

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 60**

4 (By Senator Foster)

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6 [Originating in the Committee on the Judiciary;  
7 reported January 19, 2011.]  
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11 A BILL to amend and reenact §62-12-5 and §62-12-26 of the Code of  
12 West Virginia, 1931, as amended, all relating to probation and  
13 parole; probation officers and assistants; providing that  
14 multijudicial circuit probation officers may supervise sex  
15 offenders who are on probation with authorization of the  
16 Administrative Director of the Supreme Court of Appeals or his  
17 or her designee; and clarifying that circuit court probation  
18 officers continue to supervise extended release supervisees  
19 until a multijudicial circuit probation officer is in place.

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

21 That §62-12-5 and §62-12-26 of the Code of West Virginia,  
22 1931, as amended, be amended and reenacted, all to read as follows:

23 **ARTICLE 12. PROBATION AND PAROLE.**

24 **§62-12-5. Probation officers and assistants.**

25 (a) Each circuit court, subject to the approval of the Supreme  
26 Court of Appeals and in accordance with its rules, is authorized to  
27 appoint one or more probation officers and clerical assistants.

28 (b) The appointment of probation officers and clerical

1 assistants shall be in writing and entered on the order book of the  
2 court by the judge making such appointment and a copy of said order  
3 of appointment shall be delivered to the Administrative Director of  
4 the Supreme Court of Appeals. The order of appointment shall state  
5 the monthly salary, fixed by the judge and approved by the Supreme  
6 Court of Appeals, to be paid to the probation officer or clerical  
7 assistants so appointed.

8 (c) The salary of probation officers and clerical assistants  
9 shall be paid monthly or semimonthly, as the Supreme Court of  
10 Appeals by rule may direct and they shall be reimbursed for all  
11 reasonable and necessary expenses actually incurred in the line of  
12 duty in the field. The salary and expenses shall be paid by the  
13 state from the judicial accounts thereof. The county commission  
14 shall provide adequate office space for the probation officer and  
15 his or her assistants to be approved by the appointing court. The  
16 equipment and supplies as may be needed by the probation officer  
17 and his or her assistants shall be provided by the state and the  
18 cost thereof shall be charged against the judicial accounts of the  
19 state.

20 (d) No judge may appoint any probation officer, assistant  
21 probation officer or clerical assistant who is related to him or  
22 her either by consanguinity or affinity.

23 (e) Subject to the approval of the Supreme Court of Appeals  
24 and in accordance with its rules, a judge of a circuit court whose  
25 circuit comprises more than one county may appoint a probation  
26 officer and a clerical assistant in each county of the circuit or  
27 may appoint the same persons to serve in these respective positions  
28 in two or more counties in the circuit.

1 (f) Nothing contained in this section alters, modifies,  
2 affects or supersedes the appointment or tenure of any probation  
3 officer, medical assistant or psychiatric assistant appointed by  
4 any court under any special act of the Legislature heretofore  
5 enacted, and the salary or compensation of those persons shall  
6 remain as specified in the most recent amendment of any special act  
7 until changed by the court, with approval of the Supreme Court of  
8 Appeals, by order entered of record, and any such salary or  
9 compensation shall be paid out of the State Treasury.

10 (g) In order to carry out the ~~probation~~ supervision  
11 responsibilities set forth in section twenty-six, article twelve,  
12 chapter sixty-two of this code, the Administrative Director of the  
13 Supreme Court of Appeals, or his or her designee, in accordance  
14 with the court's procedures, is authorized to hire multijudicial-  
15 circuit probation officers, to be employed through the court's  
16 Division of Probation Services. Such officers may also supervise  
17 probationers who are on probation for sexual offences with the  
18 approval of the administrative director of the Supreme Court of  
19 Appeals or his or her designee.

20 **§62-12-26. Extended supervision for certain sex offenders;**  
21 **sentencing; conditions; supervision provisions;**  
22 **supervision fee.**

23 (a) Notwithstanding any other provision of this code to the  
24 contrary, any defendant convicted after the effective date of this  
25 section of a violation of section twelve, article eight, chapter  
26 sixty-one of this code or a felony violation of the provisions of  
27 article eight-b, eight-c or eight-d of said chapter shall, as part  
28 of the sentence imposed at final disposition, be required to serve,

1 in addition to any other penalty or condition imposed by the court,  
2 a period of supervised release of up to fifty years: *Provided,*  
3 That the period of supervised release imposed by the court pursuant  
4 to this section for a defendant convicted after the effective date  
5 of this section as amended and reenacted during the first  
6 extraordinary session of the Legislature, 2006, of a violation of  
7 section three or seven, article eight-b, chapter sixty-one of this  
8 code and sentenced pursuant to section nine-a of said article,  
9 shall be no less than ten years: *Provided, however,* That a  
10 defendant designated after the effective date of this section as  
11 amended and reenacted during the first extraordinary session of the  
12 Legislature, 2006, as a sexually violent predator pursuant to the  
13 provisions of section two-a, article twelve, chapter fifteen of  
14 this code shall be subject, in addition to any other penalty or  
15 condition imposed by the court, to supervised release for life:  
16 *Provided further,* That pursuant to the provisions of subsection (g)  
17 of this section, a court may modify, terminate or revoke any term  
18 of supervised release imposed pursuant to subsection (a) of this  
19 section.

20 (b) Any person required to be on supervised release for a  
21 minimum term of ten years or for life pursuant to the provisos of  
22 subsection (a) of this section also shall be further prohibited  
23 from:

24 (1) Establishing a residence or accepting employment within  
25 one thousand feet of a school or child care facility or within one  
26 thousand feet of the residence of a victim or victims of any  
27 sexually violent offenses for which the person was convicted;

28 (2) Establishing a residence or any other living accommodation

1 in a household in which a child under sixteen resides if the person  
2 has been convicted of a sexually violent offense against a child,  
3 unless the person is one of the following:

4 (i) The child's parent;

5 (ii) The child's grandparent; or

6 (iii) The child's stepparent and the person was the stepparent  
7 of the child prior to being convicted of a sexually violent  
8 offense, the person's parental rights to any children in the home  
9 have not been terminated, the child is not a victim of a sexually  
10 violent offense perpetrated by the person, and the court determines  
11 that the person is not likely to cause harm to the child or  
12 children with whom such person will reside: *Provided*, That nothing  
13 in this subsection shall preclude a court from imposing residency  
14 or employment restrictions as a condition of supervised release on  
15 defendants other than those subject to the provision of this  
16 subsection.

17 (c) The period of supervised release imposed by the provisions  
18 of this section shall begin upon the expiration of any period of  
19 probation, the expiration of any sentence of incarceration or the  
20 expiration of any period of parole supervision imposed or required  
21 of the person so convicted, whichever expires later.

22 (d) Any person sentenced to a period of supervised release  
23 pursuant to the provisions of this section shall be supervised by  
24 a multijudicial circuit probation officer, if available. Until such  
25 time as a multijudicial circuit probation officer is available, the  
26 offender shall be supervised by the probation office of the  
27 sentencing court ~~or by the community corrections program~~  
28 ~~established in said circuit unless jurisdiction is transferred~~

1 ~~elsewhere by order of the sentence court~~ or of the circuit in which  
2 he or she resides.

3 (e) A defendant sentenced to a period of supervised release  
4 shall be subject to any or all of the conditions applicable to a  
5 person placed upon probation pursuant to the provisions of section  
6 nine of this article: *Provided*, That any defendant sentenced to a  
7 period of supervised release pursuant to this section shall be  
8 required to participate in appropriate offender treatment programs  
9 or counseling during the period of supervised release unless the  
10 court deems the offender treatment programs or counseling to no  
11 longer be appropriate or necessary and makes express findings in  
12 support thereof.

13 Within ninety days of the effective date of this section as  
14 amended and reenacted during the first extraordinary session of the  
15 Legislature, 2006, the Secretary of the Department of Health and  
16 Human Resources shall propose rules and emergency rules for  
17 legislative approval in accordance with the provisions of article  
18 three, chapter twenty-nine-a of this code establishing  
19 qualifications for sex offender treatment programs and counselors  
20 based on accepted treatment protocols among licensed mental health  
21 professionals.

22 (f) The sentencing court may, based upon defendant's ability  
23 to pay, impose a supervision fee to offset the cost of supervision.  
24 Said fee shall not exceed \$50 per month. Said fee may be modified  
25 periodically based upon the defendant's ability to pay.

26 (g) *Modification of conditions or revocation.* -- The court  
27 may:

28 (1) Terminate a term of supervised release and discharge the

1 defendant released at any time after the expiration of two years of  
2 supervised release, pursuant to the provisions of the West Virginia  
3 Rules of Criminal Procedure relating to the modification of  
4 probation, if it is satisfied that such action is warranted by the  
5 conduct of the defendant released and the interests of justice;

6 (2) Extend a period of supervised release if less than the  
7 maximum authorized period was previously imposed or modify, reduce  
8 or enlarge the conditions of supervised release, at any time prior  
9 to the expiration or termination of the term of supervised release,  
10 consistent with the provisions of the West Virginia Rules of  
11 Criminal Procedure relating to the modification of probation and  
12 the provisions applicable to the initial setting of the terms and  
13 conditions of post-release supervision;

14 (3) Revoke a term of supervised release and require the  
15 defendant to serve in prison all or part of the term of supervised  
16 release without credit for time previously served on supervised  
17 release if the court, pursuant to the West Virginia Rules of  
18 Criminal Procedure applicable to revocation of probation, finds by  
19 clear and convincing evidence that the defendant violated a  
20 condition of supervised release, except that a defendant whose term  
21 is revoked under this subdivision may not be required to serve more  
22 than the period of supervised release;

23 (4) Order the defendant to remain at his or her place of  
24 residence during nonworking hours and, if the court so directs, to  
25 have compliance monitored by telephone or electronic signaling  
26 devices, except that an order under this paragraph may be imposed  
27 only as an alternative to incarceration.

28 (h) *Written statement of conditions.* -- The court shall direct

1 that the probation officer provide the defendant with a written  
2 statement at the defendant's sentencing hearing that sets forth all  
3 the conditions to which the term of supervised release is subject  
4 and that it is sufficiently clear and specific to serve as a guide  
5 for the defendant's conduct and for such supervision as is  
6 required.

7       (i) *Supervised release following revocation.* -- When a term of  
8 supervised release is revoked and the defendant is required to  
9 serve a term of imprisonment that is less than the maximum term of  
10 supervised release authorized under subsection (a) of this section,  
11 the court may include a requirement that the defendant be placed on  
12 a term of supervised release after imprisonment. The length of  
13 such term of supervised release shall not exceed the term of  
14 supervised release authorized by this section less any term of  
15 imprisonment that was imposed upon revocation of supervised  
16 release.

17       (j) *Delayed revocation.* -- The power of the court to revoke a  
18 term of supervised release for violation of a condition of  
19 supervised release and to order the defendant to serve a term of  
20 imprisonment and, subject to the limitations in subsection (i) of  
21 this section, a further term of supervised release extends beyond  
22 the expiration of the term of supervised release for any period  
23 necessary for the adjudication of matters arising before its  
24 expiration if, before its expiration, a warrant or summons has been  
25 issued on the basis of an allegation of such a violation.

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(NOTE: Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)