

**E N G R O S S E D**

COMMITTEE SUBSTITUTE

FOR

**H. B. 2025**

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(BY DELEGATES HOWELL, SHOTT, HAMRICK, ROMINE,  
SOBONYA, ESPINOSA, MILLER, WELD,  
STATLER, KURCABA AND CANTERBURY)

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(Originating in the House Committee on the Judiciary.)  
[January 19, 2015]

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

*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 the  
2 contrary, any defendant convicted after the effective date of this  
3 section of a violation of section twelve, article eight, chapter  
4 sixty-one of this code or a felony violation of the provisions of  
5 article eight-b, eight-c or eight-d of said chapter shall, as part of  
6 the sentence imposed at final disposition, be required to serve, in  
7 addition to any other penalty or condition imposed by the court,  
8 a period of supervised release of up to fifty years: *Provided,*  
9 That the period of supervised release imposed by the court  
10 pursuant to this section for a defendant convicted after the  
11 effective date of this section as amended and reenacted during  
12 the first extraordinary session of the Legislature, 2006, of a  
13 violation of section three or seven, article eight-b, chapter  
14 sixty-one of this code and sentenced pursuant to section nine-a  
15 of said article, shall be no less than ten years: *Provided, how-*  
16 *ever,* That a defendant designated after the effective date of this  
17 section as amended and reenacted during the first extraordinary

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

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

30 (1) Establishing a residence or accepting employment within  
31 one thousand feet of a school or child care facility or within one  
32 thousand feet of the residence of a victim or victims of any  
33 sexually violent offenses for which the person was convicted;

34 (2) Loitering within one thousand feet of a school or child  
35 care facility or within one thousand feet of the residence of a  
36 victim or victims of any sexually violent offenses for which the  
37 person was convicted: *Provided*, That the imposition of this

38 prohibition shall apply to a defendant convicted after the  
39 effective date of this section as amended and reenacted during  
40 the regular session of the Legislature, 2015: *Provided further,*  
41 That as used herein “loitering” shall mean to linger or be idle in  
42 a place where the individual has no particular lawful purpose;

43       ~~(2)~~(3) Establishing a residence or any other living accom-  
44 modation in a household in which a child under sixteen resides  
45 if the person has been convicted of a sexually violent offense  
46 against a child, unless the person is one of the following:

47       (i) The child’s parent;

48       (ii) The child’s grandparent; or

49       (iii) The child’s stepparent and the person was the stepparent  
50 of the child prior to being convicted of a sexually violent  
51 offense, the person’s parental rights to any children in the home  
52 have not been terminated, the child is not a victim of a sexually  
53 violent offense perpetrated by the person, and the court deter-  
54 mines that the person is not likely to cause harm to the child or  
55 children with whom such person will reside: *Provided*, That  
56 nothing in this subsection shall preclude a court from imposing  
57 residency or employment restrictions as a condition of super-

58 vised release on defendants other than those subject to the  
59 provision of this subsection.

60 (c) The period of supervised release imposed by the provi-  
61 sions of this section shall begin upon the expiration of any period  
62 of probation, the expiration of any sentence of incarceration or  
63 the expiration of any period of parole supervision imposed or  
64 required of the person so convicted, whichever expires later.

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

71 (e) A defendant sentenced to a period of supervised release  
72 shall be subject to any or all of the conditions applicable to a  
73 person placed upon probation pursuant to the provisions of  
74 section nine of this article: *Provided*, That any defendant  
75 sentenced to a period of supervised release pursuant to this  
76 section shall be required to participate in appropriate offender  
77 treatment programs or counseling during the period of super-

78 vised release unless the court deems the offender treatment  
79 programs or counseling to no longer be appropriate or necessary  
80 and makes express findings in support thereof.

81       Within ninety days of the effective date of this section as  
82 amended and reenacted during the first extraordinary session of  
83 the Legislature, 2006, the Secretary of the Department of Health  
84 and Human Resources shall propose rules and emergency rules  
85 for legislative approval in accordance with the provisions of  
86 article three, chapter twenty-nine-a of this code establishing  
87 qualifications for sex offender treatment programs and counsel-  
88 ors based on accepted treatment protocols among licensed  
89 mental health professionals.

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

94       (g) *Modification of conditions or revocation.* — The court  
95 may:

96       (1) Terminate a term of supervised release and discharge the  
97 defendant released at any time after the expiration of two years

98 of supervised release, pursuant to the provisions of the West  
99 Virginia Rules of Criminal Procedure relating to the modifica-  
100 tion of probation, if it is satisfied that such action is warranted by  
101 the conduct of the defendant released and the interests of justice;

102 (2) Extend a period of supervised release if less than the  
103 maximum authorized period was previously imposed or modify,  
104 reduce or enlarge the conditions of supervised release, at any  
105 time prior to the expiration or termination of the term of  
106 supervised release, consistent with the provisions of the West  
107 Virginia Rules of Criminal Procedure relating to the modifica-  
108 tion of probation and the provisions applicable to the initial  
109 setting of the terms and conditions of post-release supervision;

110 (3) Revoke a term of supervised release and require the  
111 defendant to serve in prison all or part of the term of supervised  
112 release without credit for time previously served on supervised  
113 release if the court, pursuant to the West Virginia Rules of  
114 Criminal Procedure applicable to revocation of probation, finds  
115 by clear and convincing evidence that the defendant violated a  
116 condition of supervised release, except that a defendant whose

117 term is revoked under this subdivision may not be required to  
118 serve more than the period of supervised release;

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

124 (h) *Written statement of conditions.* — The court shall direct  
125 that the probation officer provide the defendant with a written  
126 statement at the defendant’s sentencing hearing that sets forth all  
127 the conditions to which the term of supervised release is subject  
128 and that it is sufficiently clear and specific to serve as a guide for  
129 the defendant’s conduct and for such supervision as is required.

130 (i) *Supervised release following revocation.* — When a term  
131 of supervised release is revoked and the defendant is required to  
132 serve a term of imprisonment that is less than the maximum term  
133 of supervised release authorized under subsection (a) of this  
134 section, the court may include a requirement that the defendant  
135 be placed on a term of supervised release after imprisonment.  
136 The length of such term of supervised release shall not exceed



137 the term of supervised release authorized by this section less any  
138 term of imprisonment that was imposed upon revocation of  
139 supervised release.

140 (j) *Delayed revocation.* — The power of the court to revoke  
141 a term of supervised release for violation of a condition of  
142 supervised release and to order the defendant to serve a term of  
143 imprisonment and, subject to the limitations in subsection (i) of  
144 this section, a further term of supervised release extends beyond  
145 the expiration of the term of supervised release for any period  
146 necessary for the adjudication of matters arising before its  
147 expiration if, before its expiration, a warrant or summons has  
148 been issued on the basis of an allegation of such a violation.





