

H. B. 4310

(By Delegates Smith, Hunt, Lawrence and Miley)
[Introduced January 26, 2012; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §15-12-11; and to
amend and reenact §62-12-26 of said code, all relating to
prohibiting sex offenders from living or working within one
thousand feet of the outer perimeter of a school, child care
facility, playground or a victim's home; prohibiting sex
offenders on supervised release for a minimum term of ten
years from living or working within one thousand feet of the
outer perimeter of a school, child care facility, playground
or a victim's home; defining terms; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §15-12-11; and that
§62-12-26 of said code be amended and reenacted, all to read as
follows:

1 **CHAPTER 15. PUBLIC SAFETY.**

2 **ARTICLE 12. SEX OFFENDER REGISTRATION ACT.**

3 **§15-12-11. Convicted sex offenders; restrictions; rulemaking.**

4 (a) Any person required to register under this article shall
5 be prohibited from:

6 (1) Establishing a residence or accepting employment within
7 one thousand feet of the outer perimeter of a school, playground or
8 child care facility or within one thousand feet of the outer
9 perimeter of the residence of a victim or victims of any sexually
10 violent offenses for which the person was convicted. For the
11 purposes of this subdivision "school" means any building or part
12 thereof used for instructional purposes, in any school of this
13 state, as defined in section one, article one, chapter eighteen of
14 this code, or on any lot or grounds actually used for
15 instructional, sporting, social or academic purposes of that school
16 while it is used or occupied for school purposes;

17 (2) Establishing a residence or any other living accommodation
18 in a household in which a child under sixteen resides if the person
19 has been convicted of a sexually violent offense against a child,
20 unless the person is one of the following:

21 (A) The child's parent;

22 (B) The child's grandparent; or

23 (C) The child's stepparent and the person was the stepparent
24 of the child prior to being convicted of a sexually violent

1 offense, the person's parental rights to any children in the home
2 have not been terminated, the child is not a victim of a sexually
3 violent offense perpetrated by the person, and the court determines
4 that the person is not likely to cause harm to the child or
5 children with whom such person will reside.

6 (b) Within ninety days of the effective date of this section
7 the Secretary of the Department of Health and Human Resources shall
8 propose rules and emergency rules for legislative approval in
9 accordance with article three, chapter twenty-nine-a of this code.

10 **CHAPTER 62. CRIMINAL PROCEDURE.**

11 **ARTICLE 12. PROBATION AND PAROLE.**

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

15 (a) Notwithstanding any other provision of this code to the
16 contrary, any defendant convicted after the effective date of this
17 section of a violation of section twelve, article eight, chapter
18 sixty-one of this code or a felony violation of ~~the provisions of~~
19 article eight-b, eight-c or eight-d of ~~said that~~ chapter shall, as
20 part of the sentence imposed at final disposition, be required to
21 serve, in addition to any other penalty or condition imposed by the
22 court, a period of supervised release of up to fifty years:
23 *Provided*, That the period of supervised release imposed by the
24 court pursuant to this section for a defendant convicted after the

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

16 (b) Any person required to be on supervised release for a
17 minimum term of ten years or for life pursuant to the provisos of
18 subsection (a) of this section also shall be further prohibited
19 from:

20 (1) Establishing a residence or accepting employment within
21 one thousand feet of the outer perimeter of a school, playground or
22 child care facility or within one thousand feet of the outer
23 perimeter of the residence of a victim or victims of any sexually
24 violent offenses for which the person was convicted. For the

1 purposes of this subdivision "school" means any building or part
2 thereof used for instructional purposes, in any school of this
3 state, as defined in section one, article one, chapter eighteen of
4 this code, or on any lot or grounds actually used for
5 instructional, sporting, social or academic purposes of that school
6 while it is used or occupied for school purposes;

7 (2) Establishing a residence or any other living accommodation
8 in a household in which a child under sixteen resides if the person
9 has been convicted of a sexually violent offense against a child,
10 unless the person is one of the following:

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

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

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

24 (c) The period of supervised release imposed by ~~the provisions~~

1 of this section shall begin upon the expiration of any period of
2 probation, the expiration of any sentence of incarceration or the
3 expiration of any period of parole supervision imposed or required
4 of the person so convicted, whichever expires later.

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

12 (e) A defendant sentenced to a period of supervised release
13 shall be subject to any or all of the conditions applicable to a
14 person placed upon probation pursuant to ~~the provisions of~~ section
15 nine of this article: *Provided*, That any defendant sentenced to a
16 period of supervised release pursuant to this section shall be
17 required to participate in appropriate offender treatment programs
18 or counseling during the period of supervised release unless the
19 court deems the offender treatment programs or counseling to no
20 longer be appropriate or necessary and makes express findings in
21 support thereof.

22 Within ninety days of the effective date of this section as
23 amended and reenacted during the first extraordinary session of the
24 Legislature, 2006, the Secretary of the Department of Health and

1 Human Resources shall propose rules and emergency rules for
2 legislative approval in accordance with ~~the provisions of~~ article
3 three, chapter twenty-nine-a of this code establishing
4 qualifications for sex offender treatment programs and counselors
5 based on accepted treatment protocols among licensed mental health
6 professionals.

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

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

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

19 (2) Extend a period of supervised release if less than the
20 maximum authorized period was previously imposed or modify, reduce
21 or enlarge the conditions of supervised release, at any time prior
22 to the expiration or termination of the term of supervised release,
23 consistent with ~~the provisions of~~ the West Virginia Rules of
24 Criminal Procedure relating to the modification of probation and

1 the provisions applicable to the initial setting of the terms and
2 conditions of post-release supervision;

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

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

17 (h) *Written statement of conditions.* -- The court shall
18 direct that the probation officer provide the defendant with a
19 written statement at the defendant's sentencing hearing that sets
20 forth all the conditions to which the term of supervised release is
21 subject and that it is sufficiently clear and specific to serve as
22 a guide for the defendant's conduct and for such supervision as is
23 required.

24 (i) *Supervised release following revocation.* -- When a term

1 of supervised release is revoked and the defendant is required to
2 serve a term of imprisonment that is less than the maximum term of
3 supervised release authorized under subsection (a) of this section,
4 the court may include a requirement that the defendant be placed on
5 a term of supervised release after imprisonment. The length of
6 such term of supervised release shall not exceed the term of
7 supervised release authorized by this section less any term of
8 imprisonment that was imposed upon revocation of supervised
9 release.

10 (j) *Delayed revocation.* -- The power of the court to revoke
11 a term of supervised release for violation of a condition of
12 supervised release and to order the defendant to serve a term of
13 imprisonment and, subject to the limitations in subsection (i) of
14 this section, a further term of supervised release extends beyond
15 the expiration of the term of supervised release for any period
16 necessary for the adjudication of matters arising before its
17 expiration if, before its expiration, a warrant or summons has been
18 issued on the basis of an allegation of such a violation.

NOTE: The purpose of the bill is to prohibit sex offenders from living or working within one thousand feet of the outer perimeter of a school, child care facility, playground or the home of a victim of any sexually violent offenses for which the person was convicted. The bill prohibits sex offenders on supervised release for a minimum term of ten years from living or working within one thousand feet of the outer perimeter of a school, child care facility, playground or the home of a victim of any sexually violent offenses for which the person was convicted. The bill also defines terms and provides for criminal penalties.

§15-12-11 is new; therefore, it has been completely underscored.

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