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2001 MAY -2 A 11: 15
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



ENROLLED

House Bill No. 2409

(By Delegates Staton, Stemple, Varner and Beane)



Passed April 14, 2001

In Effect Ninety Days from Passage

FILED

2001 MAY -2 A 11: 16

ENROLLED OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 2409

(BY DELEGATES STATON, STEMPLE, VARNER AND BEANE)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and five, article twelve, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the sex offender registry; clarifying use of information regarding the identity of victims; requiring registrants to provide information about their internet accounts and screen names; and excluding certain information from dissemination under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That sections two and five, article twelve, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2. Registration.

- 1 (a) The provisions of this article apply both retroactively
- 2 and prospectively.

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

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16 assault of a spouse, which was repealed by an act of the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

18 (2) Article eight-c;

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

20 (4) Section fourteen, article two; or

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

22 (c) Any person who has been convicted of a criminal
23 offense, and the sentencing judge made a written finding that
24 the offense was sexually motivated shall also register as set
25 forth in this article.

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

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

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

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

44 (6) Fingerprints; and

45 (7) Information relating to any internet accounts the
46 registrant has and the screen names, user names or aliases the
47 registrant uses on the internet.

48 (e) On the date that any person convicted or found not
49 guilty by reason of mental illness, mental retardation or
50 addiction of any of the crimes listed in subsection (b) of this
51 section, including those persons who are continuing under some
52 post-conviction supervisory status, are released, granted
53 probation or a suspended sentence, released on parole, proba-
54 tion, home detention, work release, conditional release or any
55 other release from confinement, the commissioner of correc-
56 tions, regional jail administrator, city or sheriff operating a jail,
57 or secretary of the department of health and human services
58 which releases the person, and any parole or probation officer
59 who releases the person or supervises the person following the
60 release, shall obtain all information required by subsection (d)
61 of this section prior to the release of the person, inform the

62 person of his or her duty to register and send written notice of
63 the release of the person to the state police within three days of
64 receiving the information. The notice must include the informa-
65 tion required by subsection (d) of this section.

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

69 (1) Identifying factors, including physical characteristics;

70 (2) History of the offense; and

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

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

91 (h) The state police shall maintain a central registry of all
92 persons who register under this article and shall release

93 information only as provided in this article. The information
94 required to be made public by the state police by subdivision
95 (2), subsection (b), section five of this article is to be accessible
96 through the internet. No information relating to internet
97 accounts, screen names, user names or aliases a registrant has
98 or uses may be released through the internet.

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

101 (1) Sexual assault in the first degree as set forth in section
102 three, article eight-b, chapter sixty-one of this code, or of a
103 similar provision in another state, federal or military jurisdic-
104 tion;

105 (2) Sexual assault in the second degree as set forth in
106 section four, article eight-b, chapter sixty-one of this code, or of
107 a similar provision in another state, federal or military jurisdic-
108 tion;

109 (3) Sexual assault of a spouse as set forth in the former
110 provisions of section six, article eight-b, chapter sixty-one of
111 this code which was repealed by an act of the Legislature during
112 the two thousand legislative session, or of a similar provision in
113 another state, federal or military jurisdiction;

114 (4) Sexual abuse in the first degree as set forth in section
115 seven, article eight-b, chapter sixty-one of this code, or of a
116 similar provision in another state, federal or military jurisdic-
117 tion.

118 (j) For purposes of this article, the term “sexually moti-
119 vated” means that one of the purposes for which a person
120 committed the crime was for any person’s sexual gratification.

121 (k) For purposes of this article, the term “sexually violent
122 predator” means a person who has been convicted or found not

123 guilty by reason of mental illness, mental retardation or
124 addiction of a sexually violent offense and who suffers from a
125 mental abnormality or personality disorder that makes the
126 person likely to engage in predatory sexually violent offenses.

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

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

**§15-12-5. Distribution and disclosure of information; community
information programs by prosecuting attorney
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 distribute
3 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 in
6 the city and county where the registrant resides, is employed or
7 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 training
10 facility;

11 (3) The child protective services office charged with
12 investigating allegations of child abuse or neglect in the county

13 where the registrant resides, is employed or attends school or a
14 training facility;

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

19 (5) Individuals and organizations which provide day care
20 services for youths or day care, residential or respite care, or
21 other supportive services for mentally or physically incapacitated
22 or infirm persons in the county where the registrant
23 resides, is employed or attends school or a training facility; and

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

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

31 (1) When a person has been determined to be a sexually
32 violent predator under the terms of section two-a of this article,
33 the state police shall notify the prosecuting attorney of the
34 county in which the person resides, is employed or attends a
35 school or training facility. The prosecuting attorney shall
36 cooperate with the state police in conducting a community
37 notification program which is to include publication of the
38 offender's name, photograph, place of residence, employment
39 and education or training, as well as information concerning the
40 legal rights and obligations of both the offender and the
41 community. Information relating to the victim of an offense
42 requiring registration may not be released to the public except
43 to the extent the prosecuting attorney and the state police
44 consider it necessary to best educate the public as to the nature

45 of sexual offenses: *Provided*, That no victim's name may be
46 released in any public notification pursuant to this subsection.
47 No information relating to internet accounts, screen names, user
48 names or aliases a registrant has or uses may be released to the
49 public with this notification program. The prosecuting attorney
50 and state police may conduct a community notification program
51 in the county of residence, employment or where a person is
52 attending school or a training facility of any person who is
53 required to register for life under the terms of subdivision (2),
54 subsection (a), section four of this article. Community notifica-
55 tion may be repeated when determined to be appropriate by the
56 prosecuting attorney;

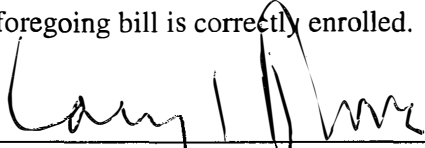
57 (2) The state police shall maintain and make available to
58 the public at least quarterly the list of all persons who are
59 required to register for life according to the terms of subdivi-
60 sion (2), subsection (a), section four of this article. No informa-
61 tion concerning the identity of a victim of an offense requiring
62 registration or information relating to internet accounts, screen
63 names, user names or aliases a registrant has or uses may be
64 released with this list. The method of publication and access to
65 this list are to be determined by the superintendent; and

66 (3) A resident of a county may petition the circuit court for
67 an order requiring the state police to release information about
68 persons residing in that county who are required to register
69 under section two of this article. The court shall determine
70 whether information contained on the list is relevant to public
71 safety and whether its relevance outweighs the importance of
72 confidentiality. If the court orders information to be released,
73 it may further order limitations upon secondary dissemination
74 by the resident seeking the information. In no event may
75 information concerning the identity of a victim of an offense
76 requiring registration or information relating to internet
77 accounts, screen names, user names or aliases a registrant has
78 or uses be released.

79 (c) The state police may furnish information and documen-
80 tation required in connection with the registration to authorized
81 law-enforcement, campus police and governmental agencies of
82 the United States and its territories, of foreign countries duly
83 authorized to receive the same, of other states within the United
84 States and of the state of West Virginia upon proper request
85 stating that the records will be used solely for law enforce-
86 ment-related purposes. The state police may disclose informa-
87 tion collected under this article to federal, state and local
88 governmental agencies responsible for conducting preemploy-
89 ment checks.

90 (d) An elected public official, public employee or public
91 agency is immune from civil liability for damages arising out
92 of any action relating to the provisions of this section except
93 when the official, employee or agency acted with gross negli-
94 gence or in bad faith.

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



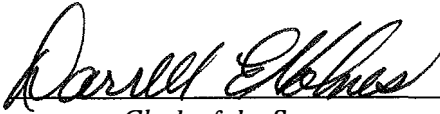
Chairman Senate Committee



Chairman House Committee

Originating in the House.

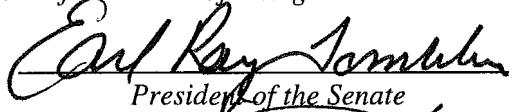
In effect ninety days from passage.



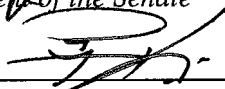
Clerk of the Senate



Clerk of the House of Delegates

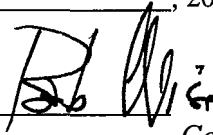


President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th
day of April, 2001.



Governor

PRESENTED TO THE

GOVERNOR

Date 4/27/01

Time 11:35 AM