (7) §61-3C-14b of this code, as it relates to violations of those provisions of chapter 61  
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  
24 this article.

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

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

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

36 of occupation, the name and address of any school or training facility the registrant is attending  
37 at the time of registration and the names and addresses of any schools or training facilities the  
38 registrant expects to attend;

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

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

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

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

43 (7) Information related to any motor vehicle, trailer, or motor home owned or regularly  
44 operated by a registrant, including vehicle make, model, color, and license plate number:  
45 *Provided*, That for the purposes of this article, the term "trailer" means travel trailer, fold-down  
46 camping trailer, and house trailer as those terms are defined in §17A-1-1 of this code;

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

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

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

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

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

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

59 (e) (1) On the date that any person convicted or found not guilty by reason of mental  
60 illness, mental retardation, or addiction of any of the crimes listed in §15-12-2(b) of this code,  
61 hereinafter referred to as a "qualifying offense", including those persons who are continuing under

62 some post-conviction supervisory status, are released, granted probation or a suspended  
63 sentence, released on parole, probation, home detention, work release, conditional release or  
64 any other release from confinement, the Commissioner of Corrections and Rehabilitation, regional  
65 jail administrator, city official, or sheriff operating a jail or Secretary of the Department of Health  
66 Facilities 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  
75 or her release.

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

- 82 (A) His or her sex;
- 83 (B) His or her age at the time of the offense; and
- 84 (C) The relationship between the victim and the perpetrator.

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

87 (f) For any person determined to be a sexually violent predator, the notice required by  
88 §15-12-2(d) of this code must also include:

89 (1) Identifying factors, including physical characteristics;

90 (2) History of the offense; and

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

93 (g) At the time the person is convicted or found not guilty by reason of mental illness,  
94 mental retardation, or addiction in a court of this state of the crimes set forth in §15-12-2(b) of this  
95 code, the person shall sign in open court a statement acknowledging that he or she understands  
96 the requirements imposed by this article. The court shall inform the person so convicted of the  
97 requirements to register imposed by this article and shall further satisfy itself by interrogation of  
98 the defendant or his or her counsel that the defendant has received notice of the provisions of  
99 this article and that the defendant understands the provisions. The statement, when signed and  
100 witnessed, constitutes prima facie evidence that the person had knowledge of the requirements  
101 of this article. Upon completion of the statement, the court shall provide a copy to the registry.  
102 Persons who have not signed a statement under the provisions of this subsection and who are  
103 subject to the registration requirements of this article must be informed of the requirement by the  
104 State Police whenever the State Police obtain information that the person is subject to registration  
105 requirements.

106 (h) The State Police shall maintain a central registry of all persons who register under this  
107 article and shall release information only as provided in this article. The information required to  
108 be made public by the State Police by §15-12-5(b)(2) of this code is to be accessible through the  
109 internet. Information relating to telephone or electronic paging device numbers a registrant has 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  
126 that makes the person likely to engage in predatory sexually violent offenses.

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

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

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



**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.**

**§61-8-9. Indecent exposure.**

1 (a) A person is guilty of indecent exposure when ~~such~~ that person intentionally exposes  
2 his or her sex organs or anus, or the sex organs or anus of another person, or intentionally causes  
3 such exposure by another or engages in any overt act of sexual gratification, and does so under  
4 circumstances in which the person knows that the conduct is likely to cause affront or alarm to a  
5 person or persons to whom he or she exposes himself or herself. ~~Provided, That it is not~~  
6 ~~considered indecent exposure for a mother to breast feed a child in any location, public or private~~

7 (b) ~~Except as provided in subsection (c), any~~ Any person who violates the provisions of  
8 ~~this section §61-8-9(a) of this code shall be~~ is guilty of a misdemeanor and, upon conviction  
9 thereof, shall be confined in jail not more than 90 days, or fined not more than \$250, or both fined  
10 and confined.

11 (c) Notwithstanding the provisions of §61-8-9(a) and §61-8-9(b) of this code, ~~Any any~~  
12 ~~person who violates the provisions of subsection (a) of this section by intentionally exposing~~  
13 ~~himself or herself~~ exposes his or her sex organs or anus, to another person ~~and the exposure~~  
14 ~~was done for the purpose of sexual gratification~~ without that person's consent, and the exposure  
15 ~~was~~ is done for the purpose of sexual gratification, or the person engages in an overt act of sexual  
16 gratification involving his or her nude sex organs or anus towards another person, including, but  
17 not limited to, masturbation, is guilty of a misdemeanor and, upon conviction thereof, shall be  
18 fined not more than \$500 or confined in jail not more than ~~12 months~~ one year, or both fined and  
19 confined. For a second offense under this subsection, the person is guilty of a misdemeanor and,  
20 upon conviction thereof, shall be fined not more than \$1,000, ~~and~~ or confined in jail for not less  
21 than 30 days nor more than ~~12 months~~ one year, or both fined and confined. For a third or  
22 subsequent offense under this subsection, the person is guilty of a felony and, upon conviction

23 thereof, shall be fined not more than \$3,000, ~~and~~ or imprisoned in a state correctional facility for  
24 not less than one year nor more than five years, or both fined and imprisoned.

25 (d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, any adult  
26 who intentionally exposes his or her sex organs or anus to another person, who knows or should  
27 know that any of the persons present are younger than 16 years of age, does so under  
28 circumstances in which the person knows that the conduct is likely to cause affront or alarm to a  
29 person or persons to whom he or she exposes himself or herself, and the exposure is done for  
30 the purpose of sexual gratification, is guilty of a felony and, upon conviction thereof, shall be fined  
31 not more than \$3,000 and imprisoned in a state correctional facility for not less than one year nor  
32 more than five years, or both fined and imprisoned.

33 (e) As used in this section, "intentionally exposes his or her sex organs or anus" means to  
34 willfully display one's nude penis, vagina, or anus to another person.

**§61-11-18. Punishment for second or third offense of felony.**

1 (a) For purposes of this section, "qualifying offense" means any offense or an attempt or  
2 conspiracy to commit any of the offenses in the following provisions of this code:

- 3 (1) §60A-4-401(a)(i) and §60A-4-401(a)(ii);
- 4 (2) §60A-4-406;
- 5 (3) §60A-4-409(b)(1) and §60A-4-409 (b)(2);
- 6 (4) §60A-4-411;
- 7 (5) §60A-4-414;
- 8 (6) §60A-4-415;
- 9 (7) §60A-4-416(a);
- 10 (8) §61-2-1;
- 11 (9) §61-2-4;
- 12 (10) §61-2-7;
- 13 (11) §61-2-9(a);

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- 14 (12) §61-2-9a(d) and §61-2-9a(e);
- 15 (13) §61-2-9b;
- 16 (14) §61-2-9c;
- 17 (15) §61-2-9d;
- 18 (16) §61-2-10;
- 19 (17) §61-2-10b(b) and §61-2-10b(c);
- 20 (18) Felony provisions of §61-2-10b(d);
- 21 (19) §61-2-12;
- 22 (20) Felony provisions of §61-2-13;
- 23 (21) §61-2-14;
- 24 (22) §61-2-14a(a) and §61-2-14a(d);
- 25 (23) §61-2-14c;
- 26 (24) §61-2-14d(a) and §61-2-14d(b);
- 27 (25) §61-2-14f;
- 28 (26) §61-2-14h(a), §61-2-14h(b), and §61-2-14h(c);
- 29 (27) §61-2-16a(a) and §61-2-16a(b);
- 30 (28) Felony provisions of §61-2-16a(c);
- 31 (29) §61-2-28(d);
- 32 (30) §61-2-29(d) and §61-2-29(e);
- 33 (31) §61-2-29a;
- 34 (32) §61-3-1;
- 35 (33) §61-3-2;
- 36 (34) §61-3-3;
- 37 (35) §61-3-4;
- 38 (36) §61-3-5;
- 39 (37) §61-3-6;

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- 40 (38) §61-3-7;
- 41 (39) §61-3-11;
- 42 (40) Felony violation of 61-3-12;
- 43 (41) §61-3-13(a);
- 44 (42) Felony violation of §61-3-18;
- 45 (43) Felony violation of §61-3-19;
- 46 (44) Felony violation of §61-3-20;
- 47 (45) Felony violation of §61-3-20a;
- 48 (46) Felony violation of §61-3-21;
- 49 (47) §61-3-22;
- 50 (48) Felony violation of §61-3-24;
- 51 (49) Felony violation of §61-3-24a;
- 52 (50) §61-3-27;
- 53 (51) §61-3-54;
- 54 (52) §61-3C-14b;
- 55 (53) §61-3E-5;
- 56 (54) Felony violation of §61-5-10;
- 57 (55) ~~§61-5-17(b), §61-5-17(f), §61-5-17(h), and §61-5-17(i);~~ Felony provisions of §61-5-17;
- 58 (56) §61-5-27;
- 59 (57) §61-6-24;
- 60 (58) Felony provisions of §61-7-7;
- 61 (59) §61-7-12;
- 62 (60) §61-7-15;
- 63 (61) §61-7-15a;
- 64 (62) §61-8-12;
- 65 (63) §61-8-19(b);

- 66 (64) §61-8A-2;
- 67 (65) §61-8A-4;
- 68 (66) §61-8A-5;
- 69 (67) §61-8B-3;
- 70 (68) §61-8B-4;
- 71 (69) §61-8B-5;
- 72 (70) §61-8B-7;
- 73 (71) §61-8B-10;
- 74 (72) §61-8B-11b;
- 75 (73) §61-8C-2;
- 76 (74) §61-8C-3;
- 77 (75) §61-8C-3a;
- 78 (76) §61-8D-2;
- 79 (77) §61-8D-2a;
- 80 (78) §61-8D-3;
- 81 (79) §61-8D-3a;
- 82 (80) §61-8D-4;
- 83 (81) §61-8D-4a;
- 84 (82) §61-8D-5;
- 85 (83) §61-8D-6;
- 86 (84) §61-10-31;
- 87 (85) §61-11-8;
- 88 (86) §61-11-8a;
- 89 (87) §61-14-2; ~~and~~
- 90 (88) §17C-5-2(b), driving under the influence causing death;
- 91 (89) Felony provisions of §61-2-10c; and
- 92 (90) Felony provisions of §61-8-9.

93           (b) Except as provided by subsection (c) of this section, when any person is convicted of  
94 a qualifying offense and is subject to imprisonment in a state correctional facility for the qualifying  
95 offender and it is determined, as provided in §61-11-19 of this code, that the person had been  
96 previously convicted in the United States of a crime punishable by imprisonment in a state or  
97 federal correctional facility, the court shall, if the sentence to be imposed is for a definite term of  
98 years, add five years to the time for which the person is or would be otherwise sentenced.  
99 Whenever in that case the court imposes an indeterminate sentence, the minimum term shall be  
100 twice the term of years otherwise provided for under the sentence.

101           (c) Notwithstanding any provision of this code to the contrary, when any person is  
102 convicted of first degree murder or second degree murder or a violation of §61-8B-3 of this code  
103 and it is determined, as provided in §61-11-19 of this code, that the person had been previously  
104 convicted in this state of first degree murder, second degree murder, or a violation of §61-8B-3 of  
105 this code, or has been so convicted under any law of the United States or any other state for an  
106 offense which has the same or substantially similar elements as any offense described in this  
107 subsection, the person shall be punished by imprisonment in a state correctional facility for life  
108 and is not eligible for parole.

109           (d) When it is determined, as provided in §61-11-19 of this code, that the person has been  
110 twice previously convicted in the United States of a crime punishable by imprisonment in a state  
111 or federal correctional facility which has the same or substantially similar elements as a qualifying  
112 offense, the person shall be sentenced to imprisonment in a state correctional facility for  
113 life: *Provided*, That prior convictions arising from the same transaction or series of transactions  
114 shall be considered a single offense for purposes of this section: *Provided, however*, That the  
115 most recent previous qualifying offense which would otherwise constitute a qualifying offense for  
116 purposes of this subsection may not be considered if more than 20 years have elapsed between:  
117 (1) The release of the person from his or her term of imprisonment or period of supervision  
118 resulting from the most recent qualifying offense or the expiration of a period of supervised release  
119 resulting from the offense; and (2) the conduct underlying the current charge.