

Senate Bill No. 60

(By Senator Foster)

[Introduced January 12, 2011; referred to the Committee on the
Judiciary.]

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
25 assistants shall be in writing and entered on the order book of the
26 court by the judge making such appointment and a copy of said order

1 of appointment shall be delivered to the Administrative Director of
2 the Supreme Court of Appeals. The order of appointment shall state
3 the monthly salary, fixed by the judge and approved by the Supreme
4 Court of Appeals, to be paid to the probation officer or clerical
5 assistants so appointed.

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

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

21 (e) Subject to the approval of the Supreme Court of Appeals
22 and in accordance with its rules, a judge of a circuit court whose
23 circuit comprises more than one county may appoint a probation
24 officer and a clerical assistant in each county of the circuit or
25 may appoint the same persons to serve in these respective positions
26 in two or more counties in the circuit.

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

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

18 **§62-12-26. Extended supervision for certain sex offenders;**
19 **sentencing; conditions; supervision provisions;**
20 **supervision fee.**

21 (a) Notwithstanding any other provision of this code to the
22 contrary, any defendant convicted after the effective date of this
23 section of a violation of section twelve, article eight, chapter
24 sixty-one of this code or a felony violation of the provisions of
25 article eight-b, eight-c or eight-d of said chapter shall, as part
26 of the sentence imposed at final disposition, be required to serve,

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

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

24 (1) Establishing a residence or accepting employment within
25 one thousand feet of a school or child care facility or within one
26 thousand feet of the residence of a victim or victims of any

1 sexually violent offenses for which the person was convicted;

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

6 (I) The child's parent;

7 (ii) The child's grandparent; or

8 (iii) The child's stepparent and the person was the stepparent
9 of the child prior to being convicted of a sexually violent
10 offense, the person's parental rights to any children in the home
11 have not been terminated, the child is not a victim of a sexually
12 violent offense perpetrated by the person, and the court determines
13 that the person is not likely to cause harm to the child or
14 children with whom such person will reside: *Provided*, That nothing
15 in this subsection shall preclude a court from imposing residency
16 or employment restrictions as a condition of supervised release on
17 defendants other than those subject to the provision of this
18 subsection.

19 (c) The period of supervised release imposed by the provisions
20 of this section shall begin upon the expiration of any period of
21 probation, the expiration of any sentence of incarceration or the
22 expiration of any period of parole supervision imposed or required
23 of the person so convicted, whichever expires later.

24 (d) Any person sentenced to a period of supervised release
25 pursuant to the provisions of this section shall be supervised by
26 a multijudicial circuit probation officer, if available, until such

1 time as a multijudicial circuit probation officer is available, the
2 offender shall be supervised by the probation office of the
3 ~~sentencing court or by the community corrections program~~
4 ~~established in said circuit unless jurisdiction is transferred~~
5 ~~elsewhere by order of the sentencing court.~~

6 (e) A defendant sentenced to a period of supervised release
7 shall be subject to any or all of the conditions applicable to a
8 person placed upon probation pursuant to the provisions of section
9 nine of this article: *Provided*, That any defendant sentenced to a
10 period of supervised release pursuant to this section shall be
11 required to participate in appropriate offender treatment programs
12 or counseling during the period of supervised release unless the
13 court deems the offender treatment programs or counseling to no
14 longer be appropriate or necessary and makes express findings in
15 support thereof.

16 Within ninety days of the effective date of this section as
17 amended and reenacted during the first extraordinary session of the
18 Legislature, 2006, the Secretary of the Department of Health and
19 Human Resources shall propose rules and emergency rules for
20 legislative approval in accordance with the provisions of article
21 three, chapter twenty-nine-a of this code establishing
22 qualifications for sex offender treatment programs and counselors
23 based on accepted treatment protocols among licensed mental health
24 professionals.

25 (f) The sentencing court may, based upon defendant's ability
26 to pay, impose a supervision fee to offset the cost of supervision.

1 Said fee shall not exceed \$50 per month. Said fee may be modified
2 periodically based upon the defendant's ability to pay.

3 (g) *Modification of conditions or revocation.* -- The court
4 may:

5 (1) Terminate a term of supervised release and discharge the
6 defendant released at any time after the expiration of two years of
7 supervised release, pursuant to the provisions of the West Virginia
8 Rules of Criminal Procedure relating to the modification of
9 probation, if it is satisfied that such action is warranted by the
10 conduct of the defendant released and the interests of justice;

11 (2) Extend a period of supervised release if less than the
12 maximum authorized period was previously imposed or modify, reduce
13 or enlarge the conditions of supervised release, at any time prior
14 to the expiration or termination of the term of supervised release,
15 consistent with the provisions of the West Virginia Rules of
16 Criminal Procedure relating to the modification of probation and
17 the provisions applicable to the initial setting of the terms and
18 conditions of post-release supervision;

19 (3) Revoke a term of supervised release and require the
20 defendant to serve in prison all or part of the term of supervised
21 release without credit for time previously served on supervised
22 release if the court, pursuant to the West Virginia Rules of
23 Criminal Procedure applicable to revocation of probation, finds by
24 clear and convincing evidence that the defendant violated a
25 condition of supervised release, except that a defendant whose term
26 is revoked under this subdivision may not be required to serve more

1 than the period of supervised release;

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

7 (h) *Written statement of conditions.* -- The court shall direct
8 that the probation officer provide the defendant with a written
9 statement at the defendant's sentencing hearing that sets forth all
10 the conditions to which the term of supervised release is subject
11 and that it is sufficiently clear and specific to serve as a guide
12 for the defendant's conduct and for such supervision as is
13 required.

14 (i) *Supervised release following revocation.* -- When a term of
15 supervised release is revoked and the defendant is required to
16 serve a term of imprisonment that is less than the maximum term of
17 supervised release authorized under subsection (a) of this section,
18 the court may include a requirement that the defendant be placed on
19 a term of supervised release after imprisonment. The length of
20 such term of supervised release shall not exceed the term of
21 supervised release authorized by this section less any term of
22 imprisonment that was imposed upon revocation of supervised
23 release.

24 (j) *Delayed revocation.* -- The power of the court to revoke a
25 term of supervised release for violation of a condition of
26 supervised release and to order the defendant to serve a term of

1 imprisonment and, subject to the limitations in subsection (i) of
2 this section, a further term of supervised release extends beyond
3 the expiration of the term of supervised release for any period
4 necessary for the adjudication of matters arising before its
5 expiration if, before its expiration, a warrant or summons has been
6 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.