

RECEIVED

RECEIVED

APR -3 AM 11: 18

MAR 34 AM 10: 14

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



ENROLLED

Committee Substitute for
SENATE BILL NO. 497

(By Senator Kessler, et al)



PASSED March 11, 2000
In Effect ninety days from Passage

RECEIVED

3 APR -3 11:18

WEST VIRGINIA SENATE
STATE HOUSE

RECEIVED

3 APR 30 11:13 14

WEST VIRGINIA SENATE
STATE HOUSE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 497

(SENATORS KESSLER, MITCHELL, SNYDER, EDGELL, HUNTER,
UNGER, PLYMALE, SHARPE, BOWMAN, BALL, MCKENZIE
AND SPROUSE, *original sponsors*)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one-a, two, two-a, three, four, five, eight and nine, article twelve of said chapter, all relating to the central abuse and the sex offender registries; declaring a reduced expectation of privacy for sex offenders; including persons convicted of certain attempted offenses and persons found not guilty by reason of mental illness, mental retardation or addiction within registration requirements; adding required registration information from sex offenders; requiring the department of health and human resources to obtain infor-

mation; adding persons found not guilty by reason of mental illness, mental retardation or addiction in duration determination; adding entities that receive information on sex offenders; providing that failure to provide notice of changes in registration information constitutes a criminal offense; requiring notice to certain offenders; increasing penalties for certain offenders who fail to provide information; requiring registration of out-of-state persons who visit this state and who have been convicted of an offense similar to an offense requiring registration in this state or in the state of residence; and requiring registration of certain offenders moving to this state.

Be it enacted by the Legislature of West Virginia:

That section two, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one-a, two, two-a, three, four, five, eight and nine, article twelve of said chapter be amended and reenacted, all to read as follows:

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-2. Central abuse registry; required information; procedures.

1 (a) The criminal identification bureau of the West
2 Virginia state police shall establish a central abuse regis-
3 try, to contain information relating to criminal convictions
4 involving child abuse or neglect, abuse or neglect of an
5 incapacitated adult and misappropriation of property by
6 individuals specified in subsection (b) of this section and
7 information relating to individuals required to be regis-
8 tered as a sex offender.

9 (b) The central abuse registry shall contain, at a mini-
10 mum, information relating to: convictions of a misde-
11 meanor or a felony involving abuse, neglect or misappro-
12 priation of property, by an individual performing services

13 for compensation, within the scope of the individual's
14 employment or contract to provide services, in a residen-
15 tial care facility, in a licensed day care center, or in
16 connection with the provision of home care services;
17 information relating to individuals convicted of specific
18 offenses enumerated in subsection (a), section three of this
19 article with respect to a child or an incapacitated adult;
20 and information relating to all individuals required to
21 register with the West Virginia state police as sex offend-
22 ers pursuant to the provisions of article twelve, chapter
23 fifteen of this code. The central abuse registry shall
24 contain the following information:

25 (1) The individual's full name;

26 (2) Sufficient information to identify the individual,
27 including date of birth, social security number and finger-
28 prints if available;

29 (3) Identification of the criminal offense constituting
30 abuse, neglect or misappropriation of property of a child
31 or an incapacitated adult;

32 (4) For cases involving abuse, neglect or misappropria-
33 tion of property of a child or an incapacitated adult in a
34 residential care facility or a day care center, or of a child
35 or an incapacitated adult receiving home care services,
36 sufficient information to identify the location where the
37 documentation of any investigation by the department of
38 health and human resources is on file and the location of
39 pertinent court files; and

40 (5) Any statement by the individual disputing the
41 conviction, if he or she chooses to make and file one.

42 (c) Upon conviction in the criminal courts of this state of
43 a misdemeanor or a felony offense constituting child abuse
44 or neglect or abuse or neglect of an incapacitated adult,

45 the individual so convicted shall be placed on the central
46 abuse registry.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-1a. Intent and findings.

1 (a) It is the intent of this article to assist law-enforce-
2 ment agencies' efforts to protect the public from sex
3 offenders by requiring sex offenders to register with the
4 state police detachment in the county where he or she shall
5 reside and by making certain information about sex
6 offenders available to the public as provided in this article.
7 It is not the intent of the Legislature that the information
8 be used to inflict retribution or additional punishment on
9 any person convicted of any offense requiring registration
10 under this article. This article is intended to be regulatory
11 in nature and not penal.

12 (b) The Legislature finds and declares that there is a
13 compelling and necessary public interest that the public
14 have information concerning persons convicted of sexual
15 offenses in order to allow members of the public to ade-
16 quately protect themselves and their children from these
17 persons.

18 (c) The Legislature also finds and declares that persons
19 required to register as sex offenders pursuant to this
20 article have a reduced expectation of privacy because of
21 the state's interest in public safety.

§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
4 an attempted offense or has been found not guilty by
5 reason of mental illness, mental retardation or addiction
6 of an offense under any of the following provisions of

7 chapter sixty-one of this code or under a similar provision
8 in another state, federal or military jurisdiction shall
9 register as set forth in subsection (d) of this section and
10 according to the internal management rules promulgated
11 by the superintendent under authority of section twenty-
12 five, article two, chapter fifteen of this code:

13 (1) Article eight-b;

14 (2) Article eight-c;

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

16 (4) Section fourteen, article two; or

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

18 (c) Any person who has been convicted of a criminal
19 offense, which at the time of sentencing was found by the
20 sentencing judge to have been sexually motivated, shall
21 also register as set forth in this article.

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

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

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

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

37 (4) A full face photograph of the registrant at the time of
38 registration;

39 (5) A brief description of the crime(s) for which the
40 registrant was convicted; and

41 (6) Fingerprints.

42 (e) On the date that any person convicted or found not
43 guilty by reason of mental illness, mental retardation or
44 addiction of any of the crimes listed herein, including
45 those persons who are continuing under some post convic-
46 tion supervisory status, are released, granted probation or
47 a suspended sentence, released on parole, probation, home
48 detention, work release, conditional release or any other
49 release from confinement, the commissioner of corrections,
50 regional jail administrator, city or sheriff operating a jail,
51 or secretary of the department of health and human
52 services which releases the person, and any parole or
53 probation officer who releases the person or supervises the
54 person following the release, shall obtain all information
55 required by subsection (d) of this section prior to the
56 release of the person, inform the person of his or her duty
57 to register, and send written notice of the release of the
58 person to the state police within three days of receiving the
59 information. The notice shall include the information
60 required by subsection (d) of this section.

61 (f) For any person determined to be a sexually violent
62 predator, the notice required by subsection (d) of this
63 section shall also include:

64 (1) Identifying factors, including physical characteristics;

65 (2) History of the offense; and

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

68 (g) At the time the person is convicted or found not guilty
69 by reason of mental illness, mental retardation or addic-
70 tion in a court of this state of the crimes set forth in
71 subsection (b) of this section, the person shall sign in open
72 court, a statement acknowledging that he or she under-
73 stands the requirements imposed by this article. The court
74 shall inform the person so convicted of the requirements to
75 register imposed by this article and shall further satisfy
76 itself by interrogation of the defendant or his or her
77 counsel that the defendant has received notice of the
78 provisions of this article and that the defendant under-
79 stands the provisions. The statement, when signed and
80 witnessed, shall constitute prima facie evidence that the
81 person had knowledge of the requirements of this article.
82 Persons who have not signed a statement under the
83 provisions of this subsection and who are subject to the
84 registration requirements of this article shall be informed
85 of such requirement by the state police whenever the state
86 police obtain information that the person is subject to
87 registration requirements.

88 (h) The state police shall maintain a central registry of
89 all persons who register under this article and shall release
90 information only as provided in this article. The informa-
91 tion required to be made public by the state police by
92 subdivision (2), subsection (b), section five of this article
93 shall be accessible through the internet.

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

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

100 (2) Sexual assault in the second degree as set forth in
101 section four, article eight-b, chaptersixty-one of this code,

102 or of a similar provision in another state, federal or
103 military jurisdiction;

104 (3) Sexual assault of a spouse as set forth in section six,
105 article eight-b, chapter sixty-one of this code, or of a
106 similar provision in another state, federal or military
107 jurisdiction;

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

112 (j) For purposes of this article, the term “sexually
113 motivated” means that one of the purposes for which a
114 person committed the crime was for any person’s sexual
115 gratification.

116 (k) For purposes of this article, the term “sexually
117 violent predator” means a person who has been convicted
118 or found not guilty by reason of mental illness, mental
119 retardation or addiction of a sexually violent offense and
120 who suffers from a mental abnormality or personality
121 disorder that makes the person likely to engage in preda-
122 tory sexually violent offenses.

123 (l) For purposes of this article, the term “mental abnor-
124 mality” means a congenital or acquired condition of a
125 person that affects the emotional or volitional capacity of
126 the person in a manner that predisposes that person to the
127 commission of criminal sexual acts to a degree that makes
128 the person a menace to the health and safety of other
129 persons.

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

§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
3 entered a judgment of acquittal of a charge of committing
4 a sexually violent offense in which the defendant has been
5 found not guilty by reason of mental illness, mental
6 retardation or addiction shall make a determination
7 whether:

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

9 (2) A person is no longer a sexually violent predator.

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

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

24 (d) A proceeding seeking to establish that a person is no
25 longer a sexually violent predator is initiated by the filing
26 of a petition by the person who has been determined to be
27 a sexually violent predator.

28 (e) Prior to making a determination pursuant to the
29 provisions of this section, the sentencing court may order
30 a psychiatric or other clinical examination and, after
31 examination, may further order a period of observation in

32 an appropriate facility within this state designated by the
33 court after consultation with the director of the division of
34 health.

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

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

54 (h) If a person is determined by the circuit court to be a
55 sexually violent predator, the clerk of the court shall
56 forward a copy of the order to the state police in the
57 manner promulgated in accordance with the provisions of
58 article three, chapter 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
3 or occupation, or school or training facility which he or
4 she is attending, or when any of the other information
5 required by this article changes, he or she shall, within ten
6 days, inform the West Virginia state police of the changes

7 in the manner prescribed by the superintendent of state
8 police in procedural rules promulgated in accordance with
9 the provisions of article three, chapter twenty-nine-a of
10 this code.

§15-12-4. Duration.

1 (a) A person required to register under the terms of this
2 article shall continue to comply with this section, except
3 during ensuing periods of incarceration or confinement,
4 until:

5 (1) Ten years have elapsed since the person was released
6 from prison, jail or a mental health facility or ten years
7 have elapsed since the person was placed on probation,
8 parole or supervised or conditional release. The ten year
9 registration period shall not be reduced by the sex of-
10 fender's release from probation, parole or supervised or
11 conditional release; or

12 (2) For the life of that person if that person: (A) Has one
13 or more prior convictions or has previously been found not
14 guilty by reason of mental illness, mental retardation or
15 addiction for any qualifying offense referred to in this
16 article; or (B) has been convicted or has been found not
17 guilty by reason of mental illness, mental retardation or
18 addiction of a qualifying offense as referred to in this
19 article, and upon motion of the prosecuting attorney, the
20 court finds by clear and convincing evidence, that the
21 qualifying offense involved multiple victims or multiple
22 violations of the qualifying offense; or (C) has been
23 convicted or has been found not guilty by reason of mental
24 illness, mental retardation or addiction of a sexually
25 violent offense; or (D) has been determined pursuant to
26 section two-a of this article to be a sexually violent
27 predator; or (E) has been convicted or has been found not
28 guilty by reason of mental illness, mental retardation or

29 addiction of a qualifying offense as referred to in this
30 article, involving a minor.

31 (b) A person whose conviction is overturned for the
32 offense which required them to register under this article
33 shall, upon petition to the court, have their name removed
34 from the registry.

**§15-12-5. Distribution and disclosure of information; commu-
nity information programs by prosecuting attor-
ney and state police; petition to circuit court.**

1 (a) Within five working days after receiving any notifica-
2 tion as described in this article, the state police shall
3 distribute 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
6 in the city and county where the registrant resides, is
7 employed or 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
10 training facility;

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

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

19 (5) Individuals and organizations which provide day care
20 services for youths or day care, residential or respite care,
21 or other supportive services for mentally or physically
22 incapacitated or infirm persons in the county where the

23 registrant resides, is employed or attends school or a
24 training facility; and

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

26 (b) Information concerning persons whose names are
27 contained in the sexual offender registry and who are not
28 required to register for life shall be disseminated only in
29 the following manner and shall not be subject to the
30 requirements of the West Virginia freedom of information
31 act, as set forth in chapter twenty-nine-b of this code:

32 (1) When a person has been determined to be a sexually
33 violent predator under the terms of section two-a of this
34 article, the state police shall notify the prosecuting
35 attorney of the county in which the person resides, is
36 employed or attends a school or training facility. The
37 prosecuting attorney shall cooperate with the state police
38 in conducting a community notification program which
39 shall include publication of the offender's name, photo-
40 graph, and place of residence, employment and education
41 or training, as well as information concerning the legal
42 rights and obligations of both the offender and the com-
43 munity. The prosecuting attorney and state police may
44 conduct a community notification program in the county
45 of residence, employment or where a person is attending
46 school or a training facility of any person who is required
47 to register for life under the terms of subdivision (2),
48 subsection (a), section four of this article. Community
49 notification may be repeated when determined to be
50 appropriate by the prosecuting attorney;

51 (2) The state police shall maintain and make available to
52 the public at least quarterly the list of all persons who are
53 required to register for life according to the terms of
54 subdivision (2), subsection (a), section four of this article.
55 The method of publication and access to this list shall be
56 determined by the superintendent; and

57 (3) A resident of a county may petition the circuit court
58 for an order requiring the state police to release informa-
59 tion about persons residing in that county who are re-
60 quired to register under section two of this article. The
61 court shall determine whether information contained on
62 the list and relevant to public safety outweighs the impor-
63 tance of confidentiality, and if the court orders informa-
64 tion to be released, it may further order limitations upon
65 secondary dissemination by the resident seeking the
66 information. In no event shall information concerning the
67 identity of a victim of an offense requiring registration be
68 released.

69 (c) The state police may furnish information and docu-
70 mentation required in connection with the registration to
71 authorized law-enforcement, campus police and govern-
72 mental agencies of the United States and its territories, of
73 foreign countries duly authorized to receive the same, of
74 other states within the United States and of the state of
75 West Virginia upon proper request stating that the records
76 will be used solely for law enforcement-related purposes.
77 The state police may disclose information collected under
78 this article to federal, state and local governmental
79 agencies responsible for conducting preemployment
80 checks.

81 (d) An elected public official, public employee or public
82 agency is immune from civil liability for damages arising
83 out of any action relating to the provisions of this section
84 except when the official, employee or agency acted with
85 gross negligence or in bad faith.

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

1 (a) Except as provided in this section, any person re-
2 quired to register under this article who knowingly
3 provides false information or who refuses to provide

4 accurate information when so required by terms of this
5 article, or who knowingly fails to register or knowingly
6 fails to provide a change in any information as required by
7 this article, is guilty of a misdemeanor and, upon conviction
8 thereof, shall be fined not less than two hundred fifty
9 dollars nor more than ten thousand dollars, or imprisoned
10 in the county or regional jail not more than one year, or
11 both: *Provided*, That each time the person has a change in
12 any of the registration information as required by this
13 article and fails to register the change or changes, each
14 failure to register each separate item of information
15 changed shall constitute a separate offense.

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

26 (c) Any person required to register as a sexual predator
27 who fails to register or provide a change in information as
28 required by this article is guilty of a felony and, upon
29 conviction thereof, shall, for a first offense, be confined in
30 a state correctional facility not less than two years nor
31 more than ten years, and for a second or subsequent
32 offense, is guilty of a felony and shall be confined in a
33 state correctional facility not less than five years nor more
34 than twenty years.

35 (d) In addition to any other penalty specified for failure
36 to register under this article, any person under the supervision
37 of a probation officer, parole officer or any other
38 sanction short of confinement in jail or prison, who

39 knowingly refuses to register, or who knowingly fails to
40 provide a change in information as required by this article,
41 shall be subject to immediate revocation of probation or
42 parole and returned to confinement for the remainder of
43 any suspended or unserved portion of his or her original
44 sentence.

§15-12-9. Registration of out-of-state offenders.

1 (a) When any probation or parole officer accepts supervi-
2 sion of and has legal authority over any person required to
3 register under this article from another state under the
4 terms and conditions of the uniform act for out-of-state
5 parolee supervision established under article six, chapter
6 twenty-eight of this code, the officer shall give the person
7 written notice of the registration requirements of this
8 section and obtain a signed statement from the person
9 required to register acknowledging the receipt of the
10 notice. The officer shall obtain and submit to the state
11 police the information required in subsection (d), section
12 two of this article.

13 (b) Any person:

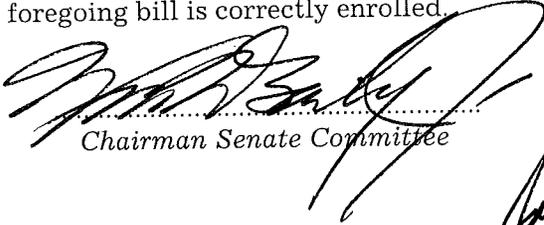
14 (1) Who resides in another state or federal or military
15 jurisdiction;

16 (2) Who is employed, carries on a vocation, is a student
17 in this state or is a visitor to this state for a period of more
18 than fifteen continuous days; and

19 (3) Who is required by the state, federal or military
20 jurisdiction in which he or she resides to register in that
21 state, federal or military jurisdiction as a sex offender, or
22 has been convicted of a violation in that state, federal or
23 military jurisdiction that is similar to a violation in this
24 article requiring registration as a sex offender in this state,
25 shall register in this state and otherwise comply with the
26 provisions of this article.

27 (c) Any person changing residence to this state from
28 another state or federal or military jurisdiction who is
29 required to register as a sex offender under the laws of
30 that state or federal or military jurisdiction shall register
31 as a sex offender in this state.

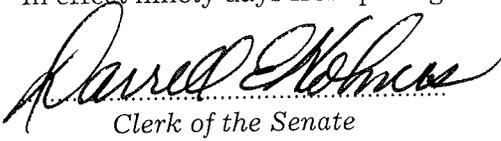
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

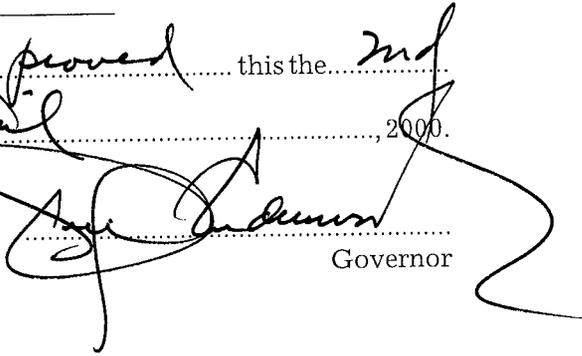

.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within..... *approved* this the *2nd*
Day of *April*, 2000.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/00

Time 3:15 pm