

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2129

By Delegate Steele

[Introduced January 11, 2023; Referred to the Committee
on the Judiciary]

1 A BILL to amend the Code of West Virginia, as amended, by adding thereto a new section,
 2 designated §62-12-30, relating to extended supervision for certain drug offenders;
 3 establishing supervised release penalty of up to 10 years for certain drug offenders;
 4 establishing when period of supervised release begins; providing for supervision by
 5 multijudicial circuit probation officers; clarifying terms of supervised release same as those
 6 for probation; establishing a fee for supervised release; establishing that court may modify
 7 or revoke supervised release; providing court required probation officer provide written
 8 conditions; providing for supervised release following revocation; providing for delayed
 9 revocation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-30. Extended supervision for certain drug 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 §60A-4-401, or §60A-4-409 of this
 3 code for the delivery of controlled substances in schedule I, II, and III in chapter 60A of this code,
 4 excluding marijuana, or for the possession with intent to deliver controlled substances in schedule
 5 I, II, and III in chapter 60A of this code, excluding marijuana, a conviction under §60A-4-411 of this
 6 code, a conviction under §60A-4-414 of this code, excluding marijuana, or a conviction under
 7 §60A-4-416 of this code, shall, as part of the sentence imposed at final disposition, be required to
 8 serve, in addition to any other penalty or condition imposed by the court, a period of supervised
 9 release of up to 10 years: *Provided*, That pursuant to the provisions of subsection (g) of this
 10 section, a court may modify, terminate, or revoke any term of supervised release imposed
 11 pursuant to subsection (a) of this section.

12 (b) The period of supervised release imposed by the provisions of this section shall begin
 13 upon the expiration of any period of probation, the expiration of any sentence of incarceration or

14 the expiration of any period of parole supervision imposed or required of the person so convicted,
15 whichever expires later.

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

20 (d) A defendant sentenced to a period of supervised release shall be subject to any or all of
21 the conditions applicable to a person placed upon probation pursuant to the provisions of §62-12-9
22 of this code.

23 (e) The sentencing court may, based upon defendant's ability to pay, impose a supervision
24 fee to offset the cost of supervision. The fee may not exceed \$50 per month. The fee may be
25 modified periodically based upon the defendant's ability to pay.

26 (f) *Modification of conditions or revocation.* -- The court may:

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

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

37 (3) Revoke a term of supervised release and require the defendant to serve in prison all or
38 part of the term of supervised release without credit for time previously served on supervised
39 release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to

40 revocation of probation, finds by clear and convincing evidence that the defendant violated a
41 condition of supervised release, except that a defendant whose term is revoked under this
42 subdivision may not be required to serve more than the period of supervised release;

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

47 (g) *Written statement of conditions.* -- The court shall direct that the probation officer
48 provide the defendant with a written statement at the defendant's sentencing hearing that sets
49 forth all the conditions to which the term of supervised release is subject and that it is sufficiently
50 clear and specific to serve as a guide for the defendant's conduct and for such supervision as is
51 required.

52 (h) *Supervised release following revocation.* -- When a term of supervised release is
53 revoked and the defendant is required to serve a term of imprisonment that is less than the
54 maximum term of supervised release authorized under subsection (a) of this section, the court
55 may include a requirement that the defendant be placed on a term of supervised release after
56 imprisonment. The length of such term of supervised release may not exceed the term of
57 supervised release authorized by this section less any term of imprisonment that was imposed
58 upon revocation of supervised release.

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

NOTE: The purpose of this bill is to require extended supervision for certain drug offenders.

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