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**WEST VIRGINIA LEGISLATURE**

Regular Session, 2003

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**ENROLLED**

SENATE BILL NO. 654

(By Senator Caldwell et al )

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**PASSED** March 8, 2003

In Effect 90 days from **Passage**

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OFFICE OF THE CLERK  
STATE OF WEST VIRGINIA

## ENROLLED

### Senate Bill No. 654

(BY SENATORS CALDWELL, KESSLER, JENKINS, HUNTER,  
MINARD, OLIVERIO, ROSS, ROWE, WHITE, DEEM,  
HARRISON, SMITH AND WEEKS)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-six, relating to community corrections generally; eligibility for community corrections supervision; extended supervision for certain sex offenders; supervision where available through community corrections; fees; procedures; and penalties.

*Be it enacted by the Legislature of West Virginia:*

That article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-six, to read as follows:

**ARTICLE 12. PROBATION AND PAROLE.**

**§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, any defendant convicted after the effective date  
3 of this section of a violation of section twelve, article eight,  
4 chapter sixty-one of this code or a felony violation of the  
5 provisions of article eight-b, eight-c or eight-d of said  
6 chapter may, as part of the sentence imposed at final  
7 disposition, be required to serve, in addition to any other  
8 penalty or condition imposed by the court, a period of  
9 supervised release of up to fifty years. The period of  
10 supervised release imposed by the provisions of this  
11 section shall begin upon the expiration of any period of  
12 probation, the expiration of any sentence of incarceration  
13 or the expiration of any period of parole supervision  
14 imposed or required of the person so convicted, whichever  
15 expires later.

16 (b) Any person sentenced to a period of supervised  
17 release pursuant to the provisions of this section shall be  
18 supervised by the probation office of the sentencing court  
19 or by the community corrections program established in  
20 said circuit unless jurisdiction is transferred elsewhere by  
21 order of the sentencing court.

22 (c) A defendant sentenced to a period of supervised  
23 release shall be subject to any or all of the conditions  
24 applicable to a person placed upon probation pursuant to  
25 the provisions of section nine, article twelve, chapter  
26 sixty-one of this code: *Provided*, That any defendant  
27 sentenced to a period of supervised release pursuant to this  
28 section shall be required to participate in appropriate  
29 offender treatment programs or counseling during the  
30 period of supervised release unless the court deems such to  
31 no longer be appropriate or necessary and makes express  
32 findings in support thereof.

33 (d) The sentencing court may, based upon defendant's  
34 ability to pay, impose a supervision fee to offset the cost of  
35 supervision. Said fee shall not exceed fifty dollars per  
36 month. Said fee may be modified periodically based upon  
37 the defendant's ability to pay.

38 (e) *Modification of conditions or revocation.* — The court  
39 may:

40 (1) Terminate a term of supervised release and discharge  
41 the defendant released at any time after the expiration of  
42 two years of supervised release, pursuant to the provisions  
43 of the West Virginia rules of criminal procedure relating to  
44 the modification of probation, if it is satisfied that such  
45 action is warranted by the conduct of the defendant  
46 released and the interests of justice;

47 (2) Extend a period of supervised release if less than the  
48 maximum authorized period was previously imposed or  
49 modify, reduce or enlarge the conditions of supervised  
50 release, at any time prior to the expiration or termination  
51 of the term of supervised release, consistent with the  
52 provisions of the West Virginia rules of criminal procedure  
53 relating to the modification of probation and the provi-  
54 sions applicable to the initial setting of the terms and  
55 conditions of post-release supervision;

56 (3) Revoke a term of supervised release and require the  
57 defendant to serve in prison all or part of the term of  
58 supervised release without credit for time previously  
59 served on supervised release if the court, pursuant to the  
60 West Virginia rules of criminal procedure applicable to  
61 revocation of probation, finds by clear and convincing  
62 evidence that the defendant violated a condition of  
63 supervised release, except that a defendant whose term is  
64 revoked under this subdivision may not be required to  
65 serve more than the period of supervised release: *Pro-*  
66 *vided,* That no person may serve a period of incarceration  
67 for a violation of supervised release which exceeds the

68 maximum statutory period of confinement for the offense  
69 of conviction underlying the period of supervised release;

70 (4) Order the defendant to remain at his place of resi-  
71 dence during nonworking hours and, if the court so directs,  
72 to have compliance monitored by telephone or electronic  
73 signaling devices, except that an order under this para-  
74 graph may be imposed only as an alternative to incarcera-  
75 tion.

76 (f) *Written statement of conditions.* — The court shall  
77 direct that the probation officer provide the defendant  
78 with a written statement that sets forth all the conditions  
79 to which the term of supervised release is subject and that  
80 it is sufficiently clear and specific to serve as a guide for  
81 the defendant's conduct and for such supervision as is  
82 required.

83 (g) *Supervised release following revocation.* — When a  
84 term of supervised release is revoked and the defendant is  
85 required to serve a term of imprisonment that is less than  
86 the maximum term of imprisonment authorized under  
87 subsection (a) of this section, the court may include a  
88 requirement that the defendant be placed on a term of  
89 supervised release after imprisonment. The length of such  
90 term of supervised release shall not exceed the term of  
91 supervised release authorized by this section less any term  
92 of imprisonment that was imposed upon revocation of  
93 supervised release.

94 (h) *Delayed revocation.* — The power of the court to  
95 revoke a term of supervised release for violation of a  
96 condition of supervised release and to order the defendant  
97 to serve a term of imprisonment and, subject to the  
98 limitations in subsection (f) of this section, a further term  
99 of supervised release extends beyond the expiration of the  
100 term of adjudication of matters arising before its expira-  
101 tion if, before its expiration, a warrant or summons has  
102 been issued on the basis of an allegation of such a viola-  
103 tion.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Carly Fiorina*  
.....  
Chairman Senate Committee

*Shan Spivey*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell G. Roberts*  
.....  
Clerk of the Senate

*Bruce D. Boy*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Tim K. Skiss*  
.....  
Speaker House of Delegates

The within *is approved* this the *2nd*  
Day of *April* *Bob Wise*, 2003.

.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/27/03

Time 10:10am