

Senate Bill No. 265

(By Senators Palumbo, Barnes, Laird and Plymale)

[Introduced January 25, 2011; referred to the Committee on the
Judiciary.]

A BILL to amend and reenact §62-12-17 of the Code of West Virginia, 1931, as amended, relating to terms and conditions of release upon parole.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-17. Conditions of release on parole.

(a) Release and supervision on parole of any person, including the supervision by the Division of Corrections of any person paroled by any other state or by the federal government, shall be upon the following conditions:

(1) That the parolee may not, during the period of his or her parole, violate any criminal law of this or any other state or of the United States;

1 (2) That he or she may not, during the period of his or her
2 parole, leave the state without the consent of the division;

3 (3) That he or she shall comply with the rules prescribed by
4 the division for his or her supervision by the parole officer;

5 (4) That in every case in which the parolee for a conviction
6 is seeking parole from an offense against a child, defined in
7 section twelve, article eight, chapter sixty-one of this code; or
8 article eight-b or eight-d of said chapter, or similar convictions
9 from other jurisdictions where the parolee is returning or
10 attempting to return to this state pursuant to the provisions of
11 article six, chapter twenty-eight of this code, the parolee may not
12 live in the same residence as any minor child nor exercise
13 visitation with any minor child nor may he or she have any contact
14 with the victim of the offense: Provided, That the parolee may
15 petition the court of the circuit wherein he or she was convicted
16 for a modification of this term and condition of his or her parole
17 and the burden rests upon the parolee to demonstrate that a
18 modification is in the best interest of the child; and

19 (5) That the parolee, and all federal or foreign state
20 probationers and parolees whose supervision may have been
21 undertaken by this state, is required to pay a fee, based on his or
22 her ability to pay, not to exceed \$40 per month to defray costs of
23 supervision.

24 (b) The commissioner shall keep a record of all actions taken

1 and account for moneys received. No provision of this section
2 prohibits the division from collecting the fees and conducting the
3 checks upon the effective date of this section. All moneys shall
4 be deposited in a special account in the State Treasury to be known
5 as the "Parolee's Supervision Fee Fund". Expenditures from the
6 fund shall be for the purposes of providing parole supervision
7 required by the provisions of this code and are not authorized from
8 collections but are to be made only in accordance with
9 appropriation by the Legislature and in accordance with the
10 provisions of article three, chapter twelve of this code and upon
11 the fulfillment of the provisions set forth in article two, chapter
12 five-a of this code. Amounts collected which are found, from time
13 to time, to exceed the funds needed for purposes set forth in this
14 article may be transferred to other accounts or funds and
15 redesignated for other purposes by appropriation of the
16 Legislature.

17 (c) The division shall consider the following factors in
18 determining whether a parolee or probationer is financially able to
19 pay the fee:

20 (1) Current income prospects for the parolee or probationer,
21 taking into account seasonal variations in income;

22 (2) Liquid assets of the parolee or probationer, assets of the
23 parolee or probationer that may provide collateral to obtain funds
24 and assets of the parolee or probationer that may be liquidated to

1 provide funds to pay the fee;

2 (3) Fixed debts and obligations of the parolee or probationer,
3 including federal, state and local taxes and medical expenses;

4 (4) Child care, transportation and other reasonably necessary
5 expenses of the parolee or probationer related to employment; and

6 (5) The reasonably foreseeable consequences for the parolee or
7 probationer if a waiver of, or reduction in, the fee is denied.

8 (d) In addition, the division may impose, subject to
9 modification at any time, any other conditions which the division
10 considers advisable.

NOTE: The purpose of this bill is to provide the same option that is available to probationers under section nine of this article to allow for a petition to the circuit court to permit certain offenders to have contact with children but only when the court finds it in the best interest of the child.

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