

H. B. 3260

(By Delegate C. Miller)
[Introduced February 21, 2011; referred to the
Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §62-12-29, relating
to probation and parole; and adding certain sanctions for
violations of probation and parole.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §62-12-29, to read as
follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-29. Swift and certain sanctions.

(a) Definitions.-- In this section, unless the context clearly
requires a different meaning:

(1) "Agency" means:

(A) The state agency responsible for supervising individuals
placed on probation by the courts or serving a period of parole or
post-release supervision from prison or jail; and

(B) Any regional, local or county governmental agencies

1 responsible for supervising individuals placed on probation by a
2 court or serving a period of parole or post-release supervision
3 from prison or jail, provided such agencies receive state funding.

4 (2) "Chief supervision officer" means the highest ranking
5 field probation or parole administrator in each judicial circuit.

6 (3) "Court" means a court of record having original criminal
7 jurisdiction.

8 (4) "Community supervision" means:

9 (A) The placement of a defendant under a continuum of programs
10 and sanctions, with conditions imposed by a court for a specified
11 period during which:

12 (i) Criminal proceedings are deferred without an adjudication
13 of guilt;

14 (ii) A sentence of imprisonment or confinement, imprisonment
15 and fine, or confinement and fine, is probated and the imposition
16 of sentence is suspended in whole or in part; or

17 (B) The placement of an individual under a continuum of
18 programs and sanctions after release from prison or jail, with
19 conditions imposed by the releasing authority for a specified
20 period.

21 (5) "Supervision officer" means a person appointed or employed
22 by the agency to supervise individuals placed on community
23 supervision.

24 (6) "Supervised individual" means an individual placed on
25 probation by a court or serving a period of parole or post-release
26 supervision from prison or jail.

1 (7) "Graduated sanction" means any of a wide range of
2 nonprison offender accountability measures and programs, including,
3 but not limited to, electronic supervision tools; drug and alcohol
4 testing or monitoring; day or evening reporting centers;
5 restitution centers; forfeiture of earned compliance credits;
6 rehabilitative interventions such as substance abuse or mental
7 health treatment; reporting requirements to supervision officers;
8 community service or work crews; secure or unsecure residential
9 treatment facilities or halfway houses; and short-term or
10 intermittent incarceration.

11 (8) "Positive reinforcement" means any of a wide range of
12 rewards and incentives, including, but not limited to, awarding
13 certificates of achievement, reducing reporting requirements,
14 deferring a monthly supervision fee payment, awarding earned
15 compliance credits, removing supervision conditions such as home
16 detention or curfew, or asking the offender to be a mentor to
17 others.

18 (b) Policy on Community Supervision.-- It is the policy of
19 this state that supervised individuals shall be subject to:

20 (1) Violation revocation proceedings and possible
21 incarceration for failure to comply with the conditions of
22 supervision when such failure constitutes a significant risk to
23 prior victims of the supervised individual or the community at
24 large, and cannot be appropriately managed in the community; or

25 (2) Sanctions other than revocation and incarceration as
26 appropriate to the severity of the violation behavior, the risk of

1 future criminal behavior by the offender, and the need for, and
2 availability of, interventions which may assist the offender to
3 remain compliant and crime-free in the community.

4 (c) System of Graduated Sanctions.--

5 (1) The agency shall, by January 1, 2012, adopt a single
6 system of graduated sanctions for violations of conditions of
7 community supervision. The system shall set forth a menu of
8 presumptive sanctions for the most common types of supervision
9 violations, including, but not limited to: Failure to report;
10 failure to pay fines, fees, and victim restitution; failure to
11 participate in a required program or service; failure to complete
12 community service; violation of a protective or no contact order;
13 and failure to refrain from the use of alcohol or controlled
14 substances. The system of sanctions shall take into account
15 factors such as the severity of the current violation, the
16 supervised individual's previous criminal record, the number and
17 severity of any previous supervision violations, the supervised
18 individual's assessed risk level, and the extent to which graduated
19 sanctions were imposed for previous violations. The system also
20 shall define positive reinforcements that supervised individuals
21 will receive for compliance with conditions of supervision.

22 (2) The agency shall establish by rules an administrative
23 process to review and approve or reject, prior to imposition,
24 graduated sanctions that deviate from those prescribed.

25 (3) The agency shall establish by rules an administrative
26 process to review graduated sanctions contested by supervised

1 individuals under subsection (e) of this section. The review shall
2 be conducted by an impartial agency employee or representative who
3 has been selected, appointed and trained to hear cases regarding
4 graduated sanctions for violations of supervision conditions.

5 (d) Conditions of Community Supervision.-- For individuals
6 placed on probation, the judge of the court having jurisdiction of
7 the case shall determine the conditions of community supervision
8 and may impose as a condition of community supervision that the
9 agency supervising the individual may, in accordance with
10 subsection (e) of this section, impose graduated sanctions adopted
11 by the agency for violations of the conditions of community
12 supervision.

13 (e) Authority to Impose Graduated Sanctions.--

14 (1) Notwithstanding any rule or law to the contrary, the
15 agency may:

16 (A) Modify the conditions of community supervision for the
17 limited purpose of imposing graduated sanctions; and

18 (B) Place a supervised individual who violates the conditions
19 of community supervision in a state or local correctional or
20 detention facility or residential center for a period of not more
21 than five days consecutively, and not more than thirty days in any
22 one calendar year.

23 (2) A supervision officer intending to modify the conditions
24 of community supervision by imposing a graduated sanction shall
25 issue to the supervised individual a notice of the intended
26 sanction. The notice shall inform the supervised individual of the

1 technical violation or violations alleged, the date or dates of the
2 violation or violations, and the graduated sanction to be imposed.

3 (3) The imposition of a graduated sanction or sanctions by a
4 community supervision officer must comport with the system of
5 graduated sanctions adopted by the agency under subsection (d) of
6 this section. Upon receipt of the notice, the supervised individual
7 shall immediately accept or object to the sanction or sanctions
8 proposed by the officer. The failure of the supervised individual
9 to comply with a sanction shall constitute a violation of
10 probation, parole or post-release supervision. If the supervised
11 individual objects to the imposition of the sanction or sanctions,
12 the individual is entitled to an administrative review to be
13 conducted by the agency within five days of the issuance of the
14 notice. If the agency affirms the recommendation contained in the
15 notice, then the sanction or sanctions shall become effective
16 immediately.

17 (4) If the graduated sanction involves confinement in a
18 correctional or detention facility, confinement must be approved by
19 the chief supervision officer, but the supervised individual may be
20 taken into custody for up to four hours while such approval is
21 obtained. If the supervised individual is employed, the supervision
22 officer shall, to the extent feasible, impose this sanction on
23 weekend days or other days and times when the supervised individual
24 is not working.

25 (5) A sanction that confines a supervised individual in a
26 correctional or detention facility for a period of more than five

1 consecutive days, or extends the term of community supervision, may
2 not be imposed as a graduated sanction, except pursuant to an order
3 of the court or the releasing authority.

4 (6) A notice of a graduated sanction may not be issued for any
5 violation of probation, parole or post-release supervision which
6 could warrant an additional, separate felony charge.
7 Notwithstanding this, a notice of a graduated sanction may be
8 issued for a positive drug test.

9 (7) Upon successful completion of a graduated sanction or
10 sanctions, a court may not revoke the term of community supervision
11 or impose additional sanctions for the same violation.

12 (8) If a supervision officer modifies the conditions of
13 community supervision by imposing a graduated sanction, the officer
14 shall:

15 (A) Deliver a copy of the modified conditions to the
16 supervised individual;

17 (B) File a copy of the modified conditions with the sentencing
18 court or releasing authority; and

19 (C) Note the date of delivery of the copy in the supervised
20 individual's file.

21 (f) *Monitoring Graduated Sanctions.*-- The chief supervision
22 officer shall review confinement sanctions recommended by
23 supervision officers on a quarterly basis to assess any disparities
24 that may exist among officers, evaluate the effectiveness of the
25 sanction as measured by the supervised individuals' subsequent
26 conduct, and monitor the impact on the agency's number and type of

1 revocations for violations of the conditions of supervision.

NOTE: The purpose of this bill is to add certain sanctions for violations of probation and parole.

§62-12-29 is new; therefore, it has been completely underscored.