

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 562

BY SENATORS TRUMP AND ROMANO

[Introduced February 15, 2018; 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 giving a court discretion to impose period of supervised release on a defendant when
 3 the defendant is convicted of certain felonies; and making the change retroactive to June
 4 6, 2003.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

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

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 §61-8-12 of this code or a felony
 3 violation of the provisions of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or ~~eight-d~~ §61-8D-5 or §61-8D-
 4 6 of this code, shall, as part of the sentence imposed at final disposition, be required to serve, in
 5 addition to any other penalty or condition imposed by the court, a period of supervised release of
 6 up to 50 years: Provided, That the court, in its discretion may as part of the sentence imposed at
 7 final disposition require a defendant convicted of a felony violation of the provisions of §61-8D-2,
 8 §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-4, or §61-8D-4a of this code to serve, in addition to
 9 any other penalty or condition imposed by the court, a period of supervised release up to 50 years:
 10 *Provided, however,* That the period of supervised release imposed by the court pursuant to this
 11 section for a defendant convicted after the effective date of this section as amended and
 12 reenacted during the first extraordinary session of the Legislature, 2006, of a violation of §61-8B-
 13 3 or §61-8B-7 of this code and sentenced pursuant to §61-8B-9a of this code, ~~shall~~ may be no
 14 less than 10 years: *Provided however further,* That a defendant designated after the effective date
 15 of this section as amended and reenacted during the first extraordinary session of the Legislature,
 16 2006, as a sexually violent predator pursuant to the provisions of §15-12-2a of this code ~~shall be~~
 17 is subject, in addition to any other penalty or condition imposed by the court, to supervised release
 18 for life: And provided further, That pursuant to the provisions of subsection (g) of this section, a

19 court may modify, terminate or revoke any term of supervised release imposed pursuant to
20 subsection (a) of this section.

21 (b) Any person required to be on supervised release between the minimum term of 10
22 years and life pursuant to the provisos of subsection (a) of this section also shall be further
23 prohibited from:

24 (1) Establishing a residence or accepting employment within 1,000 feet of a school or child
25 care facility or within 1,000 feet of the residence of a victim or victims of any sexually violent
26 offenses for which the person was convicted;

27 (2) Loitering within 1,000 feet of a school or child care facility or within 1,000 feet of the
28 residence of a victim or victims of any sexually violent offenses for which the person was
29 convicted: *Provided*, That the imposition of this prohibition ~~shall apply~~ applies to a defendant
30 convicted after the effective date of this section as amended and reenacted during the regular
31 session of the Legislature, 2015: *Provided, however*, That as used herein "loitering" means to
32 enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists,
33 remaining on that property beyond the time necessary to fulfill that purpose: *Provided further*,
34 That ~~nothing in this subdivision shall be construed to~~ does not prohibit or limit a person's presence
35 within 1,000 feet of a location or facility referenced in this subdivision if the person is present for
36 the purposes of supervision, counseling or other activity in which the person is directed to
37 participate as a condition of supervision or where the person has the express permission of his
38 supervising officer to be present;

39 (3) Establishing a residence or any other living accommodation in a household in which a
40 child under 16 resides if the person has been convicted of a sexually violent offense against a
41 child, unless the person is one of the following:

42 (i) The child's parent;

43 (ii) The child's grandparent; or

44 (iii) The child's stepparent and the person was the stepparent of the child prior to being

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

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

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

59 (e) A defendant sentenced to a period of supervised release ~~shall be~~ is subject to any or
60 all of the conditions applicable to a person placed upon probation pursuant to the provisions of
61 §62-12-9 of this code: *Provided*, That any defendant sentenced to a period of supervised release
62 pursuant to this section ~~shall be~~ is required to participate in appropriate offender treatment
63 programs or counseling during the period of supervised release unless the court ~~deems~~ considers
64 the offender treatment programs or counseling to no longer be appropriate or necessary and
65 makes express findings in support thereof.

66 Within 90 days of the effective date of this section as amended and reenacted during the
67 first extraordinary session of the Legislature, 2006, the Secretary of the Department of Health and
68 Human Resources shall propose rules and emergency rules for legislative approval in accordance
69 with the provisions of §29A-3-1 *et seq.* of this code establishing qualifications for sex offender
70 treatment programs and counselors based on accepted treatment protocols among licensed

71 mental health professionals.

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

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

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

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

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

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

96 (h) *Written statement of conditions.* -- The court shall direct that the probation officer

97 provide the defendant with a written statement at the defendant's sentencing hearing that sets
98 forth all the conditions to which the term of supervised release is subject and that it is sufficiently
99 clear and specific to serve as a guide for the defendant's conduct and for ~~such~~ the supervision as
100 is required.

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

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

114 (k) Notwithstanding any provision of this code to the contrary, the amendments made to
115 this section during the 2018 regular session of the Legislature are effective upon passage and
116 are retroactive to June 6, 2003.

NOTE: The purpose of this bill is to give courts discretion to impose period of supervised release on a defendant when the defendant is convicted of certain felonies. It makes the change retroactive to June 6, 2003.

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