

HB 101

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 2006



ENROLLED

House Bill No. 101

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]



Passed June 14, 2006

In Effect October 1, 2006

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E N R O L L E D

H. B. 101

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)
[BY REQUEST OF THE EXECUTIVE]

[Passed June 14, 2006; in effect October 1, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-11-1 and §15-11-2; to amend said code by adding thereto a new section, designated §15-2-15; to amend and reenact §15-2C-2 of said code; to amend and reenact §15-12-2, §15-12-3, §15-12-5, §15-12-8, §15-12-9 and §15-12-10 of said code; to amend said code by adding thereto a new section, designated §15-12-6a; to amend said code by adding thereto a new article, designated §15-13-1, §15-13-2, §15-13-3, §15-13-4, §15-13-5, §15-13-6, §15-13-7, and §15-13-8; to amend and reenact §17B-2-3 of said code; to amend and reenact §18-5-15c of said code; to amend said code by adding thereto a new section, designated §25-1-22; to amend said code by adding thereto a new section, designated §49-6A-11; to amend and reenact §61-8B-3 and §61-8B-7 of said code; to amend said code by adding thereto two new sections, designated §61-8B-9a and §61-8B-9b; to amend said code by adding thereto a new article, designated §62-11D-1, §62-11D-2 and §62-11D-3; to amend said code by adding thereto a new article, designated §62-11E-1, §62-11E-2 and §62-11E-3; to amend and reenact §62-12-2 of said

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code; to amend and reenact §62-12-26 of said code; and to amend said code by adding thereto a new section, designated §62-12-27, all relating to enhancing government protection of children from abuse and neglect generally; establishing the Child Protection Act of 2006; setting forth legislative findings; creating a special unit within the State Police specializing in child abuse and neglect investigations; establishing duties of the unit; requiring state and local entities to report information to the unit; authorizing legislative and procedural rules; creating special account in State Treasury; requiring the reporting of information to the sex offender registry; requiring reporting of certain changes in sex offender information to sex offender registry; providing for the distribution and disclosure of information by the sex offender registry in certain circumstances; setting forth which information is ineligible for release by the sex offender registry; providing for the provision of information to the sex offender registry by the judiciary and agencies; providing for fines and terms of incarceration for failure to properly register with the sex offender registry and for assisting sex offenders in evading registration; providing for periodic verification of information by the sex offender registry; requiring periodic in-person reporting by sex offenders; establishing the child abuse and neglect registry; providing for procedures; requiring certain individuals convicted of child abuse or neglect to register and report changes in information; providing for the distribution and disclosure of information from the child abuse and neglect registry; providing for fines and terms of incarceration for persons that fail to properly register; providing for inclusion of information from the child abuse and neglect registry in the central abuse registry; providing for the creation and maintenance of statistical indexes of child abuse and neglect allegations and convictions; mandating coded driver's licenses or nondriver identification cards for sexually violent predators; providing for fines and terms of incarceration for failure to comply with license and identification card requirements; prohibiting contractors and service providers convicted of certain

offenses from accessing school grounds; authorizing individual county school boards to require verification of criminal history and to share said information with other county school boards; providing for the disclosure of information by the central abuse registry; setting an effective date; establishing a task force to study correctional facilities specifically for sex offenders; providing for increased terms of incarceration for sexual assault and sexual abuse in certain circumstances; eliminating eligibility for probation, home incarceration and alternative sentences for certain sex offenders; providing for increased terms of incarceration for certain subsequent sex offenses committed by certain recidivist sex offenders; definitions; providing for polygraph examinations as a condition of supervision for certain probationers, parolees or those on supervised release; providing for electronic monitoring of certain sex offenders on probation, parole and supervised release; providing for term of incarceration for tampering with or destroying an electronic monitoring device; establishing a task force to develop measures aimed at managing sexually violent predators released from confinement; setting forth legislative findings and intent; requiring a report to the Legislature and Governor; requiring public hearings; providing for conditions on probation eligibility; providing for extended supervision for certain offenders; providing for supervised release requirements for certain sex offenders; addressing terms of incarceration for violation of supervised release; authorizing the Secretary of Health and Human Resources to propose rules and emergency rules for legislative approval; and providing for prerelease risk assessments of certain offenders.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §15-11-1 and §15-11-2; that said code be amended by adding thereto a new section, designated §15-2-15; that §15-2C-2 of said code be amended and reenacted; that §15-12-2, §15-12-3, §15-12-5, §15-12-8, §15-12-9 and §15-12-10 of

said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §15-12-6a; that said code be amended by adding thereto a new article, designated §15-13-1, §15-13-2, §15-13-3, §15-13-4, §15-13-5, §15-13-6, §15-13-7 and §15-13-8; that §17B-2-3 of said code be amended and reenacted; that §18-5-15c of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §25-1-22; that said code be amended by adding thereto a new section, designated §49-6A-11; that §61-8B-3 and §61-8B-7 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §61-8B-9a and §61-8B-9b; that said code be amended by adding thereto a new article, designated §62-11D-1, §62-11D-2 and §62-11D-3; that said code be amended by adding thereto a new article, designated §62-11E-1, §62-11E-2 and §62-11E-3; that §62-12-2 of said code be amended and reenacted; that §62-12-26 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §62-12-27, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 11. THE CHILD PROTECTION ACT OF 2006.

§15-11-1. The Child Protection Act of 2006.

1 This article and those other amendments and additions to
2 this code established by this Act, enacted during the first
3 extraordinary session of the West Virginia Legislature, two
4 thousand six shall be known as “The Child Protection Act of
5 2006.”

§15-11-2. Legislative findings.

1 (a) The purpose of “The Child Protection Act of 2006” is to
2 put in place a series of programs, criminal law revisions and
3 other reforms to provide and promote the ability of the children
4 of this state to live their lives without being exposed and

5 subjected to neglect and physical and sexual abuse. The
6 targeted increases in terms of incarceration, enhanced treat-
7 ment, post-release supervision and new approaches toward the
8 state's child protection system will, in the aggregate, strengthen
9 government's ability to address this most serious problem. The
10 Legislature finds that the broad reaching measures encom-
11 passed in this Act will provide for greater intervention among
12 and punishment and monitoring of individuals who create a risk
13 to our children's safety and well-being.

14 (b) The Legislature further finds that the following reforms
15 implemented as part of this Act will provide protections to the
16 children of this state and are all important to eliminate risks to
17 children and are essential elements of "The Child Protection
18 Act of 2006":

19 (1) Creating a special unit in the State Police specializing
20 in the investigation of child abuse and neglect — section
21 fifteen, article two, chapter fifteen of this code;

22 (2) Modifying the Sex Offender Registration Act to ensure
23 more effective registration, identification and monitoring of
24 persons convicted of sexual offenses — article twelve, chapter
25 fifteen of this code.

26 (3) Establishing the Child Abuse and Neglect Registry,
27 requiring the registry to disclose information to certain state and
28 local officials — article thirteen, chapter fifteen of this code;

29 (4) Providing for coded driver's licenses and nondriver
30 identification cards to more easily identify sexually violent
31 predators — section three, article two, chapter seventeen-b of
32 this code;

33 (5) Prohibiting contractors and service providers convicted
34 of certain offenses from accessing school grounds and provid-
35 ing for the release of criminal history information by the central

36 abuse registry to county school boards — section fifteen-c,
37 article five, chapter eighteen of this code;

38 (6) Establishing a task force to study the feasibility of
39 constructing separate correctional facilities for the incarceration
40 and treatment of sex offenders — section twenty-two, article
41 one, chapter twenty-five of this code.

42 (7) Requiring the State Police and the Department of Health
43 and Human Resources to maintain statewide child abuse and
44 neglect statistical indexes of all convictions and allegations,
45 respectively — section fifteen, article two, chapter fifteen and
46 section eleven, article six-a, chapter forty-nine of this code;

47 (8) Providing for increased terms of incarceration for first
48 degree sexual assault and first degree sexual abuse committed
49 against children under the age of twelve — sections three and
50 seven of article eight-b, chapter sixty-one of this code;

51 (9) Eliminating eligibility of certain sex offenders for
52 probation, home incarceration and alternative sentences and
53 providing for enhanced terms of incarceration for certain
54 subsequent sex offenses committed by recidivist sex offenders
55 — sections nine-a and nine-b of article eight-b, chapter sixty-
56 one of this code;

57 (10) Providing for polygraph examinations for certain sex
58 offenders on probation, parole or supervised release — article
59 eleven-d, chapter sixty-two of this code;

60 (11) Providing for electronic monitoring of certain sex
61 offenders on probation, parole and supervised release — article
62 eleven-d, chapter sixty-two of this code;

63 (12) Establishing a task force to develop measures aimed at
64 managing sexually violent predators released from confinement
65 — article eleven-e, chapter sixty-two of this code;

66 (13) Making psychiatric evaluations a condition of proba-
67 tion eligibility for certain sex offenders — section two, article
68 twelve, chapter sixty-two of this code;

69 (14) Authorizing the Department of Health and Human
70 Resources to establish qualifications for sex offender treatment
71 programs and counselors — sections two and twenty-six, article
72 twelve, chapter sixty-two of this code;

73 (15) Providing for extended supervision of certain offenders
74 and supervised release requirements for sexually violent
75 offenders — section twenty-six, article twelve, chapter sixty-
76 two of this code; and

77 (16) Providing for prerelease risk assessments of certain sex
78 offenders — section twenty-seven, article twelve, chapter
79 sixty-two of this code.

80 (c) In addition, the Legislature finds that those enhanced
81 terms of incarceration and post-conviction measures provided
82 for in this Act which impact certain offenders convicted of
83 sexual offenses against adults are necessary and appropriate to
84 protect children from neglect and physical and sexual abuse
85 given that: (1) Clinical research indicates that a substantial
86 percentage of sexual offenders “cross over” among age groups
87 in selecting their victims; (2) many of the risk factors prevalent
88 among sex offenders that “cross over” (e.g., substance abuse,
89 lack of empathy toward victim, inability to control inappropri-
90 ate impulses, childhood abuse) also are prevalent among
91 perpetrators of child abuse and neglect; and (3) enhanced terms
92 of incarceration, post-conviction supervision, monitoring and
93 treatment measures will enable the criminal justice system to
94 identify and address those “cross over” offenders before they
95 can victimize additional children.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-15. State Police Child Abuse and Neglect Investigations Unit.

1 (a) The superintendent shall establish a special unit of the
2 State Police, called the Child Abuse and Neglect Investigations
3 Unit. The purpose of the unit is to focus on identifying,
4 investigating and prosecuting criminal child abuse and neglect
5 cases, in coordination with Child Protective Services, estab-
6 lished pursuant to section nine, article six-a, chapter forty-nine
7 of this code. The unit shall assist other State Police members
8 with child abuse or neglect investigations as well as the
9 Division of Child Protective Services. The unit may provide
10 training, technical expertise and coordination of services for
11 other law-enforcement agencies, Child Protective Services
12 caseworkers, prosecuting attorneys and multidisciplinary teams
13 established pursuant to the provisions of section two, article
14 five-d, chapter forty-nine of this code, to identify, investigate,
15 report and prosecute criminal child abuse and criminal child
16 neglect cases. However, nothing in this section may be con-
17 strued to mean that the unit will assume the duties or investiga-
18 tions of other State Police members or other law-enforcement
19 officers.

20 (b) The unit will comprise, at a minimum, six members of
21 the State Police. The superintendent shall assign a unit director,
22 and shall assign five members regionally, to be dedicated and
23 trained to assist county Child Protective Services Offices and
24 caseworkers in investigating and coordinating with other law-
25 enforcement personnel, cases of suspected child abuse or
26 neglect. Cases to be investigated include allegations received
27 pursuant to section two, article six-a, chapter forty-nine of this
28 code, and any other credible child abuse or neglect allegations.

29 (c) The unit director's duties include:

30 (1) Overseeing State Police members assigned to the unit;

31 (2) Coordinating activities of the unit with Child Protection
32 Services;

33 (3) Assisting Child Protective Services in developing and
34 refining protocols for improving identification and prosecution
35 of suspected criminal acts of child abuse or neglect; and

36 (4) Assuring that all other directives and responsibilities of
37 the unit are fulfilled.

38 (d) The unit shall maintain a statewide statistical index on
39 child abuse and neglect convictions resulting from convictions
40 for violations of sections two, two-a, three, three-a, four and
41 four-a, article eight-d, of chapter sixty-one of this code, to
42 monitor the timely and proper investigation and disposition of
43 child abuse or neglect cases. The statistical data index main-
44 tained by the unit shall not contain information of a specific
45 nature that would identify individual cases or persons.

46 (e) On or before the thirty-first day of December of each
47 year, the unit director shall submit an annual report to the Joint
48 Committee on Government and Finance. The annual report is
49 to include the statistical index required under the provisions of
50 subsection (d) of this section, and may include recommenda-
51 tions for statutory or program reforms that will assist the unit
52 and further promote the goals of the unit. The report may not
53 contain information of a specific nature that would identify
54 individual cases or persons.

55 (f) Every state law-enforcement agency of this state shall
56 periodically provide statistical information regarding child
57 abuse and neglect cases investigated and prosecuted by that
58 law-enforcement agency to the unit.

59 (g) The superintendent may propose rules for legislative
60 approval or procedural rules as necessary to effectuate the
61 provisions of this section in accordance with the provisions of

62 article three, chapter twenty-nine-a of this code. The superinten-
63 dent shall provide forms to law-enforcement agencies, circuit
64 clerks and parole officers to facilitate submission of appropriate
65 information necessary to prepare the statistical reports required
66 by this section.

67 (h) There is hereby established a special account in the
68 State Treasury, into which shall be deposited any gifts, grants
69 or donations made to the unit, and any other funds directed to
70 be deposited into the account by appropriation of the Legisla-
71 ture, and to be expended for the purposes of this section
72 pursuant to appropriation of the Legislature.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-2. Central Abuse Registry; required information; proce- dures.

1 (a) The Criminal Identification Bureau of the West Virginia
2 State Police shall establish a Central Abuse Registry, to contain
3 information relating to criminal convictions involving child
4 abuse or neglect, abuse or neglect of an incapacitated adult or
5 an adult receiving behavioral health services and misappropria-
6 tion of property by individuals specified in subsection (b) of
7 this section and information relating to individuals required to
8 be registered as a sex offender.

9 (b) The Central Abuse Registry shall contain, at a mini-
10 mum, information relating to: Convictions of a misdemeanor or
11 a felony involving abuse, neglect or misappropriation of
12 property, by an individual performing services for compensa-
13 tion, within the scope of the individual's employment or
14 contract to provide services, in a residential care facility, in a
15 licensed day care center in connection with providing behav-
16 ioral health services, or in connection with the provision of
17 home care services; information relating to individuals con-
18 victed of specific offenses enumerated in subsection (a), section

19 three of this article with respect to a child or an incapacitated
20 adult or an adult receiving behavioral health services; informa-
21 tion relating to all individuals required to register with the Child
22 Abuse and Neglect Registry established pursuant to article
23 thirteen, chapter fifteen of this code; and information relating
24 to all individuals required to register with the West Virginia
25 State Police as sex offenders pursuant to the provisions of
26 article twelve, chapter fifteen of this code. The Central Abuse
27 Registry shall contain the following information:

28 (1) The individual's full name;

29 (2) Sufficient information to identify the individual,
30 including date of birth, social security number and fingerprints
31 if available;

32 (3) Identification of the criminal offense constituting abuse,
33 neglect or misappropriation of property of a child or an incapac-
34 itated adult or an adult receiving behavioral health services;

35 (4) For cases involving abuse, neglect or misappropriation
36 of property of a child or an incapacitated adult or an adult
37 receiving behavioral health services in a residential care facility
38 or a day care center, or of a child or an incapacitated adult or an
39 adult receiving behavioral health services receiving home care
40 services, sufficient information to identify the location where
41 the documentation of any investigation by the Department of
42 Health and Human Resources is on file and the location of
43 pertinent court files; and

44 (5) Any statement by the individual disputing the convic-
45 tion, if he or she chooses to make and file one.

46 (c) Upon conviction in the criminal courts of this state of a
47 misdemeanor or a felony offense constituting child abuse or
48 neglect or abuse or neglect of an incapacitated adult or an adult

49 receiving behavioral health services, the individual so convicted
50 shall be placed on the Central Abuse Registry.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§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 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
9 which requires proof of the same essential elements shall
10 register as set forth in subsection (d) of this section and
11 according to the internal management rules promulgated by the
12 superintendent under authority of section twenty-five, article
13 two of this 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;

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

22 (6) Section fourteen-b, article three-c, as it relates to
23 violations of those provisions of chapter sixty-one listed in this
24 subsection.

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

29 (d) Persons required to register under the provisions of this
30 article shall register in person at the West Virginia State Police
31 detachment in the county of his or her residence, the county in
32 which he or she owns or leases habitable real property that he
33 or she visits regularly, the county of his or her place of employ-
34 ment or occupation and the county in which he or she attends
35 school or a training facility, and in doing so, provide or
36 cooperate in providing, at a minimum, the following when
37 registering:

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

40 (2) The address where the registrant intends to reside or
41 resides at the time of registration, the address of any habitable
42 real property owned or leased by the registrant that he or she
43 regularly visits: *Provided*, That a post office box may not be
44 provided in lieu of a physical residential address, the name and
45 address of the registrant's employer or place of occupation at
46 the time of registration, the names and addresses of any
47 anticipated future employers or places of occupation, the name
48 and address of any school or training facility the registrant is
49 attending at the time of registration and the names and ad-
50 dresses of any schools or training facilities the registrant
51 expects to attend;

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

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

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

57 (6) Fingerprints;

58 (7) Information related to any motor vehicle, trailer or
59 motor home owned or regularly operated by a registrant,
60 including vehicle make, model, color and license plate number:
61 *Provided*, That for the purposes of this article, the term "trailer"
62 shall mean travel trailer, fold-down camping trailer and house
63 trailer as those terms are defined in section one, article one,
64 chapter seventeen-a of this code;

65 (8) Information relating to any Internet accounts the
66 registrant has and the screen names, user names or aliases the
67 registrant uses on the internet; and

68 (9) Information related to any telephone or electronic
69 paging device numbers that the registrant has or uses, including,
70 but not limited to, residential, work and mobile telephone
71 numbers.

72 (e) (1) On the date that any person convicted or found not
73 guilty by reason of mental illness, mental retardation or
74 addiction of any of the crimes listed in subsection (b) of this
75 section, hereinafter referred to as a "qualifying offense",
76 including those persons who are continuing under some post-
77 conviction supervisory status, are released, granted probation or
78 a suspended sentence, released on parole, probation, home
79 detention, work release, conditional release or any other release
80 from confinement, the Commissioner of Corrections, regional
81 jail administrator, city official or sheriff operating a jail or
82 Secretary of the Department of Health and Human Resources
83 who releases the person and any parole or probation officer who
84 releases the person or supervises the person following the
85 release, shall obtain all information required by subsection (d)
86 of this section prior to the release of the person, inform the

87 person of his or her duty to register and send written notice of
88 the release of the person to the State Police within three
89 business days of receiving the information. The notice must
90 include the information required by said subsection. Any person
91 having a duty to register for a qualifying offense shall register
92 upon conviction, unless that person is confined or incarcerated,
93 in which case he or she shall register within three business days
94 of release, transfer or other change in disposition status.

95 (2) Notwithstanding any provision of this article to the
96 contrary, a court of this state shall, upon presiding over a
97 criminal matter resulting in conviction or a finding of not guilty
98 by reason of mental illness, mental retardation or addiction of
99 a qualifying offense, cause, within seventy-two hours of entry
100 of the commitment or sentencing order, the transmittal to the
101 sex offender registry for inclusion in the registry all information
102 required for registration by a registrant as well as the following
103 non-identifying information regarding the victim or victims:

104 (A) His or her sex;

105 (B) His or her age at the time of the offense; and

106 (C) The relationship between the victim and the perpetrator.

107 The provisions of this paragraph do not relieve a person
108 required to register pursuant to this section from complying
109 with any provision of this article.

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

113 (1) Identifying factors, including physical characteristics;

114 (2) History of the offense; and

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

117 (g) At the time the person is convicted or found not guilty
118 by reason of mental illness, mental retardation or addiction in
119 a court of this state of the crimes set forth in subsection (b) of
120 this section, the person shall sign in open court a statement
121 acknowledging that he or she understands the requirements
122 imposed by this article. The court shall inform the person so
123 convicted of the requirements to register imposed by this article
124 and shall further satisfy itself by interrogation of the defendant
125 or his or her counsel that the defendant has received notice of
126 the provisions of this article and that the defendant understands
127 the provisions. The statement, when signed and witnessed,
128 constitutes prima facie evidence that the person had knowledge
129 of the requirements of this article. Upon completion of the
130 statement, the court shall provide a copy to the registry. Persons
131 who have not signed a statement under the provisions of this
132 subsection and who are subject to the registration requirements
133 of this article must be informed of the requirement by the State
134 Police whenever the State Police obtain information that the
135 person is subject to registration requirements.

136 (h) The State Police shall maintain a central registry of all
137 persons who register under this article and shall release
138 information only as provided in this article. The information
139 required to be made public by the State Police by subdivision
140 (2), subsection (b), section five of this article is to be accessible
141 through the Internet. No information relating to telephone or
142 electronic paging device numbers a registrant has or uses may
143 be released through the Internet.

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

146 (1) Sexual assault in the first degree as set forth in section
147 three, article eight-b, chapter sixty-one of this code or of a

148 similar provision in another state, federal or military jurisdic-
149 tion;

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

154 (3) Sexual assault of a spouse as set forth in the former
155 provisions of section six, article eight-b, chapter sixty-one of
156 this code, which was repealed by an Act of the Legislature
157 during the two thousand legislative session, or of a similar
158 provision in another state, federal or military jurisdiction;

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

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

166 (k) For purposes of this article, the term “sexually violent
167 predator” means a person who has been convicted or found not
168 guilty by reason of mental illness, mental retardation or
169 addiction of a sexually violent offense and who suffers from a
170 mental abnormality or personality disorder that makes the
171 person likely to engage in predatory sexually violent offenses.

172 (l) For purposes of this article, the term “mental abnormal-
173 ity” means a congenital or acquired condition of a person, that
174 affects the emotional or volitional capacity of the person in a
175 manner that predisposes that person to the commission of
176 criminal sexual acts to a degree that makes the person a menace
177 to the health and safety of other persons.

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

182 (n) For the purposes of this article, the term “business
183 days”, means days exclusive of Saturdays, Sundays and legal
184 holidays as defined in section one, article two, chapter two of
185 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 or
3 occupation, motor vehicle, trailer or motor home information
4 required by section two of this article, or school or training
5 facility which he or she is attending, or when any of the other
6 information required by this article changes, he or she shall,
7 within ten business days, inform the West Virginia State Police
8 of the changes in the manner prescribed by the Superintendent
9 of State Police in procedural rules promulgated in accordance
10 with the provisions of article three, chapter twenty-nine-a of
11 this code: *Provided*, That when any person required to register
12 under this article changes his or her residence, place of employ-
13 ment or occupation or school or training facility he or she is
14 attending from one county of this state to another county of this
15 state, he or she shall inform the West Virginia State Police
16 detachment in both counties within ten business days of the
17 change in the manner prescribed by the superintendent in
18 procedural rules promulgated in accordance with the provisions
19 of article three, chapter twenty-nine-a of this code.

**§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 business 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, owns or leases
7 habitable real property that he or she regularly visits, is em-
8 ployed or attends school or a training facility;

9 (2) The county superintendent of schools in each county
10 where the registrant resides, owns or leases habitable real
11 property that he or she regularly visits, is employed or attends
12 school or a training facility;

13 (3) The child protective services office charged with
14 investigating allegations of child abuse or neglect in the county
15 where the registrant resides, owns or leases habitable real
16 property that he or she regularly visits, is employed or attends
17 school or a training facility;

18 (4) All community organizations or religious organizations
19 which regularly provide services to youths in the county where
20 the registrant resides, owns or leases habitable real property that
21 he or she regularly visits, is employed or attends school or a
22 training facility;

23 (5) Individuals and organizations which provide day care
24 services for youths or day care, residential or respite care, or
25 other supportive services for mentally or physically incapaciti-
26 tated or infirm persons in the county where the registrant
27 resides, owns or leases habitable real property that he or she
28 regularly visits, is employed or attends school or a training
29 facility; and

30 (6) The Federal Bureau of Investigation (FBI).

31 (b) Information concerning persons whose names are
32 contained in the sex offender registry is not subject to the
33 requirements of the West Virginia Freedom of Information Act,
34 as set forth in chapter twenty-nine-b of this code, and may be
35 disclosed and disseminated only as otherwise provided in this
36 article and as follows:

37 (1) When a person has been determined to be a sexually
38 violent predator under the terms of section two-a of this article,
39 the State Police shall notify the prosecuting attorney of the
40 county in which the person resides, owns or leases habitable
41 real property that he or she regularly visits, is employed or
42 attends a school or training facility. The prosecuting attorney
43 shall cooperate with the State Police in conducting a commu-
44 nity notification program which is to include publication of the
45 offender's name, photograph, place of residence, location of
46 regularly visited habitable real property owned or leased by the
47 offender, county of employment and place at which the
48 offender attends school or a training facility, as well as informa-
49 tion concerning the legal rights and obligations of both the
50 offender and the community. Information relating to the victim
51 of an offense requiring registration may not be released to the
52 public except to the extent the prosecuting attorney and the
53 State Police consider it necessary to best educate the public as
54 to the nature of sexual offenses: *Provided*, That no victim's
55 name may be released in any public notification pursuant to this
56 subsection. No information relating to telephone or electronic
57 paging device numbers a registrant has or uses may be released
58 to the public with this notification program. The prosecuting
59 attorney and State Police may conduct a community notification
60 program in the county where a person who is required to
61 register for life under the terms of subdivision (2), subsection
62 (a), section four of this article resides, owns or leases habitable
63 real property that he or she regularly visits, is employed or
64 attends a school or training facility. Community notification

65 may be repeated when determined to be appropriate by the
66 prosecuting attorney;

67 (2) The State Police shall maintain and make available to
68 the public at least quarterly the list of all persons who are
69 required to register for life according to the terms of subdivi-
70 sion (2), subsection (a), section four of this article. No informa-
71 tion concerning the identity of a victim of an offense requiring
72 registration or telephone or electronic paging device numbers
73 a registrant has or uses may be released with this list. The
74 method of publication and access to this list are to be deter-
75 mined by the superintendent; and

76 (3) A resident of a county may petition the circuit court for
77 an order requiring the State Police to release information about
78 persons that reside or own or lease habitable real property that
79 the persons regularly visit in that county and who are required
80 to register under section two of this article. The court shall
81 determine whether information contained on the list is relevant
82 to public safety and whether its relevance outweighs the
83 importance of confidentiality. If the court orders information to
84 be released, it may further order limitations upon secondary
85 dissemination by the resident seeking the information. In no
86 event may information concerning the identity of a victim of an
87 offense requiring registration or information relating to tele-
88 phone or electronic paging device numbers a registrant has or
89 uses be released.

90 (c) The State Police may furnish information and documen-
91 tation required in connection with the registration to authorized
92 law-enforcement, campus police and governmental agencies of
93 the United States and its territories, of foreign countries duly
94 authorized to receive the same, of other states within the United
95 States and of the State of West Virginia upon proper request
96 stating that the records will be used solely for law-enforcement-
97 related purposes. The State Police may disclose information

98 collected under this article to federal, state and local govern-
99 mental agencies responsible for conducting preemployment
100 checks. The State Police also may disclose information col-
101 lected under this article to the Division of Motor Vehicles
102 pursuant to the provisions of section three, article two, chapter
103 seventeen-b of this code.

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

§15-12-6a. Release of information to the Sex Offender Registry.

1 Upon the request of the West Virginia State Police,
2 agencies in possession of records produced in conjunction with
3 investigation, prosecution, adjudication, incarceration, probation,
4 parole or presentence review of a sex offender and any other
5 records produced in conjunction with a sex offense shall provide
6 those records to the State Police.

§15-12-8. Failure to register or provide notice of registration changes; penalty; penalty for aiding and abetting.

1 (a) Each time a person has a change in any of the registra-
2 tion information as required by this article and knowingly fails
3 to register the change or changes, each failure to register each
4 separate item of information changed shall constitute a separate
5 offense under this section.

6 (b) Except as provided in this section, any person required
7 to register for ten years pursuant to subdivision (1), subsection
8 (a), section four of this article who knowingly provides materi-
9 ally false information or who refuses to provide accurate
10 information when so required by the terms of this article, or
11 who knowingly fails to register or knowingly fails to provide a

12 change in any required information as required by this article,
13 is guilty of a misdemeanor and, upon conviction thereof, shall
14 be fined not less than two hundred fifty dollars nor more than
15 ten thousand dollars or confined in jail not more than one year,
16 or both. Any person convicted of a second offense under this
17 subsection is guilty of a felony and, upon conviction thereof,
18 shall be imprisoned in a state correctional facility for not less
19 than one year nor more than five years. Any person convicted
20 of a third or subsequent offense under this subsection is guilty
21 of a felony and, upon conviction thereof, shall be imprisoned in
22 a state correctional facility for not less than five nor more than
23 twenty-five years.

24 (c) Any person required to register for life pursuant to this
25 article who knowingly provides materially false information or
26 who refuses to provide accurate information when so required
27 by the terms of this article, or who knowingly fails to register
28 or knowingly fails to provide a change in any required informa-
29 tion as required by this article, is guilty of a felony and, upon
30 conviction thereof, shall be imprisoned in a state correctional
31 facility for not less than one year nor more than five years. Any
32 person convicted of a second or subsequent offense under this
33 subsection is guilty of a felony and, upon conviction thereof,
34 shall be imprisoned in a state correctional facility for not less
35 than ten nor more than twenty-five years.

36 (d) In addition to any other penalty specified for failure to
37 register under this article, any person under the supervision of
38 a probation officer, parole officer or any other sanction short of
39 confinement in jail or prison who knowingly refuses to register
40 or who knowingly fails to provide a change in information as
41 required by this article shall be subject to immediate revocation
42 of probation or parole and returned to confinement for the
43 remainder of any suspended or unserved portion of his or her
44 original sentence.

45 (e) Notwithstanding the provisions of subsection (c) of this
46 section, any person required to register as a sexually violent
47 predator pursuant to this article who knowingly provides
48 materially false information or who refuses to provide accurate
49 information when so required by terms of this article or who
50 knowingly fails to register or knowingly fails to provide a
51 change in any required information as required by this article is
52 guilty of a felony and, upon conviction thereof, shall, for a first
53 offense, be confined in a state correctional facility not less than
54 two nor more than ten years and for a second or subsequent
55 offense, is guilty of a felony and shall be confined in a state
56 correctional facility not less than fifteen nor more than thirty-
57 five years.

58 (f) Any person who knows or who has reason to know that
59 a sex offender is not complying, or has not complied, with the
60 requirements of this section and who, with the intent to assist
61 the sex offender in eluding a law-enforcement agency that is
62 seeking to find the sex offender to question the sex offender
63 about, or to arrest the sex offender for, his or her noncompli-
64 ance with the requirements of this section:

65 (1) Withholds information from, the law-enforcement
66 agency about the sex offender's noncompliance with the
67 requirements of this section and, if known, the whereabouts of
68 the sex offender; or

69 (2) Harbors, or attempts to harbor, or assists another person
70 in harboring or attempting to harbor, the sex offender; or

71 (3) Conceals or attempts to conceal, or assists another
72 person in concealing or attempting to conceal, the sex offender;
73 or

74 (4) Provides information to the law-enforcement agency
75 regarding the sex offender which the person knows to be false
76 information is guilty of a misdemeanor and, upon conviction

77 thereof, shall be fined not less than two hundred fifty dollars
78 nor more than ten thousand dollars or confined in jail not more
79 than one year, or both: *Provided*, That where the person assists
80 or seeks to assist a sex offender whose violation of this section
81 would constitute a felony, the person shall be guilty of a felony
82 and, upon conviction thereof, shall be imprisoned in a state
83 correctional facility for not less than one year nor more than
84 five years.

§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 terms and
4 conditions of the uniform act for out-of-state parolee supervi-
5 sion established under article six, chapter twenty-eight of this
6 code, the officer shall give the person written notice of the
7 registration requirements of this section and obtain a signed
8 statement from the person required to register acknowledging
9 the receipt of the notice. The officer shall obtain and submit to
10 the State Police the information required in subsection (d),
11 section two of this article.

12 (b) Any person:

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

15 (2) Who is employed, carries on a vocation, is a student in
16 this state, is a visitor to this state for a period of more than
17 fifteen continuous days or owns or leases habitable real
18 property in this state that he or she regularly visits; and

19 (3) Who is required by the state, federal or military jurisdic-
20 tion in which he or she resides to register in that state, federal
21 or military jurisdiction as a sex offender, or has been convicted
22 of a violation in that state, federal or military jurisdiction that

23 is similar to a violation in this article requiring registration as
24 a sex offender in this state, shall register in this state and
25 otherwise comply with the provisions of this article.

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

§15-12-10. Address verification.

1 All registrants, including those for whom there has been no
2 change in registration information since their initial registration
3 or previous address verification, must report, in the month of
4 their birth, or in the case of a sexually violent predator in the
5 months of January, April, July and October, to the State Police
6 detachment in their county or counties of registration and must
7 respond to all verification inquiries or requests made by the
8 State Police pursuant to this section. The State Police shall
9 verify addresses of those persons registered as sexually violent
10 predators every ninety days and all other registered persons
11 once a year. The State Police may require registrants to
12 periodically submit to new fingerprints and photographs as part
13 of the verification process. The method of verification shall be
14 in accordance with internal management rules pertaining
15 thereto promulgated by the superintendent under authority of
16 section twenty-five, article two, chapter fifteen of this code.

ARTICLE 13. CHILD ABUSE AND NEGLECT REGISTRATION.

§15-13-1. Intent and findings.

1 (a) It is the intent of this article to assist law-enforcement
2 agencies' efforts to protect children from abuse and neglect by
3 requiring persons convicted of child abuse or neglect to register
4 with the State Police detachment in the county of his or her

5 residence and to report information as required by section two
6 of this article. It is not the intent of the Legislature that this act
7 be used to inflict retribution or additional punishment on any
8 person convicted of any offense requiring registration under this
9 article. This article is intended to be regulatory in nature and
10 not penal, and is intended to provide for the safety of children
11 who are exposed to persons convicted of child abuse and
12 neglect.

13 (b) The Legislature finds and declares that there is a
14 compelling and necessary public interest that children be
15 protected from physical abuse and neglect, and that require-
16 ments of this article are appropriate and reasonable because of
17 this compelling state interest.

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

§15-13-2. 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 has
4 been found not guilty solely by reason of mental illness, mental
5 retardation or addiction of an offense under any of the provi-
6 sions of sections two, two-a, three, three-a, four and four-a,
7 article eight-d, of chapter sixty-one of this code or under a
8 statutory provision of another state, the United States Code or
9 the Uniform Code of Military Justice which requires proof of
10 the same essential elements shall register as set forth in
11 subsection (e) of this section and according to the internal
12 management rules promulgated by the superintendent under
13 authority of section twenty-five, article two of this chapter.

14 (c) The clerk of the court in which a person is convicted for
15 an offense described in subsection (b) of this section, or for an
16 offense described in a municipal ordinance which has the same
17 elements as an offense described in said section, shall forward
18 to the superintendent, at a minimum, information required on
19 forms provided by the State Police relating to the person
20 required to register.

21 (1) If the conviction is the judgment of a magistrate court,
22 mayor, police court judge or municipal court judge, the clerk or
23 recorder shall forward to the superintendent, at a minimum,
24 information required on forms provided by the State Police
25 relating to the person required to register when the person
26 convicted has not requested an appeal within thirty days of the
27 sentencing for such conviction.

28 (2) If the conviction is the judgment of a circuit court, the
29 circuit clerk shall submit, at a minimum, the required informa-
30 tion to the superintendent regarding the person convicted within
31 thirty days after the judgment was entered.

32 (d) If a person has been convicted of any criminal offense
33 against a child in his or her household or of whom he or she has
34 custodial responsibility, and the sentencing judge makes a
35 written finding that there is a continued likelihood that the
36 person will continue to have regular contact with that child or
37 other children and that as such it is in the best interest of the
38 child or children for that person to be monitored, then that
39 person is subject to the reporting requirements of this article.

40 (e) In addition to any other requirements of this article,
41 persons required to register under the provisions of this article
42 shall provide or cooperate in providing, at a minimum, the
43 following when registering:

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

46 (2) The address where the registrant intends to reside or
47 resides at the time of registration, the name and address of the
48 registrant's employer or place of occupation at the time of
49 registration, the names and addresses of any anticipated future
50 employers or places of occupation, the name and address of any
51 school or training facility the registrant is attending at the time
52 of registration and the names and addresses of any schools or
53 training facilities the registrant expects to attend: *Provided*,
54 That a post office box or other address that does not have a
55 physical street address of residence may not be provided in lieu
56 of a physical residence address;

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

58 (4) Ages and names of any children in the household of the
59 registrant, and any children currently living or subsequently
60 born to the registrant.

61 (5) A brief description of the offense or offenses for which
62 the registrant was convicted; and

63 (6) A complete set of the registrant's fingerprints.

64 (f) On the date that any person convicted or found not
65 guilty solely by reason of mental illness, mental retardation or
66 addiction of any of the offenses listed in subsection (b) of this
67 section, hereinafter referred to as a "qualifying offense",
68 including those persons who are continuing under some
69 post-conviction supervisory status, are released, granted
70 probation or a suspended sentence, released on parole, proba-
71 tion, home detention, work release, conditional release or any
72 other release from confinement, the Commissioner of Correc-
73 tions, Regional Jail Administrator, city or sheriff operating a
74 jail or Secretary of the Department of Health and Human
75 Resources who releases the person, and any parole or probation
76 officer who releases the person or supervises the person
77 following the release, shall inform the person of his or her duty

78 to register and send written notice of the release to the superin-
79 tendent within three business days of release, and provide any
80 other information as directed by rule of the State Police. The
81 notice must include, at a minimum, the information required by
82 subsection (e) of this section.

83 (g) Any person having a duty to register for a qualifying
84 offense shall register upon conviction, unless that person is
85 confined or incarcerated, in which case he or she shall register
86 within three business days of release, transfer or other change
87 in disposition status.

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

108 (i) The State Police shall maintain a central registry of all
109 persons who register under this article and shall release
110 information only as provided in this article.

111 (j) The superintendent shall provide forms to law-enforce-
112 ment agencies, circuit clerks and parole officers to facilitate
113 submission of appropriate information necessary to administer
114 the child abuse and neglect registry established by this article.

115 (k) For the purposes of this article, the term “business
116 days”, means days exclusive of Saturdays, Sundays and legal
117 holidays as defined in section one, article two, chapter two of
118 this code.

§15-13-3. Change in registry information.

1 (a) When any person required to register under this article
2 changes his or her residence, address, or when any of the other
3 information required by this article changes, he or she shall,
4 within ten business days, inform the West Virginia State Police
5 of the changes in the manner prescribed by the Superintendent
6 of State Police in procedural rules promulgated in accordance
7 with the provisions of article three, chapter twenty-nine-a of
8 this code. Upon directive by the State Police, any person
9 required to register under this article may be required to appear
10 at the nearest State Police detachment from his or her residence,
11 to verify or provide additional information or documentation
12 necessary to have complete and accurate registry records.

13 (b) A person who is required to register pursuant to the
14 provisions of this article, who intends to move to another state
15 or country shall, prior to such move, notify the State Police of
16 his or her intent to move and of the location to which he or she
17 intends to move, or if that person is incarcerated he or she shall
18 notify correctional officials of his or her intent to reside in some
19 other state or country upon his or her release, and of the
20 location to which he or she intends to move. Upon such
21 notification, the State Police shall notify law-enforcement
22 officials of the jurisdiction where the person indicates he or she

23 intends to reside of the information provided by the person
24 under the provisions of this article.

§15-13-4. Duration.

1 (a) A person required to register pursuant to the provisions
2 of this article shall continue to comply with this section, except
3 during ensuing periods of incarceration or confinement, until
4 ten years have elapsed since the person was released from
5 prison, jail or a mental health facility or ten years have elapsed
6 since the person was placed on probation, parole or supervised
7 or conditional release. The ten-year registration period shall not
8 be reduced by the offender's release from probation, parole or
9 supervised or conditional release.

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

§15-13-5. Distribution and disclosure of information.

1 (a) Within five business days after receiving any notifica-
2 tion as described in this article, the State Police shall transmit
3 a copy of the notification statement to the Department of Health
4 and Human Resources as provided in section two of this article.

5 (b) Within five business days after receiving any notifica-
6 tion statement pursuant to the provisions of subsection (a) of
7 this section, the Secretary of the Department of Health and
8 Human Resources shall distribute a copy of the notification
9 statement to:

10 (1) The supervisor of each county and municipal
11 law-enforcement office and any campus police department in
12 the city and county where the registrant resides, is employed or
13 attends school or a training facility;

14 (2) The county superintendent of schools where the
15 registrant resides, is employed or attends school or a training
16 facility; and

17 (3) The Child Protective Services office charged with
18 investigating allegations of child abuse or neglect in the county
19 where the registrant resides, is employed or attends school or a
20 training facility.

21 (c) The State Police may furnish information and documen-
22 tation required in connection with the registration to authorized
23 law enforcement, campus police and governmental agencies of
24 the United States and its territories, of foreign countries duly
25 authorized to receive the same, of other states within the United
26 States and of the State of West Virginia upon proper request
27 stating that the records will be used solely for law-enforce-
28 ment-related purposes. The State Police may disclose informa-
29 tion collected under this article to federal, state and local
30 governmental agencies responsible for conducting
31 preemployment checks.

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

37 (e) The information contained in the child abuse and
38 neglect registry is confidential, and may not be disclosed except
39 as specifically provided in this article. The information con-
40 tained in the registry with respect to an individual shall be
41 provided to that individual promptly upon request. Individuals
42 on the registry requesting registry information shall be afforded
43 the opportunity to file statements correcting any misstatements
44 or inaccuracies contained in the registry. The State Police and
45 the Department of Health and Human Resources may disclose

46 registry information to authorized law-enforcement and
47 governmental agencies of the United States and its territories,
48 of foreign states and of the State of West Virginia upon proper
49 request stating that the information requested is necessary in the
50 interest of and will be used solely in the administration of
51 official duties and the criminal laws. Agreements with other
52 states providing for the reciprocal sharing of abuse and neglect
53 registry information are specifically authorized. Nothing in this
54 article would preclude disclosure of information authorized
55 pursuant to article two-c of this chapter.

56 (f) An active file on requests for information by requesters
57 shall be maintained by the State Police and the Department of
58 Health and Human Resources for a period of one year from the
59 date of a request.

60 (g) Information on the registry shall be exempt from
61 disclosure under the freedom of information act in article one,
62 chapter twenty-nine-b of this code.

§15-13-6. Duties of institution officials.

1 In addition to the duties imposed by sections two and four
2 of this article, the official in charge of the place of confinement
3 of any person required to register under this article shall, before
4 the person is paroled or released, inform that person of his or
5 her duty to register. Further, the official shall obtain the full
6 address of the person and a statement signed by the person
7 acknowledging that the person has been informed of his or her
8 duty to register.

§15-13-7. Failure to register or provide notice of registration changes; penalty.

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

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

14 (b) Any person required to register under this article who is
15 convicted of a second or subsequent offense of failing to
16 register or provide a change in any information as required by
17 this article who knowingly provides false information or who
18 refuses to provide accurate information when so required by
19 terms of this article or who knowingly fails to register or
20 knowingly fails to provide a change in information as required
21 by this article is guilty of a felony and, upon conviction thereof,
22 shall be imprisoned in a state correctional facility for not less
23 than one year nor more than five years.

24 (c) In addition to any other penalty specified for failure to
25 register under this article, any person under the supervision of
26 a probation officer, parole officer or any other sanction short of
27 confinement in jail or prison who knowingly refuses to register
28 or who knowingly fails to provide a change in information as
29 required by this article shall be subject to immediate revocation
30 of probation or parole and returned to confinement for the
31 remainder of any suspended or unserved portion of his or her
32 original sentence.

§15-13-8. 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

29 (b) The division may not issue a license or nondriver
30 identification card to any person required to register as a
31 sexually violent predator pursuant to the provisions of article
32 twelve, chapter fifteen, unless he or she obtains a driver's
33 license or nondriver identification card coded by the commis-
34 sioner to denote that he or she is a sexually violent predator as
35 follows:

36 (1) If a person is judicially determined to be a sexually
37 violent predator after the effective date of this section, the
38 sentencing court shall order the person or the agency with
39 custody of the person's driver's license or nondriver identifica-
40 tion card to surrender said license or card to the court. The
41 sentencing court shall forward to the division all driver's
42 licenses or nondriver identification cards that it receives
43 pursuant to this section, along with a copy of the sentencing
44 order. If a person is registered as a sexually violent predator
45 pursuant to section nine, article twelve, chapter fifteen of this
46 code after the effective date of this section as amended and
47 reenacted during the first extraordinary session of the Legisla-
48 ture, two thousand six, the person shall surrender their driver's
49 license or nondriver identification card to the division within
50 ten days of their registration with the State Police. Any replace-
51 ment driver's license or nondriver identification card issued to
52 the person under this section must be coded by the commis-
53 sioner to denote the person is a sexually violent predator and
54 shall be issued at no cost to the person.

55 (2) Within ten business days of the effective date of the
56 amendments to this section made during the first extraordinary
57 session of the Legislature, two thousand six, the State Police
58 shall provide the division with the name, address and motor
59 vehicle information of every person registered as a sexually
60 violent predator in the state at that time and also provide notice
61 to said registrants of the requirements set forth in said amend-
62 ments. If a person is registered as a sexually violent predator
63 prior to the effective date of this section, as amended and

64 reenacted during the first extraordinary session of the Legisla-
65 ture, two thousand six, he or she shall surrender his or her
66 driver's license or nondriver identification card to the division
67 within ten business days of his or her receipt of the notice from
68 the State Police required by said amendments. Any replacement
69 driver's license or nondriver identification card issued to the
70 person under this section must be coded by the commissioner
71 to denote the person is a sexually violent predator and shall be
72 issued at no cost to the person.

73 (c) Upon receipt of a driver's license or nondriver identifi-
74 cation card from a sentencing court or individual pursuant to
75 subsection (b) of this section, the division shall cancel said
76 license or card and note the cancellation in its records system so
77 as to prevent the issuance of a replacement or duplicate license
78 or card lacking the coded notation required by subsection (b) of
79 this section.

80 (d) Upon showing proof that a person is no longer required
81 to register as a sexually violent predator, the division shall, at
82 no charge, issue a driver's license or nondriver identification
83 card without the coded notation printed upon the license. No
84 person issued a driver's license or nondriver identification card
85 pursuant to the amendments to this section made during the first
86 extraordinary session of the Legislature, two thousand six, may
87 alter or deface the license or card to obscure the special
88 marking identifying the holder as a sexually violent predator.

89 (e) Any person failing to comply with the provisions of
90 subsections (b), (c) or (d) is guilty of a misdemeanor and, upon
91 conviction thereof, shall be fined not less than fifty dollars nor
92 more than five hundred dollars or confined in jail not more than
93 one year, or both fined and imprisoned.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.

1 (a) In recognition of the findings of the Legislature as set
2 forth in section one, article six-c, chapter forty-nine of this
3 code, the Legislature further finds that public schools are able
4 to provide a special environment for the training of children,
5 parents and school personnel in the prevention of child abuse
6 and neglect and child assault and that child abuse and neglect
7 prevention and child assault prevention programs in the public
8 schools are an effective and cost-efficient method of reducing
9 the incidents of child abuse and neglect, promoting a healthy
10 family environment and reducing the general vulnerability of
11 children.

12 (b) County boards of education shall be required, to the
13 extent funds are provided, to establish programs for the
14 prevention of child abuse and neglect and child assault. Such
15 programs shall be provided to pupils, parents and school
16 personnel as deemed appropriate. Such programs shall be in
17 compliance with regulations to be developed by the State Board
18 of Education with the advice and assistance of the state Depart-
19 ment of Health and Human Resources and the West Virginia
20 State Police: *Provided*, That any such programs which substan-
21 tially comply with the regulations adopted by the board and
22 were in effect prior to the adoption of the regulations may be
23 continued.

24 (c) Funds for implementing the child abuse and neglect
25 prevention and child assault prevention programs may be
26 allocated to the county boards of education from the children's
27 trust fund established pursuant to the provisions of article six-c,
28 chapter forty-nine of this code or appropriated for such purpose
29 by the Legislature.

30 (d) County boards of education shall request from the State
31 Criminal Identification Bureau the record of any and all
32 criminal convictions relating to child abuse, sex-related
33 offenses or possession of controlled substances with intent to
34 deliver same for all of its future employees. This request shall
35 be made immediately after the effective date of this section, and
36 thereafter as warranted.

37 (e) Contractors or service providers or their employees may
38 not make direct, unaccompanied contact with students or access
39 school grounds unaccompanied when students are present if it
40 cannot be verified that the contractors, service providers or
41 employees have not previously been convicted of a qualifying
42 offense, as defined in section two, article twelve, chapter fifteen
43 of this code. For the purposes of this section, contractor and
44 service provider shall be limited to any vendor, individual or
45 entity under contract with a county school board. County school
46 boards may require contractors and service providers to verify
47 the criminal records of their employees before granting the
48 above-mentioned contact or access. Where prior written consent
49 is obtained, county school boards may obtain information from
50 the Central Abuse Registry regarding contractors, service
51 providers and their employees for the purposes of this subsection.
52 Where a contractor or service provider gives his or her
53 prior written consent, the county school board also may share
54 information provided by the Central Abuse Registry with other
55 county school boards for the purposes of satisfying the requirements
56 of this subsection. The requirements of this subsection
57 shall not go into effect until the first day of July, two thousand
58 seven.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-22. Task Force to Study the Feasibility of Establishing a Correctional Facility for the Incarceration and Treatment of Sex Offenders; members; duties.

1 (a) There is hereby created a Task Force to Study the
2 Feasibility of Establishing a Correctional Facility for the
3 Incarceration and Treatment of Sex Offenders.

4 (b) The task force consists of the following members:

5 (1) The Secretary of the Department of Military Affairs and
6 Public Safety, or his or her designee;

7 (2) The Commissioner of the Division of Corrections, or his
8 or her designee;

9 (3) The Secretary of the Department of Health and Human
10 Resources, or his or her designee;

11 (4) The Commissioner of the Bureau for Behavioral Health
12 and Health Facilities, or his or her designee; and

13 (5) The Director of the Division of Criminal Justice
14 Services, or his or her designee.

15 (c) The task force shall designate the chair of the task force.

16 (d) The Legislature directs the task force to:

17 (1) Study whether sex offenders can be treated and rehabili-
18 tated;

19 (2) Study the feasibility and cost effectiveness of operating
20 a separate correctional facility for the incarceration and
21 treatment of sex offenders;

22 (3) Study the findings and recommendations from relevant
23 national advisory committees, federal agencies, and peer-
24 reviewed medical, correctional, and legal literature; and

25 (4) Identify and recommend alternatives to establishing a
26 separate facility, if a separate facility is not feasible and cost
27 effective.

28 (e) The task force may conduct inquiries and hold hearings
29 in furtherance of its objectives and in order to provide utilities
30 subject to its jurisdiction and other interested persons the
31 opportunity to comment.

32 (f) All actual and necessary travel expenses of the members
33 of the task force shall be reimbursed by the member's employ-
34 ing agency. All other expenses incurred by the task force shall
35 be paid by the Division of Corrections.

36 (g) The task force shall make its final report to the Gover-
37 nor and the Legislature regarding its findings and recommenda-
38 tions not later than the first day of July, two thousand seven.

CHAPTER 49. CHILD WELFARE.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-11. Statistical reports.

1 The Department of Health and Human Resources shall
2 maintain a statewide child abuse and neglect statistical index of
3 all substantiated allegations of child abuse or neglect cases to
4 include information contained in the reports required under this
5 article and any other information considered appropriate by the
6 Secretary of the Department of Health and Human Resources.
7 Nothing in the statistical data index maintained by the Depart-
8 ment of Health and Human Resources may contain information
9 of a specific nature that would identify individual cases or
10 persons. Notwithstanding the provisions of section one, article
11 seven, chapter forty-nine of this code, the Department of Health
12 and Human Resources shall provide copies of the statistical

13 data maintained pursuant to this subsection to the State Police
14 child abuse and neglect investigations unit to carry out its
15 responsibilities to protect children from abuse and neglect.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-3. Sexual assault in the first degree.

1 (a) A person is guilty of sexual assault in the first degree
2 when:

3 (1) The person engages in sexual intercourse or sexual
4 intrusion with another person and, in so doing:

5 (i) Inflicts serious bodily injury upon anyone; or

6 (ii) Employs a deadly weapon in the commission of the act;
7 or

8 (2) The person, being fourteen years old or more, engages
9 in sexual intercourse or sexual intrusion with another person
10 who is younger than twelve years old and is not married to that
11 person.

12 (b) Any person violating the provisions of this section is
13 guilty of a felony and, upon conviction thereof, shall be
14 imprisoned in a state correctional facility not less than fifteen
15 nor more than thirty-five years, or fined not less than one
16 thousand dollars nor more than ten thousand dollars and
17 imprisoned in a state correctional facility not less than fifteen
18 nor more than thirty-five years.

19 (c) Notwithstanding the provisions of subsection (b) of this
20 section, the penalty for any person violating the provisions of
21 subsection (a) of this section who is eighteen years of age or
22 older and whose victim is younger than twelve years of age,

23 shall be imprisonment in a state correctional facility for not less
24 than twenty-five nor more than one hundred years and a fine of
25 not less than five thousand dollars nor more than twenty-five
26 thousand dollars.

§61-8B-7. Sexual abuse in the first degree.

1 (a) A person is guilty of sexual abuse in the first degree
2 when:

3 (1) Such person subjects another person to sexual contact
4 without their consent, and the lack of consent results from
5 forcible compulsion; or

6 (2) Such person subjects another person to sexual contact
7 who is physically helpless; or

8 (3) Such person, being fourteen years old or more, subjects
9 another person to sexual contact who is younger than twelve
10 years old.

11 (b) Any person who violates the provisions of this section
12 shall be guilty of a felony, and, upon conviction thereof, shall
13 be imprisoned in a state correctional facility not less than one
14 year nor more than five years, or fined not more than ten
15 thousand dollars and imprisoned in a state correctional facility
16 not less than one year nor more than five years.

17 (c) Notwithstanding the provisions of subsection (b) of this
18 section, the penalty for any person violating the provisions of
19 subsection (a) of this section who is eighteen years of age or
20 older and whose victim is younger than twelve years of age,
21 shall be imprisonment for not less than five nor more than
22 twenty-five years and fined not less than one thousand dollars
23 nor more than five thousand dollars.

**§61-8B-9a. Mandatory sentence for person committing certain
sex offenses against children.**

1 (a) Notwithstanding the provisions of section one-a, article
2 eleven-a, section four, article eleven-b and section two, article
3 twelve of chapter sixty-two of this code, a person shall not be
4 eligible for probation, home incarceration or an alternative
5 sentence provided under this code if they are convicted of an
6 offense under section three, four, five, seven, eight or nine,
7 article eight-b, chapter sixty-one of this code, are eighteen years
8 of age or older, the victim is younger than twelve years of age
9 and the finder of fact determines that one of the following
10 aggravating circumstances exists:

11 (1) The person employed forcible compulsion in commis-
12 sion of the offense;

13 (2) The offense constituted, resulted from or involved a
14 predatory act as defined in subsection (m), section two, article
15 twelve, chapter fifteen of this code;

16 (3) The person was armed with a weapon or any article
17 used or fashioned in a manner to lead the victim to reasonably
18 believe it to be a dangerous weapon and used or threatened to
19 use the weapon or article to cause the victim to submit; or

20 (4) The person removed the victim from one place to
21 another and did not release the victim in a safe place. For the
22 purposes of this section, "release the victim in a safe place"
23 means release of a victim in a place and manner which realisti-
24 cally conveys to the victim that he or she is free from captivity
25 in circumstances and surroundings wherein aid is readily
26 available.

27 (b)(1) The existence of any fact which would make any
28 person ineligible for probation under subsection (a) of this
29 section because of the existence of an aggravating circumstance
30 shall not be applicable unless such fact is clearly stated and
31 included in the indictment or presentment by which such person

32 is charged and is either: (i) Found by the court upon a plea of
33 guilty or nolo contendere; or (ii) found by the jury, if the matter
34 be tried before a jury, upon submitting to such jury a special
35 interrogatory for such purpose; or (iii) found by the court, if the
36 matter be tried by the court, without a jury.

37 (2) Insofar as the provisions of this section relate to
38 mandatory sentences without probation, home incarceration or
39 alternative sentences, all such matters requiring such sentence
40 shall be proved beyond a reasonable doubt in all cases tried by
41 the jury or the court.

§61-8B-9b. Enhanced penalties for subsequent offenses committed by those previously convicted of sexually violent offenses against children.

1 (a) Notwithstanding any provision of this article to the
2 contrary, any person who has been convicted of a sexually
3 violent offense, as defined in section two, article twelve,
4 chapter fifteen of this code, against a victim under the age of
5 twelve years old and thereafter commits and thereafter is
6 convicted of one of the following offenses shall be subject to
7 the following penalties unless another provision of this code
8 authorizes a longer sentence:

9 (1) For a violation of section three of this article, the
10 penalty shall be imprisonment in a state correctional facility for
11 not less than fifty nor more than one hundred fifty years;

12 (2) For a violation of section four of this article, the penalty
13 shall be imprisonment in a state correctional facility for not less
14 than thirty nor more than one hundred years;

15 (3) For a violation of section five of this article, the penalty
16 shall be imprisonment in a state correctional facility for not less
17 than five nor more than twenty-five years;

18 (4) For a violation of section seven of this article, the
19 penalty shall be imprisonment in a state correctional facility for
20 not less than ten nor more than thirty-five years; and

21 (5) Notwithstanding the penalty provisions of section eight
22 of this article, a violation of its provisions by a person previ-
23 ously convicted of a sexually violent offense, as defined in
24 section two, article twelve, chapter fifteen of this code, shall be
25 a felony and the penalty therefor shall be imprisonment in a
26 state correctional facility for not less than three nor more than
27 fifteen years.

28 (b) Notwithstanding the provisions of section two, article
29 twelve, chapter sixty-two of this code, any person sentenced
30 pursuant to this section shall not be eligible for probation.

31 (c) Notwithstanding the provisions of section one-a, article
32 eleven-a and section four, article eleven-b of chapter sixty-two
33 of this code, a person sentenced under this section shall not be
34 eligible for home incarceration or an alternative sentence.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11D. HEIGHTENED EXAMINATION AND SUPERVISION FOR CERTAIN SEX OFFENDERS.

§62-11D-1. Definitions.

1 As used in this article:

2 (1) "Certified polygraph analyst" means a person licensed
3 pursuant to the provisions of section five-c, article five, chapter
4 twenty-one of this code and who:

5 (A) Is certified in post conviction sex offender testing as
6 prescribed by the American Polygraph Association;

7 (B) Has completed not less than twenty hours of American
8 Polygraph Association-approved sex offender testing training
9 every other calendar year; and

10 (C) Uses standards approved by the American Polygraph
11 Association for sex offender testing.

12 (2) "Electronic monitoring" means any one or a combina-
13 tion of the following technologies:

14 (A) Voice verification;

15 (B) Radio frequency;

16 (C) Video display/breath alcohol test;

17 (D) Global positioning satellite; or

18 (E) Global positioning satellite - cellular.

19 (3) "Full-disclosure polygraph" or "sexual history poly-
20 graph" means a polygraph examination administered to
21 determine the entire sexual history of the probationer or
22 parolee.

23 (4) "Maintenance test" means polygraph examination
24 administered to determine the probationer's or parolee's
25 compliance with the terms of supervision and treatment.

26 (5) "Sexually violent predator" means any person deter-
27 mined by a circuit court of this state to be a sexually violent
28 predator pursuant to the provisions of section two-a, article
29 twelve, chapter fifteen of this code or of a similar provision in
30 another state, federal or military jurisdiction.

**§62-11D-2. Polygraph examinations as a condition of supervision
for certain sex offenders released on probation,
parole or on supervised release.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, any person:

3 (1) Who has been determined to be a sexually violent
4 predator pursuant to the provisions of section two-a, article
5 twelve, chapter fifteen of this code; or

6 (2) Who is required to register as a sex offender pursuant to
7 the provisions of article twelve, chapter fifteen of this code and
8 who is ordered by a circuit court or supervising entity to
9 undergo polygraph examination as a condition of probation,
10 parole or supervised release, shall, as a condition of said
11 probation, parole or supervised release, submit to polygraph
12 examinations as prescribed in this section.

13 (b) Any person required to undergo polygraph examination
14 pursuant to subsection (a) of this section shall, at his or her
15 expense, submit to at least one polygraph examination each
16 year to answer questions relating to his or her compliance with
17 conditions of supervision, including conditions related to
18 treatment. Additional examinations may be required, not to
19 exceed a total of five. The results of any examination are not
20 admissible in evidence and are to be used solely as a risk
21 assessment and treatment tool. Examination results shall be
22 made available to the person under supervision, upon request.

23 (c) In the event a person required to submit to polygraph
24 examinations as required by the provisions of this section is
25 unable to pay for the polygraph examination or examinations,
26 that person may present an affidavit reflecting the inability to
27 pay for such testing to the circuit court of the county of supervi-
28 sion. If it appears to the satisfaction of the court that such
29 person is in fact financially unable to pay for such testing, the
30 court shall issue an order reflecting such findings and forward
31 such order to the supervising entity. Upon receipt of such order,
32 the supervising entity shall then be responsible for paying for
33 such testing.

34 (d) Any polygraph examination conducted pursuant to the
35 provisions of this section shall be conducted by a certified
36 polygraph analyst.

37 (e) In the conduct of polygraph examinations of a sex
38 offender performed pursuant to the provisions of this section,
39 no certified polygraph analyst may:

40 (1) Conduct more than two full disclosure or sexual history
41 polygraph examinations in a twenty-four hour period;

42 (2) Disclose any information gained during any full
43 disclosure or sexual history polygraph examination to any law-
44 enforcement agency or other party, other than the supervising
45 entity, without the supervised person's consent, nor shall any
46 information or disclosure be admissible in any court of this
47 state, unless such information disclosed indicates the intention
48 or plan to commit a criminal violation of the laws of this or
49 another state or of the United States in which case such
50 information may be released only to such persons as might be
51 necessary solely to prevent the commission of such crime;

52 (3) Conduct more than two maintenance tests in a twenty-
53 four hour period;

54 (4) Conduct more than one full disclosure or sexual history
55 polygraph examination and more than two maintenance tests in
56 a twenty-four hour period; or

57 (5) Conduct more than five polygraph examinations of the
58 same sex offender in a calendar year.

59 (f) No polygraph examination performed pursuant to the
60 provisions this section may be conducted by a person who is a
61 sworn peace officer, within the boundaries of that officer's
62 jurisdiction.

§62-11D-3. Electronic monitoring of certain sex offenders under supervision; tampering with devices; offenses and penalties.

1 (a) Notwithstanding any provisions of this code to the
2 contrary, any person designated as a sexually violent predator
3 pursuant to the provisions of section two-a, article twelve,
4 chapter fifteen of this code who is on probation, parole or
5 supervised release, shall be subject to electronic monitoring as
6 a condition of probation, parole or supervised release. A person
7 required to register as a sex offender pursuant to the provisions
8 of article twelve, chapter fifteen of this code may, as a condi-
9 tion of probation, parole or supervised release, be subject to
10 electronic monitoring.

11 (b) Upon being placed on supervision, a person required to
12 undergo electronic monitoring pursuant to the provisions of this
13 section shall be placed at a minimum on radio frequency
14 monitoring with curfews enforced. Following an assessment
15 designed to determine the level and type of electronic monitor-
16 ing necessary to effectuate the protection of the public, a
17 supervised person may be placed on a system providing a
18 greater or lesser degree of monitoring.

19 (c) A person subject to the provisions of this section shall
20 be responsible for the cost of the electronic monitoring. In the
21 event a person required to submit to electronic monitoring as
22 required by the provisions of this section is unable to pay for
23 the electronic monitoring, that person may present an affidavit
24 reflecting the inability to pay for such monitoring to the circuit
25 court of the county of supervision. If it appears to the satisfac-
26 tion of the court that such person is in fact financially unable to
27 pay for such monitoring, the court shall issue an order reflecting
28 such findings and forward said order to the supervising entity.
29 Upon receipt of such order, the supervising entity shall then be
30 responsible for paying for each testing.

31 (d) The assessment required by the provisions of subsection
32 (b) of this section shall be completed not later than thirty days
33 after the supervised person begins serving probation or parole
34 or supervised release. Under no circumstances may a person of
35 whom electronic monitoring has been mandated as a condition
36 of supervision be on a type of monitoring less effective than
37 voice verification with a curfew.

38 (e) Any person who intentionally alters, tampers with,
39 damages or destroys any electronic monitoring equipment, with
40 the intent to remove the device or impair its effectiveness, is
41 guilty of a felony and, upon conviction thereof, shall be
42 confined in a state correctional facility for not less than one
43 year nor more than ten years.

**ARTICLE 11E. SEXUALLY VIOLENT PREDATOR MANAGEMENT TASK
FORCE.**

§62-11E-1. Legislative findings and intent.

1 The Legislature finds:

2 (1) That a small but extremely dangerous group of sexually
3 violent offenders exist who do not have a mental disease or
4 defect that renders them appropriate for involuntary hospitaliza-
5 tion pursuant to chapter twenty-seven of this code, which is
6 intended to be a short-term civil commitment system that is
7 primarily designed to provide short-term treatment to individu-
8 als with serious mental disorders and then return them to the
9 community. In contrast, these offenders, known as sexually
10 violent predators, generally have personality disorders and/or
11 mental abnormalities which are largely unamenable to existing
12 mental illness treatment modalities and those conditions render
13 them likely to engage in sexually violent behavior.

14 (2) That the likelihood of sexually violent predators
15 engaging in repeat acts of predatory sexual violence is high.
16 The existing involuntary commitment procedure is inadequate

17 to address the risk to re-offend because during confinement
18 these predators do not have access to potential victims and
19 therefore they will not engage in an overt act during confine-
20 ment as required by the involuntary treatment act for continued
21 confinement.

22 (3) That the prognosis for curing sexually violent predators
23 is poor, the treatment needs of this population are very long
24 term, and the treatment modalities for this population are very
25 different from the traditional treatment modalities for people
26 appropriate for commitment under chapter twenty-seven of this
27 code.

28 (4) It is therefore the purpose of this article to establish a
29 public-private task force to identify and develop measures
30 providing for the appropriate treatment of sexually violent
31 predators lasting until they are no longer dangerous to the
32 public. The measures should reflect the need to protect the
33 public, to respect the needs of the victims of sexually violent
34 offenses, and to encourage full, meaningful participation of
35 sexually violent predators in treatment programs.

**§62-11E-2. Sexually Violent Predator Management Task Force
created; duties.**

1 (a) There is hereby created the “Sexually Violent Predator
2 Management Task Force.” The task force shall consist of the
3 following persons:

4 (1) The Commissioner of the Division of Corrections, or his
5 or her designee;

6 (2) The Commissioner of the Bureau for Behavioral Health
7 and Health Facilities, or his or her designee;

8 (3) The Executive Director of the West Virginia Prosecut-
9 ing Attorney’s Institute, or his or her designee;

10 (4) The Executive Director of Public Defender Services, or
11 his or her designee;

12 (5) The Director of the Division of Criminal Justice
13 Services, or his or her designee;

14 (6) The President of the Sex Offender Registration Advi-
15 sory Board, or his or her designee;

16 (7) The Superintendent of the West Virginia State Police,
17 or his or her designee; and

18 (8) Four public members appointed by the Governor with
19 the advice and consent of the Senate as follows:

20 (i) A forensic psychiatrist with experience evaluating
21 persons charged with sexually violent offenses;

22 (ii) A forensic psychologist with experience evaluating
23 persons charged with sexually violent offenses;

24 (iii) A prosecuting attorney with experience prosecuting
25 persons for sexually violent offenses; and

26 (iv) A public defender or private criminal defense attorney:
27 *Provided*, That the person have experience defending persons
28 charged with committing sexually violent offenses.

29 (b) The task force also may invite, as it deems necessary,
30 other individuals with certain specialties to join the task force
31 as members, including, but not limited to, probation officers
32 and current or former members of the judiciary in West
33 Virginia. The Commissioner of the Division of Corrections
34 shall chair the task force.

35 (c) Each ex officio member of the task force is entitled to
36 be reimbursed by their employing agency for actual and
37 necessary expenses incurred for each day or portion thereof

38 engaged in the discharge of official duties in a manner consis-
39 tent with guidelines of the travel management office of the
40 Department of Administration. All other expenses incurred by
41 the task force shall be paid by the Division of Corrections.

42 (d) It shall be the duty of the task force to develop measures
43 for the appropriate treatment of sexually violent predators,
44 assess resources and circumstances specific to West Virginia,
45 examine constitutional, statutory and regulatory requirements
46 with which such measures must comply, identify the adminis-
47 trative and financial impact of those measures and develop a
48 plan for implementation of the measures by a date certain. In
49 fulfilling those duties, the task force, at a minimum, shall:

50 (1) Consult with psychiatrists and psychologists regarding
51 the management of sexually violent predators, including, but
52 not limited to, their diagnosis and treatment;

53 (2) Evaluate current involuntary commitment procedures
54 set forth in chapter twenty-seven of this code and how they may
55 interact with the state's management of sexually violent
56 predators;

57 (3) Survey the mental health resources offered by state
58 agencies, including, but not limited to, current treatment
59 resources for sexually violent predators in all phases of the
60 correctional, probation and parole systems;

61 (4) Assess what, if any, state resources exist for use in the
62 confinement of sexually violent predators;

63 (5) Examine the interaction between criminal penalties for
64 sexually violent offenses and the management of sexually
65 violent predators;

66 (6) Consider other states' approaches to managing sexually
67 violent offenders released after the completion of their criminal
68 sentences;

69 (7) Conduct interviews with relevant personnel inside and
70 outside of state government; and

71 (8) Determine the fiscal impact of any of its recommenda-
72 tions.

§62-11E-3. Schedule; public hearings.

1 (a) On or before the first day of July, two thousand seven,
2 the task force shall submit a report setting forth their final
3 findings and recommendations to the Legislature and the
4 Governor.

5 (b) In recognition of the importance of public engagement,
6 the task force shall have two public hearings prior to the first
7 day of March, two thousand seven, to solicit input from
8 citizens, mental health professionals, local law-enforcement
9 officials, other stakeholders, and interested parties about the
10 state's management of sexually violent predators.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

1 (a) All persons who are found guilty of or plead guilty to
2 any felony, the maximum penalty for which is less than life
3 imprisonment, and all persons who are found guilty of or plead
4 guilty to any misdemeanor, shall be eligible for probation,
5 notwithstanding the provisions of sections eighteen and
6 nineteen, article eleven, chapter sixty-one of this code.

7 (b) The provisions of subsection (a) of this section to the
8 contrary notwithstanding, any person who commits or attempts
9 to commit a felony with the use, presentment or brandishing of
10 a firearm shall be ineligible for probation. Nothing in this
11 section shall apply to an accessory before the fact or a principal
12 in the second degree who has been convicted as if he or she

13 were a principal in the first degree if, in the commission of or
14 in the attempted commission of the felony, only the principal in
15 the first degree used, presented or brandished a firearm.

16 (c)(1) The existence of any fact which would make any
17 person ineligible for probation under subsection (b) of this
18 section because of the commission or attempted commission of
19 a felony with the use, presentment or brandishing of a firearm
20 shall not be applicable unless such fact is clearly stated and
21 included in the indictment or presentment by which such person
22 is charged and is either: (i) Found by the court upon a plea of
23 guilty or nolo contendere; or (ii) found by the jury, if the matter
24 be tried before a jury, upon submitting to such jury a special
25 interrogatory for such purpose; or (iii) found by the court, if the
26 matter be tried by the court, without a jury.

27 (2) The amendments to this subsection adopted in the year
28 one thousand nine hundred eighty-one:

29 (A) Shall apply to all applicable offenses occurring on or
30 after the first day of August of that year;

31 (B) Shall apply with respect to the contents of any indict-
32 ment or presentment returned on or after the first day of August
33 of that year irrespective of when the offense occurred;

34 (C) Shall apply with respect to the submission of a special
35 interrogatory to the jury and the finding to be made thereon in
36 any case submitted to such jury on or after the first day of
37 August of that year or to the requisite findings of the court upon
38 a plea of guilty or in any case tried without a jury: *Provided,*
39 That the state shall give notice in writing of its intent to seek
40 such finding by the jury or court, as the case may be, which
41 notice shall state with particularity the grounds upon which
42 such finding shall be sought as fully as such grounds are
43 otherwise required to be stated in an indictment, unless the

44 grounds therefor are alleged in the indictment or presentment
45 upon which the matter is being tried;

46 (D) Shall not apply with respect to cases not affected by
47 such amendment and in such cases the prior provisions of this
48 section shall apply and be construed without reference to such
49 amendment; and

50 Insofar as such amendments relate to mandatory sentences
51 without probation, all such matters requiring such sentence
52 shall be proved beyond a reasonable doubt in all cases tried by
53 the jury or the court.

54 (d) For the purpose of this section, the term "firearm" shall
55 mean any instrument which will, or is designed to, or may
56 readily be converted to, expel a projectile by the action of an
57 explosive, gunpowder, or any other similar means.

58 (e) In the case of any person who has been found guilty of,
59 or pleaded guilty to, violation of the provisions of section
60 twelve, article eight, chapter sixty-one of this code, the provi-
61 sions of article eight-c or eight-b of said chapter, or under the
62 provisions of section five, article eight-d of said chapter, such
63 person shall only be eligible for probation after undergoing a
64 physical, mental and psychiatric study and diagnosis which
65 shall include an on-going treatment plan requiring active
66 participation in sexual abuse counseling at a mental health
67 facility or through some other approved program: *Provided,*
68 That nothing disclosed by the person during such study or
69 diagnosis shall be made available to any law-enforcement
70 agency, or other party without that person's consent, or
71 admissible in any court of this state, unless such information
72 disclosed shall indicate the intention or plans of the probationer
73 to do harm to any person, animal, institution or property, in
74 which case such information may be released only to such
75 persons as might be necessary for protection of the said person,
76 animal, institution or property.

77 Within ninety days of the effective date of this section as
78 amended and reenacted during the first extraordinary session of
79 the Legislature, two thousand six, the Secretary of the Depart-
80 ment of Health and Human Resources shall propose rules and
81 emergency rules for legislative approval in accordance with the
82 provisions of article three, chapter twenty-nine-a of this code
83 establishing qualifications for sex offender treatment programs
84 and counselors based on accepted treatment protocols among
85 licensed mental health professionals.

86 (f) Any person who has been convicted of a violation of the
87 provisions of article eight-b, eight-c or sections five and six,
88 article eight-d, chapter sixty-one of this code, or of section
89 fourteen, article two, or of sections twelve and thirteen, article
90 eight, chapter sixty-one of this code, or of a felony violation
91 involving a minor of section six or seven, article eight, chapter
92 sixty-one of this code, or of a similar provision in another
93 jurisdiction shall be required to be registered upon release on
94 probation. Any person who has been convicted of an attempt to
95 commit any of the offenses set forth in this subsection shall also
96 be registered upon release on probation.

97 (g) The probation officer shall within three days of release
98 of the offender, send written notice to the State Police of the
99 release of the offender. The notice shall include:

100 (1) The full name of the person;

101 (2) The address where the person shall reside;

102 (3) The person's social security number;

103 (4) A recent photograph of the person;

104 (5) A brief description of the crime for which the person
105 was convicted;

106 (6) Fingerprints; and

107 (7) For any person determined to be a sexually violent
108 predator as defined in section two-a, article twelve, chapter
109 fifteen of this code, the notice shall also include:

110 (i) Identifying factors, including physical characteristics;

111 (ii) History of the offense; and

112 (iii) Documentation of any treatment received for the
113 mental abnormality or personality disorder.

**§62-12-26. Extended supervision for certain sex offenders; sen-
tencing; conditions; supervision provisions;
supervision fee.**

1 (a) Notwithstanding any other provision of this code to the
2 contrary, any defendant convicted after the effective date of this
3 section of a violation of section twelve, article eight, chapter
4 sixty-one of this code or a felony violation of the provisions of
5 article eight-b, eight-c or eight-d of said chapter shall, as part of
6 the sentence imposed at final disposition, be required to serve,
7 in addition to any other penalty or condition imposed by the
8 court, a period of supervised release of up to fifty years:
9 *Provided*, That the period of supervised release imposed by the
10 court pursuant to this section for a defendant convicted after the
11 effective date of this section as amended and reenacted during
12 the first extraordinary session of the Legislature, two thousand
13 six, of a violation of sections three or seven, article eight-b,
14 chapter sixty-one of this code and sentenced pursuant to section
15 nine-a, article eight-b, chapter sixty-one of this code, shall be
16 no less than ten years: *Provided, however*, That a defendant
17 designated after the effective date of this section as amended
18 and reenacted during the first extraordinary session of the
19 Legislature, two thousand six, as a sexually violent predator
20 pursuant to the provisions of section two-a, article twelve,

21 chapter fifteen of this code shall be subject, in addition to any
22 other penalty or condition imposed by the court, to supervised
23 release for life: *Provided further*, That, pursuant to the provi-
24 sions of subsection (g) of this section, a court may modify,
25 terminate or revoke any term of supervised release imposed
26 pursuant to subsection (a) of this section.

27 (b) Any person required to be on supervised release for a
28 minimum term of ten years or for life pursuant to the provisos
29 of subsection (a) also shall be further prohibited from:

30 (1) Establishing a residence or accepting employment
31 within one thousand feet of a school or child care facility or
32 within one thousand feet of the residence of a victim or victims
33 of any sexually violent offenses for which the person was
34 convicted;

35 (2) Establishing a residence or any other living accommo-
36 dation in a household in which a child under sixteen resides if
37 the person has been convicted of a sexually violent offense
38 against a child, unless the person is one of the following:

39 (i) The child's parent;

40 (ii) The child's grandparent; or

41 (iii) The child's stepparent and the person was the steppar-
42 ent of the child prior to being convicted of a sexually violent
43 offense, the person's parental rights to any children in the home
44 have not been terminated, the child is not a victim of a sexually
45 violent offense perpetrated by the person, and the court deter-
46 mines that the person is not likely to cause harm to the child or
47 children with whom such person will reside: *Provided*, That
48 nothing in this subsection shall preclude a court from imposing
49 residency or employment restrictions as a condition of super-
50 vised release on defendants other than those subject to the
51 provision of this subsection.

52 (c) The period of supervised release imposed by the
53 provisions of this section shall begin upon the expiration of any
54 period of probation, the expiration of any sentence of incarceration
55 or the expiration of any period of parole supervision
56 imposed or required of the person so convicted, whichever
57 expires later.

58 (d) Any person sentenced to a period of supervised release
59 pursuant to the provisions of this section shall be supervised by
60 the probation office of the sentencing court or by the commu-
61 nity corrections program established in said circuit unless
62 jurisdiction is transferred elsewhere by order of the sentencing
63 court.

64 (e) A defendant sentenced to a period of supervised release
65 shall be subject to any or all of the conditions applicable to a
66 person placed upon probation pursuant to the provisions of
67 section nine, article twelve, chapter sixty-one of this code:
68 *Provided*, That any defendant sentenced to a period of super-
69 vided release pursuant to this section shall be required to
70 participate in appropriate offender treatment programs or
71 counseling during the period of supervised release unless the
72 court deems such to no longer be appropriate or necessary and
73 makes express findings in support thereof.

74 Within ninety days of the effective date of this section as
75 amended and reenacted during the first extraordinary session of
76 the Legislature, two thousand six, the Secretary of the Depart-
77 ment of Health and Human Resources shall propose rules and
78 emergency rules for legislative approval in accordance with the
79 provisions of article three, chapter twenty-nine-a of this code
80 establishing qualifications for sex offender treatment programs
81 and counselors based on accepted treatment protocols among
82 licensed mental health professionals.

83 (f) The sentencing court may, based upon defendant's
84 ability to pay, impose a supervision fee to offset the cost of

85 supervision. Said fee shall not exceed fifty dollars per month.
86 Said fee may be modified periodically based upon the defen-
87 dant's ability to pay.

88 (g) *Modification of conditions or revocation.* — The court
89 may:

90 (1) Terminate a term of supervised release and discharge
91 the defendant released at any time after the expiration of two
92 years of supervised release, pursuant to the provisions of the
93 West Virginia Rules of Criminal Procedure relating to the
94 modification of probation, if it is satisfied that such action is
95 warranted by the conduct of the defendant released and the
96 interests of justice;

97 (2) Extend a period of supervised release if less than the
98 maximum authorized period was previously imposed or modify,
99 reduce or enlarge the conditions of supervised release, at any
100 time prior to the expiration or termination of the term of
101 supervised release, consistent with the provisions of the West
102 Virginia Rules of Criminal Procedure relating to the modifica-
103 tion of probation and the provisions applicable to the initial
104 setting of the terms and conditions of post-release supervision;

105 (3) Revoke a term of supervised release and require the
106 defendant to serve in prison all or part of the term of supervised
107 release without credit for time previously served on supervised
108 release if the court, pursuant to the West Virginia Rules of
109 Criminal Procedure applicable to revocation of probation, finds
110 by clear and convincing evidence that the defendant violated a
111 condition of supervised release, except that a defendant whose
112 term is revoked under this subdivision may not be required to
113 serve more than the period of supervised release;

114 (4) Order the defendant to remain at his or her place of
115 residence during nonworking hours and, if the court so directs,
116 to have compliance monitored by telephone or electronic

117 signaling devices, except that an order under this paragraph
118 may be imposed only as an alternative to incarceration.

119 (h) *Written statement of conditions.* — The court shall
120 direct that the probation officer provide the defendant with a
121 written statement that sets forth all the conditions to which the
122 term of supervised release is subject and that it is sufficiently
123 clear and specific to serve as a guide for the defendant's
124 conduct and for such supervision as is required.

125 (i) *Supervised release following revocation.* — When a
126 term of supervised release is revoked and the defendant is
127 required to serve a term of imprisonment that is less than the
128 maximum term of imprisonment authorized under subsection
129 (a) of this section, the court may include a requirement that the
130 defendant be placed on a term of supervised release after
131 imprisonment. The length of such term of supervised release
132 shall not exceed the term of supervised release authorized by
133 this section less any term of imprisonment that was imposed
134 upon revocation of supervised release.

135 (j) *Delayed revocation.* — The power of the court to revoke
136 a term of supervised release for violation of a condition of
137 supervised release and to order the defendant to serve a term of
138 imprisonment and, subject to the limitations in subsection (h)
139 of this section, a further term of supervised release extends
140 beyond the expiration of the term of adjudication of matters
141 arising before its expiration if, before its expiration, a warrant
142 or summons has been issued on the basis of an allegation of
143 such a violation.

**§62-12-27. Mandatory prerelease risk assessment of certain sex
offenders.**

1 Prior to discharging an inmate convicted of a violation of
2 section twelve, article eight, chapter sixty-one of this code or a
3 felony violation of the provisions of article eight-b or eight-d of

4 said chapter at the expiration of the term of their sentence, the
5 Division of Corrections shall perform an assessment to deter-
6 mine the statistical risk that the inmate will reoffend after being
7 released from the division's custody. Prior to releasing the
8 inmate, the division shall forward the results of the assessment
9 to the inmate's supervising entity.

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

Chandy White
Chairman Senate Committee

R. Berry
Chairman House Committee

Originating in the House.

In effect October 1, 2006.

Dorell Holmes
Clerk of the Senate

Bryon M. Day
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

Robert S. Taylor
Speaker of the House of Delegates

The within *is approved* this the *19th*
day of *June*, 2006.

Robert S. Taylor
Governor

PRESENTED TO THE
GOVERNOR

JUN 19 2006

Time 10:15 am