

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4310**

4 (By Delegates Smith, Hunt, Lawrence and Miley)

5  
6 (Originating in the Committee on Finance)

7 [February 24, 2012]

8  
9  
10 A BILL to amend and reenact §62-12-26 of the Code of West Virginia,  
11 1931, as amended, relating to limitations and restrictions  
12 placed on sex offenders who have been adjudicated as violent  
13 sexual predators or who are under active supervision as a  
14 condition of release on parole or probation; and clarifying  
15 the statutory restrictions against such persons living or  
16 working within one thousand feet of a school, child care  
17 facility or residence of a former victim; defining terms.

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

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

21 **ARTICLE 12. PROBATION AND PAROLE.**

22 **§62-12-26. Extended supervision for certain sex offenders;**  
23 **sentencing; conditions; supervision provisions;**  
24 **supervision fee.**

25 (a) Notwithstanding any other provision of this code to the

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

25 (b) Any person required to be on supervised release for a  
26 minimum term of ten years or for life pursuant to the provisos of

1 subsection (a) of this section also shall be further prohibited  
2 from:

3 (1) Establishing a residence or accepting employment within  
4 one thousand feet from the perimeter of a school or child care  
5 facility or within one thousand feet of the residence of a victim  
6 or victims of any sexually violent offenses for which the person  
7 was convicted. For the purposes of this subdivision, "residence"  
8 includes the yard, grounds, outbuildings and common or public areas  
9 in or surrounding the residence; "child care facility" includes the  
10 classrooms, buildings, playground areas, parking lots and common  
11 areas utilized by children while attending the child care  
12 facility; "school" means an educational facility comprised of one or  
13 more buildings including school grounds, used by students during  
14 regular school hours or during any school-sponsored function or  
15 extracurricular activities; "school grounds" includes the land on  
16 which a school is built together with such other land used by  
17 students for play, recreation or athletic events while attending  
18 school; and "extracurricular activities" means voluntary activities  
19 sponsored by a school, a county board or an organization sanctioned  
20 by a county board or the state board of education, and include, but  
21 are not limited to, preparation for and involvement in public  
22 performances, contests, athletic competitions, demonstrations,  
23 displays, organizations and clubs.

24 (2) Establishing a residence or any other living accommodation  
25 in a household in which a child under sixteen resides if the person  
26 has been convicted of a sexually violent offense against a child,

1 unless the person is one of the following:

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

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

4       ~~(iii)~~ (C) The child's stepparent and the person was the  
5 stepparent of the child prior to being convicted of a sexually  
6 violent offense, the person's parental rights to any children in  
7 the home have not been terminated, the child is not a victim of a  
8 sexually violent offense perpetrated by the person, and the court  
9 determines that the person is not likely to cause harm to the child  
10 or children with whom such person will reside: *Provided*, That  
11 nothing in this subsection shall preclude a court from imposing  
12 residency or employment restrictions as a condition of supervised  
13 release on defendants other than those subject to the provision of  
14 this subsection.

15       (c) The period of supervised release imposed by ~~the provisions~~  
16 ~~of~~ this section shall begin upon the expiration of any period of  
17 probation, the expiration of any sentence of incarceration or the  
18 expiration of any period of parole supervision imposed or required  
19 of the person so convicted, whichever expires later.

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

1 (e) A defendant sentenced to a period of supervised release  
2 shall be subject to any or all of the conditions applicable to a  
3 person placed upon probation pursuant to ~~the provisions of~~ section  
4 nine of this article: *Provided*, That any defendant sentenced to a  
5 period of supervised release pursuant to this section shall be  
6 required to participate in appropriate offender treatment programs  
7 or counseling during the period of supervised release unless the  
8 court deems the offender treatment programs or counseling to no  
9 longer be appropriate or necessary and makes express findings in  
10 support thereof.

11 Within ninety days of the effective date of this section as  
12 amended and reenacted during the first extraordinary session of the  
13 Legislature, 2006, the Secretary of the Department of Health and  
14 Human Resources shall propose rules and emergency rules for  
15 legislative approval in accordance with ~~the provisions of~~ article  
16 three, chapter twenty-nine-a of this code establishing  
17 qualifications for sex offender treatment programs and counselors  
18 based on accepted treatment protocols among licensed mental health  
19 professionals.

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

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

26 (1) Terminate a term of supervised release and discharge the

1 defendant released at any time after the expiration of two years of  
2 supervised release, pursuant to ~~the provisions of~~ the West Virginia  
3 Rules of Criminal Procedure relating to the modification of  
4 probation, if it is satisfied that such action is warranted by the  
5 conduct of the defendant released and the interests of justice;

6       (2) Extend a period of supervised release if less than the  
7 maximum authorized period was previously imposed or modify, reduce  
8 or enlarge the conditions of supervised release, at any time prior  
9 to the expiration or termination of the term of supervised release,  
10 consistent with ~~the provisions of~~ the West Virginia Rules of  
11 Criminal Procedure relating to the modification of probation and  
12 the provisions applicable to the initial setting of the terms and  
13 conditions of post-release supervision;

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

23       (4) Order the defendant to remain at his or her place of  
24 residence during nonworking hours and, if the court so directs, to  
25 have compliance monitored by telephone or electronic signaling  
26 devices, except that an order under this paragraph may be imposed

1 only as an alternative to incarceration.

2       (h) *Written statement of conditions.* -- The court shall  
3 direct that the probation officer provide the defendant with a  
4 written statement at the defendant's sentencing hearing that sets  
5 forth all the conditions to which the term of supervised release is  
6 subject and that it is sufficiently clear and specific to serve as  
7 a guide for the defendant's conduct and for such supervision as is  
8 required.

9       (i) *Supervised release following revocation.* -- When a term  
10 of supervised release is revoked and the defendant is required to  
11 serve a term of imprisonment that is less than the maximum term of  
12 supervised release authorized under subsection (a) of this section,  
13 the court may include a requirement that the defendant be placed on  
14 a term of supervised release after imprisonment. The length of  
15 such term of supervised release shall not exceed the term of  
16 supervised release authorized by this section less any term of  
17 imprisonment that was imposed upon revocation of supervised  
18 release.

19       (j) *Delayed revocation.* -- The power of the court to revoke  
20 a term of supervised release for violation of a condition of  
21 supervised release and to order the defendant to serve a term of  
22 imprisonment and, subject to the limitations in subsection (i) of  
23 this section, a further term of supervised release extends beyond  
24 the expiration of the term of supervised release for any period  
25 necessary for the adjudication of matters arising before its  
26 expiration if, before its expiration, a warrant or summons has been

1 issued on the basis of an allegation of such a violation.