

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 367

BY SENATORS CARMICHAEL AND PREZIOSO

[Introduced January 21, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating
2 to prohibiting any sex offender from living within one thousand feet of a school.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee; prohibitions for all sex offenders.

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

18 (b) Any person required to be on supervised release between the minimum term of ten

19 years and life pursuant to the provisos of subsection (a) of this section also shall be further
20 prohibited from:

21 (1) Establishing a residence or accepting employment within one thousand feet of a school
22 or child care facility or within one thousand feet of the residence of a victim or victims of any
23 sexually violent offenses for which the person was convicted: Provided, That this prohibition
24 applies to all sex offenders whether on supervised or unsupervised release;

25 (2) Loitering within 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 sexually violent offenses for which the
27 person was convicted: *Provided*, That the imposition of this prohibition shall apply to a defendant
28 convicted after the effective date of this section as amended and reenacted during the regular
29 session of the Legislature, 2015: *Provided, however*, That as used herein "loitering" means to
30 enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists,
31 remaining on that property beyond the time necessary to fulfill that purpose: *Provided further*,
32 That nothing in this subdivision shall be construed to prohibit or limit a person's presence within
33 one thousand feet of a location or facility referenced in this subdivision if the person is present for
34 the purposes of supervision, counseling or other activity in which the person is directed to
35 participate as a condition of supervision or where the person has the express permission of his
36 or her supervising officer to be present;

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

40 (i) The child's parent;

41 (ii) The child's grandparent; or

42 (iii) The child's stepparent and the person was the stepparent of the child prior to being
43 convicted of a sexually violent offense, the person's parental rights to any children in the home
44 have not been terminated, the child is not a victim of a sexually violent offense perpetrated by the

45 person, and the court determines that the person is not likely to cause harm to the child or children
46 with whom such person will reside: *Provided*, That nothing in this subsection shall preclude a
47 court from imposing residency or employment restrictions as a condition of supervised release on
48 defendants other than those subject to the provision of this subsection.

49 (c) The period of supervised release imposed by the provisions of this section shall begin
50 upon the expiration of any period of probation, the expiration of any sentence of incarceration or
51 the expiration of any period of parole supervision imposed or required of the person so convicted,
52 whichever expires later.

53 (d) Any person sentenced to a period of supervised release pursuant to the provisions of
54 this section shall be supervised by a multijudicial circuit probation officer, if available. Until such
55 time as a multijudicial circuit probation officer is available, the offender shall be supervised by the
56 probation office of the sentencing court or of the circuit in which he or she resides.

57 (e) A defendant sentenced to a period of supervised release shall be subject to any or all
58 of the conditions applicable to a person placed upon probation pursuant to the provisions of
59 section nine of this article: *Provided*, That any defendant sentenced to a period of supervised
60 release pursuant to this section shall be required to participate in appropriate offender treatment
61 programs or counseling during the period of supervised release unless the court deems the
62 offender treatment programs or counseling to no longer be appropriate or necessary and makes
63 express findings in support thereof.

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

70 (f) The sentencing court may, based upon defendant's ability to pay, impose a supervision

71 fee to offset the cost of supervision. Said fee shall not exceed \$50 per month. Said fee may be
72 modified periodically based upon the defendant's ability to pay.

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

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

78 (2) Extend a period of supervised release if less than the maximum authorized period was
79 previously imposed or modify, reduce or enlarge the conditions of supervised release, at any time
80 prior to the expiration or termination of the term of supervised release, consistent with the
81 provisions of the West Virginia Rules of Criminal Procedure relating to the modification of
82 probation and the provisions applicable to the initial setting of the terms and conditions of post-
83 release supervision;

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

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

94 (h) *Written statement of conditions.* -- The court shall direct that the probation officer
95 provide the defendant with a written statement at the defendant's sentencing hearing that sets
96 forth all the conditions to which the term of supervised release is subject and that it is sufficiently

97 clear and specific to serve as a guide for the defendant's conduct and for such supervision as is
98 required.

99 (i) *Supervised release following revocation.* -- When a term of supervised release is
100 revoked and the defendant is required to serve a term of imprisonment that is less than the
101 maximum term of supervised release authorized under subsection (a) of this section, the court
102 may include a requirement that the defendant be placed on a term of supervised release after
103 imprisonment. The length of such term of supervised release shall not exceed the term of
104 supervised release authorized by this section less any term of imprisonment that was imposed
105 upon revocation of supervised release.

106 (j) *Delayed revocation.* -- The power of the court to revoke a term of supervised release
107 for violation of a condition of supervised release and to order the defendant to serve a term of
108 imprisonment and, subject to the limitations in subsection (i) of this section, a further term of
109 supervised release extends beyond the expiration of the term of supervised release for any period
110 necessary for the adjudication of matters arising before its expiration if, before its expiration, a
111 warrant or summons has been issued on the basis of an allegation of such a violation.

NOTE: The purpose of this bill is to prohibit any sex offender from living within one thousand feet of a school.

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