

**WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia State Police TITLE NUMBER: 81

CITE AUTHORITY: 15-12-1 and 62-12-2

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES NO

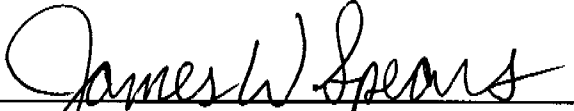
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 14

TITLE OF RULE BEING AMENDED: Regulations and Procedures Pertaining to the West
Virginia Sex Offender Registration Act

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS May 31, 2007


Authorized Signature

FILED

TITLE 81
PROCEDURAL RULE
WEST VIRGINIA STATE POLICE

2007 MAY -1 AM 10: 09

SERIES 14
REGULATIONS AND PROCEDURES PERTAINING TO THE WEST VIRGINIA
SEX OFFENDER REGISTRATION ACT

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§81-14-1. General.

1.1. Scope. -- This procedural rule explains the responsibilities and the administration of the West Virginia Sex Offender Registry, the community notification/education program, the West Virginia Sex Offender Registration Advisory Board and the responsibility of sex offenders required to register, incarceration facilities, probation or parole officers, sentencing courts, Circuit Court, Prosecuting Attorney, State Police, all law enforcement agencies, community or religious organizations and the public. The Sex Offender Registration Act is regulatory in nature and is not penal. The provisions of this Act apply retroactively and prospectively.

1.2. Authority. -- This rule is issued under authority of W. Va. Code §15-12-1 et. seq. and §62-12-2, as amended.

1.3. Filing Date. -- ~~March 28~~, 2007
May 1

1.4. Effective Date. -- May ~~28~~³¹, 2007

§81-14-2. Definitions.

As used in this rule, unless in a context that clearly requires a different meaning the following terms are defined as such:

2.1. Board - The Sex Offender Registration Advisory Board, hereon known as the 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. Central Registry - hereon known as the Registry, the West Virginia Sex Offender Registry maintained by the West Virginia State Police and housed in the Criminal Records Section.

2.3. 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.

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

2.5. Post conviction supervisory status - monitored or supervised behavior of the person following their conviction or release from incarceration. This status may include, but is not limited to, probation, parole, home detention or work release.

2.6. Sex Offender Registration Act - hereon known as the Act, article §15-12-1 et. seq., as amended, 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.

2.7. Sexual criminal offenses - those offenses that require registration as a sexual offender upon conviction or when found not guilty by reason of mental illness, mental retardation or addiction. These offenses include, but are not limited to, §61-3C-14b, §61-8B-3, 4, 5,6,7,8,9 or 10, §61-8C-2 or 3, §61-2-14, §61-8-6 or 7, §61-8D-5 or 6, §61-8-12 and §61-11-8

(attempt to commit the previous offenses). These also include, but are not limited to, offenses with similar provisions in another state, federal or military jurisdiction.

2.8. Sexually violent offenses - any criminal offense set forth in §61-8B of the West Virginia Criminal Code as amended, or offenses with similar provisions in another state, federal or military jurisdiction that include forcible compulsion, bodily injury or the use of a deadly weapon or any violent offense(s) that is determined by a court of competent jurisdiction to be sexually motivated.

2.9. Sexually violent predator – a person who has pled guilty to, 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 a person likely to engage in predatory sexually violent offenses.

2.10. Sex offender - a person convicted of any of the offenses referred to in W. Va. §15-12-2 as amended, or offenses with similar provisions in another state, federal or military jurisdiction, or a person convicted of the attempt to commit the above referred offenses or a person that was found not guilty of the above referenced offenses by reason of mental illness, mental retardation or addiction or a person convicted of a criminal offense, which at the time of sentencing, was found by the sentencing judge to have been sexually motivated.

2.11. Vehicle information – make, model, color, year and license number of any vehicle including any motor vehicle, trailer or motor home the person has registered in his or her name or to which he or she has regular access. Trailer shall mean travel trailer, fold-down camping trailer and house trailer.

2.12. Address – any current physical address(es) including the mailing address and any habitable real property owned or leased that the offender regularly visits.

2.13. Physical address – the actual location of the residence(s).

2.14. Family member – as defined in §48-27-204 of the WV Code, as amended.

§81-14-3. 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 regarding persons residing within a specific county, through the community notification program and quarterly releases of offender lists, so the community can develop constructive plans to adequately protect themselves and their children.

3.3. Inform the community, law enforcement, criminal justice entities and the person 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.

§81-14-4. Objectives.

4.1. To enter all sex offenders into the Registry as prescribed in W. Va. Code §15-12-1 et. seq., as amended, in a timely and accurate manner.

4.2. To form collaborative partnerships with West Virginia Prosecuting Attorneys, family related community organizations and victim advocates in conducting community notification/education 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 inappropriate actions by citizens.

4.5. Inform public entities and care givers as prescribed by W. Va. Criminal Code §15-12-1 et. seq., as amended, of the sex offenders residing, working, attending school or visiting for more than fifteen (15) continuous days in their areas.

§81-14-5. Intent, Findings and Severability.

5.1. Legislative Intent and Findings: The intent of the Sex Offender Registration Act is to assist law-enforcement agencies efforts to protect the public from sex offenders by requiring sex offenders to register with a State Police detachment in the county where they reside, work, attend school or visit for more than fifteen (15) continuous days and by making certain information about sex offenders available to the public. It is not the intent of the Legislature that the information be used to inflict either retribution or additional punishment on any person requiring registration under the West Virginia Sex Offender Registration Act.

5.2. Severability. If any sections or subsections of this rule are determined to be invalid, it shall not be construed to invalidate any of the provisions not otherwise affected.

81-14-6. Persons Required to Register.

6.1. All persons who are convicted, enter a plea of guilty or found not guilty by reason of mental illness, mental retardation or addiction, of committing any of the following criminal sexual offenses are to register;

6.1.a. Sexual assault in the first degree, W. Va. Code §61-8B-3, as amended,

6.1.b. Sexual assault in the second degree, W. Va. Code §61-8B-4, as amended,

6.1.c. Sexual assault in the third degree, W. Va. Code §61-8B-5, as amended,

6.1.d. Sexual assault of a spouse, W. Va. Code §61-8B-6 (repealed as of June 7, 2000),

6.1.e. Sexual abuse in the first degree, W. Va. Code §61-8B-7, as amended,

6.1.f. Sexual abuse in the second degree, W. Va. Code §61-8B-8, as amended,

6.1.g. Sexual abuse in the third degree, W. Va. Code §61-8B-9, as amended,

6.1.h. Incest, W. Va. Code §61-8-12, as amended,

6.1.i. Detention of person in place of prostitution, W. Va. Code §61-8-6, involving a minor, as amended,

6.1.j. Procuring for house of prostitution, W. Va. Code §61-8-7, as amended,

6.1.k. Abduction of person, kidnapping or concealing a child, W. Va. Code §61-2-14, as amended,

6.1.l. Use of minors in filming sexually explicit conduct, W. Va. Code §61-8C-2, as amended,

6.1.m. Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct, W. Va. Code §61-8C-3, as amended,

6.1.n. Sexual abuse by parent, guardian or custodian, W. Va. Code §61-8D-5, as amended,

6.1.o. Guardian or custodian allowing sexual abuse to be inflicted on a child, W. Va. Code §61-8D-5, as amended,

6.1.p. Displaying of sex organs by a parent, guardian or custodian, W. Va. Code §61-8D-5, as amended,

6.1.q. Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct, W. Va. Code §61-8D-6, as amended,

6.1.r Imposition of sexual intercourse or sexual intrusion of incarcerated persons, W. Va. Code §61-8B-10,

6.1.s. Soliciting, etc. a minor via computer, W. Va. Code §61-3C-14b.

6.2. All persons who are convicted, enter a plea of guilty or are found not guilty by reason of mental illness, mental retardation or addiction of attempting to commit, W.Va. Code §61-11-8, as amended, any of the previous criminal sexual offenses are to register.

6.3. All persons convicted of offenses with similar provisions in another state, federal or military jurisdictions are to register in West Virginia if they reside, work, attend school or if they visit for more than fifteen (15) continuous days in the state.

6.4. All persons convicted of any criminal offense, which at the time of sentencing, was found by the sentencing court to have been sexually motivated are to register.

§81-14-7. Duration of Registration.

7.1. Persons required to register shall comply with this rule, except during periods of incarceration, for a minimum period of ten (10) years from the time of release from prison or jail or from the time the person entered a plea of guilty or was convicted prior to actual incarceration.

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

7.2.a. One or more prior convictions or any finding of not guilty by reason of mental illness, mental retardation or addiction, of a qualifying offense;

7.2.b. Conviction or a finding of not guilty by reason of mental illness, mental retardation or addiction of a sexually violent offense or any offense determined to be sexually motivated, or;

7.2.c. The person has been determined to be a sexually violent predator or;

7.2.d. The victim of qualifying offense was a minor or;

7.2.e. The qualifying offense involved multiple victims or multiple violations of a qualifying offense.

§81-14-8. Responsibilities of Administrators of Incarceration Facilities, Probation or Parole Officers.

8.1. Administrator, probation or parole officers include, but are not limited to:

8.1.a. Commissioner of Corrections or his/her designee or;

8.1.b. Regional jail administrator or his/her designee or;

8.1.c. Chief or Sheriff operating a jail or his/her designee or;

8.1.d. Secretary of DHHR or his/her designee or;

8.1.e. Probation officer or;

8.1.f. Parole officer or;

8.1.g. Such person who supervises the person to be registered following their release from incarceration.

8.2. Release from incarceration shall include, but is not limited to:

8.2.a. Granted probation or;

8.2.b. Granted a suspended sentence or;

8.2.c. Release on probation or;

8.2.d. Release on parole or;

8.2.e. Release on home detention or confinement or;

8.2.f. Release on work release or;

8.2.g. Discharge the sentence or;

8.2.h. Any other type of release from incarceration.

8.3. 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 from another state, shall within three (3) business days of receiving notification of the persons release, obtain the information required by way of a written notice.

8.3.a. The written notice shall be completed on registration form(s) designated by the Superintendent or an agency equivalent and shall include:

8.3.a.1. Full name of the person to be registered including any aliases, nicknames and other names used by the person.

8.3.a.2. Full address, including any and or all county(ies), where the person resides or intends to reside, works or attends school at time of registration and;

8.3.a.3. Name and address of employer or place of occupation at time of registration or any anticipated future employers or places of occupation and;

8.3.a.4. Name and address of any school or training facility the person is attending at time of registration or expects to attend and;

8.3.a.5. Person's social security number and;

8.3.a.6. Recent photographs of the person and;

8.3.a.7. Brief description of the crime for which the person was convicted and;

8.3.a.8. Right thumb print and;

8.3.a.9. If applicable, the name and telephone number of the probation or parole officer and;

8.3.a.10. Jurisdiction of arrest or conviction and;

8.3.a.11. The date of conviction and;

8.3.a.12. If incarcerated, the date of release from incarceration and;

8.3.a.13. If the person has been determined to be a sexually violent predator, the notice shall also include:

8.3.a.13.A. Identifying factors, including physical characteristics and;

8.3.a.13.B. History of the offense and;

8.3.a.13.C. Documentation of any treatment received for mental abnormality or personality disorder.

8.4. The administrator, probation or parole officer shall have the person sign and date the registration form(s) advising the person of their responsibility to register.

8.5. The administrator, probation or parole officer, shall send the original registration form(s) to the Registry and a copy to the State Police detachment in the county(ies) where the person will reside, work, attend school or will visit for more than 15 continuous days.

8.5.a. A copy of the registration form(s) will be maintained by the administrator, probation or parole officer and;

8.5.b. A copy of the completed registration form(s) shall be given to the person to be registered.

8.6. The administrator, probation or parole officer shall have the signatures applied to the registration form(s) notarized. The form shall have an embossed/raised official seal or official stamp of the controlling government agency placed upon said form.

8.7. Upon request of the West Virginia State Police, provide any and all requested records relating to a sex offender to the West Virginia State Police.

§81-14-9. Responsibilities of the Sentencing Court.

9.1. At the time the person is convicted of the crimes set forth in 6.1 of this procedural rule, the sentencing court shall:

9.1.a. 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 said provisions.

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

9.2. 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.

9.2.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.

9.2.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 providing that the underlying conviction has been reversed, vacated or set-aside.

9.3. Before determining sexually violent predator status, the sentencing court may order a psychiatric or other clinical examination. After such examination, the court may further order a period of observation 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.

9.4. Before determining sexually violent predator status, the court shall, by order, request a report from the Board.

9.4.a. The order shall be issued within thirty (30) business days of the filing of the information by the Prosecuting Attorney or a petition by the person.

9.4.b. The court shall forward its order, the information or petition, as well as the entire criminal record, all medical and/or psychiatric records and any other relevant materials to the Board.

9.4.b.1. The court order shall provide that any and all records, documents and materials received by the Board are confidential and not subject to public disclosure or dissemination.

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

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

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

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

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

9.5.e. Make a finding of fact on the person's sexually violent predator status based on a preponderance of the evidence.

9.6. The clerk of the court shall forward a copy of the court's final order and the following information to the Registry by certified or registered mail.

9.6.a. Name of the offender and;

9.6.b. Date of birth and;

9.6.c. Social Security number and;

9.6.d. The crime for which the person was convicted and;

9.6.e. Date of conviction and;

9.6.f. Sentence imposed.

9.7. The court may, at the time of sentencing of any criminal offense that is not covered in 6.1 of this procedural rule, determine that the offense was sexually motivated, thus requiring the person convicted of the offense to register as a sex offender.

9.8. A court 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 (72) 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 non-identifying information regarding the victim or victims:

9.8.a. His or her sex;

9.8.b. His or her age at the time of the offense; and

9.8.c. The relationship between the victim and the perpetrator.

9.9. Upon request of the West Virginia State Police, provide any and all requested records relating to a sex offender to the West Virginia State Police.

§81-14-10. Responsibility of Circuit Court.

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

10.1.a. When petitioned to release information, the court shall determine if the requested information is relevant to public safety and outweighs the need for confidentiality of the person(s).

10.1.a.1. The court may further order limitation upon secondary dissemination

of the information released by the Registry by the resident seeking the information.

10.2. Upon request of the West Virginia State Police, provide any and all requested records relating to a sex offender to the West Virginia State Police.

§81-14-11. Responsibility of the Prosecuting Attorney.

11.1. 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.

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

11.1.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.

11.2. 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.

11.3. When notified that a person required to register for life intends to reside in their county, the Prosecuting Attorney shall cooperate with the Registry in conducting a community notification/education program.

11.4. Upon request of the West Virginia State Police, provide any and all requested records relating to a sex offender to the West Virginia State Police.

§81-14-12. Sex Offender Registration Advisory Board.

12.1. General.

12.1.a. The scope of the Sex Offender Registration Advisory Board is defined in W. Va. Code §15-12-2 (b), as amended. The Act is regulatory in nature and not penal. The provisions of the Act apply retroactively and prospectively.

12.1.b. Liberal Construction. The provisions of this rule will be liberally construed to permit the Board to discharge its statutory functions and to secure just and expeditious determination of all matters before the Board; therefore, for good cause, the Board may, at any time suspend the requirements of any of these regulations.

12.1.c. Immunity. The Board shall be immune from civil liability for damages arising out of any action for carrying out its responsibilities in the administration of W. Va. Code §15-12-1 et. seq., as amended, except when the board acts with gross negligence or in bad faith.

12.1.d. Delegation of Powers and Duties. Except where contrary to law, the Board may delegate any of its powers to the employees or agents of the Board.

12.1.e. Meetings. The West Virginia Sex Offender Registration Advisory Board shall meet as called for by the Board President, a majority of the Board members or the Secretary of the Department of Military Affairs and Public Safety. A quorum consists of three members, one of whom shall be a mental health professional. Meeting location will be at the discretion of the Board President.

12.1.f. Mail. The West Virginia Sex Offender Registry located at West Virginia State Police Headquarters, shall be responsible for the receipt of all correspondence and requests for reports from the courts.

12.2. Referral by Circuit Court.

12.2.a. After the court sentences a person convicted of a sexually violent offense as provided in W. Va. Code §15-12-2 et. seq., as amended, and upon the commencement of a summary proceeding, the court shall, by order,

request a report from the West Virginia Sex Offender Registration Advisory Board. The order shall be issued within thirty (30) business days of the filing of the information by the prosecuting attorney or a petition by the sex offender.

12.2.b. The report shall set forth the Boards findings, conclusions and a recommendation on the issue of whether the sex offender is or is not a sexually violent predator subject to the registration requirements in W. Va. Code §15-12-4, as amended, or is no longer a sexually violent predator.

12.2.c. The court shall request and receive the report prior to the hearing to determine if the sex offender is or is not a sexually violent predator or is no longer a sexually violent predator.

12.2.d. The court order, the information or petition as well as the entire criminal record, all medical and/or psychiatric records and any other relevant materials shall be forwarded to the West Virginia Sex Offender Registration Advisory Board, West Virginia State Police Headquarters, 725 Jefferson Road, South Charleston, West Virginia 25309.

12.2.e. The court order shall provide that any and all records, documents and materials received by the Board are confidential and not subject to public disclosure or dissemination.

12.2.f. Faxed materials are accepted only if the original documents are received within five (5) business days of the date of the fax transmission.

12.2.g. Submission dates shall be determined by postmark, or if hand-delivered, by office receipt stamp and the date of the fax transmission.

12.2.h. Upon receipt of the court order and all relevant documents, the Sex Offender Registry shall forward copies of the same to each member of the Board. All copies of documents mailed or delivered to individual Board members shall be destroyed by the Registry after the Board issues its findings,

conclusions and recommendation to the court. The original shall be maintained at the office of the Sex Offender Registry.

12.2.i. In the event the Board is unable to make a decision based on the information provided by the court, the Board shall inform the court of the specific information needed to make findings, conclusions and a recommendation. The Board may request the court to order the information listed in 12.3.c. of these procedural rules be made available.

12.3. Duties of the Sex Offender Registration Advisory Board.

12.3.a. The Board shall issue a report setting forth its findings, conclusions and a recommendation within thirty (30) business days from the date the Board received the courts order requesting the report.

12.3.b. The Board shall consider all case records, interview data, mental health and treatment summaries, relevant materials submitted by the sex offender as well as any other relevant documents that have been timely submitted to the Board.

12.3.c. Other factors that may be considered include, but are not limited to, are:

12.3.c.1. The sex offender's criminal record from the National Criminal Information Center (NCIC) and the Interstate Identification Index (III) or other legal jurisdiction criminal record;

12.3.c.2. Probation and parole records;

12.3.c.3. A copy of the original criminal complaint;

12.3.c.4. The police investigation report;

12.3.c.5. Witness statements;

12.3.c.6. A copy of the indictment;

12.3.c.7. A copy of the plea agreement;

12.3.c.8. The victim(s) impact statement;

12.3.c.9. The sex offender's use of alcohol, illegal drugs and misuse of prescription drugs;

12.3.c.10. Psychological and psychiatric assessments defined by the Board;

12.3.c.11. Participation in sex offender programs in and/or out of correctional facilities;

12.3.c.12. Any mental illness or mental disability of the sex offender;

12.3.c.13. Any mental hygiene hearing reports;

12.3.c.14. The nature of the sexual contact with the victim;

12.3.c.15. Demonstrated patterns of sexual abuse performed by or against the sex offender;

12.3.c.16. Any display of unusual cruelty during the commission of any and all convicted offenses;

12.3.c.17. Any behavioral characteristics that contribute to the sex offender's conduct;

12.3.c.18. A review of commonly accepted sex offender risk factors;

12.3.c.19. An assessment of the sex offender's empathy and remorse for the offense he or she was convicted of;

12.3.c.20. An assessment of the sex offender's understanding and intentions regarding the registration statute;

12.3.c.21. An assessment of the sex offender's plans to not re-offend;

12.3.c.22. An assessment of the sex offender's cognitive, affective and behavioral resources to not re-offend;

12.3.c.23. An assessment of the sex offender's psycho social history;

12.3.c.24. Trial transcript; and;

12.3.c.25. Relevant reports from the West Virginia Department of Health and Human Resources.

12.4. Findings and Conclusions.

12.4.a. When the Board finds that the sex offender is a sexually violent predator, the following findings shall have been made:

12.4.a.1. The sex offender was convicted of an eligible offense as provided in W. Va. Code §15-12-2, as amended, and;

12.4.a.2. The sex offender suffers from a mental abnormality or personality disorder and;

12.4.a.3. The sex offender is likely to engage in predatory violent offenses.

12.4.b. When the Board finds that the sex offender is not a sexually violent predator, the following findings shall have been made:

12.4.b.1. The sex offender was not convicted of an eligible offense(s) or;

12.4.b.2. The sex offender does not suffer from a mental abnormality or;

12.4.b.3. The sex offender is not likely to engage in violent predatory offenses.

12.4.c. When the Board finds that the sex offender is no longer a sexually violent predator, the following findings shall have been made:

12.4.c.1. The sex offender no longer suffers from a mental abnormality and;

12.4.c.2. The sex offender is not likely to engage in sexually violent predatory offenses.

12.4.c.3. The underlying conviction has been reversed, vacated or set aside.

§81-14-13. Responsibilities of the State Police.

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

13.2. The registration of sex offenders shall include on registration form(s) designated by the Superintendent;

13.2.a. Full name;

13.2.b. Date of birth;

13.2.c. Social Security number;

13.2.d. Sex, race, height, weight, hair and eye color;

13.2.e. Any current physical and mailing address(es) including owned or leased habitable real property the person regularly visits;

13.2.f. County of residence(s);

13.2.g. All telephone numbers including cellular and electronic paging device;

13.2.h. Previous address and date of address change;

13.2.i. Make, model, year, color and license number of all vehicles including any travel trailer, fold down camping trailer, house trailer or motor home the person has registered or to which he or she has regular access;

13.2.j. Employer name and complete address including county;

13.2.k. School or training facility name and complete address including county;

13.2.l. All Internet Provider(s) and Account(s) including screen names, user names, e-mail addresses or aliases used on the Internet;

13.2.m. Jurisdiction (State and County of conviction) and conviction date;

13.2.n. Date released from incarceration or placed on probation;

13.2.o. Conviction offense;

13.2.p. Parole or Probation officer name and telephone number;

13.2.q. Right thumb print of the person;

13.2.r. At least two full face photographs including no more than and no less than the shoulder area to the top of the head of the person not wearing a hat or sunglasses;

13.2.s. Required signatures of the person and date signed;

13.2.t. Required signatures and information of uniformed member(s) and date signed;

13.2.u. The detachment shall retain a copy of the registration form(s) and shall display the date the post office was contacted and date the address was physically verified on the detachment's copy.

13.3. When a person required to be registered arrives at a State Police detachment located in the county where the person resides, intends to reside, works, attends school or will visit for more than fifteen (15) continuous days, the Detachment Commander, or in his/her absence, another uniformed member, shall;

13.3.a. Obtain photo identification and;

13.3.b. Complete the registration form(s) on the person that shall include all information stipulated in 13.2 of this procedural rule and;

13.3.c. Take two (2) full sets of fingerprints on FD-249 (FBI Fingerprint Card) and;

13.3.d. Take at least two (2) full face photographs (see procedural rule 13.2.r) of the person using a placard with the name, detachment and date of photograph. Additional photographs may be taken and placed in an investigative file located at the detachment.

13.3.e. The completed original registration form(s), an original photograph and the two (2) full sets of fingerprints (FD-249) shall be mailed to the Registry within five (5) business days.

13.3.f. A copy of the completed registration form(s) and one original photograph shall be kept in the detachment Sex Offender Registry file.

13.3.g. Within fifteen (15) working days of the date of registration a uniformed member of the West Virginia State Police shall make an appearance at the person's residence to verify that the person resides at or has moved from the given address, and; shall contact the Post Office to verify that person receives mail or no longer receives mail at the given address and document date verified on detachment copy.

13.3.g.1. If the Post Office is unable to verify the person is receiving mail at the given address, the inquiring officer shall notify the Registry in writing of same.

13.4. When a person previously registered arrives at the detachment to report a change of address or a change in any other registration information, the Detachment Commander or in his/her absence, another uniformed member shall;

13.4.a. Complete registration form(s) including a right thumb print and signatures of the person, the uniformed member and the supervisor;

13.4.a.1. Compare file photograph and take at least two full face photographs if determined by the officer to be a significant change in appearance.

13.4.a.2. The original completed registration form(s) and an original photograph,

if applicable, shall be mailed to the Registry within five (5) business days.

13.4.a.3. A copy of the completed registration form(s) and one original photograph, if applicable, shall be kept in the detachment Sex Offender Registry file.

13.4.a.4. Follow verification procedures in 13.3.g of this procedural rule.

13.5. When notified that a registered person has moved out of their county and has no other registration requirement within that county, the Detachment Commander shall forward all original registration documents and photographs pertaining to the person to the Registry.

13.5.a. Copies of the photographs and registration documents may remain at the detachment in an investigative file.

13.6. When notified of a registered person's intent to move out of state, the Detachment Commander, or in his/her absence, another uniformed member, shall: follow the procedure in 13.4.a. and 13.4.a.2 of this procedural rule.

13.7. 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 or visiting for more than fifteen (15) continuous days in West Virginia, the Detachment Commander shall;

13.7.a. Ascertain the location of the person and require the person to report to the detachment to be fingerprinted using two (2) FD-249 (FBI fingerprint cards).

13.7.b. Mail the completed FD-249 (FBI Fingerprint cards) to the Registry within five (5) business days.

13.8. When an officer makes contact with anyone with a previous conviction of a sexual offense or may be required to register as defined in W. Va. Code §15-12-2 et. seq., as amended, 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 the offense for which they were convicted or the qualifying offense.

13.9. Within five (5) business days after receiving a completed registration form, the Detachment Commander, or in his/her absence, another uniformed member, shall cause the distribution of information obtained via registration form(s) and a copy of the photograph to:

13.9.a. All law enforcement agencies including any campus police department within the county or 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 area of responsibility.

13.10. Upon receiving information on a person who resides or intends to reside in the county(ies) covered by the detachment that the person's place of employment, school or training facility or place of visitation for more than fifteen (15) continuous days is located in another detachment area, the Detachment Commander, or in his/her absence, another uniformed member, shall forward a copy of the registration form(s) and a photograph or copy of a photograph to the affected detachment(s).

13.11. When the detachment receives a facsimile copy from the Registry of a list of those persons who have been sent a certified letter informing them of their requirement to verify their address, the list shall serve as a notice that the person has been informed of their requirement to verify his/her address and has ten (10) business days from receipt of certified letter to comply.

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

13.11.a.1. Follow the procedure in 13.3.a., 13.3.b. and 13.3.d;

13.11.a.2. The completed registration form(s) and photograph shall be mailed to the Registry within five (5) business days;

13.11.a.3. Follow the verification procedure in 13.3.g of this procedural rule.

§81-14-14. 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/education 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 or qualifying offense, the agency shall report that contact to the Registry for verification of registration requirements. This contact shall include name and date of birth of the person, current address and offense of which the offender was convicted.

14.4. As the provisions of this Act apply both retroactively and prospectively, 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 who is not registered and may be required to register, the agency shall provide the Registry with the person's current address and any available information pertaining to the person.

14.5. Upon request of the West Virginia State Police, provide any and all requested

records relating to a sex offender to the West Virginia State Police.

§81-14-15. 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 roster of all authorized community organizations or religious organizations that regularly provide services to youths in the county and have signed the Sex Offender Non-Disclosure Agreement.

15.2.a. This roster of authorized organizations may also include individuals and organizations that 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 roster, 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 sex offender registration information.

15.2.a.2. To be included in this roster, the individual or organization shall, if applicable, 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 roster of authorized community organization or religious organization when that organization or a member of that organization has violated the terms of the Sex Offender Non-Disclosure Agreement or when that organization no longer meets the requirements outlined in this section or requests removal.

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 and disseminated 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 shall 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 place of employment, training or school and the street and house address (physical location) of the person's residence, but shall not include the name of employer, training or school.

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 place of employment, training or school and the street and house address (physical location) of the person's residence but shall not include the name of employer, training or school.

15.5. Within five (5) business days of receiving a person's registration, the Registry shall forward electronically the information reported via registration form(s) and a copy of the photograph to all authorized community and religious organizations that are to receive sex offender registration information.

15.6. Within fifteen (15) business days of receiving a person's registration, the Registry shall notify the FBI National Sex Offender Registry (NSOR).

15.7. Within fifteen (15) business days of receiving a lifetime person's registration, the Registry shall update its available information

accessible to the public via the quarterly mailing and the Internet.

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

15.9. 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 state jurisdictions and the state of West Virginia.

15.9.a. These countries/government jurisdictions must stipulate in writing that this information will be used solely for law enforcement related purposes.

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

15.11. The Registry shall release a list of sex offenders not subject to notification on the Internet and who reside, work, attend school or visit for more than fifteen (15) continuous days in a county to a resident of same county only upon being properly ordered by a circuit court to make such a release.

15.12. Within fifteen (15) business days of notification, 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 and shall:

15.12.a. Inform the FBI National Sex Offender Registry (NSOR) when a name has been removed from the Registry;

15.12.b. Inform the State Police detachment, in the county where the person resides, the person has been removed from the Registry files and the Internet;

15.12.c. 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.

15.12.d. 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 and by telephone request.

15.13. When notified that a person required to register has changed or intends to change their address to an address outside the county where the person has been residing the Registry shall:

15.13.a. If applicable, within fifteen (15) business days of the notice, inform the State Police detachment in the county where that person resided.

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

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

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

15.15.a. Within fifteen (15) business days of the notice, inform the State Police detachment and all authorized community and religious organizations of the court's determination of the person's sexually violent predator status.

15.15.b. Within fifteen (15) business days of the notice, update the list of persons made available to the public through the Internet.

15.15.c. Within fifteen (15) business days of the notice, inform the Prosecuting Attorney in the county where the person resides of the court's determination of the person's sexually violent predator status.

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

15.16.a. Receive and date stamp any mail, fax transmissions or hand delivered documents addressed to the Board at the Registry office address.

15.16.b. Upon receipt of the court order and all relevant documents, forward copies of the same to each member of the Board, retaining all original documents within the Registry.

15.16.c. Inform the Board of a meeting time and place as determined by the Board President.

15.16.d. Assist the Board in forwarding the report to the requesting court.

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

15.17. The Registry shall conduct, as outlined in this rule and at any time as requested by the Prosecuting Attorney, in cooperation with the Prosecuting Attorney, a community notification/education program.

15.17.a. Coordinate with the Prosecuting Attorney to arrange a time and meeting place for the program.

15.17.b. Provide handouts, brochures and involve appropriate local community persons that can provide information and services.

15.18. The Registry shall upon receipt of notification of a Sexually Violent Predator registering or being determined in West Virginia, notify the West Virginia Department of

Motor Vehicles pursuant to W. Va. Code §17B-2-3 within ten (10) business days.

§81-14-16. Responsibilities of Community Organizations or Religious Organizations Authorized to Receive Sex Offender Registration Information.

16.1. Individuals or organizations that provide the following services are authorized to receive 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 all legal documents, charters, statute, licenses, etc. that authenticate the organization as a community or religious organization providing services to youth in the county or providing residential care, respite care, or other supportive services for incapacitated, infirm or mentally incapacitated persons.

16.3. These organizations and/or individuals shall sign and abide by the terms set forth in WVSP Form Sex Offender Non-Disclosure Agreement Form and shall:

16.3.a. Limit the use of the provided information to its intended purpose;

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 organization 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 and necessary procedures to protect this information from unauthorized access, alteration or destruction.

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

16.4.a. The information shall not be used to harass or intimidate persons registered as stated in W. Va. Code §15-12-1a., as amended.

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

§81-14-17. Responsibilities of Those Persons Required to Register.

17.1. Responsibilities at the time of conviction.

17.1.a. The person who has pled guilty, is convicted or found not guilty by reason of mental illness, mental retardation or addiction of those crimes listed in 6.1 of this procedural rule that require registration, or those offenses determined by the sentencing court to have been sexually motivated, shall sign in open court and on the record, a statement that they understand the sex offender registration requirements.

17.1.a.1. The statement, once signed and witnessed, constitutes prima facie evidence that the person has knowledge of the sex offender registration 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, and shall have the right to be represented by counsel, introduce evidence and cross examine witnesses.

17.2.b. Prior to the hearing, the person whose status is in question shall have the right to an examination by an independent psychiatric or clinical expert of their choice and have the right to utilize the testimony of such expert as a medical witness on their behalf.

17.2.c. 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 as set forth in 17.1 et. seq. and 13.3 of this procedural rule.

17.2.d. 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 providing that the underlying conviction has been reversed, vacated or set aside.

17.3. Responsibilities of the person upon release from an incarceration facility.

17.3.a. Within three (3) business days of release the person shall physically appear at a State Police Detachment in the county of residence and supply information necessary to complete registration form(s) and comply with the procedures in 13.3 of this procedural rule.

17.4. Responsibilities after conviction or plea of guilty, but prior to actual incarceration.

17.4.a. Within three (3) business days of conviction or entering of a guilty plea, the person shall physically appear at a State Police Detachment in the county of residence and supply information necessary to complete registration form(s) and comply with the procedures in 13.3 of this procedural rule providing that the person is not incarcerated.

17.5. Responsibilities for verification of address.

17.5.a. When initially registering at a State Police detachment, the person shall supply a mailing and physical address(es) to the uniformed member.

17.5.a.1. Following the registration process, the person shall cooperate fully with the State Police uniformed member when he/she 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 shall continue to be required. In the month of their birth, the person shall be sent a certified registration notification from the Registry

17.5.b.1. Those persons determined to be a sexually violent predator shall be sent the registration notification in the months of January, April, July and October to comply with the every ninety (90) day requirement.

17.5.b.2. All other persons shall be sent a registration notification once a year.

17.5.c. The person shall physically appear at a State Police detachment in the county(ies) they reside within ten (10) business days of receiving the registration notification and comply with the procedures outlined in 13.3.b and 13.3.d of this procedural rule.

17.5.d. Regardless of a person being sent or receiving a registration notification, registered persons shall comply with the registration verification process outlined in 17.5.b and 17.5.c.

17.5.e. Persons required to register must comply with all verification inquiries or requests made by the State Police.

17.6. Responsibility of the person when changing address or encountering any change in registration information.

17.6.a. Within ten (10) business days 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 provide their new address according to the change of address procedure in 13.4 of this procedural rule.

17.6.a.1. 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) business days following the move, the person must physically appear at the State Police detachment in the county(ies) where the new address is located and provide the new address according to the registration procedure outlined in 13.3 of this procedural rule.

17.6.c. Within ten (10) business days of a change in registration information, the person must physically appear at a State Police detachment in the county(ies) where they reside, work or attend school and provide the information necessary to comply with the registration procedures outlined in 13.4.a of this procedural rule.

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) business days of the start of their employment, work, school enrollment or visit;

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 or;

17.7.a.4. Is visiting for more than fifteen (15) continuous days.

17.7.b. The person required to register shall physically appear at a State Police Detachment in the county(ies) in which the place of employment, school, vocation and/or the place of visitation is located and provide all necessary information to comply with the registration procedures outlined in 13.3 of this procedural rule.

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

17.8.a. Within ten (10) business days of the change of address, the person shall physically appear at the State Police detachment in the county(ies) where they reside or intend to reside and provide the information necessary to complete the registration procedures in 13.3 of this procedural rule.

17.9. Responsibility of a person who is required to register and resides in one county and works, carries on a vocation, attends school or is visiting for more than fifteen (15) continuous days in another county(ies).

17.9.a. The person required to register shall physically appear at a State Police Detachment in the county(ies) in which the place of employment, school, vocation or place of visitation is located and provide the necessary information to complete the registration procedures outlined in 13.3 of this procedural rule.

17.10. Responsibility of a person who is qualified to be registered as a sex offender, but is not included in the Registry.

17.10.a. As the provisions of this Act apply both retroactively and prospectively, if a person has been convicted or found not guilty by reason of mental illness, mental retardation or addiction of any offense listed in 6.1 and 6.2 of this procedural rule or of any offenses determined by the sentencing court to have been sexually motivated and is required to register, but is not included in the Registry, the person must register as a sex offender.

17.10.a.1. Within ten (10) business days of being notified, by certified mail from the Registry, of their responsibility to register, the person must physically appear at a State Police detachment in the county(ies) where they reside, work and/or attend school and provide all information necessary to complete the registration procedures outlined in 13.3 of this procedural rule.

**§81-14-18. Community Notification/
Education Meetings.**

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

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

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

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

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

18.4.a. A brief presentation, on West Virginia's sex offender law, its origins in Federal Legislation, state and national statistics of registered sex offenders.

18.4.b. Handouts will include information naming sex offenders subject to public notification residing in the county that the meeting is being held.

18.4.b.1. The information will include the municipality of place of employment or training or school and the street and house address (physical location) of the person's residence, but shall not include the name of the employer, training or school.

18.4.c. Open forum for questions from the public.

§81-14-19. Responsibilities of the Public.

19.1. Communities and individuals shall

responsibly manage the information pertaining to sex offenders.

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

19.1.b. The information shall not be used in any attempt to affect the person's employment or housing status.

§81-14-20. Documents Available.

Unless otherwise 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

20.1. Registration form(s).

20.2. FD-249, FBI fingerprint card.

20.3. Sex Offender Information Bulletin-Notification of Release.

20.4. Sex Offender Information Non-Disclosure Release Agreement.

20.5. List of all persons, updated quarterly, and separated by county of residence who are required to register for life as a sex offender.

**West Virginia State Police
Title 81
Series 14**

Response to Comments Received

The West Virginia State Police received no comments during the comment period that commenced March 28, 2007 and ended April 27, 2007. The rule is final filed as originally filed for public comment.

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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