

Senate Bill No. 325

(By Senators Palumbo, Laird and Klempa)

[Introduced January 27, 2011; referred to the Committee on the
Judiciary.]

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10 A BILL to amend and reenact §62-12-17 of the Code of West Virginia,
11 1931, as amended, relating to permitting a parolee who was
12 convicted of a crime against a child to petition a court for
13 a modification to the condition that he or she not live with
14 or have visitation rights with that child; and that before the
15 modification can be approved the parolee must demonstrate the
16 modification is in the best interests of the child.

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

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

20 **ARTICLE 12. PROBATION AND PAROLE.**

21 **§62-12-17. Conditions of release on parole.**

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

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

1 the United States;

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

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

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

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

25 (b) The commissioner shall keep a record of all actions taken
26 and account for moneys received. No provision of this section
27 prohibits the division from collecting the fees and conducting the

1 checks upon the effective date of this section. All moneys shall
2 be deposited in a special account in the State Treasury to be known
3 as the "Parolee's Supervision Fee Fund". Expenditures from the
4 fund shall be for the purposes of providing parole supervision
5 required by the provisions of this code and are not authorized from
6 collections but are to be made only in accordance with
7 appropriation by the Legislature and in accordance with the
8 provisions of article three, chapter twelve of this code and upon
9 the fulfillment of the provisions set forth in article two, chapter
10 five-a of this code. Amounts collected which are found, from time
11 to time, to exceed the funds needed for purposes set forth in this
12 article may be transferred to other accounts or funds and
13 redesignated for other purposes by appropriation of the
14 Legislature.

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

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

20 (2) Liquid assets of the parolee or probationer, assets of the
21 parolee or probationer that may provide collateral to obtain funds
22 and assets of the parolee or probationer that may be liquidated to
23 provide funds to pay the fee;

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

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

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

3 (d) In addition, the division may impose, subject to
4 modification at any time, any other conditions which the division
5 considers advisable.

NOTE: The purpose of this bill is to permit a parolee who was convicted of a crime against a child to petition a court for a modification to the condition that he or she not live with or have visitation rights with that child. Before the modification may be approved the parolee must demonstrate the modification is in the best interests of the child.

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