

1 **H. B. 2460**

2
3 (By Delegate Frazier)

4 [Introduced January 13, 2011; referred to the
5 Committee on the Judiciary.]
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10 A BILL to amend and reenact §62-12-5 and §62-12-26 of the Code of
11 West Virginia, 1931, as amended, all relating to probation and
12 parole; probation officers and assistants; and providing that
13 probation officers are authorized to supervise sex offenders
14 until a multijudicial officer is available in the probation
15 officer's area.

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

17 That §62-12-5 and §62-12-26 of the Code of West Virginia,
18 1931, as amended, be amended and reenacted, all to read as follows:

19 **ARTICLE 12. PROBATION AND PAROLE.**

20 **§62-12-5. Probation officers and assistants.**

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

24 (b) The appointment of probation officers and clerical

1 assistants shall be in writing and entered on the order book of the
2 court by the judge making such appointment and a copy of said order
3 of appointment shall be delivered to the Administrative Director of
4 the Supreme Court of Appeals. The order of appointment shall state
5 the monthly salary, fixed by the judge and approved by the Supreme
6 Court of Appeals, to be paid to the probation officer or clerical
7 assistants so appointed.

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

20 (d) No judge may appoint any probation officer, assistant
21 probation officer or clerical assistant who is related to him or
22 her either by consanguinity or affinity.

23 (e) Subject to the approval of the Supreme Court of Appeals
24 and in accordance with its rules, a judge of a circuit court whose

1 circuit comprises more than one county may appoint a probation
2 officer and a clerical assistant in each county of the circuit or
3 may appoint the same persons to serve in these respective positions
4 in two or more counties in the circuit.

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

14 (g) In order to carry out the probation responsibilities
15 relating to the supervision of sex offenders as well as those
16 responsibilities set forth in section twenty-six, article twelve,
17 chapter sixty-two of this code, the Administrative Director of the
18 Supreme Court of Appeals, or his or her designee, in accordance
19 with the court's procedures, is authorized to hire multijudicial-
20 circuit probation officers, to be employed through the court's
21 Division of Probation Services.

22 **§62-12-26. Extended supervision for certain sex offenders;**
23 **sentencing; conditions; supervision provisions;**
24 **supervision fee.**

1 (a) Notwithstanding any other provision of this code to the
2 contrary, any defendant convicted after the effective date of this
3 section of a violation of section twelve, article eight, chapter
4 sixty-one of this code or a felony violation of the provisions of
5 article eight-b, eight-c or eight-d of said chapter shall, as part
6 of the sentence imposed at final disposition, be required to serve,
7 in addition to any other penalty or condition imposed by the court,
8 a period of supervised release of up to fifty years: *Provided,*
9 That the period of supervised release imposed by the court pursuant
10 to this section for a defendant convicted after the effective date
11 of this section as amended and reenacted during the first
12 extraordinary session of the Legislature, 2006, of a violation of
13 section three or seven, article eight-b, chapter sixty-one of this
14 code and sentenced pursuant to section nine-a of said article,
15 shall be no less than ten years: *Provided, however,* That a
16 defendant designated after the effective date of this section as
17 amended and reenacted during the first extraordinary session of the
18 Legislature, 2006, as a sexually violent predator pursuant to the
19 provisions of section two-a, article twelve, chapter fifteen of
20 this code shall be subject, in addition to any other penalty or
21 condition imposed by the court, to supervised release for life:
22 *Provided further,* That pursuant to the provisions of subsection (g)
23 of this section, a court may modify, terminate or revoke any term
24 of supervised release imposed pursuant to subsection (a) of this

1 section.

2 (b) Any person required to be on supervised release for a
3 minimum term of ten years or for life pursuant to the provisos of
4 subsection (a) of this section also shall be further prohibited
5 from:

6 (1) Establishing a residence or accepting employment within
7 one thousand feet of a school or child care facility or within one
8 thousand feet of the residence of a victim or victims of any
9 sexually violent offenses for which the person was convicted;

10 (2) Establishing a residence or any other living accommodation
11 in a household in which a child under sixteen resides if the person
12 has been convicted of a sexually violent offense against a child,
13 unless the person is one of the following:

14 (i) The child's parent;

15 (ii) The child's grandparent; or

16 (iii) The child's stepparent and the person was the stepparent
17 of the child prior to being convicted of a sexually violent
18 offense, the person's parental rights to any children in the home
19 have not been terminated, the child is not a victim of a sexually
20 violent offense perpetrated by the person, and the court determines
21 that the person is not likely to cause harm to the child or
22 children with whom such person will reside: *Provided*, That nothing
23 in this subsection shall preclude a court from imposing residency
24 or employment restrictions as a condition of supervised release on

1 defendants other than those subject to the provision of this
2 subsection.

3 (c) The period of supervised release imposed by the provisions
4 of this section shall begin upon the expiration of any period of
5 probation, the expiration of any sentence of incarceration or the
6 expiration of any period of parole supervision imposed or required
7 of the person so convicted, whichever expires later.

8 (d) Any person sentenced to a period of supervised release
9 pursuant to the provisions of this section shall be supervised by
10 a multijudicial circuit probation officer, if available, until such
11 time as a multijudicial circuit probation officer is available, the
12 offender shall be supervised by the probation office of the
13 ~~sentencing court or by the community corrections program~~
14 ~~established in said circuit unless jurisdiction is transferred~~
15 ~~elsewhere by order of the sentencing court.~~

16 (e) A defendant sentenced to a period of supervised release
17 shall be subject to any or all of the conditions applicable to a
18 person placed upon probation pursuant to the provisions of section
19 nine of this article: *Provided*, That any defendant sentenced to a
20 period of supervised release pursuant to this section shall be
21 required to participate in appropriate offender treatment programs
22 or counseling during the period of supervised release unless the
23 court deems the offender treatment programs or counseling to no
24 longer be appropriate or necessary and makes express findings in

1 support thereof.

2 Within ninety days of the effective date of this section as
3 amended and reenacted during the first extraordinary session of the
4 Legislature, 2006, the Secretary of the Department of Health and
5 Human Resources shall propose rules and emergency rules for
6 legislative approval in accordance with the provisions of article
7 three, chapter twenty-nine-a of this code establishing
8 qualifications for sex offender treatment programs and counselors
9 based on accepted treatment protocols among licensed mental health
10 professionals.

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

15 (g) *Modification of conditions or revocation.* -- The court
16 may:

17 (1) Terminate a term of supervised release and discharge the
18 defendant released at any time after the expiration of two years of
19 supervised release, pursuant to the provisions of the West Virginia
20 Rules of Criminal Procedure relating to the modification of
21 probation, if it is satisfied that such action is warranted by the
22 conduct of the defendant released and the interests of justice;

23 (2) Extend a period of supervised release if less than the
24 maximum authorized period was previously imposed or modify, reduce

1 or enlarge the conditions of supervised release, at any time prior
2 to the expiration or termination of the term of supervised release,
3 consistent with the provisions of the West Virginia Rules of
4 Criminal Procedure relating to the modification of probation and
5 the provisions applicable to the initial setting of the terms and
6 conditions of post-release supervision;

7 (3) Revoke a term of supervised release and require the
8 defendant to serve in prison all or part of the term of supervised
9 release without credit for time previously served on supervised
10 release if the court, pursuant to the West Virginia Rules of
11 Criminal Procedure applicable to revocation of probation, finds by
12 clear and convincing evidence that the defendant violated a
13 condition of supervised release, except that a defendant whose term
14 is revoked under this subdivision may not be required to serve more
15 than the period of supervised release;

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

21 (h) *Written statement of conditions.* -- The court shall direct
22 that the probation officer provide the defendant with a written
23 statement at the defendant's sentencing hearing that sets forth all
24 the conditions to which the term of supervised release is subject

1 and that it is sufficiently clear and specific to serve as a guide
2 for the defendant's conduct and for such supervision as is
3 required.

4 (i) *Supervised release following revocation.* -- When a term of
5 supervised release is revoked and the defendant is required to
6 serve a term of imprisonment that is less than the maximum term of
7 supervised release authorized under subsection (a) of this section,
8 the court may include a requirement that the defendant be placed on
9 a term of supervised release after imprisonment. The length of
10 such term of supervised release shall not exceed the term of
11 supervised release authorized by this section less any term of
12 imprisonment that was imposed upon revocation of supervised
13 release.

14 (j) *Delayed revocation.* -- The power of the court to revoke a
15 term of supervised release for violation of a condition of
16 supervised release and to order the defendant to serve a term of
17 imprisonment and, subject to the limitations in subsection (i) of
18 this section, a further term of supervised release extends beyond
19 the expiration of the term of supervised release for any period
20 necessary for the adjudication of matters arising before its
21 expiration if, before its expiration, a warrant or summons has been
22 issued on the basis of an allegation of such a violation.

NOTE: The purpose of this bill is to clarify that probation officers are authorized to supervise sex offenders until a multijudicial officer is available in the probation officer's area.

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