

OPPOSITION Response to HB 2979
To allow police access to all photo information upon arrest for sex offenders.
March 3, 2025

House Judiciary Committee:

[West Virginians for Rational Sexual Offence Laws \(WVRSOL\)](#) is a West Virginia non-profit association and an affiliate of the [National Association for Rational Sexual Offence Laws \(NARSOL\)](#), which advocates for society's segment that is adversely affected by the sex offender registry. We help families impacted by the registry, seek ways to maintain and improve public safety, recommend prudent use of state funding in this area, and work to ensure that proposed legislation is constitutional.

WVRSOL **opposes** HB 2979 because its language is vague, doesn't meet intermediate scrutiny, and is unconstitutional on several fronts.

HB 2979 has vague language and requirements.

1. The proposed updates to West Virginia Registry §15-12-2 (d)(8) remove the requirement to provide "screen names, user names, or aliases the registrant uses on the internet and adds the requirement to provide:
 - a. Any "online identifier" used by the registrant, which includes:
 - i. Any email address information, instant message, or chat information;
 - ii. A social networking platform account name or identifier;
 - iii. Any identifier used for communicating on a mobile application or internet website;
 - iv. A mobile telephone number;
 - v. Any mobile device identification information; and
 - vi. Any other similar internet communication name.
2. First, neither screen names, user names, aliases, nor IP addresses are included in the "Adam Walsh Child Protection and Safety Act of 2006" schema; as such, if the bill's purpose is to be taken seriously, then §15-12-2. (d)(8) should be struck, NOT expanded. Moreover, recent federal case law has concluded that collecting internet identifiers from registrants violates the First Amendment. (*Cornelio v. Connecticut*, 2023)
3. Second, while "email address," "instant message," or "chat" may not need further elaboration, the statute does not define nor limit the scope of "social networking platform," "mobile device identification," or "other similar internet communication name" information." Does this include usernames and passwords? What about information for commercial transactions or pure political speech?
4. Third, the law does not specify what local law enforcement or other government officials can do with the identifier information they receive. Under what circumstances, if any, can they disseminate it to the public? What about for internal use? Can the state peruse identifier information at its leisure or only to investigate a specific type of crime?
5. Fourth, how can requiring individuals to disclose their identifier information within three days of an update be seen as anything other than highly onerous and deeply burdening protected speech?

HB 2979 doesn't meet intermediate scrutiny.

1. The existing and proposed updates to §15-12-2. (d)(8) internet-identifier reporting requirements do not withstand intermediate scrutiny.
 - a. The statute chills a wide swath of speech activity—regardless of whether such activity could further the commission of a sex crime.
 - b. The statute has not defined whether or how law enforcement uses internet identifiers to protect the public against the commission of sex crimes.
 - c. C. The statute has not defined how the information may or may not be released to the public or how the public could effectively use it to protect themselves.
 - d. Finally, the current statute and proposed updates (collectively, internet reporting requirements) have not been shown by other states and jurisdictions to serve any government interest, much less a significant interest. (*Doe A et al v. Whitmer et al*, No. 2:2022cv10209—Document 158 (E.D. Mich. 2024), 2024)

HB 2979 is unconstitutional on several fronts.

1. The constitutional problems with the existing and proposed updates to §15-12-2. (d)(8) internet-identifier reporting requirements are both readily apparent and significant.
 - a. Collecting internet identifiers from registrants chills a wide swath of speech activity—regardless of whether such activity could further the commission of a sex crime and violates the U.S. Constitution's First Amendment. (*Cornelio v. Connecticut*, 2023)
 - b. Collecting internet identifiers from registrants does not meet intermediate scrutiny. Other states and jurisdictions have not shown it to serve any government interest, much less a significant interest. (*Doe A et al v. Whitmer et al*, No. 2:2022cv10209—Document 158 (E.D. Mich. 2024), 2024)
 - c. Article III, Section 4 of the West Virginia Constitution prohibits “No bill of attainder, ex post facto law, or law impairing the obligation of a contract, shall be passed.” (West Virginia Constitution, n.d.) There is little doubt that this bill could be anything other than a retroactive increase in punishment, ex post facto, because it seeks to place retroactive restrictions and punishment on registrants who have completed their court-ordered sentences. Specific examples of the punitive nature of this bill are:
 - i. Piling on onerous restrictions retroactively that are not supported in research or empirical evidence (*Riley v. New Jersey State Parole Board*, 39 A.3d 200, 209 N.J. 595 2012); and
 - ii. Providing for a felon penalty for non-compliance.
 - d. Other jurisdictions have attempted to impose similar restrictions, only to have them stricken on constitutional grounds – most recently in *Does v. Snyder*, where the Sixth Circuit Court of Appeals determined Michigan's SORNA to be punishment and may not be applied retroactively. (*Doe v. Snyder*, 101 F. Supp. 3d 672 E.D. Mich. 2015).
 - e. The existing and proposed updates to §15-12-2. (d)(8) Internet-identifier reporting requirements are overbroad.
 - i. A law is considered “overbroad” when it is “not sufficiently restricted to a specific subject or purpose.” (FindLaw Legal Dictionary)

- ii. HB 2979 applies to "All registrants," not just those whose offense involved or had an internet component.
- 2. The constitutional problems with the proposed updates to §15-12-2. (d)(8) "The registrant shall permit inspection of his or her mobile device to verify all identifiers for mobile applications used by the registrant are provided." is also both readily apparent and significant.
 - a. Requiring all registrants regardless of parole, probation, or supervised status is overbroad.
 - i. A law is considered "overbroad" when it is "not sufficiently restricted to a specific subject or purpose." (FindLaw Legal Dictionary)
 - ii. HB 2979 applies to "all registrants," not just those on parole, probation, or under supervision.
 - b. Requiring registrants performing their civil regulatory reporting duties under §15-12-2 who are not on parole, probation, or supervision to submit to a search and seizure of their person and effects represents an unreasonable search and seizure. It **clearly violates** the U.S. Constitution's Fourth Amendment (Fourth Amendment Library of Congress, n.d.) and Article III, Section 6 of the West Virginia Constitution. (West Virginia Constitution, n.d.)

WVRSOL supports legislation that reduces abuse and sexual offenses, helps children and families, and improves public safety. Unfortunately, HB 2979 does none of these things. Therefore, we **oppose** and respectfully urge the House, its members, and the House Judiciary Committee to **reject HB 2979**.

Sincerely,

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Works Cited

Cornelio v. Connecticut, No. 3:19-CV-1240 (JAM), 2023 WL 5979996 (D. Conn. Sept. 14, 2023).

<https://casetext.com/case/cornelio-v-connecticut-3>

Doe A et al v. Whitmer et al, No. 2:2022cv10209 - Document 158 (E.D. Mich. 2024) (September 27, 2024).

<https://law.justia.com/cases/federal/district-courts/michigan/miedce/2:2022cv10209/359651/158/>

Does v. Snyder. No. 15-1536. United States Court of Appeals for the Sixth Circuit. 25 August 2016.

FindLaw Legal Dictionary. 1996. Merriam-Webster's Dictionary of Law. 27 February 2017.

<http://dictionary.findlaw.com/definition/overbroad.html>>.

Fourth Amendment | Browse | Constitution Annotated | Congress.gov | Library of Congress. (n.d.). Retrieved March 1, 2025, from <https://constitution.congress.gov/browse/amendment-4/>

Riley v. New Jersey State Parole Board, 39 A.3d 200, 209 N.J. 595 2012

https://scholar.google.com/scholar_case?case=12914673643919845255&q=Riley+v+New+Jersey+State+Parole+Board&hl=en&as_sdt=6,49

West Virginia Constitution. (n.d.). Retrieved March 1, 2025, from

https://www.wvlegislature.gov/wvcode/wv_con.cfm?lv=true#articleIII