

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Introduced**

## **Senate Bill 46**

BY SENATOR SMITH

[Introduced January 9, 2019; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §62-12-9 of the Code of West Virginia, 1931, as amended, relating  
2 to requiring probationers who have served 10 or more years to participate in a work  
3 release program and spend six months in a work release center; and requiring that 70  
4 percent of their earnings be held in an account and provided to them at the successful  
5 completion of the six-month period.

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

## **ARTICLE 12. PROBATION AND PAROLE.**

### **§62-12-9. Conditions of release on probation.**

1 (a) Release on probation is conditioned upon the following:

2 (1) That the probationer may not, during the term of his or her probation, violate any  
3 criminal law of this or any other state or of the United States;

4 (2) That the probationer may not, during the term of his or her probation, leave the state  
5 without the consent of the court which placed him or her on probation;

6 (3) That the probationer complies with the conditions prescribed by the court for his or her  
7 supervision by the probation officer;

8 (4) That in every case in which the probationer has been convicted of an offense defined  
9 in §61-8-12 or §62-8B-1 *et seq.*, or §62-8D-1 *et seq.* of this code, against a child, the probationer  
10 may not live in the same residence as any minor child, nor exercise visitation with any minor child  
11 and may have no contact with the victim of the offense: *Provided*, That the probationer may  
12 petition the court of the circuit in which he or she was convicted for a modification of this term and  
13 condition of his or her probation and the burden rests upon the probationer to demonstrate that a  
14 modification is in the best interest of the child;

15 (5) That the probationer pay a fee, not to exceed \$20 per month, to defray costs of  
16 supervision: *Provided*, That the court conducts a hearing prior to imposition of probation and  
17 makes a determination on the record that the offender is able to pay the fee without undue  
18 hardship. All moneys collected as fees from probationers pursuant to this subdivision shall be

19 deposited with the circuit clerk who shall, on a monthly basis, remit the moneys collected to the  
20 State Treasurer for deposit in the State General Revenue Fund; ~~and~~

21 (6) That the probationer is required to pay the fee described in §62-1C-4 of this code:  
22 *Provided*, That the court conducts a hearing prior to imposition of probation and makes a  
23 determination on the record that the offender is able to pay the fee without undue hardship; and

24 (7) Probationers who have served 10 or more years are required to participate in a work  
25 release program and spend six months in a work release center. Seventy percent of the wages  
26 or other compensation earned by the probationer at the work release center shall be held in an  
27 account and provided to him or her at the successful completion of the six-month period.

28 (b) In addition, the court may impose, subject to modification at any time, any other  
29 conditions which it may determine advisable, including, but not limited to, any of the following:

30 (1) That the probationer make restitution or reparation, in whole or in part, immediately or  
31 within the period of probation, to any party injured by the crime for which he or she has been  
32 convicted: *Provided*, That the court conducts a hearing prior to imposition of probation and makes  
33 a determination on the record that the offender is able to pay restitution without undue hardship;

34 (2) That the probationer pays any fine assessed and the costs of the proceeding in  
35 installments directed by the court: *Provided*, That the court conducts a hearing prior to imposition  
36 of probation and makes a determination on the record that the offender is able to pay the costs  
37 without undue hardship;

38 (3) That the probationer makes contributions from his or her earnings, in sums directed by  
39 the court, for the support of his or her dependents; and

40 (4) That the probationer, in the discretion of the court, is required to serve a period of  
41 confinement in jail of the county in which he or she was convicted for a period not to exceed one  
42 third of the minimum sentence established by law or one third of the least possible period of  
43 confinement in an indeterminate sentence, but in no case may the period of confinement exceed  
44 six consecutive months. The court may sentence the defendant within the six-month period to

45 intermittent periods of confinement including, but not limited to, weekends or holidays and may  
46 grant to the defendant intermittent periods of release in order that he or she may work at his or  
47 her employment or for other reasons or purposes as the court may determine appropriate:  
48 *Provided*, That the provisions of §62-11A-1 *et seq.* of this code do not apply to intermittent periods  
49 of confinement and release except to the extent directed by the court. If a period of confinement  
50 is required as a condition of probation, the court shall make special findings that other conditions  
51 of probation are inadequate and that a period of confinement is necessary.

52 (c) Circuit courts may impose, as a condition of probation, participation in a day report  
53 center.

54 (1) To be eligible, the probationer must be identified as moderate to high risk of reoffending  
55 and moderate to high criminogenic need, as determined by the standardized risk and needs  
56 assessment adopted by the Supreme Court of Appeals of West Virginia under §62-12-6(d) of this  
57 code, and applied by a probation officer or day report staff. In eligible cases, circuit courts may  
58 impose a term of up to one year: *Provided*, That notwithstanding the results of the standardized  
59 risk and needs assessment, a judge may impose, as a term of probation, participation in a day  
60 report center program upon making specific written findings of fact as to the reason for departing  
61 from the requirements of this subdivision.

62 (2) The day report center staff shall determine which services a person receives based on  
63 the results of the standardized risk and needs assessment and taking into consideration the other  
64 conditions of probation set by the court.

65 (d) For the purposes of this article, "day report center" means a court-operated or court-  
66 approved facility where persons ordered to serve a sentence in this type of facility are required to  
67 report under the terms and conditions set by the court for purposes which include, but are not  
68 limited to, counseling, employment training, alcohol or drug testing or other medical testing.

NOTE: The purpose of this bill is to require probationers who have served 10 or more years

to participate in a work release program and spend six months in a work release center. The bill requires that 70 percent their earnings be held in an account and provided to them at the successful completion of the six-month period.

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