

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED
JUN 1 3 25 PM '99

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia State Police TITLE NUMBER: 81

RULE TYPE: Procedural CITE AUTHORITY: 61-8F-2a & 29A-3-1-etc.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

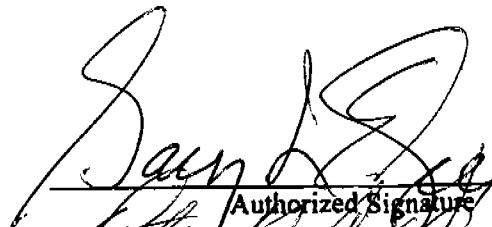
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 14

TITLE OF RULE BEING PROPOSED: Guidelines Pertaining to the West Virginia
Sex Offender Registration Act.

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 1, 1999 AT 3:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Sex Offender Registry
Records
West Virginia State Police
725 Jefferson Road
South Charleston, WV 25177

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

\$6.20

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Guidelines Pertaining to the West Virginia Sex Offender Registration Act.

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia State Police

Address: Sex Offender Registry

Records

725 Jefferson Road

South Charleston, WV 25309

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

The West Virginia Sex Offender Registry (SOR) is currently operational and is staffed and funded within the current state police budget. The SOR has been awarded a National Criminal History Improvement Project (NCHIP) grant to purchase additional equipment and provide training. The grant was part of a federal project to assist the SORs.

3. Objectives of These Rules:

To comply with 61-8F-2a which promulgates the Superintendent of the West Virginia State Police to establish rules concerning the operation of the Sex Offender Registry. The rules explain the role of the Sex Offender Registry, the community education/notification program and clarify the responsibilities of all parties involved.

Rule Title: Guidelines Pertaining to the West Virginia Sex Offender Registration Act.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

The Sex Offender Registry is currently budgeted and funded. It is possible that as awareness and education of the SOR broadens, more offenders that fail to register will be reported, thus resulting in arrest, conviction and incarceration or incarceration following the revoking of parole or probation.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

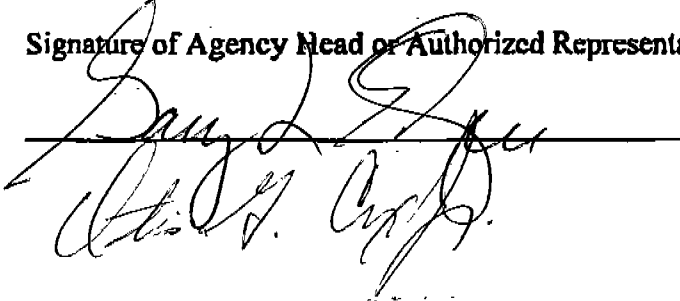
No economic impact foreseen

C. Economic Impact on Citizens/Public at Large.

No economic impact foreseen

Date: _____

Signature of Agency Head or Authorized Representative:



The Sex Offender Registry (SOR) is established under West Virginia State Criminal Code 61-8F and is housed in the Records Division of the West Virginia State Police. The federal government sets many guidelines for the operation of the state SORs and their submission of data to the National Sex Offender Registry (NSOR). The guidelines insure compliance with the Jacob Wetterling Act, Megan's Law, and the Pam Lynchner Act.

68-8F, in accordance with 29A-3-1 etc of the state code promulgates the Superintendent of the West Virginia State Police to establish rules in reference to West Virginia's Sex Offender Registry. Most of the guidelines have been implemented and are part of regular practice, but the formal establishment of the rules should help clarify the roles and responsibilities of all involved parties. The rules are separated by listing the responsibilities of administrators of incarceration facilities, probation or parole officers, the sentencing courts, county prosecuting attorneys, the Sex Offender Registration Advisory Board, the State Police, other law enforcement agencies, the West Virginia Sex Offender Registry, community or religious organizations authorized to receive Sex Offender registration information, those persons required to register as a sex offender and the public at large.

The rules also explain the role and format of the community education/notification program.

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Jul 1 3 25 PM '99

Title 81
Procedural Rule
West Virginia State Police
Series 14

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

Guidelines Pertaining to the West Virginia Sex Offender Registration Act

81-14-1 General

1.1 Scope - This procedural rule explains the West Virginia Sex Offender Registry, the community/education notification program and the responsibilities of the parties involved.

1.2 WV Code §61-8F and §62-21-2

1.3 Filing Date

1.4 Effective Date

14-2 Definitions

As used in this rule, unless in a context that clearly requires a different meaning the term:

2.1 Board - the Sex Offender Registration Advisory Board, a board created within the Division of Military Affairs and Public Safety whose primary purpose is to assist the circuit courts by delivering a report setting forth the findings and recommendations of the board on whether a person before the sentencing court is a sexually violent predator.

2.2 Bodily injury - substantial physical pain, illness or impairment of physical condition.

2.3 Central Registry - here as known as the "Registry", the West Virginia Sex Offender Registry maintained by the West Virginia State Police and housed in the Criminal Records Section.

2.4 Deadly weapon - any instrument, device or thing capable of inflicting death or serious bodily injury and designed or specially adapted for use as a weapon or possessed, carried or used as a weapon.

2.5 Forcible compulsion, as defined in article 61-8B-1 of the West Virginia Criminal Code - physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or threat or intimidation, expressed or implied; placing a person in fear of immediate death or bodily injury to himself or herself or another person will be kidnaped; or fear by a person under 16 years of age caused by intimidation expressed or implied by another person who is at least 4 years older than the victim.

2.6 Mental abnormality - 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.

2.7 Predatory act - any act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

2.8 Post conviction supervisory status - monitored or supervised behavior of the person following their conviction or release from incarceration. This status may include probation, parole, home detention or work release.

2.9 Sex Offender Registration Act - here as known as the "Act", article 61-8F of the West Virginia Criminal Code that sets forth the duties of various entities as it pertains to the registration of sex offenders and the duty of the West Virginia State Police to promulgate rules prescribing the manner of registration procedures.

2.10 Sexual criminal offenses - those offenses that require registration as a sexual

offender upon conviction. These offenses include, but are not limited to, §61-8B-3,4,5,6,7,8,9, §61-8C-2 or 3, §61-2-14, §61-8-6 or 7, §61-8D-5 or 6, § 61-8-12 or §61-11-8 (attempt to commit the previous offenses). These also include, but not limited to offenses with similar provisions in another state, federal or military jurisdiction.

2.11 Sexually violent offenses - any criminal offense set forth in §61-8B or offenses with similar provisions in another state, federal or military jurisdiction which include forcible compulsion, bodily injury or the use of a deadly weapon.

2.12 Sexually violent predator - person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes a person likely to engage in predatory sexually violent offenses.

14-3 Purposes

3.1 Assist local law enforcement agencies' efforts to protect their communities by regulating how sex offenders register with the Sex Offender Registry at their local state police detachments.

3.2 Give local communities adequate notice and information of a persons release, through the community notification program and quarterly releases of offender lists, so the community can develop constructive plans to prepare themselves and their children for the persons release.

3.3 Inform the community, law enforcement, the criminal justice entities and the offender of their rights and responsibilities as it pertains to the Act.

3.4 To prescribe the manner of how a person is to register and the manner of how information pertinent to the registry originating from the probation officers, parole officers, courts, and law enforcement officers is to be forwarded to the Registry.

14.4 Objectives

4.1 To enter all sex offenders into the Registry as prescribed in §61-8F in a timely and thorough manner.

4.2 To form collaborative partnerships with the Prosecuting Attorneys, family related community organizations and victim's advocates in conducting community/education notification programs.

4.3 To conduct community notification/education programs that provide education for the community on characteristics of sex offenders, the sex offender registry law, strategies for protecting an individual and their children and the resources available for victims.

4.4 Educate the public through the community education program to reduce vigilante-like actions by citizens.

4.5 Inform public entities and care givers as prescribed by §61-8F, of the sex offenders living, working or attending school in their areas.

4.6 Achieve compliance by law enforcement as it pertains to the offender registration and the confirmation of offenders' addresses or address changes by law enforcement.

14-5 Persons Required to Register

5.1 All persons who are convicted of committing any of the following criminal sexual offenses are to register.

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

- 5.1.b. Sexual assault in the second degree §61-8B-4
- 5.1.c. Sexual assault in the third degree §61-8B-5
- 5.1.d. Sexual assault of a spouse §61-8B-6
- 5.1.e. Sexual abuse in the first degree §61-8B-7
- 5.1.f. Sexual abuse in the second degree §61-8B-8
- 5.1.g. Sexual abuse in the third degree §61-8B-9
- 5.1.h. Incest §61-8-12
- 5.1.i. Detention of person in place of prostitution §61-8-6 involving a minor
- 5.1.j. Procuring for house of prostitution §61-8-7
- 5.1.k. Abduction of person, kidnaping or concealing a child §61-2-14
- 5.1.l. Use of minors in filming sexually explicit conduct §61-8C-2
- 5.1.m. Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct §61-8C-3
- 5.1.n. Sexual abuse by parent, guardian or custodian §61-8D-5
- 5.1.o. Guardian or custodian allowing sexual abuse to be inflicted on a child §61-8D-5
- 5.1.p. Displaying of sex organs by a parent, guardian or custodian §61-8D-5
- 5.1.q. Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct §61-8D-6

5.2 All persons who are convicted of attempting to commit (§61-11-8) any of the previous criminal sexual offenses are to register.

5.3 All persons convicted of offenses with similar provisions in another state, federal or military jurisdictions are to register in West Virginia if they plan to live, work or attend school in the state.

14.6 Duration of registration

6.1 Persons required to register shall comply with this rule, except during periods of incarceration, for a period of ten (10) years from the time of a person's release from prison or jail or from the time the person was placed upon probation, parole or supervised release.

6.2 Certain persons are required to register for life. The conditions for lifetime registration include:

- 6.2.a. One or more prior convictions for sexually criminal offenses or
- 6.2.b. Conviction of a sexually violent offense or
- 6.2.c. The person has been determined to be a sexually violent predator.

14.7 Responsibilities of administrators of incarceration facilities, probation or parole officers.

7.1 Administrator, probation or parole officers include:

- 7.1.a. Commissioner of Corrections or his/her delegated agent or
- 7.1.b. Regional jail administrator or his/her delegated agent or
- 7.1.c. Chief or Sheriff operating a jail or his/her delegated agent or
- 7.1.d. Probation officer or
- 7.1.e. Parole officer or
- 7.1.f. Such person who supervises the person to be registered following their

release

7.2 Release from incarceration shall include:

- 7.2.a. Being granted probation or
- 7.2.b. Being granted a suspended sentence or
- 7.2.c. Being released on probation or
- 7.2.d. Being released on parole or
- 7.2.e. Being released on home detention or confinement or
- 7.2.f. Being released on work released or
- 7.2.g. Having discharged the sentence or
- 7.2.h. Any other type of release from incarceration

7.3. The administrator, probation or parole officer who supervises a person required to be registered or accepts supervision of a person registered as a sexual offender in another state, shall within three (3) days of receiving notification of the person's release, obtain the information required by way of a written notice.

7.3.a. The written notice shall be a DPS 170 (Offender Registration form) or an agency equivalent and shall include:

- 7.3.a.1. Full name of the person to be registered
- 7.3.a.2. Full address, including county, where the person will reside
- 7.3.a.3. Person's social security number
- 7.3.a.4. Recent photographs of the person
- 7.3.a.5. Brief description of the crime for which the person was convicted
- 7.3.a.6. Duplicate full set of fingerprints
 - 7.3.a.6.A. One full set to be placed on DPS 40 (WV State

Fingerprint Card)

7.3.a.6.B. One full set to be placed on FD-249 (FBI Fingerprint

Card)

- 7.3.a.7. Right thumb print
- 7.3.a.8. If applicable, the name and telephone number of the probation or
- 7.3.a.9. Jurisdiction of arrest or conviction
- 7.3.a.10. The date of conviction
- 7.3.a.11. If incarcerated, the date of release from incarceration
- 7.3.a.12. If the person has been determined to be a sexually violent

predator, the notice shall also include:

- 7.3.a.12.A. Identifying factors, including physical characteristics
- 7.3.a.12.B. History of the offense
- 7.3.a.12.C. Documentation of any treatment received for mental

abnormality or personality disorder

7.4. The administrator, probation or parole officer shall have the person sign a WVSP 196 (Notification of Sex Offender Responsibility) or agency equivalent.

7.5. The administrator, probation or parole officer, shall send the original of the DPS 170 and WVSP 196 (or agency equivalents) to the Registry and a copy of each to the State Police

detachment in the county where the person will reside.

7.5.a. A copy of the DPS 170 will be maintained by the administrator, probation or parole officer.

7.5.b. A copy of the WVSP 196 will be given to the person to be registered.

7.6. The administrator, probation or parole officer shall have the signatures applied to the DPS 170 and WVSP 196 (or agency equivalents) notarized. The forms shall have an embossed official seal placed upon them.

14.8 Responsibilities of the sentencing court.

8.1 At the time the person is convicted of the crimes set forth in 14.5 of this rule, the sentencing court shall:

8.1.a. Inform the person of the requirement imposed on them by the Act. The court shall interrogate the defendant or their counsel until satisfied that the defendant has received notice and understands the provisions of the Act.

8.1.b. Have the person sign in open court, a statement acknowledging that the person understands the requirements imposed by the Act.

8.2 The sentencing court shall determine if a person who has been convicted of a sexually violent crime is a sexually violent predator or is no longer a sexually violent predator.

8.2.a. The proceeding to determine if a person is a sexually violent predator shall be initiated by the filing of written information by the prosecuting attorney.

8.2.b. The proceeding to determine if a person is no longer a sexually violent predator shall be initiated by the filing of a petition by the person who has been determined to be a sexually violent predator.

8.3 Before determining sexually violent predator status, the sentencing court may order a psychiatric or other clinical examination. Following the examination, the court may order a period of observation. The observation is to be conducted at an appropriate facility within the state. The choice of the facility is to be made after consulting with the Director of the Division of Health.

8.4 Before determining sexually violent predator status the court shall request a report from the Board.

8.5 At the hearing to determine sexually violent predator status the court shall:

8.5.a. Allow the person whose status is in question to be present.

8.5.b. Allow the person whose status is in question to be represented by counsel, introduce evidence and cross-examine witnesses.

8.5.c. Allow the person whose status is in question access to a summary of the medical evidence to be presented by the state.

8.5.d. Allow the person whose status is in question to be examined by an independent expert of their choice and use this expert's testimony as evidence on their behalf.

8.5.e. At the end of the hearing, make a finding of fact on the person's sexually violent predator status based on a preponderance of the evidence.

8.6 After the court has made its determination the clerk of the court shall forward a copy of the order and the following information to the Registry by certified or registered mail.

8.6.a. Name of the offender

8.6.b. Date of birth

8.6.c. Social Security number

8.6.d. The crime for which the person was convicted

8.6.e. Date of conviction

8.6.f. Sentence imposed

14.9 Responsibility of Circuit Court.

9.1 A Circuit Court may, upon petition of a resident of a county, order the Registry to release information about persons residing in that county that are required to register.

9.1.a. When petitioned to release information, the court shall determine if the requested information is relevant to public safety and out-weighs the need for confidentiality of the registrants.

9.1.a.1 The court may further order limitation upon secondary dissemination of the information released by the Registry by the resident seeking the information.

14.10 Responsibility of the Prosecuting Attorney

10.1 Following the conviction of a person required to be registered or when receiving knowledge that a person required to be registered is being released from incarceration, the Prosecuting Attorney may initiate proceedings seeking to establish that a person is a sexually violent predator by filing of a written information with the circuit court that sentenced the offender.

10.1.a. The written information shall describe a record of judgment of the court regarding the person's conviction.

10.1.b. The written information shall contain a short and plain statement of the claim that the person suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexual offenses.

10.2 When notified that a sexually violent predator intends to reside in their county, the Prosecuting Attorney shall, in cooperation with the Registry, conduct a community notification/education program.

10.3 When notified that a person required to register for life intends to reside in their county, the Prosecuting Attorney may, in cooperation with the Registry, conduct a community notification/education program.

14.11 Sex Offender Registration Advisory Board

11.1 The Board is hereby created within the West Virginia Department of Military Affairs and Public Safety.

11.2 The Board shall assist Circuit Courts in determining whether a person convicted of a sexually violent crime is or is no longer a sexually violent predator.

11.3 The Board will consist of a minimum of five (5) appointed members.

11.3.a. Two (2) members shall be experts in the field of behavior and treatment of sexual offenders. These experts shall be a physician, psychologist or social worker in the employ of the state.

11.3.b. The remaining members shall be victims' rights advocates and/or representatives of law enforcement agencies.

14.12 Responsibilities of the Board.

12.1 The Board shall determine the diagnostic tool(s) to be utilized in making their recommendation.

12.2 The Board shall meet upon the request of a sentencing court which is charged with determining if a person is or is no longer a sexually violent predator.

12.3 After meeting, the Board shall submit a report that sets forth their findings and recommendations on the issue of whether the person in question is a sexually violent predator.

12.3.a. The report shall be submitted to the sentencing court in a reasonable time and no later than five (5) working days prior to the date of the hearing to determine sexually violent predator status.

12.4 The Board has the authority and shall request from the Registry pertinent information necessary to make their determination, such as a criminal history.

14.13 Responsibilities of the State Police.

13.1 The State Police detachments will serve as the local law enforcement agency that actually administers the registration procedures upon the person required to be registered.

13.2 When a person required to be registered arrives at the State Police detachment located in the county where they intend to reside, the Detachment Commander, or in his/her absence, another uniformed member, shall:

13.2.a. Complete a DPS 170 (Offender Registration form) on the person, including obtaining a right thumb print.

13.2.a.1 Insure that the DPS 170 is signed by both the person and the officer.

13.2.b. Take a full set of duplicate fingerprint cards.

13.2.b.1 One set will be on DPS 40 (State Police Fingerprint Card).

13.2.b.2 One set will be on FD-249 (FBI Fingerprint Card).

13.2.c. Take at least two (2) full face photographs of the person.

13.2.c.1 The officer will use a Department issued camera if a Polaroid camera is not available.

13.2.c.1.a. If a department issued camera is used, the officer shall submit the roll of film with the original DPS 170 to the Registry. The officer will not send the roll of film directly to the Photography Laboratory.

13.2.d. The original DPS 170, an original photograph and the full set of fingerprints (DPS 40 and FD-249) shall be mailed to the Registry within five (5) working days.

13.2.e. A copy of the DPS 170 and one original photograph will be kept in the detachment's file.

13.2.f. The officer shall make an appearance at the person's residence within fifteen (15) working days of the person's appearance at the detachment to verify the address, so to substantiate that the person does reside at the given address.

13.3 When a person arrives at the detachment to report their change of address, the

Detachment Commander shall:

13.3.a. Complete a new DPS 170 (Offender Registration form) including a right thumb print.

13.3.a.1 Insure the DPS 170 is signed by both the person and the officer.

13.3.b. If the person has had a significant change in appearance or if pictures were never obtained during the previous registration, take at least two full-face photographs of the person.

13.3.b.1 The officer will use a Department issued camera if a Polaroid camera is not available.

13.3.b.1.a. If a Department issued camera is used, the officer shall submit the roll of film with the original DPS 170 to the Registry. The officer will not send the roll of film directly to the Photo Laboratory.

13.3.c. The completed DPS 170 and one original photograph (if applicable) shall be mailed to the Registry within five (5) working days.

13.3.d. A copy of the DPS 170 and one original photograph (if applicable) will be kept in the detachment files.

13.3.e. The officer shall make an appearance at the person's residence within fifteen (15) working days of the persons's appearance at the Detachment to verify the address, so to substantiate that the person does reside at the given address.

13.4 When notified by the Registry that a registered person has moved out of their county, the Detachment Commander will forward all registration documents and photographs pertaining to the offender to the Registry.

13.5 When notified of a registered person's intent to move out of state, the Detachment Commander shall:

13.5.a. Complete a new DPS 170 (Offender Registration form), including a right thumb print, showing the person's new address.

13.5.a.1 Insure that the DPS 170 is signed by both the person and the officer.

13.5.b. Take a new photograph of the person.

13.5.c. Forward by mail, within five (5) working days, the completed DPS 170 and the photograph to the Registry.

13.5.d. The officer shall make an appearance at the person's previous residence within thirty (30) working days of the person's appearance at the Detachment to verify the fact that the person no longer resides there.

13.6 The Detachment Commander, or in his/her absence, another uniformed member, shall administer the procedure for registration, when a person moving from another state moves into West Virginia; or when a person lives in another state and carries on a vocation, works or attends school in West Virginia.

13.6.a. When a person under the supervision of a probation or parole officer appears at the detachment to register, the Detachment Commander shall:

13.6.a.1 Complete a DPS 170 (Offender Registration form) on the person, including a right thumb print.

13.6.a.1.A. Insure that the DPS 170 is signed by both the person and the officer.

13.6.a.2. Take at least two (2) full face photographs of the person.

13.6.a.2.A. The officer will use a Department issued camera if a Polaroid is not available.

13.6.a.2.A.1 If a Department issued camera is used, the officer shall submit the roll of film with the original DPS 170 to the Registry.

13.6.a.3. Take a full set of fingerprints to be placed on FD-249 (FBI Fingerprint card)

13.6.a.4. The original DPS 170, one original photograph and the full set of fingerprints (FD-249) shall be mailed to the Registry within five (5) working days.

13.6.a.5. A copy of the DPS 170 and one original photograph will be kept in the detachment files.

13.6.a.6. The officer shall make an appearance at the person's residence within fifteen (15) working days of the person's appearance at the Detachment to verify the address, so to substantiate that the person does reside at the given address.

13.6.b. When the person no longer under supervision reports to the detachment to register, the Detachment Commander shall:

13.6.b.1 Read to the person and have the person sign a WVSP 196 (Notification of Responsibility to Register).

13.6.b.2 Complete a DPS 170 (Offender Registration form) on the person, including a right thumb print.

13.6.b.3 Insure that the DPS 170 is signed by both the person and the officer.

13.6.b.4 Take at least two (2) full face photographs of the person.

13.6.b.4.A. The officer will use a Department issued camera if a Polaroid camera is not available.

13.6.b.4.A.1. If a Department issued camera is used, the officer shall submit the roll of film with the original DPS 170 to the Registry.

13.6.b.5 Take a full set of duplicate fingerprints to be placed on DPS 40 (State Police Fingerprint card) and FD-249 (FBI Fingerprint card)

13.6.b.6 The original DPS 170, the original WVSP 196, one original photograph and the full set of duplicate fingerprints (DPS 40 and FD-249) shall be mailed to the Registry within five (5) working days.

13.6.b.7 A copy of the DPS 170, WVSP 196 and one original photograph will be kept in the detachment file.

13.6.b.8. The officer shall make an appearance at the person's residence within fifteen (15) working days of the person's appearance at the Detachment to verify the address, so to substantiate that the person does reside at the given address.

13.6.c. If the Registry informs the Detachment Commander that additional fingerprints are needed on a person moving from another state or living in another state and carrying on a vocation, working or attending school in West Virginia, the Detachment

Commander shall:

13.6.c.1. Ascertain the location of the person and have the person report to the detachment to be fingerprinted.

13.6.c.2. When the person to be fingerprinted arrives at the detachment the Detachment Commander shall take a full set of fingerprints on a FD-249 (FBI Fingerprint card).

13.6.c.3. Mail the completed FD-249 (FBI Fingerprint card) to the Registry within five (5) working days.

13.7 When an officer makes contact with anyone convicted of a sexual criminal offense, the Detachment Commander, or in his/her absence, another uniformed member, shall report that contact to the Registry for verification of registration requirements. This contact shall be by telephone or fax stating name and date of birth of the person and offense for which they were convicted.

13.8 If informed by the Registry that they have arrested a person who was convicted prior to the enactment of the Sex Offender Registration law but within ten (10) years of conviction or release from incarceration, but whom has not yet registered, the Detachment Commander, or in his/her absence, another uniformed member, shall:

13.8.a. Ascertain the location of the person and read to the person and have the person sign WVSP Form 196 (Sex offender Notification of Responsibility form), giving the person ten (10) days to register with the State Police in the county the person resides in.

13.8.b. When the person required to be registered arrives at the State Police detachment, the Detachment Commander shall:

13.8.b.1. Complete a DPS 170 (Offender Registration form) on the person, including a right thumb print.

13.8.b.2. Insure that the DPS 170 is signed by both the person and the officer.

13.8.b.3. Take a full set of duplicate fingerprints.

13.8.b.3.A. One set will be on DPS 40 (State Police Fingerprint Card)

13.8.b.3.B. One set will be on FD-249 (FBI Fingerprint Card).

13.8.b.4. Take at least two (2) full-face photographs of the person.

13.8.b.4.A. The officer will use a Department issued camera if a Polaroid camera is not available.

13.8.b.4.A.1 If a Department issued camera is used, the officer shall submit the roll of film with the original DPS 170 to the Registry. The officer will not send the roll of film directly to the Photography Laboratory.

13.8.b.5. The original DPS 170, the original WVSP 196, an original photograph and the full set of duplicate fingerprints (DPS 40 and FD-249) shall be mailed to the Registry within five (5) working days.

13.8.b.6. A copy of the DPS 170, a copy of the WVSP 196 and one original photograph will be kept in the detachment files.

13.9 Within five (5) working days after receiving a completed DPS 170, the Detachment Commander, or in his/her absence, another uniformed member, will distribute a copy of the DPS

170 and a copy of the photograph to:

13.9.a. All law enforcement agencies within the counties covered by the detachment and

13.9.b. The County Superintendent of Schools and

13.9.c. The Child Protective Services investigators within the detachment's area of responsibility.

13.10 When the detachment receives a facsimile copy from the Registry of the letter sent to the person informing them of their requirement to verify their address, the copy will serve as a notice that the person has been informed of their requirement to verify his/her address.

13.10.a. When the person arrives at the detachment with the address verification card, the Detachment Commander, or in his/her absence, another uniformed member, shall:

13.10.a.1. Insure that the card is thoroughly completed and legible.

13.10.a.2. Verify that the address given is a true physical address. A post office box number is not an acceptable address.

13.10.a.3. Insure that the card is signed by both the person and the officer.

13.10.a.4. The officer shall consult the original registration and ascertain if there has been an address change.

13.10.a.4.a. If there has been an address change the officer shall:

13.10.a.4.a.1. Complete a new DPS 170 (Offender Registration form) showing the person's new address.

13.10.a.4.a.2. Take a new photograph of the person.

13.10.a.4.a.3. Forward, by mail, within five (5) working days the completed DPS 170 and the photograph to the Registry.

13.10.a.5. The officer shall make a copy of the verification card, attach it to the Detachment's file of the registration, and re-file the documents.

13.10.a.6. The officer will make a written request to the local Postmaster to receive verification that the person is receiving mail at the given address. The request shall:

13.10.a.6.a. Be on West Virginia State Police letterhead.

13.10.a.6.b. Bear the signature of the officer.

13.10.a.6.c. List the persons name and address.

13.10.a.6.d. Include a statement that the information is to be used for law enforcement purposes only, pursuant to §61-8F of the West Virginia Criminal Code.

13.10.a.7. After receiving verification from the Post Office, the officer shall mail the original verification card to the Registry.

13.10.a.8. If the Post Office is unable to verify if the person is receiving mail at the given address, the officer shall notify the Registry by sending a written statement of the response from the Post Office.

13.10.a.9. For sexually violent predators, an officer shall make an appearance at the person's residence within ninety (90) days of the persons's appearance at the Detachment to verify the address, so to substantiate that the person does reside at the given address.

13.10.a.10. For all sexual offenders, other than sexually violent predators,

and officer shall make an appearance at the persons's residence within one (1) year of the person's appearance at the Detachment to verify the address, so to substantiate that the person does reside at the given address.

14.14. The responsibilities of law enforcement agencies, other than the State Police.

14.1. Assist cooperatively upon request of the Prosecuting Attorney or the Registry in conducting the community notification program.

14.2 Responsibly manage the information concerning sexual offenders residing within the county.

14.2.a. Refrain from secondary dissemination of the information.

14.2.b. Utilize the information for investigative purposes only.

14.3 When making contact with anyone convicted of a sexual criminal offense, the agency shall report that contact to the Registry for verification of registration requirements. This contact shall be by telephone or fax stating name and date of birth of the person and offense convicted of.

14.4 If informed by the Registry that they have arrested a person who was convicted prior to the enactment of the Sex Offender Registration law but within ten (10) years of conviction or release from incarceration, but whom has not yet registered, the agency shall:

14.4.a. Ascertain the location of the person and inform the person of his/her duty to register, within ten (10) days, at the State Police detachment located in the county where the person resides by reading to them and having them sign a WVSP 196 (Notification of Responsibility to Register).

14.4.b. Mail or send a facsimile of the person's arrest and of the WVSP 196 to both the Registry and the local State Police detachment.

14.15 Responsibilities of the Sex Offender Registry

15.1 The Registry shall maintain the central registry of information on those persons who are required to be registered

15.2 Maintain a registry of all authorized community organizations or religious organizations which regularly provide services to youths in the county who have signed the Sex Offender Non-Disclosure Agreement

15.2.a. This registry of authorized organizations may also include individuals and organizations which provide day care services for youth or day care, residential, or respite care, or other supportive services for incapacitated, infirm or mentally incapacitated persons.

15.2.a.1. To be included in this registry, the individual or organization shall make a written request to the Registry stating the services provided, the counties served and a statement as to why the individual or organization should be eligible to receive the sex offender information.

15.2.a.2. To be included in this registry the individual or organization shall provide any legal documents, charters, statute, license, etc. that authenticate the organization as a community or religious organization that regularly provides services to youths in the county or provides residential care, respite care, or other supportive services for incapacitated, infirm or mentally incapacitated persons. The individual or organization shall sign the Sex Offender Non-Disclosure Agreement.

15.2.b. The Registry shall remove an organization from the registry of authorized community organization or religious organization when that organization or member of that organization has violated the terms of the Sex Offender Non-Disclosure Agreement.

15.3 The Registry shall maintain and make available to the public at least quarterly a list of all persons who are required to register for life. This list will be separated by county of residence.

15.3.a. The list shall be released following a telephone or written request by a member of the public. The list will be for the county in which the requesting person resides.

15.3.a.1. To receive quarterly updates, the requesting person must resubmit their telephone or written request on a quarterly basis.

15.3.b. The list shall include the municipality of the person's address but will not include the street or house address.

15.4 The Registry shall maintain and make available to the public a list of all persons who are required to register for life that shall be accessible through the Internet.

15.4.a. The list shall include the municipality of the person's address but will not include the street or house address.

15.5 Within five (5) working days of receiving an offender registration, the Registry shall forward a copy of the DPS 170 (Offender Registration form) and a copy of the photograph to all authorized community and religious organizations that are to receive sex offender registration information.

15.6 Within five (5) working days of receiving an offender registration, the Registry will complete a revised I-12 (FBI Flash/Sexual Offender Registration/Cancellation Notice) and mail to the FBI's National Sex Offender Registry (NSOR).

15.7 Within five (5) working days of receiving a person's registration, the Registry shall notify all authorized community or religious organizations that are located or serve the county in which the person intends to reside.

15.8 Within five (5) working days of receiving a lifetime person's registration, the Registry shall update its available information accessible to the public via telephone request or via the Internet.

15.9 The Registry may release sex offender registration information and documentation to federal, state and local governmental agencies responsible for conducting pre-employment checks.

15.10 The Registry may release sex offender registration information and documentation, when properly requested, to authorized law enforcement and governmental agencies of the United States, its territories, foreign countries authorized to receive the same, other states and the state of West Virginia.

15.10.a. These agencies must state in writing that this information will be used solely for law enforcement related purposes.

15.11 The Registry may release sex offender registration information and documentation, when properly requested, to the West Virginia Crime Victims Compensation Fund.

15.12 The Registry shall release a list of sex offenders residing in a county to a resident of same county upon being properly ordered by a circuit court to make such a release.

15.13 The Registry shall remove a name from the Registry when properly ordered by a circuit court following a petition by a registered person whose conviction has been overturned.

15.13.a. Within five (5) working days of notification the Registry shall inform the FBI's National Sex Offender Registry (NSOR) when a name has been removed from the Registry.

15.13.b. Within five (5) working days of notification the Registry shall inform the State Police detachment in the county where the person resides, when that person's name has been removed from the Registry.

15.13.c. Within five (5) working days of notification, the Registry shall inform all authorized community and religious organizations that have been properly registered to receive sex offender registration information when a name has been removed from the registry.

15.13.d. Within five (5) working days, if the person was required to register for life, the Registry shall update the list of persons made available to the public through the Internet or by telephone request.

15.14 When notified that a person required to register has changed or intends to change their address to an address within the same county where the registrant has been residing the Registry shall:

15.14.a. If applicable, within five (5) working days, inform the State Police detachment in the county where that person resides of the change.

15.15 When notified that a person required to register has changed or intends to change their address the Registry shall, within fifteen (15) working days, if the person was required to register for life, update the list of persons made available to the public through the Internet or by telephone request.

15.15.a. Within five (5) working days, inform the State Police detachment in the county where the person intends to reside of the change.

15.15.b. When notified that a person required to register has moved or intends to move out of state, the Registry shall within ten (10) working days, inform the Sex Offender Registry point of contact for the state in which the person intends to reside and forward requested information as per their instructions.

15.16 When notified by a court of its determination that a person is or is no longer a sexually violent predator, the Registry shall,

15.16.a. Within five (5) working days, inform the State Police detachment in the county where the person resides.

15.16.b. Within five (5) working days, inform all authorized community and religious organizations registered to receive sex offender registration information.

15.16.c. Within five (5) working days, update the list of persons made available to the public through the Internet, by telephone request or by written request.

15.16.d. Within five (5) working days inform the Prosecuting Attorney in the county where the person resides of the court's determination of the persons sexually violent predator status.

15.17 When a court has requested a report from the Sex Offender Registration Advisory Board, the Registry shall:

15.17.a. Inform the Board of a meeting time and place.

15.17.b. Assist the Board in forwarding the report to requesting court.

15.17.c. Provide the Board with relevant background information, such as a criminal history record, on the person.

15.18 Conduct, in cooperation with the Prosecuting Attorney, a community notification/education program.

15.18.a. Arrange a time and meeting place for the program.

15.18.b. Provide handouts and brochures

15.18.c. Request the assistance of local law-enforcement agencies.

15.18.d. Request the assistance of probation and/or parole officers.

15.18.e. Request the assistance of victims advocates and/or victim resource representatives.

15.18.f. Request the assistance of experts in the field of victimization and/or treatment of offenders.

14.16 Responsibilities of community organizations or religious organizations authorized to receive sex offender registration information.

16.1. Individuals or organizations which provide the following are authorized to received sex offender registration information:

16.1.a. Youth or day care services or

16.1.b. Residential care or

16.1.c. Respite care or

16.1.d. Other supportive services for incapacitated, infirm or mentally incapacitated persons.

16.2 These organizations shall provide any legal document, charter, statute, license, etc. that authenticates the organization as a community or religious organization that provides services to youth in the county or provides residential care, respite care, or other supportive services for incapacitated, infirm or mentally incapacitated persons.

16.3 These organizations and individuals will sign and abide by the Sex Offender Non-Disclosure Agreement and

16.3.a. Limit the use of the provided information for which it was provided and

16.3.b. Use the information to develop prevention and safety strategies and

16.3.c. Destroy all documentation when it is no longer needed for the purpose for which it was provided and

16.3.d. Only allow authorized officials of said organizations access to the information and

16.3.e. Not disseminate the information to any other organization, agency or person and

16.3.f. Implement reasonable procedures to protect this information from unauthorized access, alteration or destruction.

16.4 Individuals and organizations shall responsibly manage the information pertaining to sex offenders.

16.4.a. The information shall not be used to harass or intimidate.

16.4.b. The information shall not be used in any attempt to affect the persons employment or housing status.

14.17 Responsibilities of those persons required to register.

17.1 Responsibilities at the time of conviction

17.1.a. The person convicted of those crimes listed in sections 5.1 and 5.2 of this Rule that require registration shall sign in open court and on the record, a statement that they understand the sex offender registry requirements.

17.1.a.1 The statement, once signed and witnessed, constitutes prima fascia evidence that the person has knowledge of the sex offender registry requirements.

17.1.b. The person shall respond to the court's interrogation to verify that the person has received notice and understands the provisions of the Act.

17.2 Responsibilities concerning sexually violent predator status.

17.2.a. At the hearing to determine sexually violent predator status, the person whose status is in question, shall be present.

17.2.b. At the hearing to determine sexually violent predator status, the person whose status is in question shall have the right to be represented by counsel, introduce evidence and cross examine witnesses.

17.2.c. Prior to the hearing to determine sexually violent predator status, the person whose status is in question shall have the right to an examination by an independent psychiatric or clinical expert of their choice.

17.2.d. The person whose status is in question shall have the right to utilize the testimony of such expert as a medical witness on their behalf.

17.2.e. If determined by a court to be a sexually violent predator, the person must comply with all registration requirements pertinent to a sexually violent predator.

17.2.f. The proceeding seeking to establish that a person is no longer a sexually violent predator is initiated by the filing of a petition by the person determined to be a sexually violent predator.

17.3 Responsibilities of an incarceration facility before the release from the facility.

17.3.a. At least three (3) days prior to the persons release, the person shall provide the following information to the incarceration facility:

17.3.a.1. Full name and

17.3.a.2. Address, including the county, where they intend to reside and

17.3.a.3. Social security number and

17.3.a.4. A recent photograph and

17.4 Responsibilities of person upon release from an incarceration facility.

17.4.a. Within three (3) days of release the person shall physically appear at the State Police Detachment in the county of residence and supply information necessary to complete a DPS 170 (Offender Registration Form).

17.4.a.1. The person shall affix their signature to the DPS 170.

17.4.b. The person shall also submit to the following:

17.4.b.1. Photographs and

17.4.b.2. Right Thumb print and

17.4.b.3. Full set of fingerprints in duplicate

17.4.b.3.A. One full set of fingerprints to be placed on DPS 40
(WV State Fingerprint Card)

17.4.2.3.B. One full set of fingerprints to be placed on FD-249
(FBI Fingerprint Card)

17.4.c. The registrant shall read and affix their signature to WVSP 196
(Notification of Sex Offender Responsibility).

17.5 Responsibilities for verification of address

17.5.a. When initially registering at the State Police detachment, the person will supply an address to the officer.

17.5.a.1. The address must be a true physical address, a post office address is not an acceptable address.

17.5.a.2. Following the registration process, the person will assist the law enforcement officer when the officer physically arrives at the person's address to verify that the given address is correct.

17.5.b. Once the person is included in the Registry, the address verification will continue to be required. The person will receive a certified letter from the Registry containing a Sex Offender Address Verification Card.

17.5.b.1. Those persons determined to be a sexually violent predator will receive the letter and card every ninety (90) days.

17.5.b.2. All other persons will receive the letter and card once a year.

17.5.c. The person shall physically appear at the State Police detachment in the county they reside within ten (10) days of receiving the letter and card.

17.5.d. The person will complete the verification card in the presence of a Trooper.

17.5.d.1 The address must be a true physical address, a post office box is not an acceptable address.

17.5.e. The person shall sign the card in the presence of the Trooper

17.5.f. If the address on the card differs from the address on file, the person shall:

17.5.f.1. Provide information for a new DPS 170

17.5.f.2. Be photographed

17.5.g. The person will assist the law enforcement officer when he/she physically arrives at the persons address to verify the correct address.

17.6 Responsibility of a registrant when changing address.

17.6.a. Prior to the actual change of address, the person shall physically appear at the State Police detachment where they last registered and advise of their intent to move as well as their new address.

17.6.a.1. If the person is moving out-of-state or out-of-country, they must notify the State Police detachment at least ten (10) days prior to the actual move.

17.6.a.2. If incarcerated and intending to reside out-of-state or out-of-country, the person required to register must notify correctional officials before their release of such intent and the actual address where they will reside

17.6.b. Within ten (10) days following the move, the registrant must physically appear at the State Police detachment in the county where the new address is located and provide the information necessary to complete a DPS 170 (Offender Registration Form).

17.6.b.1 The person shall also submit to the following:

17.6.b.1.A. Photographs and

17.6.b.1.B. Right thumb print and

17.6.b.1.C. Full set of fingerprints in duplicate

17.6.b.1.c.1 One full set of fingerprints to be placed on DPS 40 (WV State Fingerprint Card)

17.6.b.1.c.2. One full set of fingerprints to be placed on FD-249 (FBI Fingerprint Card)

17.6.b.2. The registrant shall read and affix their signature to WVSP 196 (Notification of Sex Offender Responsibility).

17.7 Responsibilities of out-of-state registrants.

17.7.a. All persons who are required to register as a sex offender in the state where they reside, and meet one of the following criteria, must register within three (3) days of the start of employment, work or school enrollment:

17.7.a.1. Employed in West Virginia or

17.7.a.2. Carry on a vocation in West Virginia or

17.7.a.3. A student in West Virginia

17.7.b. The person required to register shall physically appear at the State Police Detachment in the county in which the place of employment or school is located or where the person is carrying on a vocation and provide the necessary information to complete a DPS 170 (Offender Registration Form).

17.7.b.1. The person shall affix their signature to DPS 170.

17.7.c. The person shall provide the following:

17.7.c.1. Photograph and

17.7.c.2. Right thumb print and

17.7.c.3. Full set of fingerprints in duplicate.

17.7.c.3.1 One full set of fingerprints to be placed on DPS 40 (WV State Fingerprint Card)

17.7.c.3.2. One full set of fingerprints to be placed on FD-249 (FBI Fingerprint Card)

17.7.d. The person shall read and affix their signature to WVSP 196 (Notification of Sex Offender Responsibility).

17.8 Responsibilities of out-of-state sex offender in another state moving to West Virginia.

17.8.a.. Within three (3) days of the change of address, the person shall physically appear at the State Police detachment in the county where they reside or intend to reside and

provide the information necessary to complete a DPS 170 (Offender Registration Form).

17.8.a.1. The person shall affix their signature to DPS 170.

17.8.b. The person required to register shall submit to the following:

17.8.b.1. Photographs and

17.8.b.2. Right thumb print and

17.8.b.3. Full set of fingerprints in duplicate

17.8.b.3.1. One full set of fingerprints to be placed on DPS 40
(WV State Fingerprint Card)

Fingerprint Card)

17.8.b.3.2. One full set of fingerprints to be placed on FD-249 (FBI

17.8.c. The person required to register shall read and affix their signature to a
WVSP 196 (Notification of Sex Offender Responsibility).

14.18 Responsibility of a person who is qualified to be registered as a sex offender, but is not
registered and has been arrested on a new criminal charge.

18.1 If a person has been convicted on any offense listed in 5.1 and 5.2 of this rule but is
not included in the Registry and is arrested within a ten (10) year period of the date of release
from correctional supervision for the original sexual criminal offense they must register as a sex
offender.

18.1.a. Within ten (10) days of being notified of their responsibility to register, the
person must physically appear at the State Police detachment in the county where they reside and
provide the information necessary to complete a DPS 170 (Offender Registration form).

18.1.a.1. The person required to register shall apply their signature to the
DPS 170

18.2 The person required to register shall submit to the following:

18.2.a. Photographs and

18.2.b. Right thumb print and

18.2.c. Full set of fingerprints in duplicate

18.2.c.1. One full set of fingerprints to be placed on DPS 40 (WV State
Fingerprint Card)

Fingerprint Card)

18.2.c.2. One full set of fingerprints to be placed on FD-249 (FBI

18.3 The person required to register shall read and sign a WVSP 196 (Notification of Sex
Offender Responsibility).

14.19 Community Notification/Education Meetings

19.1 The meetings shall be conducted by the Prosecuting Attorney and in collaboration
with the Registry, local law-enforcement agencies, probation and/or parole, community
organizations, victim resource organizations and victim's advocates.

19.2 The meetings shall be conducted within fifteen (15) working days from the time that
the Prosecuting Attorney receives notification that a Sexually Violent Predator has moved or
intends to reside in that county.

19.3 The meetings shall be conducted within fifteen (15) working days from the time that
the Prosecuting Attorney received notification that a person required to register for life has

moved or intends to reside in that county.

19.4 Additional community/education notification meetings may be conducted at the discretion of the Prosecuting Attorney.

19.4.a. After determining that a community/education notification program will be repeated, the Prosecuting Attorney will promptly notify the Registry to initiate the proceedings for the meeting.

19.5 The community/education notification meeting shall include, but is not limited to:

19.5.a. Presentation of a montage of offenders

19.5.b. Historical reasons for the establishment of the Sex Offender Registration Act and its origin in Federal Legislation.

19.5.c. Rights and responsibilities of the public

19.5.c.1. Consequences of vigilante response

19.5.d. Role of law enforcement

19.5.e. Extent of the sex offender problem

19.5.f. Characteristics of sex offenders

19.5.g. Additional information about sex offenders

19.5.h. Rights and responsibilities of the sexual offender registrants

19.5.i. Strategies for protection and prevention

19.5.j. Resources for victims

19.5.k. Handouts

19.5.k.1. Handouts naming particular persons shall be passed out only at the end of the program but prior to the open forum for questions.

19.5.k.1.A. Handouts will list the municipality of the persons address but will not include the street or house address.

19.5.l. Open forum for questions from the public

14.20 Responsibilities of the Public

20.1 Communities and individuals shall responsibly manage the information pertaining to sex offenders.

20.1.a. The information shall not be used to harass or intimidate.

20.1.b. The information shall not be used in any attempt to affect the persons employment or housing status.

14.21 Documents Available

Unless specifically specified in the proceeding rule, the following documents are available by contacting the Sex Offender Registry at:

Sex Offender Registry

Criminal Records

West Virginia State Police

725 Jefferson Road

South Charleston, WV 25309

Telephone number 304-746-2133

Fax number 304-746-2402

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- 21.2. DPS 170 Offender Registration form
- 21.3. DPS 40 West Virginia fingerprint card
- 21.4. FD-249 FBI fingerprint card
- 21.5. Sex Offender Address Verification card
- 21.6. Sex Offender Information Bulletin-Notification of Release
- 21.7. Sex Offender Information Non-Disclosure Release Agreement
- 21.8. List of all persons, updated quarterly, and separated by county of residence who are required to register for life as a sex offender.