

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 60

(SENATOR FOSTER, *original sponsor*)

[Passed March 4, 2011; in effect from passage.]

AN ACT to amend and reenact §62-12-5 and §62-12-26 of the Code of West Virginia, 1931, as amended, all relating to probation and parole; probation officers and assistants; providing that multijudicial circuit probation officers may supervise sex offenders who are on probation with authorization of the Administrative Director of the Supreme Court of Appeals or his or her designee; and clarifying that circuit court probation officers continue to supervise extended release supervisees until a multijudicial circuit probation officer is in place.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

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

- 1 (a) Each circuit court, subject to the approval of the
- 2 Supreme Court of Appeals and in accordance with its rules,

3 is authorized to appoint one or more probation officers and
4 clerical assistants.

5 (b) The appointment of probation officers and clerical
6 assistants shall be in writing and entered on the order book
7 of the court by the judge making such appointment and a
8 copy of said order of appointment shall be delivered to the
9 Administrative Director of the Supreme Court of Appeals.
10 The order of appointment shall state the monthly salary,
11 fixed by the judge and approved by the Supreme Court of
12 Appeals, to be paid to the probation officer or clerical
13 assistants so appointed.

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

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

29 (e) Subject to the approval of the Supreme Court of
30 Appeals and in accordance with its rules, a judge of a circuit
31 court whose circuit comprises more than one county may
32 appoint a probation officer and a clerical assistant in each
33 county of the circuit or may appoint the same persons to
34 serve in these respective positions in two or more counties in
35 the circuit.

36 (f) Nothing contained in this section alters, modifies,
37 affects or supersedes the appointment or tenure of any
38 probation officer, medical assistant or psychiatric assistant

39 appointed by any court under any special act of the Legisla-
40 ture heretofore enacted, and the salary or compensation of
41 those persons shall remain as specified in the most recent
42 amendment of any special act until changed by the court,
43 with approval of the Supreme Court of Appeals, by order
44 entered of record, and any such salary or compensation shall
45 be paid out of the State Treasury.

46 (g) In order to carry out the supervision responsibilities set
47 forth in section twenty-six, article twelve, chapter sixty-two
48 of this code, the Administrative Director of the Supreme
49 Court of Appeals, or his or her designee, in accordance with
50 the court's procedures, is authorized to hire multijudicial-
51 circuit probation officers, to be employed through the court's
52 Division of Probation Services. Such officers may also
53 supervise probationers who are on probation for sexual
54 offences with the approval of the administrative director of
55 the Supreme Court of Appeals or his or her designee.

**§62-12-26. Extended supervision for certain sex offenders; sen-
tencing; conditions; supervision provisions; super-
vision fee.**

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

19 during the first extraordinary session of the Legislature,
20 2006, as a sexually violent predator pursuant to the provi-
21 sions of section two-a, article twelve, chapter fifteen of this
22 code shall be subject, in addition to any other penalty or
23 condition imposed by the court, to supervised release for life:
24 *Provided further*, That pursuant to the provisions of subsec-
25 tion (g) of this section, a court may modify, terminate or
26 revoke any term of supervised release imposed pursuant to
27 subsection (a) of this section.

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

32 (1) Establishing a residence or accepting employment
33 within one thousand feet of a school or child care facility or
34 within one thousand feet of the residence of a victim or
35 victims of any sexually violent offenses for which the person
36 was convicted;

37 (2) Establishing a residence or any other living accommo-
38 dation in a household in which a child under sixteen resides
39 if the person has been convicted of a sexually violent offense
40 against a child, unless the person is one of the following:

41 (i) The child's parent;

42 (ii) The child's grandparent; or

43 (iii) The child's stepparent and the person was the steppar-
44 ent of the child prior to being convicted of a sexually violent
45 offense, the person's parental rights to any children in the
46 home have not been terminated, the child is not a victim of
47 a sexually violent offense perpetrated by the person, and the
48 court determines that the person is not likely to cause harm
49 to the child or children with whom such person will reside:
50 *Provided*, That nothing in this subsection shall preclude a
51 court from imposing residency or employment restrictions as
52 a condition of supervised release on defendants other than
53 those subject to the provision of this subsection.

54 (c) The period of supervised release imposed by the
55 provisions of this section shall begin upon the expiration of
56 any period of probation, the expiration of any sentence of
57 incarceration or the expiration of any period of parole
58 supervision imposed or required of the person so convicted,
59 whichever expires later.

60 (d) Any person sentenced to a period of supervised release
61 pursuant to the provisions of this section shall be supervised
62 by a multijudicial circuit probation officer, if available. Until
63 such time as a multijudicial circuit probation officer is
64 available, the offender shall be supervised by the probation
65 office of the sentencing court or of the circuit in which he or
66 she resides.

67 (e) A defendant sentenced to a period of supervised release
68 shall be subject to any or all of the conditions applicable to
69 a person placed upon probation pursuant to the provisions of
70 section nine of this article: *Provided*, That any defendant
71 sentenced to a period of supervised release pursuant to this
72 section shall be required to participate in appropriate
73 offender treatment programs or counseling during the period
74 of supervised release unless the court deems the offender
75 treatment programs or counseling to no longer be appropri-
76 ate or necessary and makes express findings in support
77 thereof.

78 Within ninety days of the effective date of this section as
79 amended and reenacted during the first extraordinary
80 session of the Legislature, 2006, the Secretary of the Depart-
81 ment of Health and Human Resources shall propose rules
82 and emergency rules for legislative approval in accordance
83 with the provisions of article three, chapter twenty-nine-a of
84 this code establishing qualifications for sex offender treat-
85 ment programs and counselors based on accepted treatment
86 protocols among licensed mental health professionals.

87 (f) The sentencing court may, based upon defendant's
88 ability to pay, impose a supervision fee to offset the cost of
89 supervision. Said fee shall not exceed \$50 per month. Said

90 fee may be modified periodically based upon the defendant's
91 ability to pay.

92 (g) *Modification of conditions or revocation.* — The court
93 may:

94 (1) Terminate a term of supervised release and discharge
95 the defendant released at any time after the expiration of
96 two years of supervised release, pursuant to the provisions of
97 the West Virginia Rules of Criminal Procedure relating to the
98 modification of probation, if it is satisfied that such action is
99 warranted by the conduct of the defendant released and the
100 interests of justice;

101 (2) Extend a period of supervised release if less than the
102 maximum authorized period was previously imposed or
103 modify, reduce or enlarge the conditions of supervised
104 release, at any time prior to the expiration or termination of
105 the term of supervised release, consistent with the provisions
106 of the West Virginia Rules of Criminal Procedure relating to
107 the modification of probation and the provisions applicable
108 to the initial setting of the terms and conditions of post-
109 release supervision;

110 (3) Revoke a term of supervised release and require the
111 defendant to serve in prison all or part of the term of super-
112 vised release without credit for time previously served on
113 supervised release if the court, pursuant to the West Virginia
114 Rules of Criminal Procedure applicable to revocation of
115 probation, finds by clear and convincing evidence that the
116 defendant violated a condition of supervised release, except
117 that a defendant whose term is revoked under this subdivi-
118 sion may not be required to serve more than the period of
119 supervised release;

120 (4) Order the defendant to remain at his or her place of
121 residence during nonworking hours and, if the court so
122 directs, to have compliance monitored by telephone or
123 electronic signaling devices, except that an order under this
124 paragraph may be imposed only as an alternative to incar-
125 ceration.

126 (h) *Written statement of conditions.* — The court shall
127 direct that the probation officer provide the defendant with
128 a written statement at the defendant's sentencing hearing
129 that sets forth all the conditions to which the term of
130 supervised release is subject and that it is sufficiently clear
131 and specific to serve as a guide for the defendant's conduct
132 and for such supervision as is required.

133 (i) *Supervised release following revocation.* — When a term
134 of supervised release is revoked and the defendant is re-
135 quired to serve a term of imprisonment that is less than the
136 maximum term of supervised release authorized under
137 subsection (a) of this section, the court may include a
138 requirement that the defendant be placed on a term of
139 supervised release after imprisonment. The length of such
140 term of supervised release shall not exceed the term of
141 supervised release authorized by this section less any term of
142 imprisonment that was imposed upon revocation of super-
143 vised release.

144 (j) *Delayed revocation.* — The power of the court to revoke
145 a term of supervised release for violation of a condition of
146 supervised release and to order the defendant to serve a term
147 of imprisonment and, subject to the limitations in subsection
148 (i) of this section, a further term of supervised release
149 extends beyond the expiration of the term of supervised
150 release for any period necessary for the adjudication of
151 matters arising before its expiration if, before its expiration,
152 a warrant or summons has been issued on the basis of an
153 allegation of such a violation.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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Acting President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2011.

.....
Governor

