

OPPOSITION Response to HB 3164

Requiring registered sex offenders to pay an annual fee

March 6, 2023

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 try to 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.

We are aware of the perceived benefits of the registry for public safety. However, we would not want the regulation to be ruled unconstitutional upon being challenged due to implementing a fee to registrants, as it has in other jurisdictions (see below).

As you may be already aware of the legislative intent of the Sex Offender Registration Act(SORA), the Legislature also included what they intended the registry not to be:

- It is not the intent of the Legislature that the information be used to inflict retribution or additional punishment on any person convicted of any offense requiring registration under this article. This article is intended to be regulatory in nature and not penal. W. Va. Code Ann. § 15-12-1a (West)

Punishment would constitute a harsher sentence on registrants after their sentencing has already occurred, aka an *ex post facto* constitutional violation.

WVRSOL **opposes** HB 3164 because it goes against the original intent of the Sex Offender Registration, which was regulatory, not penal, moreover, as a fee without apparent benefit to the payee as such punishment after the fact is an *ex post facto* constitutional violation in effect.

HB 3164 is *ex post facto* punitive in effect.

1. The new section §15-2C-2(d) imposes an annual fee of \$250 on persons required to register with the State Police as part of the Central Abuse Registry; however, the person needed to pay receives no benefit from said registry. Consequently, an ordinary person's interpretation is that the fee compounded with the other requirements outlined in §15-2C-2 and §15-12-2 sans any benefit constitutes punishment and *ipso facto ex post facto* punishment.
2. 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 said, "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)). The same; however, can't be said and isn't the case with the West Virginia registry in that it has no levels/classifications to petition for change nor any provision to petition for removal. Consequently, void of similar benefits, any fee requirement must be deemed punitive.
3. In addition, other states have found that the fee implemented is similar to a fine, meaning punishment.
 - "Only the \$100 annual fee would seem to fall into a different category. As noted above, 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. **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.

WVRSOL does not in any way condone sexual activity between adults and children, nor does it condone any sexual activity that would break the laws of any state. We do not advocate lowering the age of consent, and we have no affiliation with any group that does condone such activities.

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 States 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)." (*Doe v. Raemisch*, 895 F. Supp. 2d 897, 909 (E.D. Wis. 2012))."

- In addition to a fine equivalent outlined above, HB 3164 includes additional penal-like provisions of placing liens on the registrant's personal property for non-payment, compounding the effect the Legislature so carefully sought to avoid. "Provided, however, That notice by the State Police that the annual fee has not been paid may be recorded in the office of the clerk of the county commission where the person required to register resides, where the same shall have the force and effect of a judgment, and the same shall be recorded and indexed by the clerk in the judgment lien docket."
4. Finally, as written, this new section §15-2C-2(d) provides no relief for persons living below the poverty line, which adds to and compounds its punitive effect. At a minimum, this point should be addressed before passing, regardless.

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** and, if deemed necessary, amend it to address the issues mentioned above.

Sincerely,

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Works Cited

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