

1 **H. B. 2810**

2
3 (By Delegates P. Smith, Longstreth, Phillips, L,
4 Marcum, Hunt, Barill, Walker, Lawrence, Stowers,
5 Eldridge and Skaff)
6

7 [Introduced March 4, 2013; referred to the
8 Committee on the Judiciary.]
9

10 A BILL to amend and reenact §62-12-26 of the Code of West Virginia,
11 1931, as amended, relating to limitations and restrictions
12 placed on sex offenders who have been adjudicated as violent
13 sexual predators or who are under active supervision as a
14 condition of release on parole or probation; clarifying the
15 statutory restrictions against those persons living or working
16 within one thousand feet of a school, child care facility or
17 residence of a former victim; and defining terms.

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

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

21 **ARTICLE 12. PROBATION AND PAROLE.**

22 **§62-12-26. Extended supervision for certain sex offenders;**
23 **sentencing; conditions; supervision provisions;**
24 **supervision fee.**

25 (a) Notwithstanding any other provision of this code to the

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

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

5 (1) Establishing a residence or accepting employment within
6 one thousand feet from the outer perimeter of a school or child
7 care facility or within one thousand feet from the outer perimeter
8 of the residence of a victim or victims of any sexually violent
9 offenses for which the person was convicted. For the purposes of
10 this subdivision: "Residence" includes the yard, grounds,
11 outbuildings and common or public areas in or surrounding the
12 residence; "child care facility" includes the classrooms,
13 buildings, playground areas, parking lots and common areas utilized
14 by children while attending the child care facility; "school" means
15 an educational facility comprised of one or more buildings
16 including school grounds, used by students during regular school
17 hours or during any school-sponsored function or extracurricular
18 activities; "school grounds" includes the land on which a school is
19 built together with such other land used by students for play,
20 recreation or athletic events while attending school; and
21 "extracurricular activities" means voluntary activities sponsored
22 by a school, a county board or an organization sanctioned by a
23 county board or the State Board of Education, and include, but are
24 not limited to, preparation for and involvement in public

1 performances, contests, athletic competitions, demonstrations,
2 displays, organizations and clubs.

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

7 ~~(i)~~ (A) The child's parent;

8 ~~(ii)~~ (B) The child's grandparent; or

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

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

1 (d) Any person sentenced to a period of supervised release
2 pursuant to ~~the provisions of~~ this section shall be supervised by
3 a multijudicial circuit probation officer, if available. Until
4 such time as a multijudicial circuit probation officer is
5 available, the offender shall be supervised by the probation office
6 of the sentencing court or of the circuit in which he or she
7 resides.

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

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

1 based on accepted treatment protocols among licensed mental health
2 professionals.

3 (f) The sentencing court may, based upon defendant's ability
4 to pay, impose a supervision fee to offset the cost of supervision.
5 Said fee shall not exceed \$50 per month. Said fee may be modified
6 periodically based upon the defendant's ability to pay.

7 (g) *Modification of conditions or revocation.* -- The court
8 may:

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

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

23 (3) Revoke a term of supervised release and require the
24 defendant to serve in prison all or part of the term of supervised

1 release without credit for time previously served on supervised
2 release if the court, pursuant to the West Virginia Rules of
3 Criminal Procedure applicable to revocation of probation, finds by
4 clear and convincing evidence that the defendant violated a
5 condition of supervised release, except that a defendant whose term
6 is revoked under this subdivision may not be required to serve more
7 than the period of supervised release;

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

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

20 (i) *Supervised release following revocation.* -- When a term
21 of supervised release is revoked and the defendant is required to
22 serve a term of imprisonment that is less than the maximum term of
23 supervised release authorized under subsection (a) of this section,
24 the court may include a requirement that the defendant be placed on

1 a term of supervised release after imprisonment. The length of
2 such term of supervised release shall not exceed the term of
3 supervised release authorized by this section less any term of
4 imprisonment that was imposed upon revocation of supervised
5 release.

6 (j) *Delayed revocation.* -- The power of the court to revoke
7 a term of supervised release for violation of a condition of
8 supervised release and to order the defendant to serve a term of
9 imprisonment and, subject to the limitations in subsection (i) of
10 this section, a further term of supervised release extends beyond
11 the expiration of the term of supervised release for any period
12 necessary for the adjudication of matters arising before its
13 expiration if, before its expiration, a warrant or summons has been
14 issued on the basis of an allegation of such a violation.

NOTE: The purpose of this bill is to clarify the statutory restrictions placed on sex offenders who have been adjudicated as violent sexual predators or who are under active supervision as a condition of release on parole or probation living or working within one thousand feet of a school, child care facility or residence of a former victim. The bill further clarifies those restrictions by defining certain terms.

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