

[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.

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## **WVRSOL OPPOSES HB3164 (Committee Substitute) Requiring registered sex offenders to pay an annual fee**

WVRSOL supports legislation that works to reduce abuse and sexual offenses, help children and families, and improve public safety. Unfortunately, HB 3164 does none of these things. Therefore, we **oppose** and respectfully urge the House, its members, and the House Judiciary Committee to **reject HB 3164**

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### **I. HB3164 (Committee Substitute) points for consideration:**

- a. The bills' addition of section §15-2C-2. (d) and §15-12-2. (o) stipulates that the State Police are authorized to use the newly created Central Abuse Registry and Sex Offender Registry registrant's annual \$125 fee to *(a) "first to enhance mental health services for current and former employees of the West Virginia State Police, including but not limited to hiring, or contracting, mental health professionals, conducting periodic educational seminars, meetings, training or conferences addressing mental health issues that affect persons that are, or have been, employed as law enforcement, and (b) then for any other use essential to the general operations of the State Police."*
    - i. Any fee, regardless of the amount, without a direct benefit to the payee, in this case, the registrant, is punitive and has been adjudicated as such where challenged in states that impose a similar registry fee that could not be correlated to the registrant's benefit.
      - a. In challenges where the fee was considered constitutional, the benefit determined was the registrant's ability to appeal for removal; however, West Virginia does not have such a provision. Consequently, West Virginia's registry fee, if passed and imposed, would be punitive ipso facto unconstitutional as ex post facto punishment.
        - i. Ultimately, if passed, this bill will result in a net loss to the state, contrary to the approximately \$ 800,000 it aims to generate annually.
          1. All monies collected will have to be returned to the registrants, and the state will be responsible for damages and legal costs, resulting in a net loss.
      - b. Case in point. When similar regulatory scheme fees were challenged in Massachusetts in DOE, SEX OFFENDER REGISTRY BOARD NO. 10800 v. Sex Offender Registry Board, the court ruled in favor of allowing the fee but only in light of the benefit the fee provided to the persons required to pay it. The court stated, "We add that the regulatory scheme governing the registration of sex offenders is not wholly devoid of any benefit to a sex offender because it provides the offender with the opportunity to alter his classification level or terminate his registration obligation" (Doe, Bd. No. 10800 v. Sex Offender Registry, 459 Mass. 603, 946 N.E.2d 9, 947 N.E.2d 9 (Mass. 2011)).
        - i. West Virginia's Sex Offender and Central Abuse registries have no levels or classifications for petitioning for change, nor any provision for petitioning for removal. Consequently, void of registrant benefits, any fee requirement must be deemed punitive, ipso facto, unconstitutional as ex post facto punishment.
      - c. Case in point. From Wisconsin District Court order against fee, Doe v Raemisch, 895 F. Supp. 2d 897 (E.D. Wis. 2013), "after Plaintiffs' convictions, Wisconsin amended its sex offender registration statute to authorize the DOC to require sex offenders to pay a \$100 annual fee to help offset the costs of monitoring sex offenders' activities. Wis. Stat. § 301.45(10). Defendants cite no case upholding the imposition of such a charge on individuals based solely on a prior conviction, and the Court has been unable to find any authority on its own. Though denominated a fee and intended to offset the costs of monitoring sex offenders, the annual assessment bears a striking resemblance to a fine. A fine, of course, is a traditional form of punishment for criminal conduct. United States v. Devenport, 131 F.3d 604, 610 (7th Cir. 1997). Though \$100 is not as great an amount as most fines today, the statute authorizes an annual assessment of \$100. Given Plaintiffs' life expectancies, the cumulative amount assessed is likely to well exceed \$2000. Moreover, as small an amount as \$50 has been found sufficient to trigger the ex post facto prohibition. See United State v. Jones, 489 F.3d 243, 255 (6th Cir. 2007) (holding that application of increase in special assessment from \$50 to \$100 to criminal offense that preceded increase violated ex post facto clause).
  - b. The bills' addition of section §15-2C-2. (d) and §15-12-2. (o) provides no relief for indigent registrants or registrants living below the poverty line, which exacerbates and compounds its punitive effect.
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