

H. B. 2484

(By Delegates P. Smith, Perry, Hartman, Eldridge, Lynch,
Williams, Longstreth, Ferro, Reynolds, Faircloth and Moye)

[Introduced January 28, 2015; referred to the
Committee on the Judiciary.]

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; clarifying the statutory restrictions against those persons living or working within one thousand feet of a school, child care facility or residence of a former victim; and 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.

(a) Notwithstanding any other provision of this code to the contrary, any defendant convicted after the effective date of this section of a violation of section twelve, article eight, chapter sixty-one

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

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

17 (1) Establishing a residence or accepting employment within one thousand feet from the outer
18 perimeter of a school or child care facility or within one thousand feet from the outer perimeter of
19 the residence of a victim or victims of any sexually violent offenses for which the person was
20 convicted. For the purposes of this subdivision: "Residence" includes the yard, grounds,
21 outbuildings and common or public areas in or surrounding the residence; "child care facility"
22 includes the classrooms, buildings, playground areas, parking lots and common areas utilized by

1 children while attending the child care facility; “school” means an educational facility comprised of
2 one or more buildings including school grounds, used by students during regular school hours or
3 during any school-sponsored function or extracurricular activities; “school grounds” includes the
4 land on which a school is built together with such other land used by students for play, recreation
5 or athletic events while attending school; and “extracurricular activities” means voluntary activities
6 sponsored by a school, a county board or an organization sanctioned by a county board or the State
7 Board of Education, and include, but are not limited to, preparation for and involvement in public
8 performances, contests, athletic competitions, demonstrations, displays, organizations and clubs.

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

12 (i) (A) The child’s parent;

13 (ii) (B) The child’s grandparent; or

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

21 (c) The period of supervised release imposed by ~~the provisions of~~ this section shall begin
22 upon the expiration of any period of probation, the expiration of any sentence of incarceration or the

1 expiration of any period of parole supervision imposed or required of the person so convicted,
2 whichever expires later.

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

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

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

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

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

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

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

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

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

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

1 all the conditions to which the term of supervised release is subject and that it is sufficiently clear
2 and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

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

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

NOTE: The purpose of this bill is to clarify the statutory 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 living or working within one thousand feet of a school, child care facility or residence of a former victim. The bill further clarifies those restrictions by defining certain terms.

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

