

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 4538**

By Delegate Steele

[Introduced January 10, 2024; 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 establishing supervised release penalty of up to 10 years for certain drug offenders;  
 4 establishing when period of supervised release begins; providing for supervision by  
 5 multijudicial circuit probation officers; clarifying terms of supervised release same as those  
 6 for probation; establishing a fee for supervised release; establishing that court may modify  
 7 or revoke supervised release; providing court required probation officer provide written  
 8 conditions; providing for supervised release following revocation; providing for delayed  
 9 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) 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 §60A-4-401, or §60A-4-409 of this  
 3 code for the delivery of controlled substances in schedule I, II, and III in chapter 60A of this code,  
 4 excluding marijuana, or for the possession with intent to deliver controlled substances in schedule  
 5 I, II, and III in chapter 60A of this code, excluding marijuana, a conviction under §60A-4-411 of this  
 6 code, a conviction under §60A-4-414 of this code, excluding marijuana, or a conviction under  
 7 §60A-4-416 of this code, shall, as part of the sentence imposed at final disposition, be required to  
 8 serve, in addition to any other penalty or condition imposed by the court, a period of supervised  
 9 release of up to 10 years: *Provided*, That pursuant to the provisions of subsection (g) of this  
 10 section, a court may modify, terminate, or revoke any term of supervised release imposed  
 11 pursuant to subsection (a) of this section.

12 (b) The period of supervised release imposed by the provisions of this section shall begin  
 13 upon the expiration of any period of probation, the expiration of any sentence of incarceration or

14 the expiration of any period of parole supervision imposed or required of the person so convicted,  
15 whichever expires later.

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

20 (d) A defendant sentenced to a period of supervised release shall be subject to any or all of  
21 the conditions applicable to a person placed upon probation pursuant to §62-12-9 of this code.

22 (e) The sentencing court may, based upon defendant's ability to pay, impose a supervision  
23 fee to offset the cost of supervision. The fee may not exceed \$50 per month. The fee may be  
24 modified periodically based upon the defendant's ability to pay.

25 (f) *Modification of conditions or revocation.* -- The court may:

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

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

36 (3) Revoke a term of supervised release and require the defendant to serve in prison all or  
37 part of the term of supervised release without credit for time previously served on supervised  
38 release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to  
39 revocation of probation, finds by clear and convincing evidence that the defendant violated a

40 condition of supervised release, except that a defendant whose term is revoked under this  
41 subdivision may not be required to serve more than the period of supervised release;

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

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

51 (h) *Supervised release following revocation.* -- When a term of supervised release is  
52 revoked and the defendant is required to serve a term of imprisonment that is less than the  
53 maximum term of supervised release authorized under subsection (a) of this section, the court  
54 may include a requirement that the defendant be placed on a term of supervised release after  
55 imprisonment. The length of the term of supervised release may not exceed the term of supervised  
56 release authorized by this section less any term of imprisonment that was imposed upon  
57 revocation of supervised release.

58 (i) *Delayed revocation.* -- The power of the court, to revoke a term of supervised release for  
59 violation of a condition of supervised release and to order the defendant to serve a term of  
60 imprisonment and, subject to the limitations in subsection (i) of this section, a further term of  
61 supervised release extends beyond the expiration of the term of supervised release for any period  
62 necessary for the adjudication of matters arising before its expiration if, before its expiration, a  
63 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.