



1 barred from being in a public school or public school grounds  
2 unless he or she has written permission of a judge or the person's  
3 parole officer stating with specificity the purpose, time period  
4 and location of the person's visit.

5 (b) For the purposes of subsection (a) of this section:  
6 "public school" means an educational facility comprised of one or  
7 more buildings including school grounds, used by students during  
8 regular school hours or during any school-sponsored function or  
9 extracurricular activities; "public school grounds" includes the  
10 land on which a school is built together with such other land used  
11 by students for play, recreation or athletic events while attending  
12 school; and "extracurricular activities" means voluntary activities  
13 sponsored by a school, a county board or an organization sanctioned  
14 by a county board or the State Board of Education, and include, but  
15 are not limited to, preparation for and involvement in public  
16 performances, contests, athletic competitions, demonstrations,  
17 displays, organizations and clubs.

18 (c) A person who violates subsection (a) of this section is  
19 guilty of a misdemeanor and, upon conviction, shall be confined in  
20 jail not more than six months or fined not more than \$5,000, or  
21 both fined and confined.

22 **CHAPTER 62. CRIMINAL PROCEDURE.**

23 **ARTICLE 12. PROBATION AND PAROLE.**

24 **§62-12-26. Extended supervision for certain sex offenders;**

1                   **sentencing; conditions; supervision provisions;**  
2                   **supervision fee.**

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

1 supervised release for life: *Provided further,* That pursuant to  
2 ~~the provisions of~~ subsection (g) of this section, a court may  
3 modify, terminate or revoke any term of supervised release imposed  
4 pursuant to subsection (a) of this section.

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

9 (1) Establishing a residence or accepting employment within  
10 one thousand feet of a school or child care facility or within one  
11 thousand feet of the residence of a victim or victims of any  
12 sexually violent offenses for which the person was convicted;

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

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

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

19 ~~(iii)~~ (C) The child's stepparent and the person was the  
20 stepparent of the child prior to being convicted of a sexually  
21 violent offense, the person's parental rights to any children in  
22 the home have not been terminated, the child is not a victim of a  
23 sexually violent offense perpetrated by the person, and the court  
24 determines that the person is not likely to cause harm to the child

1 or children with whom such person will reside: *Provided*, That  
2 nothing in this subsection shall preclude a court from imposing  
3 residency or employment restrictions as a condition of supervised  
4 release on defendants other than those subject to ~~the provision of~~  
5 this subsection; or

6 (3) Being in a public school or on public school grounds  
7 unless he or she has written permission of a judge or the person's  
8 parole officer stating with specificity the purpose, time period  
9 and location of the person's visit. For the purposes of this  
10 subdivision: "public school" means an educational facility  
11 comprised of one or more buildings including school grounds, used  
12 by students during regular school hours or during any  
13 school-sponsored function or extracurricular activities; "public  
14 school grounds" includes the land on which a school is built  
15 together with such other land used by students for play, recreation  
16 or athletic events while attending school; and "extracurricular  
17 activities" means voluntary activities sponsored by a school, a  
18 county board or an organization sanctioned by a county board or the  
19 State Board of Education, and include, but are not limited to,  
20 preparation for and involvement in public performances, contests,  
21 athletic competitions, demonstrations, displays, organizations and  
22 clubs.

23 (c) The period of supervised release imposed by ~~the provisions~~  
24 ~~of~~ this section shall begin upon the expiration of any period of

1 probation, the expiration of any sentence of incarceration or the  
2 expiration of any period of parole supervision imposed or required  
3 of the person so convicted, whichever expires later.

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

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

21 Within ninety days of the effective date of this section as  
22 amended and reenacted during the first extraordinary session of the  
23 Legislature, 2006, the Secretary of the Department of Health and  
24 Human Resources shall propose rules and emergency rules for

1 legislative approval in accordance with ~~the provisions of~~ article  
2 three, chapter twenty-nine-a of this code establishing  
3 qualifications for sex offender treatment programs and counselors  
4 based on accepted treatment protocols among licensed mental health  
5 professionals.

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

10 (g) *Modification of conditions or revocation.* -- The court  
11 may:

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

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

1 conditions of post-release supervision;

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

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

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

23       (I) *Supervised release following revocation.* -- When a term  
24 of supervised release is revoked and the defendant is required to

1 serve a term of imprisonment that is less than the maximum term of  
2 supervised release authorized under subsection (a) of this section,  
3 the court may include a requirement that the defendant be placed on  
4 a term of supervised release after imprisonment. The length of  
5 such term of supervised release shall not exceed the term of  
6 supervised release authorized by this section less any term of  
7 imprisonment that was imposed upon revocation of supervised  
8 release.

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

NOTE: The purpose of this bill is to prohibit a person convicted of a sexual offense against a child from being on school property without written permission of a judge or parole officer. The bill creates criminal penalties. The bill also defines terms.

§61-8B-11b is new; therefore, it has been completely underscored.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.