

COMMITTEE SUBSTITUTE

FOR

H. B. 4310

(BY DELEGATES SMITH, HUNT, LAWRENCE AND MILEY)

(Originating in the Committee on Finance)
[February 24, 2012]

A BILL to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating to limitations and restrictions placed on sex offenders who have been adjudicated as violent sexual predators or who are under active supervision as a condition of release on parole or probation; and clarifying the statutory restrictions against such persons living or working within one thousand feet of a school, child care facility or residence of a former victim; defining terms.

Be it enacted by the Legislature of West Virginia:

That §62-12-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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 other provision of this code to
2 the 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~~ that
6 chapter shall, 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: *Provided*, That the
10 period of supervised release imposed by the court pursuant to
11 this section for a defendant convicted after the effective date
12 of this section as amended and reenacted during the first
13 extraordinary session of the Legislature, 2006, of a violation
14 of section three or seven, article eight-b, chapter sixty-one of
15 this code and sentenced pursuant to section nine-a of ~~said~~ that
16 article, shall be no less than ten years: *Provided, however*,

17 That a defendant designated after the effective date of this
18 section as amended and reenacted during the first
19 extraordinary session of the Legislature, 2006, as a sexually
20 violent predator pursuant to ~~the provisions of~~ section two-a,
21 article twelve, chapter fifteen of this code shall be subject, in
22 addition to any other penalty or condition imposed by the
23 court, to supervised release for life: *Provided further*, That
24 pursuant to ~~the provisions of~~ subsection (g) of this section, a
25 court may modify, terminate or revoke any term of
26 supervised release imposed pursuant to subsection (a) of this
27 section.

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

32 (1) Establishing a residence or accepting employment
33 within one thousand feet from the perimeter of a school or
34 child care facility or within one thousand feet of the residence
35 of a victim or victims of any sexually violent offenses for

36 which the person was convicted. For the purposes of this
37 subdivision, “residence” includes the yard, grounds,
38 outbuildings and common or public areas in or surrounding
39 the residence; “child care facility” includes the classrooms,
40 buildings, playground areas, parking lots and common areas
41 utilized by children while attending the child care
42 facility; “school” means an educational facility comprised of
43 one or more buildings including school grounds, used by
44 students during regular school hours or during any school-
45 sponsored function or extracurricular activities; “school
46 grounds” includes the land on which a school is built together
47 with such other land used by students for play, recreation or
48 athletic events while attending school; and “extracurricular
49 activities” means voluntary activities sponsored by a school,
50 a county board or an organization sanctioned by a county
51 board or the state board of education, and include, but are not
52 limited to, preparation for and involvement in public
53 performances, contests, athletic competitions,
54 demonstrations, displays, organizations and clubs.

55 (2) Establishing a residence or any other living
56 accommodation in a household in which a child under sixteen
57 resides if the person has been convicted of a sexually violent
58 offense against a child, unless the person is one of the
59 following:

60 (i) (A) The child's parent;

61 (ii) (B) The child's grandparent; or

62 (iii) (C) The child's stepparent and the person was the
63 stepparent of the child prior to being convicted of a sexually
64 violent offense, the person's parental rights to any children in
65 the home have not been terminated, the child is not a victim
66 of a sexually violent offense perpetrated by the person, and
67 the court determines that the person is not likely to cause
68 harm to the child or children with whom such person will
69 reside: *Provided*, That nothing in this subsection shall
70 preclude a court from imposing residency or employment
71 restrictions as a condition of supervised release on defendants
72 other than those subject to the provision of this subsection.

73 (c) The period of supervised release imposed by ~~the~~
74 ~~provisions of~~ this section shall begin upon the expiration of
75 any period of probation, the expiration of any sentence of
76 incarceration or the expiration of any period of parole
77 supervision imposed or required of the person so convicted,
78 whichever expires later.

79 (d) Any person sentenced to a period of supervised
80 release pursuant to ~~the provisions of~~ this section shall be
81 supervised by a multijudicial circuit probation officer, if
82 available. Until such time as a multijudicial circuit probation
83 officer is available, the offender shall be supervised by the
84 probation office of the sentencing court or of the circuit in
85 which he or she resides.

86 (e) A defendant sentenced to a period of supervised
87 release shall be subject to any or all of the conditions
88 applicable to a person placed upon probation pursuant to ~~the~~
89 ~~provisions of~~ section nine of this article: *Provided*, That any
90 defendant sentenced to a period of supervised release
91 pursuant to this section shall be required to participate in

92 appropriate offender treatment programs or counseling during
93 the period of supervised release unless the court deems the
94 offender treatment programs or counseling to no longer be
95 appropriate or necessary and makes express findings in
96 support thereof.

97 Within ninety days of the effective date of this section as
98 amended and reenacted during the first extraordinary session
99 of the Legislature, 2006, the Secretary of the Department of
100 Health and Human Resources shall propose rules and
101 emergency rules for legislative approval in accordance with
102 ~~the provisions of~~ article three, chapter twenty-nine-a of this
103 code establishing qualifications for sex offender treatment
104 programs and counselors based on accepted treatment
105 protocols among licensed mental health professionals.

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

111 (g) *Modification of conditions or revocation.* -- The court
112 may:

113 (1) Terminate a term of supervised release and discharge
114 the defendant released at any time after the expiration of two
115 years of supervised release, pursuant to ~~the provisions of the~~
116 West Virginia Rules of Criminal Procedure relating to the
117 modification of probation, if it is satisfied that such action is
118 warranted by the conduct of the defendant released and the
119 interests of justice;

120 (2) Extend a period of supervised release if less than the
121 maximum authorized period was previously imposed or
122 modify, reduce or enlarge the conditions of supervised
123 release, at any time prior to the expiration or termination of
124 the term of supervised release, consistent with ~~the provisions~~
125 ~~of the~~ West Virginia Rules of Criminal Procedure relating to
126 the modification of probation and the provisions applicable
127 to the initial setting of the terms and conditions of post-
128 release supervision;

129 (3) Revoke a term of supervised release and require the
130 defendant to serve in prison all or part of the term of
131 supervised release without credit for time previously served
132 on supervised release if the court, pursuant to the West
133 Virginia Rules of Criminal Procedure applicable to
134 revocation of probation, finds by clear and convincing
135 evidence that the defendant violated a condition of supervised
136 release, except that a defendant whose term is revoked under
137 this subdivision may not be required to serve more than the
138 period of supervised release;

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

145 (h) *Written statement of conditions.* -- The court shall
146 direct that the probation officer provide the defendant with a
147 written statement at the defendant's sentencing hearing that

148 sets forth all the conditions to which the term of supervised
149 release is subject and that it is sufficiently clear and specific
150 to serve as a guide for the defendant's conduct and for such
151 supervision as is required.

152 (i) *Supervised release following revocation.* -- When a
153 term of supervised release is revoked and the defendant is
154 required to serve a term of imprisonment that is less than the
155 maximum term of supervised release authorized under
156 subsection (a) of this section, the court may include a
157 requirement that the defendant be placed on a term of
158 supervised release after imprisonment. The length of such
159 term of supervised release shall not exceed the term of
160 supervised release authorized by this section less any term of
161 imprisonment that was imposed upon revocation of
162 supervised release.

163 (j) *Delayed revocation.* -- The power of the court to
164 revoke a term of supervised release for violation of a
165 condition of supervised release and to order the defendant to
166 serve a term of imprisonment and, subject to the limitations

167 in subsection (i) of this section, a further term of supervised
168 release extends beyond the expiration of the term of
169 supervised release for any period necessary for the
170 adjudication of matters arising before its expiration if, before
171 its expiration, a warrant or summons has been issued on the
172 basis of an allegation of such a violation.