

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 2607

BY DELEGATE CANESTRARO

[Introduced February 21, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §62-12-10 of the Code of West Virginia, 1931, as amended, relating
 2 to extending the maximum period of confinement a judge may impose for certain, first-
 3 time probationary violations from sixty days to six months; and providing judges greater
 4 sentencing discretion for certain, subsequent violations of probation.

Be it enacted by the Legislature of West Virginia:

1 That §62-12-10 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-10. Violation of probation.

1 (a) If at any time during the period of probation there shall be reasonable cause to believe
 2 that the probationer has violated any of the conditions of his or her probation, the probation officer
 3 may arrest him or her with or without an order or warrant, or the court which placed him or her on
 4 probation, or the judge thereof in vacation, may issue an order for his or her arrest, whereupon
 5 he or she shall be brought before the court, or the judge thereof in vacation, for a prompt and
 6 summary hearing.

7 (1) If the court or judge finds reasonable cause exists to believe that the probationer:

8 (A) Absconded supervision;

9 (B) Engaged in new criminal conduct other than a minor traffic violation or simple
 10 possession of a controlled substance; or

11 (C) Violated a special condition of probation designed either to protect the public or a
 12 victim; the court or judge may revoke the suspension of imposition or execution of sentence,
 13 impose sentence if none has been imposed and order that sentence be executed.

14 (2) If the judge finds that reasonable cause exists to believe that the probationer violated
 15 any condition of supervision other than the conditions of probation set forth in subdivision (1) of
 16 this subsection then, for the first violation, the judge shall impose a period of confinement up to
 17 ~~sixty days or, for the second violation~~ six months. ~~For subsequent violations, a period of~~

18 ~~confinement up to one hundred twenty days. For the third violation,~~ the judge may revoke the
19 suspension of imposition or execution of sentence, impose sentence if none has been imposed
20 and order that sentence be executed, with credit for time spent in confinement under this section.

21 (3) In computing the period for which the offender is to be confined, the time between his
22 or her release on probation and his or her arrest may not be taken to be any part of the term of
23 his or her sentence.

24 (b) A probationer confined for a first or second violation pursuant to subdivision (2),
25 subsection (a) of this section may be confined in jail, and the costs of confining felony probationers
26 shall be paid out of funds appropriated for the Division of Corrections. Whenever the court orders
27 the incarceration of a probationer pursuant to the provisions of subdivision (2), subsection (a) of
28 this section, a circuit clerk shall provide a copy of the order of confinement within five days to the
29 Commissioner of Corrections.

30 (c) If, despite a violation of the conditions of probation, the court or judge is of the opinion
31 that the interests of justice do not require that the probationer serve his or her sentence or a period
32 of confinement, the judge may, except when the violation was the commission of a felony, again
33 release him or her on probation: *Provided*, That a judge may otherwise depart from the sentence
34 limitations set forth in subdivision (2), subsection (a) of this section upon making specific written
35 findings of fact supporting the basis for the departure.

NOTE: The purpose of this bill is to extend the maximum period of confinement a judge may impose for certain, first-time probationary violations from sixty days to six months. The bill also provides judges greater sentencing discretion for certain, subsequent violations of probation.

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