

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]

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 sixty-  
14 one of this code and sentenced pursuant to section nine-a of said  
15 article, shall be no less than ten years: *Provided, however,* That  
16 a defendant designated after the effective date of this section as  
17 amended and reenacted during the first extraordinary session of

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

26 (b) Any person required to be on supervised release for a  
27 minimum term of ten years or for life pursuant to the provisions of  
28 subsection (a) of this section also shall be further prohibited  
29 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 hang  
42 around in a public place where the individual has no particular  
43 or legal purpose;

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

48       (i) The child’s parent;

49       (ii) The child’s grandparent; or

50       (iii) The child’s stepparent and the person was the stepparent

51 of the child prior to being convicted of a sexually violent

52 offense, the person’s parental rights to any children in the home

53 have not been terminated, the child is not a victim of a sexually

54 violent offense perpetrated by the person, and the court deter-

55 mines that the person is not likely to cause harm to the child or

56 children with whom such person will reside: *Provided*, That

57 nothing in this subsection shall preclude a court from imposing

58 residency or employment restrictions as a condition of super-  
59 vised release on defendants other than those subject to the  
60 provision of this subsection.

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

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

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

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

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

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

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

97 (1) Terminate a term of supervised release and discharge the  
98 defendant released at any time after the expiration of two years  
99 of supervised release, pursuant to the provisions of the West  
100 Virginia Rules of Criminal Procedure relating to the modifica-  
101 tion of probation, if it is satisfied that such action is warranted by  
102 the conduct of the defendant released and the interests of justice;

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

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

117 condition of supervised release, except that a defendant whose  
118 term is revoked under this subdivision may not be required to  
119 serve more than the period of supervised release;

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

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

131 (i) *Supervised release following revocation.* — When a term  
132 of supervised release is revoked and the defendant is required to  
133 serve a term of imprisonment that is less than the maximum term  
134 of supervised release authorized under subsection (a) of this  
135 section, the court may include a requirement that the defendant  
136 be placed on a term of supervised release after imprisonment.



137 The length of such term of supervised release shall not exceed  
138 the term of supervised release authorized by this section less any  
139 term of imprisonment that was imposed upon revocation of  
140 supervised release.

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





