

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2257

BY DELEGATES STEELE, PINSON AND PACK

[Introduced January 12, 2022; referred to the

Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, as amended, by adding thereto a new section,
2 designated §62-12-30, relating to extended supervision for certain drug offenders;
3 specifying that the section shall apply to a person with a second or subsequent conviction;
4 establishing supervised release penalty of up to 10 years for certain drug offenders;
5 establishing when period of supervised release begins; providing for supervision by
6 multijudicial circuit probation officers; clarifying terms of supervised release same as those
7 for probation; establishing a fee for supervised release; establishing that court may modify
8 or revoke supervised release; providing court required probation officer provide written
9 conditions; providing for supervised release following revocation; providing for delayed
10 revocation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

**§62-12-30. Extended supervision for certain drug offenders; sentencing; conditions;
supervision provisions; supervision fee.**

1 (a) The provisions of this section shall apply to any person convicted of a second or
2 subsequent offense for any of the provisions of this code set forth in this section or under a
3 statutory provision of another state, under the United States Code, or under the Uniform Code of
4 Military Justice which requires proof of the same essential elements.

5 (b) Notwithstanding any other provision of this code to the contrary, any defendant
6 convicted after the effective date of this section of a violation of §60A-4-401(a)(i), §60A-4-
7 409(b)(1), or §60A-4-415 of this code with respect to the controlled substance of fentanyl, alone
8 or in combination with another controlled substance, shall, as part of the sentence imposed at
9 final disposition, be required to serve, in addition to any other penalty or condition imposed by the
10 court, a period of supervised release of up to 10 years: *Provided*, That pursuant to the provisions
11 of subsection (g) of this section, a court may modify, terminate or revoke any term of supervised
12 release imposed pursuant to subsection (a) of this section. For purposes of this section, the term

13 “fentanyl” includes carfentanil, any substance containing any quantity of carfentanil, or any of its
14 salts, isomers, or salts of isomers, or any other fentanyl analog that is not otherwise scheduled in
15 this Chapter 60A of the code.

16 (c) The period of supervised release imposed by the provisions of this section shall begin
17 upon the expiration of any period of probation, the expiration of any sentence of incarceration or
18 the expiration of any period of parole supervision imposed or required of the person so convicted,
19 whichever expires later.

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

24 (e) A defendant sentenced to a period of supervised release shall be subject to any or all
25 of the conditions applicable to a person placed upon probation pursuant to the provisions of §61-
26 2-9 of this code.

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

30 (g) *Modification of conditions or revocation.* — The court may:

31 (1) Terminate a term of supervised release and discharge the defendant released at any
32 time after the expiration of six months of supervised release, pursuant to the provisions of the
33 West Virginia Rules of Criminal Procedure relating to the modification of probation, if it is satisfied
34 that such action is warranted by the conduct of the defendant released and the interests of justice;

35 (2) Extend a period of supervised release if less than the maximum authorized period was
36 previously imposed or modify, reduce or enlarge the conditions of supervised release, at any time
37 prior to the expiration or termination of the term of supervised release, consistent with the
38 provisions of the West Virginia Rules of Criminal Procedure relating to the modification of

39 probation and the provisions applicable to the initial setting of the terms and conditions of post-
40 release supervision;

41 (3) Revoke a term of supervised release and require the defendant to serve in prison all
42 or part of the term of supervised release without credit for time previously served on supervised
43 release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to
44 revocation of probation, finds by clear and convincing evidence that the defendant violated a
45 condition of supervised release, except that a defendant whose term is revoked under this
46 subdivision may not be required to serve more than the period of supervised release: *Provided,*
47 That a person serving a term of incarceration pursuant to this subsection shall not be eligible for
48 the commutation set forth in §15A-4-17 of this code, and shall not be eligible for parole on the
49 term of incarceration;

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

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

59 (i) *Supervised release following revocation.* — When a term of supervised release is
60 revoked and the defendant is required to serve a term of imprisonment that is less than the
61 maximum term of supervised release authorized under subsection (a) of this section, the court
62 may include a requirement that the defendant be placed on a term of supervised release after
63 imprisonment. The length of such term of supervised release shall not exceed the term of
64 supervised release authorized by this section less any term of imprisonment that was imposed

65 upon revocation of supervised release.

66 (j) *Delayed revocation.* — The power of the court to revoke a term of supervised release
67 for violation of a condition of supervised release and to order the defendant to serve a term of
68 imprisonment and, subject to the limitations in subsection (i) of this section, a further term of
69 supervised release extends beyond the expiration of the term of supervised release for any period
70 necessary for the adjudication of matters arising before its expiration if, before its expiration, a
71 warrant or summons has been issued on the basis of an allegation of such a violation.

NOTE: The purpose of this bill is to require extended supervision for certain drug offenders.

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