

E N R O L L E D

COMMITTEE SUBSTITUTE

for

H. B. 2025

(BY DELEGATE(S) HOWELL, SHOTT,
HAMRICK, ROMINE, SOBONYA, ESPINOSA, MILLER, WELD,
STATLER, KURCABA AND CANTERBURY)

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

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

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 §61-8-29; and that §62-12-26 of said code be amended and reenacted, all to read as follows:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

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

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

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

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

23 (d) As used in this section:

24 (1) “Authorized person” means:

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

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

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

33 (D) A victim or parent, guardian or lawful temporary or
34 permanent custodian thereof;

35 (E) An employee of a county Board of Education acting in
36 his or her employment capacity.

37 (2) “Facility or business, the principal purpose of which is
38 the education, entertainment or care of minor children” means:

39 (A) A pre-school, primary, intermediate, middle or high
40 school, either public or private;

41 (B) A childcare facility;

42 (C) A park;

43 (D) An athletic facility used by minors;

44 (E) A school bus stop.

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

49 (e) Nothing in this section shall be construed to prohibit or
50 limit a person's presence within one thousand feet of a location
51 or facility referenced in this section if the person is there present
52 for the purposes of supervision, counseling or other activity in
53 which the person is directed to participate as a condition of
54 supervision or where the person has the express permission of
55 his supervising officer to be present.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

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

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

21 condition imposed by the court, to supervised release for life:
22 *Provided further*, That pursuant to the provisions of subsection
23 (g) of this section, a court may modify, terminate or revoke any
24 term of supervised release imposed pursuant to subsection (a) of
25 this section.

26 (b) Any person required to be on supervised release between
27 the minimum term of ten years and life pursuant to the provisos
28 of subsection (a) of this section also shall be further prohibited
29 from:

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

34 (2) Loitering within one thousand feet of a school or child
35 care facility or within one thousand feet of the residence of a
36 victim or victims of any sexually violent offenses for which the
37 person was convicted: *Provided*, That the imposition of this
38 prohibition shall apply to a defendant convicted after the
39 effective date of this section as amended and reenacted during
40 the regular session of the Legislature, 2015: *Provided, however*,
41 That as used herein “loitering” means to enter or remain on
42 property while having no legitimate purpose or, if a legitimate
43 purpose exists, remaining on that property beyond the time
44 necessary to fulfill that purpose: *Provided further*, That nothing
45 in this subdivision shall be construed to prohibit or limit a
46 person’s presence within one thousand feet of a location or
47 facility referenced in this subdivision if the person is present for
48 the purposes of supervision, counseling or other activity in
49 which the person is directed to participate as a condition of
50 supervision or where the person has the express permission of
51 his supervising officer to be present;

52 (3) Establishing a residence or any other living
53 accommodation in a household in which a child under sixteen

54 resides if the person has been convicted of a sexually violent
55 offense against a child, unless the person is one of the following:

56 (i) The child's parent;

57 (ii) The child's grandparent; or

58 (iii) The child's stepparent and the person was the stepparent
59 of the child prior to being convicted of a sexually violent
60 offense, the person's parental rights to any children in the home
61 have not been terminated, the child is not a victim of a sexually
62 violent offense perpetrated by the person, and the court
63 determines that the person is not likely to cause harm to the child
64 or children with whom such person will reside: *Provided*, That
65 nothing in this subsection shall preclude a court from imposing
66 residency or employment restrictions as a condition of
67 supervised release on defendants other than those subject to the
68 provision of this subsection.

69 (c) The period of supervised release imposed by the
70 provisions of this section shall begin upon the expiration of any
71 period of probation, the expiration of any sentence of
72 incarceration or the expiration of any period of parole
73 supervision imposed or required of the person so convicted,
74 whichever expires later.

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

81 (e) A defendant sentenced to a period of supervised release
82 shall be subject to any or all of the conditions applicable to a
83 person placed upon probation pursuant to the provisions of

84 section nine of this article: *Provided*, That any defendant
 85 sentenced to a period of supervised release pursuant to this
 86 section shall be required to participate in appropriate offender
 87 treatment programs or counseling during the period of
 88 supervised release unless the court deems the offender treatment
 89 programs or counseling to no longer be appropriate or necessary
 90 and makes express findings in support thereof.

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

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

104 (g) *Modification of conditions or revocation.* — The court
 105 may:

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

113 (2) Extend a period of supervised release if less than the
 114 maximum authorized period was previously imposed or modify,

115 reduce or enlarge the conditions of supervised release, at any
116 time prior to the expiration or termination of the term of
117 supervised release, consistent with the provisions of the West
118 Virginia Rules of Criminal Procedure relating to the
119 modification of probation and the provisions applicable to the
120 initial setting of the terms and conditions of post-release
121 supervision;

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

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

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

142 (i) *Supervised release following revocation.* — When a term
143 of supervised release is revoked and the defendant is required to
144 serve a term of imprisonment that is less than the maximum term
145 of supervised release authorized under subsection (a) of this
146 section, the court may include a requirement that the defendant

147 be placed on a term of supervised release after imprisonment.
 148 The length of such term of supervised release shall not exceed
 149 the term of supervised release authorized by this section less any
 150 term of imprisonment that was imposed upon revocation of
 151 supervised release.

152 (j) *Delayed revocation.* — The power of the court to revoke
 153 a term of supervised release for violation of a condition of
 154 supervised release and to order the defendant to serve a term of
 155 imprisonment and, subject to the limitations in subsection (i) of
 156 this section, a further term of supervised release extends beyond
 157 the expiration of the term of supervised release for any period
 158 necessary for the adjudication of matters arising before its
 159 expiration if, before its expiration, a warrant or summons has
 160 been issued on the basis of an allegation of such a violation.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2015.

Governor

