

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2484

2015 Carryover

(BY DELEGATES P. SMITH, PERRY, HARTMAN, ELDRIDGE,
LYNCH, LONGSTRETH, FERRO, REYNOLDS, FAIRCLOTH
AND MOYE)

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

1 A BILL to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating
 2 to limitations and restrictions placed on sex offenders who have been adjudicated as
 3 violent sexual predators or who are under active supervision as a condition of release on
 4 parole or probation; clarifying the statutory restrictions against those persons living or
 5 working within one thousand feet of a school, child care facility or residence of a former
 6 victim; and defining terms.

Be it enacted by the Legislature of West Virginia:

1 That §62-12-26 of the Code of West Virginia, 1931, as amended, be amended and
 2 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 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 from the
22 outer perimeter of a school or child care facility or within one thousand feet from the outer
23 perimeter of the residence of a victim or victims of any sexually violent offenses for which the
24 person was convicted. For the purposes of this subdivision: "Residence" includes the yard,
25 grounds, outbuildings and common or public areas in or surrounding the residence; "child care
26 facility" includes the classrooms, buildings, playground areas, parking lots and common areas
27 utilized by children while attending the child care facility; "school" means an educational facility
28 comprised of one or more buildings including school grounds, used by students during regular
29 school hours or during any school-sponsored function or extracurricular activities; "school
30 grounds" includes the land on which a school is built together with such other land used by
31 students for play, recreation or athletic events while attending school; and "extracurricular
32 activities" means voluntary activities sponsored by a school, a county board or an organization
33 sanctioned by a county board or the State Board of Education, and include, but are not limited to,
34 preparation for and involvement in public performances, contests, athletic competitions,
35 demonstrations, displays, organizations and clubs.

36 (2) Establishing a residence or any other living accommodation in a household in which a

37 child under sixteen resides if the person has been convicted of a sexually violent offense against
38 a child, unless the person is one of the following:

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

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

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

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

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

56 (e) A defendant sentenced to a period of supervised release shall be subject to any or all
57 of the conditions applicable to a person placed upon probation pursuant to ~~the provisions of~~
58 section nine of this article: *Provided*, That any defendant sentenced to a period of supervised
59 release pursuant to this section shall be required to participate in appropriate offender treatment
60 programs or counseling during the period of supervised release unless the court deems the

61 offender treatment programs or counseling to no longer be appropriate or necessary and makes
62 express findings in support thereof.

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

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

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

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

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

83 (3) Revoke a term of supervised release and require the defendant to serve in prison all
84 or part of the term of supervised release without credit for time previously served on supervised

85 release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to
86 revocation of probation, finds by clear and convincing evidence that the defendant violated a
87 condition of supervised release, except that a defendant whose term is revoked under this
88 subdivision may not be required to serve more than the period of supervised release;

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

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

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

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

109 necessary for the adjudication of matters arising before its expiration if, before its expiration, a
110 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.