# WEST VIRGINIA CODE: §15-12-2A

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

(a) The circuit court that has sentenced a person for the commission of a sexually violent offense or that has entered a judgment of acquittal of a charge of committing a sexually violent offense in which the defendant has been found not guilty by reason of mental illness, mental retardation or addiction shall make a determination whether:

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

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

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

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

(d) Prior to making a determination pursuant to the provisions of this section, the sentencing court may order a psychiatric or other clinical examination and, after examination, may further order a period of observation in an appropriate facility within this state designated by the court after consultation with the Director of the Division of Health.

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

(f) At a hearing to determine whether a person is a sexually violent predator, the person shall be present and shall have the right to be represented by counsel, introduce evidence and cross-examine witnesses. The offender shall have access to a summary of the medical evidence to be presented by the state. The offender shall have the right to an examination by an independent expert of his or her choice and testimony from the expert as a medical witness on his or her behalf. At the termination of the hearing the court shall make a finding of fact upon a preponderance of the evidence as to whether the person is a sexually violent predator.

(g) If a person is determined by the circuit court to be a sexually violent predator, the clerk

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of the court shall forward a copy of the order to the State Police in the manner promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

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