

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Originating

House Bill 3133

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[Originating on the Committee on Prevention and
Treatment of Substance Abuse; Reported on
February 14, 2019]

1 A BILL to amend and reenact §62-12-6 and §62-12-17 of the Code of West Virginia, 1931, relating
2 to requiring a parolee or probationer found to have suffered with addiction to participate in
3 a support service upon release for a certain period of time.

Be it enacted by the Legislature of West Virginia:

CHAPTER 62. CRIMINAL PROCEDURE.

§62-12-6. Powers and duties of probation officers.

1 (a) Each probation officer shall:

2 (1) Investigate all cases which the court refers to the officer for investigation and shall
3 report in writing on each case;

4 (2) Conduct a standardized risk and needs assessment, using the instrument adopted by
5 the Supreme Court of Appeals of West Virginia, for any probationer for whom an assessment has
6 not been conducted either prior to placement on probation or by a specialized assessment officer.

7 The results of all standardized risk and needs assessments are confidential;

8 (3) Supervise the probationer and enforce probation according to assessment and
9 supervision standards adopted by the Supreme Court of Appeals of West Virginia;

10 (4) Furnish to each person released on probation under the officer's supervision a written
11 statement of the probationer's conditions of probation together with a copy of the rules prescribed
12 by the Supreme Court of Appeals of West Virginia;

13 (5) Stay informed concerning the conduct and condition of each probationer under the
14 officer's supervision and report on the conduct and condition of each probationer in writing as
15 often as the court requires;

16 (6) Use all practicable and suitable methods to aid and encourage the probationer to
17 improve his or her conduct and condition;

18 (7) Perform random drug and alcohol testing on probationers under his or her supervision
19 as directed by the circuit court;

20 (8) Maintain detailed work records; and

21 (9) Perform any other duties the court requires.

22 (b) The probation officer may, with or without an order or warrant, arrest any probationer
23 as provided in section ten of this article, and arrest any person on supervised release when there
24 is reasonable cause to believe that the person on supervised release has violated a condition of
25 release. A person on supervised release who is arrested shall be brought before the court for a
26 prompt and summary hearing.

27 (c) Notwithstanding any provision of this code to the contrary:

28 (1) Any probation officer appointed on or after July 1, 2002, may carry handguns in the
29 course of the officer's official duties after meeting specialized qualifications established by the
30 Governor's Committee on Crime, Delinquency and Correction. The qualifications shall include the
31 successful completion of handgun training, which is comparable to the handgun training provided
32 to law-enforcement officers by the West Virginia State Police and includes a minimum of four
33 hours' training in handgun safety.

34 (2) Probation officers may only carry handguns in the course of their official duties after
35 meeting the specialized qualifications set forth in subdivision (1) of this subsection.

36 (3) Nothing in this subsection includes probation officers within the meaning of law-
37 enforcement officers as defined in section one, article twenty-nine, chapter thirty of this code.

38 (d) The Supreme Court of Appeals of West Virginia ~~may~~ shall adopt a standardized risk
39 and needs assessment with risk cut-off scores for use by probation officers, taking into
40 consideration the assessment instrument adopted by the Division of Corrections under subsection
41 (h), section thirteen of this article and the responsibility of the Division of Justice and Community
42 Services to evaluate the use of the standardized risk and needs assessment. The results of any
43 standardized risk and needs assessment are confidential.

§62-12-17. Conditions of release on probation and parole.

1 (a) Release and supervision on parole of any person, including the supervision by the
2 Division of Corrections of any person paroled by any other state or by the federal government,
3 shall be upon the following conditions:

4 (1) That the parolee may not, during the period of his or her parole, violate any criminal
5 law of this or any other state or of the United States;

6 (2) That the parolee may not, during the period of his or her parole, leave the state without
7 the consent of the Division of Corrections;

8 (3) That the parolee complies with the rules prescribed by the Division of Corrections for
9 his or her supervision by the parole officer;

10 (4) That when a probationer or parolee has been determined, by the standardized risk and
11 needs assessment adopted by the Supreme Court of Appeals of West Virginia under §62-12-6(d)
12 to have a history of substance abuse, he or she shall participate in the appropriate support service,
13 for a minimum of 60 days on a schedule approved by the probation or parole officer.

14 ~~(4)~~ (5) That in every case in which the parolee for a conviction is seeking parole from an
15 offense against a child, defined in §61-8-12-one of this code, or §61-8b-1 et seq., §61-8d-1 et
16 seq.,, or similar convictions from other jurisdictions where the parolee is returning or attempting
17 to return to this state pursuant to the provisions of §28-6-1 et seq of this code, the parolee may
18 not live in the same residence as any minor child nor exercise visitation with any minor child nor
19 may he or she have any contact with the victim of the offense; and

20 (5) That the parolee, and all federal or foreign state probationers and parolees whose
21 supervision may have been undertaken by this state, pay a fee, based on his or her ability to pay,
22 not to exceed \$40 per month to defray the costs of supervision.

23 (b) The Commissioner of Corrections shall keep a record of all actions taken and account
24 for moneys received. All moneys shall be deposited in a special account in the State Treasury to
25 be known as the Parolee's Supervision Fee Fund. Expenditures from the fund shall be for the

26 purposes of providing the parole supervision required by the provisions of this code and are not
27 authorized from collections, but are to be made only in accordance with appropriation by the
28 Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon the
29 fulfillment of the provisions set forth in §5A-2-1 et seq of this code. Amounts collected which are
30 found, from time to time, to exceed the funds needed for purposes set forth in this article may be
31 transferred to other accounts or funds and redesignated for other purposes by appropriation of
32 the Legislature.

33 (c) The Division of Corrections shall consider the following factors in determining whether
34 a parolee or probationer is financially able to pay the fee:

35 (1) Current income prospects for the parolee or probationer, taking into account seasonal
36 variations in income;

37 (2) Liquid assets of the parolee or probationer, assets of the parolee or probationer that
38 may provide collateral to obtain funds and assets of the parolee or probationer that may be
39 liquidated to provide funds to pay the fee;

40 (3) Fixed debts and obligations of the parolee or probationer, including federal, state and
41 local taxes and medical expenses;

42 (4) Child care, transportation and other reasonably necessary expenses of the parolee or
43 probationer related to employment; and

44 (5) The reasonably foreseeable consequences for the parolee or probationer if a waiver
45 of, or reduction in, the fee is denied.

46 (d) In addition, the Division of Corrections may impose, subject to modification at any time,
47 any other conditions which the division considers advisable.

48 (e) The Division of Corrections may order substance abuse treatment as a condition or as
49 a modification of parole, only if the standardized risk and needs assessment indicates the offender
50 has a high risk for reoffending and a need for substance abuse treatment.

51 (f) The Division of Corrections may impose, as an initial condition of parole, a term of

52 reporting to a day report center or other community corrections program only if the standardized
53 risk and needs assessment indicates a moderate to high risk of reoffending and moderate to high
54 criminogenic need. Any parolee required to report to a day report center or other community
55 corrections program is subject to all the rules and regulations of the center or program and may
56 be removed at the discretion of the center's or program's director. The Commissioner of
57 Corrections shall enter into a master agreement with the Division of Justice and Community
58 Services to provide reimbursement to counties for the use of community corrections programs by
59 eligible parolees. Any placement by the Division of Corrections of a parolee in a day report center
60 or other community corrections program may only be done with the center or program director's
61 consent and the parolee is subject to all of the rules and regulations of the center or program and
62 may be removed by the director.

NOTE: The purpose of this bill is to require that any inmate found to have exhibited signs of abuse or patterns of addiction of drugs and alcohol to require counseling for the inmate for a minimum of 60 days upon being released on parole.

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