

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2428

2015 Carryover

(BY DELEGATES P. SMITH, PERRY, HARTMAN, TRECOST,
ELDRIDGE, CAMPBELL, LYNCH, FRICH, FERRO AND
REYNOLDS)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §61-8B-11b; and to amend and reenact §62-12-26 of said code, all relating to
 3 prohibiting a person convicted of a sexual offense against a child from being on school
 4 property without written permission of a judge or parole officer; creating criminal penalties;
 5 and defining terms.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 section, designated §61-8B-11b; and to amend and reenact §62-12-26 of said code, all to read
 3 as follows:

CHAPTER 61.

CRIMES AND THEIR PUNISHMENT.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-11b. Enhanced penalty for offenses against children.

1 (a) In any case where a person is convicted of an offense described in this article against
 2 a child, that person is forever barred from being in a public school or on public school grounds
 3 unless he or she has written permission of a judge or the person's parole officer stating with
 4 specificity the purpose, time period and location of the person's visit.

5 (b) For the purposes of subsection (a) of this section: "public school" means an
 6 educational facility comprised of one or more buildings including school grounds, used by
 7 students during regular school hours or during any school-sponsored function or extracurricular
 8 activities; "public school grounds" includes the land on which a school is built together with other
 9 land used by students for play, recreation or athletic events while attending school; and
 10 "extracurricular activities" means voluntary activities sponsored by a school, a county board or an

11 organization sanctioned by a county board or the State Board of Education, and include, but are
 12 not limited to, preparation for and involvement in public performances, contests, athletic
 13 competitions, demonstrations, displays, organizations and clubs.

14 (c) A person who violates subsection (a) of this section is guilty of a misdemeanor and,
 15 upon conviction, shall be confined in jail not more than six months or fined not more than \$5,000,
 16 or both fined and confined.

CHAPTER 62.

CRIMINAL PROCEDURE.

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

13 pursuant to ~~the provisions of~~ section two-a, article twelve, chapter fifteen of this code shall be
14 subject, in addition to any other penalty or condition imposed by the court, to supervised release
15 for life: *Provided further*, That pursuant to ~~the provisions of~~ subsection (g) of this section, a court
16 may modify, terminate or revoke any term of supervised release imposed pursuant to subsection
17 (a) of this section.

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

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

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

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

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

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

36 (3) Being in a public school or on public school grounds unless he or she has written

37 permission of a judge or the person's parole officer stating with specificity the purpose, time period
38 and location of the person's visit. For the purposes of this subdivision: "public school" means an
39 educational facility comprised of one or more buildings including school grounds, used by
40 students during regular school hours or during any school-sponsored function or extracurricular
41 activities; "public school grounds" includes the land on which a school is built together with such
42 other land used by students for play, recreation or athletic events while attending school; and
43 "extracurricular activities" means voluntary activities sponsored by a school, a county board or an
44 organization sanctioned by a county board or the State Board of Education, and include, but are
45 not limited to, preparation for and involvement in public performances, contests, athletic
46 competitions, demonstrations, displays, organizations and clubs.

47 (c) The period of supervised release imposed by ~~the provisions of~~ this section shall begin
48 upon the expiration of any period of probation, the expiration of any sentence of incarceration or
49 the expiration of any period of parole supervision imposed or required of the person so convicted,
50 whichever expires later.

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

55 (e) A defendant sentenced to a period of supervised release shall be subject to any or all
56 of the conditions applicable to a person placed upon probation pursuant to ~~the provisions of~~
57 section nine of this article: *Provided*, That any defendant sentenced to a period of supervised
58 release pursuant to this section shall be required to participate in appropriate offender treatment
59 programs or counseling during the period of supervised release unless the court deems the
60 offender treatment programs or counseling to no longer be appropriate or necessary and makes

61 express findings in support thereof.

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

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

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

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

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

82 (3) Revoke a term of supervised release and require the defendant to serve in prison all
83 or part of the term of supervised release without credit for time previously served on supervised
84 release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to

85 revocation of probation, finds by clear and convincing evidence that the defendant violated a
86 condition of supervised release, except that a defendant whose term is revoked under this
87 subdivision may not be required to serve more than the period of supervised release;

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

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

97 (i) *Supervised release following revocation.* -- When a term of supervised release is
98 revoked and the defendant is required to serve a term of imprisonment that is less than the
99 maximum term of supervised release authorized under subsection (a) of this section, the court
100 may include a requirement that the defendant be placed on a term of supervised release after
101 imprisonment. The length of such term of supervised release shall not exceed the term of
102 supervised release authorized by this section less any term of imprisonment that was imposed
103 upon revocation of supervised release.

104 (j) *Delayed revocation.* -- The power of the court to revoke a term of supervised release
105 for violation of a condition of supervised release and to order the defendant to serve a term of
106 imprisonment and, subject to the limitations in subsection (i) of this section, a further term of
107 supervised release extends beyond the expiration of the term of supervised release for any period
108 necessary for the adjudication of matters arising before its expiration if, before its expiration, a

109 warrant or summons has been issued on the basis of an allegation of such a violation.

NOTE: The purpose of this bill is to prohibit a person convicted of a sexual offense against a child from being on school property without written permission of a judge or parole officer. The bill creates criminal penalties. The bill also defines terms.

§61-8B-11b is new; therefore, it has been completely underscored.

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