

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3448**

By Delegates Kelly and Hott

[Introduced February 14, 2023; Referred to the  
Committee on the Judiciary]



1 A BILL to amend and reenact §62-12-5 of the Code of West Virginia, 1931, as amended, relating to  
2 probation officer field training.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 12. PROBATION AND PAROLE.**

**§62-12-5. Probation officers and assistants.**

1 (a) Each circuit court, subject to the approval of the Supreme Court of Appeals and in  
2 accordance with its rules, is authorized to appoint one or more probation officers and clerical  
3 assistants.

4 (b) The appointment of probation officers and clerical assistants shall be in writing and  
5 entered on the order book of the court by the judge making such appointment and a copy of the  
6 order of appointment shall be delivered to the Administrative Director of the Supreme Court of  
7 Appeals. The order of appointment shall state the annual salary, fixed by the judge and approved  
8 by the Supreme Court of Appeals, to be paid to the appointed probation officer or clerical  
9 assistants.

10 (c) The salary of probation officers and clerical assistants shall be paid at least twice per  
11 month, as the Supreme Court of Appeals by rule may direct, and they shall be reimbursed for all  
12 reasonable and necessary expenses actually incurred in the line of duty in the field. The salary and  
13 expenses shall be paid by the state from the judicial accounts thereof. The county commission  
14 shall provide adequate office space for the probation officer and his or her assistants to be  
15 approved by the appointing court. The equipment and supplies as may be needed by the probation  
16 officer and his or her assistants shall be provided by the state and the cost thereof shall be charged  
17 against the judicial accounts of the state.

18 (d) A judge may not appoint any probation officer, assistant probation officer, or clerical  
19 assistant who is related to him or her either by consanguinity or affinity.

20 (e) Subject to the approval of the Supreme Court of Appeals and in accordance with its  
21 rules, a judge of a circuit court whose circuit comprises more than one county may appoint a

22 probation officer and a clerical assistant in each county of the circuit or may appoint the same  
23 persons to serve in these respective positions in two or more counties in the circuit.

24 (f) Nothing contained in this section alters, modifies, affects, or supersedes the  
25 appointment or tenure of any probation officer, medical assistant, or psychiatric assistant  
26 appointed by any court under any special act of the Legislature heretofore enacted, and the salary  
27 or compensation of those persons shall remain as specified in the most recent amendment of any  
28 special act until changed by the court, with approval of the Supreme Court of Appeals, by order  
29 entered of record, and any such salary or compensation shall be paid out of the State Treasury.

30 (g) In order to carry out the supervision responsibilities set forth in §62-26-12 of this code,  
31 the Administrative Director of the Supreme Court of Appeals, or his or her designee, in accordance  
32 with the court's procedures, may hire multijudicial-circuit probation officers, to be employed  
33 through the court's Division of Probation Services. Such officers may also supervise probationers  
34 who are on probation for sexual offences with the approval of the administrative director of the  
35 Supreme Court of Appeals or his or her designee.

36 (h) In recognition of the duties of their employment supervising confinement and  
37 supervised release, and the inherent arrest powers for violation of the same which constitute law  
38 enforcement, state probation officers are determined to be qualified law-enforcement officers as  
39 that term is used in 18 U.S.C. § 926B.

40 (i) Any state probation officer may carry a concealed firearm for self-defense purposes  
41 pursuant to the provisions of 18 U.S.C. § 926B if the following criteria are met:

42 (1) The Supreme Court of Appeals has a written policy authorizing probation officers to  
43 carry a concealed firearm for self-defense purposes.

44 (2) There is in place a requirement that the state probation officers annually qualify in the  
45 use of a firearm with standards for qualification which are equal to, or exceed those required of  
46 sheriff's deputies by the Law-Enforcement Professional Standards Program;

47 (3) The Supreme Court of Appeals issues a photographic identification and certification  
48 card which identify the state probation officers as qualified law-enforcement employees pursuant  
49 to the provisions of §30-29-12 of this code.

50 (j) Any policy instituted pursuant to this subsection shall include provisions which:

51 (1) Preclude or remove a person from participation in the concealed firearm program;

52 (2) Preclude from participation persons prohibited by federal or state law from possessing  
53 or receiving a firearm and;

54 (3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection  
55 while in an impaired state as defines in §17C-5-2 of this code.

56 (k) Any state probation officer who participates in a program authorized by the provisions of  
57 this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable  
58 firearm and ammunition.

59 (l) It is the intent of the Legislature in enacting the amendments to this section during the  
60 2022 regular session of the Legislature to authorize state probation officers wishing to do so to  
61 meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

62 (m) The privileges authorized by the amendments to this section enacted during the 2022  
63 regular session of the Legislature are wholly within the discretion of the Supreme Court of  
64 Appeals.

65 (n) The Administrative Director of the Supreme Court of Appeals, or his or her designee,  
66 may hire field training probation officers to provide uniform training to new and current probation  
67 officers statewide. A field training probation officer shall have all the powers granted to a  
68 probation officer under this code while performing his or her duties.

NOTE: The purpose of this bill is to allow the Supreme Court Division of Probation Services to conduct field training for probation officers and to grant a field training officer the same powers as a probation officer while performing his or her duties.

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