

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2025**

5 (By Delegates Howell, Shott, Hamrick, Romine, Sobonya, Espinosa,
6 Miller, Weld, Statler, Kurcaba and Canterbury)

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8 [Passed February 25, 2015; in effect ninety days from passage.]

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11 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
12 designated §61-8-29; and to amend and reenact §62-12-26 of said code, relating to creating
13 the offense of criminal loitering by persons on supervised release; prohibiting loitering by
14 such persons within one thousand feet of a victim’s home, schools and facilities providing
15 care and entertainment for children; defining terms; establishing penalties; and prohibiting
16 certain sex offenders on supervised release from loitering within one thousand feet of a
17 school, child care facility, or victim.

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

19 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
20 section, designated §61-8-29; and that §62-12-26 of said code be amended and reenacted, all to read
21 as follows:

22 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

23 **ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

1 **§61-8-29. Criminal loitering by persons on supervised release.**

2 (a) Any person serving a period of supervised release of ten years or more pursuant to the
3 provision of section twenty-six, article twelve, chapter sixty-two of this code who loiters within one
4 thousand feet of the property line of the residence or workplace of a victim of a sexually violent
5 offense for which the person was convicted shall be guilty of a misdemeanor and, upon conviction
6 thereof, shall be confined in jail for not more than thirty days.

7 (b) Any person serving a period of supervised release of ten years or more pursuant to the
8 provisions of section twenty-six, article twelve, chapter sixty-two of this code for an offense where
9 the victim was a minor who loiters within one thousand feet of the property line of a facility or
10 business the principal purpose of which is the education, entertainment or care of minor children,
11 playground, athletic facility or school bus stop shall be guilty of a misdemeanor and, upon conviction
12 thereof, shall be confined in jail for a period of not more than thirty days.

13 (c) A person does not violate the provisions of subsection (a) or (b) of this section unless he
14 or she has previously been asked to leave the proscribed location by an authorized person and
15 thereafter refuses to leave or leaves and thereafter returns to the proscribed location.

16 (d) As used in this section:

17 (1) "Authorized person" means:

18 (A) A law-enforcement officer acting in his or her official capacity;

19 (B) A security officer employed by a business or facility to protect persons or property acting
20 in his or her employment capacity;

21 (C) An owner, manager or employee of a facility or business having a principal purpose the
22 caring for, education or entertainment of minors;

- 1 (D) A victim or parent, guardian or lawful temporary or permanent custodian thereof;
- 2 (E) An employee of a county Board of Education acting in his or her employment capacity.
- 3 (2) “Facility or business, the principal purpose of which is the education, entertainment or
- 4 care of minor children” means:
 - 5 (A) A pre-school, primary, intermediate, middle or high school, either public or private;
 - 6 (B) A childcare facility;
 - 7 (C) A park;
 - 8 (D) An athletic facility used by minors;
 - 9 (E) A school bus stop.

10 (3) “Loitering” means to enter or remain on property while having no legitimate purpose or,
11 if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that
12 purpose.

13 (e) Nothing in this section shall be construed to prohibit or limit a person’s presence within
14 one thousand feet of a location or facility referenced in this section if the person is there present for
15 the purposes of supervision, counseling or other activity in which the person is directed to participate
16 as a condition of supervision or where the person has the express permission of his supervising
17 officer to be present.

18 **CHAPTER 62. CRIMINAL PROCEDURE.**

19 **ARTICLE 12. PROBATION AND PAROLE.**

20 **§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions;**
21 **supervision provisions; supervision fee.**

22 (a) Notwithstanding any other provision of this code to the contrary, any defendant convicted

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

19 (1) Establishing a residence or accepting employment within one thousand feet of a school
20 or child care facility or within one thousand feet of the residence of a victim or victims of any
21 sexually violent offenses for which the person was convicted;

22 (2) Loitering within one thousand feet of a school or child care facility or within one

1 thousand feet of the residence of a victim or victims of any sexually violent offenses for which the
2 person was convicted: *Provided*, That the imposition of this prohibition shall apply to a defendant
3 convicted after the effective date of this section as amended and reenacted during the regular session
4 of the Legislature, 2015: *Provided, however*, That as used herein “loitering” means to enter or
5 remain on property while having no legitimate purpose or, if a legitimate purpose exists, remaining
6 on that property beyond the time necessary to fulfill that purpose: *Provided further*, That nothing in
7 this subdivision shall be construed to prohibit or limit a person’s presence within one thousand feet
8 of a location or facility referenced in this subdivision if the person is present for the purposes of
9 supervision, counseling or other activity in which the person is directed to participate as a condition
10 of supervision or where the person has the express permission of his supervising officer to be
11 present;

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

15 (i) The child’s parent;

16 (ii) The child’s grandparent; or

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

1 other than those subject to the provision of this subsection.

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

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

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

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

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

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

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

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

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

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

1 incarceration.

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

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

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