WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 2006

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ENROLLED

House Bill No. 101

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

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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-II-1 and §15-II-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 code;
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, paroles 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-II-1 and § 15-II-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.


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

§15-11-2. Legislative findings.

(a) The purpose of “The Child Protection Act of 2006” is to put in place a series of programs, criminal law revisions and other reforms to provide and promote the ability of the children of this state to live their lives without being exposed and
subjected to neglect and physical and sexual abuse. The targeted increases in terms of incarceration, enhanced treatment, post-release supervision and new approaches toward the state’s child protection system will, in the aggregate, strengthen government’s ability to address this most serious problem. The Legislature finds that the broad reaching measures encompassed in this Act will provide for greater intervention among and punishment and monitoring of individuals who create a risk to our children’s safety and well-being.

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

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

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

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

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

(5) Prohibiting contractors and service providers convicted of certain offenses from accessing school grounds and providing for the release of criminal history information by the central
abuse registry to county school boards — section fifteen-c, article five, chapter eighteen of this code;

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

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

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

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

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

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

(12) Establishing a task force to develop measures aimed at managing sexually violent predators released from confinement — article eleven-e, chapter sixty-two of this code;
(13) Making psychiatric evaluations a condition of probation eligibility for certain sex offenders — section two, article twelve, chapter sixty-two of this code;

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

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

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

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

(a) The superintendent shall establish a special unit of the State Police, called the Child Abuse and Neglect Investigations Unit. The purpose of the unit is to focus on identifying, investigating and prosecuting criminal child abuse and neglect cases, in coordination with Child Protective Services, established pursuant to section nine, article six-a, chapter forty-nine of this code. The unit shall assist other State Police members with child abuse or neglect investigations as well as the Division of Child Protective Services. The unit may provide training, technical expertise and coordination of services for other law-enforcement agencies, Child Protective Services caseworkers, prosecuting attorneys and multidisciplinary teams established pursuant to the provisions of section two, article five-d, chapter forty-nine of this code, to identify, investigate, report and prosecute criminal child abuse and criminal child neglect cases. However, nothing in this section may be construed to mean that the unit will assume the duties or investigations of other State Police members or other law-enforcement officers.

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

(c) The unit director’s duties include:

(1) Overseeing State Police members assigned to the unit;
(2) Coordinating activities of the unit with Child Protection Services;

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

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

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

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

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

(g) The superintendent may propose rules for legislative approval or procedural rules as necessary to effectuate the provisions of this section in accordance with the provisions of
article three, chapter twenty-nine-a of this code. The superintendent shall provide forms to law-enforcement agencies, circuit clerks and parole officers to facilitate submission of appropriate information necessary to prepare the statistical reports required by this section.

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

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

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

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

(b) The Central Abuse Registry shall contain, at a minimum, information relating to: Convictions of a misdemeanor or a felony involving abuse, neglect or misappropriation of property, by an individual performing services for compensation, within the scope of the individual's employment or contract to provide services, in a residential care facility, in a licensed day care center in connection with providing behavioral health services, or in connection with the provision of home care services; information relating to individuals convicted of specific offenses enumerated in subsection (a), section
three of this article with respect to a child or an incapacitated 
adult or an adult receiving behavioral health services; informa-
tion relating to all individuals required to register with the Child 
Abuse and Neglect Registry established pursuant to article 
thirteen, chapter fifteen of this code; and information relating 
to all individuals required to register with the West Virginia 
State Police as sex offenders pursuant to the provisions of 
article twelve, chapter fifteen of this code. The Central Abuse 
Registry shall contain the following information:

(1) The individual's full name;

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

(3) Identification of the criminal offense constituting abuse, 
neglect or misappropriation of property of a child or an incapaci-
tated adult or an adult receiving behavioral health services;

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

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

(c) Upon conviction in the criminal courts of this state of a 
misdemeanor or a felony offense constituting child abuse or 
neglect or abuse or neglect of an incapacitated adult or an adult
receiving behavioral health services, the individual so convicted shall be placed on the Central Abuse Registry.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2. Registration.

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

(b) Any person who has been convicted of an offense or an attempted offense or has been found not guilty by reason of mental illness, mental retardation or addiction of an offense under any of the following provisions of chapter sixty-one of this code or under a statutory provision of another state, the United States Code or the Uniform Code of Military Justice which requires proof of the same essential elements shall register as set forth in subsection (d) of this section and according to the internal management rules promulgated by the superintendent under authority of section twenty-five, article two of this chapter:

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

(2) Article eight-c;

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

(4) Section fourteen, article two;

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

(6) Section fourteen-b, article three-c, as it relates to violations of those provisions of chapter sixty-one listed in this subsection.
(c) Any person who has been convicted of a criminal offense and the sentencing judge made a written finding that the offense was sexually motivated shall also register as set forth in this article.

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

1. The full name of the registrant, including any aliases, nicknames or other names used by the registrant;

2. The address where the registrant intends to reside or resides at the time of registration, the address of any habitable real property owned or leased by the registrant that he or she regularly visits: Provided, That a post office box may not be provided in lieu of a physical residential address, the name and address of the registrant’s employer or place of occupation at the time of registration, the names and addresses of any anticipated future employers or places of occupation, the name and address of any school or training facility the registrant is attending at the time of registration and the names and addresses of any schools or training facilities the registrant expects to attend;

3. The registrant’s social security number;

4. A full-face photograph of the registrant at the time of registration;
(5) A brief description of the crime or crimes for which the registrant was convicted;

(6) Fingerprints;

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

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

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

(e) (1) On the date that any person convicted or found not guilty by reason of mental illness, mental retardation or addiction of any of the crimes listed in subsection (b) of this section, hereinafter referred to as a “qualifying offense”, including those persons who are continuing under some post-conviction supervisory status, are released, granted probation or a suspended sentence, released on parole, probation, home detention, work release, conditional release or any other release from confinement, the Commissioner of Corrections, regional jail administrator, city official or sheriff operating a jail or Secretary of the Department of Health and Human Resources who releases the person and any parole or probation officer who releases the person or supervises the person following the release, shall obtain all information required by subsection (d) of this section prior to the release of the person, inform the
person of his or her duty to register and send written notice of
the release of the person to the State Police within three
business days of receiving the information. The notice must
include the information required by said subsection. Any person
having a duty to register for a qualifying offense shall register
upon conviction, unless that person is confined or incarcerated,
in which case he or she shall register within three business days
of release, transfer or other change in disposition status.

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

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

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

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

(1) Identifying factors, including physical characteristics;
(2) History of the offense; and
(3) Documentation of any treatment received for the mental abnormality or personality disorder.

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

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

(i) For the purpose of this article, "sexually violent offense" means:

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

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

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

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

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

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

(l) For purposes of this article, the term “mental abnormality” means a congenital or acquired condition of a person, that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.
(m) For purposes of this article, the term “predatory act” means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

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

§15-12-3. Change in registry information.

When any person required to register under this article changes his or her residence, address, place of employment or occupation, motor vehicle, trailer or motor home information required by section two of this article, or school or training facility which he or she is attending, or when any of the other information required by this article changes, he or she shall, within ten business days, inform the West Virginia State Police of the changes in the manner prescribed by the Superintendent of State Police in procedural rules promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code: Provided, That when any person required to register under this article changes his or her residence, place of employment or occupation or school or training facility he or she is attending from one county of this state to another county of this state, he or she shall inform the West Virginia State Police detachment in both counties within ten business days of the change in the manner prescribed by the superintendent in procedural rules promulgated in accordance with the provisions 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.
(a) Within five business days after receiving any notification as described in this article, the State Police shall distribute a copy of the notification statement to:

(1) The supervisor of each county and municipal law-enforcement office and any campus police department in the city and county where the registrant resides, owns or leases habitable real property that he or she regularly visits, is employed or attends school or a training facility;

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

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

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

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

(6) The Federal Bureau of Investigation (FBI).
(b) Information concerning persons whose names are contained in the sex offender registry is not subject to the requirements of the West Virginia Freedom of Information Act, as set forth in chapter twenty-nine-b of this code, and may be disclosed and disseminated only as otherwise provided in this article and as follows:

(1) When a person has been determined to be a sexually violent predator under the terms of section two-a of this article, the State Police shall notify the prosecuting attorney of the county in which the person resides, owns or leases habitable real property that he or she regularly visits, is employed or attends a school or training facility. The prosecuting attorney shall cooperate with the State Police in conducting a community notification program which is to include publication of the offender’s name, photograph, place of residence, location of regularly visited habitable real property owned or leased by the offender, county of employment and place at which the offender attends school or a training facility, as well as information concerning the legal rights and obligations of both the offender and the community. Information relating to the victim of an offense requiring registration may not be released to the public except to the extent the prosecuting attorney and the State Police consider it necessary to best educate the public as to the nature of sexual offenses: Provided, That no victim’s name may be released in any public notification pursuant to this subsection. No information relating to telephone or electronic paging device numbers a registrant has or uses may be released to the public with this notification program. The prosecuting attorney and State Police may conduct a community notification program in the county where a person who is required to register for life under the terms of subdivision (2), subsection (a), section four of this article resides, owns or leases habitable real property that he or she regularly visits, is employed or attends a school or training facility. Community notification
may be repeated when determined to be appropriate by the
prosecuting attorney;

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

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

(c) The State Police may furnish information and documen-
tation required in connection with the registration to authorized
law-enforcement, campus police and governmental agencies of
the United States and its territories, of foreign countries duly
authorized to receive the same, of other states within the United
States and of the State of West Virginia upon proper request
stating that the records will be used solely for law-enforcement-
related purposes. The State Police may disclose information
collected under this article to federal, state and local government agencies responsible for conducting preemployment checks. The State Police also may disclose information collected under this article to the Division of Motor Vehicles pursuant to the provisions of section three, article two, chapter seventeen-b of this code.

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

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

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

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

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

(b) Except as provided in this section, any person required to register for ten years pursuant to subdivision (1), subsection (a), section four of this article who knowingly provides materially false information or who refuses to provide accurate information when so required by the terms of this article, or who knowingly fails to register or knowingly fails to provide a
change in any required information as required by this article,
is guilty of a misdemeanor and, upon conviction thereof, shall
be fined not less than two hundred fifty dollars nor more than
ten thousand dollars or confined in jail not more than one year,
or both. Any person convicted of a second offense under this
subsection is guilty of a felony and, upon conviction thereof,
shall be imprisoned in a state correctional facility for not less
than one year nor more than five years. Any person convicted
of a third or subsequent offense under this subsection is guilty
of a felony and, upon conviction thereof, shall be imprisoned in
a state correctional facility for not less than five nor more than
twenty-five years.

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

(d) In addition to any other penalty specified for failure to
register under this article, any person under the supervision of
a probation officer, parole officer or any other sanction short of
confinement in jail or prison who knowingly refuses to register
or who knowingly fails to provide a change in information as
required by this article shall be subject to immediate revocation
of probation or parole and returned to confinement for the
remainder of any suspended or unserved portion of his or her
original sentence.
(e) Notwithstanding the provisions of subsection (c) of this section, any person required to register as a sexually violent predator pursuant to this article who knowingly provides materially false information or who refuses to provide accurate information when so required by terms of this article or who knowingly fails to register or knowingly fails to provide a change in any required information as required by this article is guilty of a felony and, upon conviction thereof, shall, for a first offense, be confined in a state correctional facility not less than two nor more than ten years and for a second or subsequent offense, is guilty of a felony and shall be confined in a state correctional facility not less than fifteen nor more than thirty-five years.

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

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

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

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

(4) Provides information to the law-enforcement agency regarding the sex offender which the person knows to be false information is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than two hundred fifty dollars nor more than ten thousand dollars or confined in jail not more than one year, or both: Provided, That where the person assists or seeks to assist a sex offender whose violation of this section would constitute a felony, the person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than five years.


(a) When any probation or parole officer accepts supervision of and has legal authority over any person required to register under this article from another state under the terms and conditions of the uniform act for out-of-state parolee supervision established under article six, chapter twenty-eight of this code, the officer shall give the person written notice of the registration requirements of this section and obtain a signed statement from the person required to register acknowledging the receipt of the notice. The officer shall obtain and submit to the State Police the information required in subsection (d), section two of this article.

(b) Any person:

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

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

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

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

§15-12-10. Address verification.

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

ARTICLE 13. CHILD ABUSE AND NEGLECT REGISTRATION.

§15-13-1. Intent and findings.

(a) It is the intent of this article to assist law-enforcement agencies’ efforts to protect children from abuse and neglect by requiring persons convicted of child abuse or neglect to register with the State Police detachment in the county of his or her
residence and to report information as required by section two of this article. It is not the intent of the Legislature that this act be used to inflict retribution or additional punishment on any person convicted of any offense requiring registration under this article. This article is intended to be regulatory in nature and not penal, and is intended to provide for the safety of children who are exposed to persons convicted of child abuse and neglect.

(b) The Legislature finds and declares that there is a compelling and necessary public interest that children be protected from physical abuse and neglect, and that requirements of this article are appropriate and reasonable because of this compelling state interest.

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

§15-13-2. Registration.

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

(b) Any person who has been convicted of an offense or has been found not guilty solely by reason of mental illness, mental retardation or addiction of an offense under any of the provisions of sections two, two-a, three, three-a, four and four-a, article eight-d, of chapter sixty-one of this code or under a statutory provision of another state, the United States Code or the Uniform Code of Military Justice which requires proof of the same essential elements shall register as set forth in subsection (e) of this section and according to the internal management rules promulgated by the superintendent under authority of section twenty-five, article two of this chapter.
(c) The clerk of the court in which a person is convicted for an offense described in subsection (b) of this section, or for an offense described in a municipal ordinance which has the same elements as an offense described in said section, shall forward to the superintendent, at a minimum, information required on forms provided by the State Police relating to the person required to register.

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

(2) If the conviction is the judgment of a circuit court, the circuit clerk shall submit, at a minimum, the required information to the superintendent regarding the person convicted within thirty days after the judgment was entered.

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

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

(1) The full name of the registrant, including any aliases, nicknames or other names used by the registrant;
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(2) The address where the registrant intends to reside or resides at the time of registration, the name and address of the registrant’s employer or place of occupation at the time of registration, the names and addresses of any anticipated future employers or places of occupation, the name and address of any school or training facility the registrant is attending at the time of registration and the names and addresses of any schools or training facilities the registrant expects to attend: Provided, That a post office box or other address that does not have a physical street address of residence may not be provided in lieu of a physical residence address;

(3) The registrant’s social security number;

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

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

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

(f) On the date that any person convicted or found not guilty solely by reason of mental illness, mental retardation or addiction of any of the offenses listed in subsection (b) of this section, hereinafter referred to as a “qualifying offense”, including those persons who are continuing under some post-conviction supervisory status, are released, granted probation or a suspended sentence, released on parole, probation, home detention, work release, conditional release or any other release from confinement, the Commissioner of Corrections, Regional Jail Administrator, city or sheriff operating a jail or Secretary of the Department of Health and Human Resources who releases the person, and any parole or probation officer who releases the person or supervises the person following the release, shall inform the person of his or her duty
78 to register and send written notice of the release to the superintend- 
79 ent 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.
The superintendent shall provide forms to law-enforcement agencies, circuit clerks and parole officers to facilitate submission of appropriate information necessary to administer the child abuse and neglect registry established by this article.

For the purposes of this article, the term "business days", means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code.


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

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

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

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


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

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

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

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

(c) The State Police may furnish information and documentation required in connection with the registration to authorized law enforcement, campus police and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the State of West Virginia upon proper request stating that the records will be used solely for law-enforcement-related purposes. The State Police may disclose information collected under this article to federal, state and local governmental agencies responsible for conducting preemployment checks.

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

(e) The information contained in the child abuse and neglect registry is confidential, and may not be disclosed except as specifically provided in this article. The information contained in the registry with respect to an individual shall be provided to that individual promptly upon request. Individuals on the registry requesting registry information shall be afforded the opportunity to file statements correcting any misstatements or inaccuracies contained in the registry. The State Police and the Department of Health and Human Resources may disclose
registry information to authorized law-enforcement and
governmental agencies of the United States and its territories,
of foreign states and of the State of West Virginia upon proper
request stating that the information requested is necessary in the
interest of and will be used solely in the administration of
official duties and the criminal laws. Agreements with other
states providing for the reciprocal sharing of abuse and neglect
registry information are specifically authorized. Nothing in this
article would preclude disclosure of information authorized
pursuant to article two-c of this chapter.

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

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


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

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

(a) Except as provided in this section, any person required
to register under this article who knowingly provides false
information or who refuses to provide accurate information
when so required by this article, or who knowingly fails to register or knowingly fails to provide a change in any information as required by this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than ten thousand dollars or imprisoned in jail not more than one year, or both: Provided, That each time the person has a change in any of the registration information as required by this article and fails to register the change or changes, each failure to register each separate item of information changed shall constitute a separate offense.

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

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


(a) When any probation or parole officer accepts supervision of, and has legal authority over, any person required to
(b) The division may not issue a license or nondriver identification card to any person required to register as a sexually violent predator pursuant to the provisions of article twelve, chapter fifteen, unless he or she obtains a driver's license or nondriver identification card coded by the commissioner to denote that he or she is a sexually violent predator as follows:

(1) If a person is judicially determined to be a sexually violent predator after the effective date of this section, the sentencing court shall order the person or the agency with custody of the person's driver's license or nondriver identification card to surrender said license or card to the court. The sentencing court shall forward to the division all driver's licenses or nondriver identification cards that it receives pursuant to this section, along with a copy of the sentencing order. If a person is registered as a sexually violent predator pursuant to section nine, article twelve, chapter fifteen of this code after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, two thousand six, the person shall surrender their driver's license or nondriver identification card to the division within ten days of their registration with the State Police. Any replacement driver's license or nondriver identification card issued to the person under this section must be coded by the commissioner to denote the person is a sexually violent predator and shall be issued at no cost to the person.

(2) Within ten business days of the effective date of the amendments to this section made during the first extraordinary session of the Legislature, two thousand six, the State Police shall provide the division with the name, address and motor vehicle information of every person registered as a sexually violent predator in the state at that time and also provide notice to said registrants of the requirements set forth in said amendments. If a person is registered as a sexually violent predator prior to the effective date of this section, as amended and
reenacted during the first extraordinary session of the Legislature, two thousand six, he or she shall surrender his or her driver’s license or nondriver identification card to the division within ten business days of his or her receipt of the notice from the State Police required by said amendments. Any replacement driver’s license or nondriver identification card issued to the person under this section must be coded by the commissioner to denote the person is a sexually violent predator and shall be issued at no cost to the person.

(c) Upon receipt of a driver’s license or nondriver identification card from a sentencing court or individual pursuant to subsection (b) of this section, the division shall cancel said license or card and note the cancellation in its records system so as to prevent the issuance of a replacement or duplicate license or card lacking the coded notation required by subsection (b) of this section.

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

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

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

(b) County boards of education shall be required, to the extent funds are provided, to establish programs for the prevention of child abuse and neglect and child assault. Such programs shall be provided to pupils, parents and school personnel as deemed appropriate. Such programs shall be in compliance with regulations to be developed by the State Board of Education with the advice and assistance of the state Department of Health and Human Resources and the West Virginia State Police: Provided, That any such programs which substantially comply with the regulations adopted by the board and were in effect prior to the adoption of the regulations may be continued.

(c) Funds for implementing the child abuse and neglect prevention and child assault prevention programs may be allocated to the county boards of education from the children's trust fund established pursuant to the provisions of article six-c, chapter forty-nine of this code or appropriated for such purpose by the Legislature.
(d) County boards of education shall request from the State Criminal Identification Bureau the record of any and all criminal convictions relating to child abuse, sex-related offenses or possession of controlled substances with intent to deliver same for all of its future employees. This request shall be made immediately after the effective date of this section, and thereafter as warranted.

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

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

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

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

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

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

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

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

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

(d) The Legislature directs the task force to:

(1) Study whether sex offenders can be treated and rehabilitated;

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

(3) Study the findings and recommendations from relevant national advisory committees, federal agencies, and peer-reviewed medical, correctional, and legal literature; and
(4) Identify and recommend alternatives to establishing a separate facility, if a separate facility is not feasible and cost effective.

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

(f) All actual and necessary travel expenses of the members of the task force shall be reimbursed by the member's employing agency. All other expenses incurred by the task force shall be paid by the Division of Corrections.

(g) The task force shall make its final report to the Governor and the Legislature regarding its findings and recommendations 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.


The Department of Health and Human Resources shall maintain a statewide child abuse and neglect statistical index of all substantiated allegations of child abuse or neglect cases to include information contained in the reports required under this article and any other information considered appropriate by the Secretary of the Department of Health and Human Resources. Nothing in the statistical data index maintained by the Department of Health and Human Resources may contain information of a specific nature that would identify individual cases or persons. Notwithstanding the provisions of section one, article seven, chapter forty-nine of this code, the Department of Health and Human Resources shall provide copies of the statistical
data maintained pursuant to this subsection to the State Police child abuse and neglect investigations unit to carry out its responsibilities to protect children from abuse and neglect.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8B. SEXUAL OFFENSES.


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

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

(i) Inflicts serious bodily injury upon anyone; or

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

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

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

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age,
shall be imprisonment in a state correctional facility for not less than twenty-five nor more than one hundred years and a fine of not less than five thousand dollars nor more than twenty-five thousand dollars.

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

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

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

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

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

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

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

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

(1) The person employed forcible compulsion in commission of the offense;

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

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

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

(b)(1) The existence of any fact which would make any person ineligible for probation under subsection (a) of this section because of the existence of an aggravating circumstance shall not be applicable unless such fact is clearly stated and included in the indictment or presentment by which such person
is charged and is either: (i) Found by the court upon a plea of
 guilty or nolo contendere; or (ii) found by the jury, if the matter
 be tried before a jury, upon submitting to such jury a special
 interrogatory for such purpose; or (iii) found by the court, if the
 matter be tried by the court, without a jury.

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

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

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

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

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

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

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

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

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

CHAPTER 62. CRIMINAL PROCEDURE.

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


As used in this article:

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

(A) Is certified in post conviction sex offender testing as prescribed by the American Polygraph Association;
(B) Has completed not less than twenty hours of American Polygraph Association-approved sex offender testing training every other calendar year; and

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

(2) "Electronic monitoring" means any one or a combination of the following technologies:

(A) Voice verification;

(B) Radio frequency;

(C) Video display/breath alcohol test;

(D) Global positioning satellite; or

(E) Global positioning satellite - cellular.

(3) "Full-disclosure polygraph" or "sexual history polygraph" means a polygraph examination administered to determine the entire sexual history of the probationer or parolee.

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

(5) "Sexually violent predator" means any person determined by a circuit court of this state to be a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code or of a similar provision in 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.
(a) Notwithstanding any provision of this code to the contrary, any person:

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

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

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

(c) In the event a person required to submit to polygraph examinations as required by the provisions of this section is unable to pay for the polygraph examination or examinations, that person may present an affidavit reflecting the inability to pay for such testing to the circuit court of the county of supervision. If it appears to the satisfaction of the court that such person is in fact financially unable to pay for such testing, the court shall issue an order reflecting such findings and forward such order to the supervising entity. Upon receipt of such order, the supervising entity shall then be responsible for paying for such testing.
(d) Any polygraph examination conducted pursuant to the provisions of this section shall be conducted by a certified polygraph analyst.

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

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

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

3. Conduct more than two maintenance tests in a twenty-four hour period;

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

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

(f) No polygraph examination performed pursuant to the provisions this section may be conducted by a person who is a sworn peace officer, within the boundaries of that officer’s jurisdiction.
§62-11D-3. Electronic monitoring of certain sex offenders under supervision; tampering with devices; offenses and penalties.

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

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

(c) A person subject to the provisions of this section shall be responsible for the cost of the electronic monitoring. In the event a person required to submit to electronic monitoring as required by the provisions of this section is unable to pay for the electronic monitoring, that person may present an affidavit reflecting the inability to pay for such monitoring to the circuit court of the county of supervision. If it appears to the satisfaction of the court that such person is in fact financially unable to pay for such monitoring, the court shall issue an order reflecting such findings and forward said order to the supervising entity. Upon receipt of such order, the supervising entity shall then be responsible for paying for each testing.
(d) The assessment required by the provisions of subsection
(b) of this section shall be completed not later than thirty days
after the supervised person begins serving probation or parole
or supervised release. Under no circumstances may a person of
whom electronic monitoring has been mandated as a condition
of supervision be on a type of monitoring less effective than
voice verification with a curfew.

(e) Any person who intentionally alters, tampers with,
damages or destroys any electronic monitoring equipment, with
the intent to remove the device or impair its effectiveness, is
guilty of a felony and, upon conviction thereof, shall be
confined in a state correctional facility for not less than one
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
violent offenders exist who do not have a mental disease or
defect that renders them appropriate for involuntary hospitaliza-
tion pursuant to chapter twenty-seven of this code, which is
intended to be a short-term civil commitment system that is
primarily designed to provide short-term treatment to individu-
als with serious mental disorders and then return them to the
community. In contrast, these offenders, known as sexually
violent predators, generally have personality disorders and/or
mental abnormalities which are largely unamenable to existing
mental illness treatment modalities and those conditions render
them likely to engage in sexually violent behavior.

2 (2) That the likelihood of sexually violent predators
engaging in repeat acts of predatory sexual violence is high.
The existing involuntary commitment procedure is inadequate
to address the risk to re-offend because during confinement
these predators do not have access to potential victims and
therefore they will not engage in an overt act during confine-
ment as required by the involuntary treatment act for continued
confinement.

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

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

created; duties.

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

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

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

(3) The Executive Director of the West Virginia Prosecut-
ing Attorney’s Institute, or his or her designee;
(4) The Executive Director of Public Defender Services, or his or her designee;

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

(6) The President of the Sex Offender Registration Advisory Board, or his or her designee;

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

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

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

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

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

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

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

(c) Each ex officio member of the task force is entitled to be reimbursed by their employing agency for actual and necessary expenses incurred for each day or portion thereof.
engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the Department of Administration. All other expenses incurred by the task force shall be paid by the Division of Corrections.

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

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

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

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

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

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

(6) Consider other states’ approaches to managing sexually violent offenders released after the completion of their criminal sentences;
(7) Conduct interviews with relevant personnel inside and outside of state government; and

(8) Determine the fiscal impact of any of its recommendations.


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

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

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

(b) The provisions of subsection (a) of this section to the contrary notwithstanding, any person who commits or attempts to commit a felony with the use, presentment or brandishing of a firearm shall be ineligible for probation. Nothing in this section shall apply to an accessory before the fact or a principal in the second degree who has been convicted as if he or she
were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm.

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

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

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

(B) Shall apply with respect to the contents of any indictment or presentment returned on or after the first day of August of that year irrespective of when the offense occurred;

(C) Shall apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to such jury on or after the first day of August of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, That the state shall give notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which such finding shall be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the
grounds therefor are alleged in the indictment or presentment upon which the matter is being tried;

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

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

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

(e) In the case of any person who has been found guilty of, or pleaded guilty to, violation of the provisions of section twelve, article eight, chapter sixty-one of this code, the provisions of article eight-c or eight-b of said chapter, or under the provisions of section five, article eight-d of said chapter, such person shall only be eligible for probation after undergoing a physical, mental and psychiatric study and diagnosis which shall include an on-going treatment plan requiring active participation in sexual abuse counseling at a mental health facility or through some other approved program: Provided, That nothing disclosed by the person during such study or diagnosis shall be made available to any law-enforcement agency, or other party without that person's consent, or admissible in any court of this state, unless such information disclosed shall indicate the intention or plans of the probationer to do harm to any person, animal, institution or property, in which case such information may be released only to such persons as might be necessary for protection of the said person, animal, institution or property.
Within ninety days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, two thousand six, the Secretary of the Department of Health and Human Resources shall propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

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

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

(1) The full name of the person;

(2) The address where the person shall reside;

(3) The person's social security number;

(4) A recent photograph of the person;

(5) A brief description of the crime for which the person was convicted;
(6) Fingerprints; and

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

(i) Identifying factors, including physical characteristics;

(ii) History of the offense; and

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

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

(a) Notwithstanding any other provision of this code to the contrary, any defendant convicted after the effective date of this section of a violation of section twelve, article eight, chapter sixty-one of this code or a felony violation of the provisions of article eight-b, eight-c or eight-d of said chapter shall, as part of the sentence imposed at final disposition, be required to serve, in addition to any other penalty or condition imposed by the court, a period of supervised release of up to fifty years: Provided, That the period of supervised release imposed by the court pursuant to this section for a defendant convicted after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, two thousand six, of a violation of sections three or seven, article eight-b, chapter sixty-one of this code and sentenced pursuant to section nine-a, article eight-b, chapter sixty-one of this code, shall be no less than ten years: Provided, however, That a defendant designated after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, two thousand six, as a sexually violent predator pursuant to the provisions of section two-a, article twelve,
chapter fifteen of this code shall be subject, in addition to any other penalty or condition imposed by the court, to supervised release for life: Provided further, That, pursuant to the provisions of subsection (g) of this section, a court may modify, terminate or revoke any term of supervised release imposed pursuant to subsection (a) of this section.

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

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

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

(i) The child's parent;

(ii) The child's grandparent; or

(iii) The child's stepparent and the person was the stepparent of the child prior to being convicted of a sexually violent offense, the person's parental rights to any children in the home have not been terminated, the child is not a victim of a sexually violent offense perpetrated by the person, and the court determines that the person is not likely to cause harm to the child or children with whom such person will reside: Provided, That nothing in this subsection shall preclude a court from imposing residency or employment restrictions as a condition of supervised release on defendants other than those subject to the provision of this subsection.
(c) The period of supervised release imposed by the
provisions of this section shall begin upon the expiration of any
period of probation, the expiration of any sentence of incarcer-
tion or the expiration of any period of parole supervision
imposed or required of the person so convicted, whichever
expires later.

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

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

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

(f) The sentencing court may, based upon defendant’s
ability to pay, impose a supervision fee to offset the cost of
supervision. Said fee shall not exceed fifty dollars per month. Said fee may be modified periodically based upon the defendant’s ability to pay.

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

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

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

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

(4) Order the defendant to remain at his or her place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic
signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

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

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

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


Prior to discharging an inmate convicted of a violation of section twelve, article eight, chapter sixty-one of this code or a felony violation of the provisions of article eight-b or eight-d of
said chapter at the expiration of the term of their sentence, the Division of Corrections shall perform an assessment to determine the statistical risk that the inmate will reoffend after being released from the division's custody. Prior to releasing the inmate, the division shall forward the results of the assessment to the inmate's supervising entity.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect October 1, 2006.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor