

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2025**

4 (By Delegates Howell, Shott, Hamrick, Romine, Sobonya, Espinosa,
5 Miller, Weld, Statler, Kurcaba and Canterbury)

6
7 (Originating in the House Committee on the Judiciary.)

8 [January 19, 2015]

9
10 A BILL to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating
11 to prohibiting certain sex offenders from loitering within one thousand feet of a school,
12 child care facility, or victim; and defining loitering.

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

14 That §62-12-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted
15 to read as follows:

16 **ARTICLE 12. PROBATION AND PAROLE.**

17 **§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions;
18 supervision provisions; supervision fee.**

19 (a) Notwithstanding any other provision of this code to the contrary, any defendant convicted
20 after the effective date of this section of a violation of section twelve, article eight, chapter sixty-one
21 of this code or a felony violation of the provisions of article eight-b, eight-c or eight-d of said chapter
22 shall, as part of the sentence imposed at final disposition, be required to serve, in addition to any
23 other penalty or condition imposed by the court, a period of supervised release of up to fifty years:

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

12 (b) Any person required to be on supervised release ~~for a~~ between the minimum term of ten
13 years or for life as the case may be pursuant to the provisos of subsection (a) of this section also shall
14 be further prohibited from:

15 (1) Establishing a residence, ~~or~~ accepting employment within one thousand feet of a school
16 or child care facility or within one thousand feet of the residence of a victim or victims of any
17 sexually violent offenses for which the person was convicted;

18 (2) Loitering within one thousand feet of a school or child care facility or within one
19 thousand feet of the residence of a victim or victims of any sexually violent offenses for which the
20 person was convicted: *Provided*, That the imposition of this prohibition shall apply to a defendant
21 convicted after the effective date of this section as amended and reenacted during the regular session
22 of the Legislature, 2015: *Provided further*, That as used herein “loitering” shall mean to linger or

1 be idle in a place where the individual has no particular lawful purpose;

2 ~~(2)~~(3) Establishing a residence or any other living accommodation in a household in which
3 a child under sixteen resides if the person has been convicted of a sexually violent offense against
4 a child, unless the person is one of the following:

5 (i) The child's parent;

6 (ii) The child's grandparent; or

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

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

18 (d) Any person sentenced to a period of supervised release pursuant to the provisions of this
19 section shall be supervised by a multijudicial circuit probation officer, if available. Until such time
20 as a multijudicial circuit probation officer is available, the offender shall be supervised by the
21 probation office of the sentencing court or of the circuit in which he or she resides.

22 (e) A defendant sentenced to a period of supervised release shall be subject to any or all of

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

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

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

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

17 (1) Terminate a term of supervised release and discharge the defendant released at any time
18 after the expiration of two years of supervised release, pursuant to the provisions of the West
19 Virginia Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that
20 such action is warranted by the conduct of the defendant released and the interests of justice;

21 (2) Extend a period of supervised release if less than the maximum authorized period was
22 previously imposed or modify, reduce or enlarge the conditions of supervised release, at any time

1 prior to the expiration or termination of the term of supervised release, consistent with the provisions
2 of the West Virginia Rules of Criminal Procedure relating to the modification of probation and the
3 provisions applicable to the initial setting of the terms and conditions of post-release supervision;

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

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

14 (h) *Written statement of conditions.* -- The court shall direct that the probation officer
15 provide the defendant with a written statement at the defendant's sentencing hearing that sets forth
16 all the conditions to which the term of supervised release is subject and that it is sufficiently clear
17 and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

18 (i) *Supervised release following revocation.* -- When a term of supervised release is revoked
19 and the defendant is required to serve a term of imprisonment that is less than the maximum term
20 of supervised release authorized under subsection (a) of this section, the court may include a
21 requirement that the defendant be placed on a term of supervised release after imprisonment. The
22 length of such term of supervised release shall not exceed the term of supervised release authorized

1 by this section less any term of imprisonment that was imposed upon revocation of supervised
2 release.

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