

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 3133**

BY ROHRBACH, PUSHKIN AND ROBINSON

[Originating in the Committee on Prevention and  
Treatment of Substance Abuse then the Judiciary.]



1 A BILL to amend and reenact §62-12-6 and §62-12-9 of the Code of West Virginia, 1931, as  
2 amended, relating to requiring a probationer found to have suffered with addiction to  
3 participate in 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.

**§62-12-9. Conditions of release on probation.**

1 (a) Release on probation is conditioned upon the following:

2 (1) That the probationer may not, during the term of his or her probation, violate any  
3 criminal law of this or any other state or of the United States;

4 (2) That the probationer may not, during the term of his or her probation, leave the state  
5 without the consent of the court which placed him or her on probation;

6 (3) That the probationer complies with the conditions prescribed by the court for his or her  
7 supervision by the probation officer;

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

12 ~~(4)~~ (5) That in every case in which the probationer has been convicted of an offense  
13 defined in section twelve, article eight, chapter sixty-one of this code or article eight-b or eight-d  
14 of said chapter, against a child, the probationer may not live in the same residence as any minor  
15 child, nor exercise visitation with any minor child and may have no contact with the victim of the  
16 offense: *Provided*, That the probationer may petition the court of the circuit in which he or she was  
17 convicted for a modification of this term and condition of his or her probation and the burden rests  
18 upon the probationer to demonstrate that a modification is in the best interest of the child;

19 ~~(5)~~ (6) That the probationer pay a fee, not to exceed \$20 per month, to defray costs of  
20 supervision: *Provided*, That the court conducts a hearing prior to imposition of probation and  
21 makes a determination on the record that the offender is able to pay the fee without undue  
22 hardship. All moneys collected as fees from probationers pursuant to this subdivision shall be  
23 deposited with the circuit clerk who shall, on a monthly basis, remit the moneys collected to the  
24 State Treasurer for deposit in the State General Revenue Fund; and

25           ~~(6)~~ (7) That the probationer is required to pay the fee described in section four, article  
26 eleven-c of this chapter: *Provided*, That the court conducts a hearing prior to imposition of  
27 probation and makes a determination on the record that the offender is able to pay the fee without  
28 undue hardship.

29           (b) In addition, the court may impose, subject to modification at any time, any other  
30 conditions which it may determine advisable, including, but not limited to, any of the following:

31           (1) That the probationer make restitution or reparation, in whole or in part, immediately or  
32 within the period of probation, to any party injured by the crime for which he or she has been  
33 convicted: *Provided*, That the court conducts a hearing prior to imposition of probation and makes  
34 a determination on the record that the offender is able to pay restitution without undue hardship;

35           (2) That the probationer pays any fine assessed and the costs of the proceeding in  
36 installments directed by the court: *Provided*, That the court conducts a hearing prior to imposition  
37 of probation and makes a determination on the record that the offender is able to pay the costs  
38 without undue hardship;

39           (3) That the probationer makes contributions from his or her earnings, in sums directed by  
40 the court, for the support of his or her dependents; and

41           (4) That the probationer, in the discretion of the court, is required to serve a period of  
42 confinement in jail of the county in which he or she was convicted for a period not to exceed one  
43 third of the minimum sentence established by law or one third of the least possible period of  
44 confinement in an indeterminate sentence, but in no case may the period of confinement exceed  
45 six consecutive months. The court may sentence the defendant within the six-month period to  
46 intermittent periods of confinement including, but not limited to, weekends or holidays and may  
47 grant to the defendant intermittent periods of release in order that he or she may work at his or  
48 her employment or for other reasons or purposes as the court may determine appropriate:  
49 *Provided*, That the provisions of article eleven-a of this chapter do not apply to intermittent periods  
50 of confinement and release except to the extent directed by the court. If a period of confinement

51 is required as a condition of probation, the court shall make special findings that other conditions  
52 of probation are inadequate and that a period of confinement is necessary.

53 (c) Circuit courts may impose, as a condition of probation, participation in a day report  
54 center.

55 (1) To be eligible, the probationer must be identified as moderate to high risk of reoffending  
56 and moderate to high criminogenic need, as determined by the standardized risk and needs  
57 assessment adopted by the Supreme Court of Appeals of West Virginia under subsection (d),  
58 section six of this article, and applied by a probation officer or day report staff. In eligible cases,  
59 circuit courts may impose a term of up to one year: *Provided*, That notwithstanding the results of  
60 the standardized risk and needs assessment, a judge may impose, as a term of probation,  
61 participation in a day report center program upon making specific written findings of fact as to the  
62 reason for departing from the requirements of this subdivision.

63 (2) The day report center staff shall determine which services a person receives based on  
64 the results of the standardized risk and needs assessment and taking into consideration the other  
65 conditions of probation set by the court.

66 (d) For the purposes of this article, “day report center” means a court-operated or court-  
67 approved facility where persons ordered to serve a sentence in this type of facility are required to  
68 report under the terms and conditions set by the court for purposes which include, but are not  
69 limited to, counseling, employment training, alcohol or drug testing or other medical testing.

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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.