

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2423

BY DELEGATE FOSTER, HIGGINBOTHAM, FAST, LINVILLE,
PACK, STEELE, PHILLIPS, KESSINGER, PORTERFIELD,
FLEISCHAUER AND STAGGERS

[Originating in the Committee on the Judiciary,

January 16, 2019.]

1 A BILL to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating
2 to prohibiting certain sex offenders from being in a supervisory position over children.

Be it enacted by the Legislature of West Virginia:

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 contrary, any defendant
2 convicted after the effective date of this section of a violation of §61-8-12 of this code or a felony
3 violation of the provisions of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code
4 shall, as part of the sentence imposed at final disposition, be required to serve, in addition to any
5 other penalty or condition imposed by the court, a period of supervised release of up to 50 years:
6 *Provided*, That the period of supervised release imposed by the court pursuant to this section for
7 a defendant convicted after the effective date of this section as amended and reenacted during
8 the first extraordinary session of the Legislature, 2006, of a violation of §61-8B-3 or §61-8B-7 of
9 this code and sentenced pursuant to §62-12-9(a) of this code, shall be no less than 10 years:
10 *Provided, however*, That a defendant designated after the effective date of this section as
11 amended and reenacted during the first extraordinary session of the Legislature, 2006, as a
12 sexually violent predator pursuant to the provisions of §15-12-2a of this code shall be subject, in
13 addition to any other penalty or condition imposed by the court, to supervised release for life:
14 *Provided further*, That pursuant to the provisions of ~~subsection (g) of this section~~ §62-12-26(h) of
15 this code, a court may modify, terminate or revoke any term of supervised release imposed
16 pursuant to §62-12-26(a) of this code.

17 (b) Any person required to be on supervised release between the minimum term of 10
18 years and life pursuant to the provisos of §62-12-26(a) of this code also shall be further prohibited
19 from:

20 (1) Establishing a residence or accepting employment within 1,000 feet of a school or child
21 care facility or within 1,000 feet of the residence of a victim or victims of any sexually violent
22 offenses for which the person was convicted;

23 (2) Loitering within 1,000 feet of a school or child care facility or within 1,000 feet of the
24 residence of a victim or victims of any sexually violent offenses for which the person was
25 convicted: *Provided*, That the imposition of this prohibition shall apply to a defendant convicted
26 after the effective date of this section as amended and reenacted during the regular session of
27 the Legislature, 2015: *Provided, however*, That as used herein “loitering” means to enter or remain
28 on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on
29 that property beyond the time necessary to fulfill that purpose: *Provided further*, That nothing in
30 this subdivision shall be construed to prohibit or limit a person’s presence within 1,000 feet of a
31 location or facility referenced in this subdivision if the person is present for the purposes of
32 supervision, counseling or other activity in which the person is directed to participate as a
33 condition of supervision or where the person has the express permission of his supervising officer
34 to be present;

35 (3) Establishing a residence or any other living accommodation in a household in which a
36 child under 16 resides if the person has been convicted of a sexually violent offense against a
37 child, unless the person is one of the following:

38 (i) The child’s parent;

39 (ii) The child’s grandparent; or

40 (iii) The child’s stepparent and the person was the stepparent of the child prior to being
41 convicted of a sexually violent offense, the person’s parental rights to any children in the home
42 have not been terminated, the child is not a victim of a sexually violent offense perpetrated by the
43 person, and the court determines that the person is not likely to cause harm to the child or children
44 with whom such person will reside: *Provided*, That nothing in this subsection shall preclude a

45 court from imposing residency or employment restrictions as a condition of supervised release on
46 defendants other than those subject to the provision of this subsection.

47 (c) In addition to any other prohibitions, any person found guilty of violating the provisions
48 of §61-8B-3 or §61-8B-7 are also prohibited from being in a supervisory position, play a
49 supervisory role or be responsible for groups of children, including, but not limited to, religious
50 organizations, Boy Scouts, Girl Scouts, 4H organizations, sporting and scholastic teams, music,
51 sporting and theatre groups and camps, and summer day camps.

52 ~~(e)~~ (d) The period of supervised release imposed by the provisions of this section shall
53 begin upon the expiration of any period of probation, the expiration of any sentence of
54 incarceration or the expiration of any period of parole supervision imposed or required of the
55 person so convicted, whichever expires later.

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

60 ~~(e)~~ (f) A defendant sentenced to a period of supervised release shall be subject to any or
61 all of the conditions applicable to a person placed upon probation pursuant to the provisions of
62 §62-12-9 of this code: *Provided*, That any defendant sentenced to a period of supervised release
63 pursuant to this section shall be required to participate in appropriate offender treatment programs
64 or counseling during the period of supervised release unless the court deems the offender
65 treatment programs or counseling to no longer be appropriate or necessary and makes express
66 findings in support thereof.

67 Within 90 days of the effective date of this section as amended and reenacted during the
68 first extraordinary session of the Legislature, 2006, the Secretary of the Department of Health and
69 Human Resources shall propose rules and emergency rules for legislative approval in accordance
70 with the provisions of §29A-3-1 *et seq.* of this code establishing qualifications for sex offender

71 treatment programs and counselors based on accepted treatment protocols among licensed
72 mental health professionals.

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

76 ~~(g)~~ (h) *Modification of conditions or revocation.* — The court may:

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

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

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

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

97 ~~(h)~~ (i) *Written statement of conditions.* — The court shall direct that the probation officer
98 provide the defendant with a written statement at the defendant’s sentencing hearing that sets
99 forth all the conditions to which the term of supervised release is subject and that it is sufficiently
100 clear and specific to serve as a guide for the defendant’s conduct and for such supervision as is
101 required.

102 ~~(i)~~ (j) *Supervised release following revocation.* — When a term of supervised release is
103 revoked and the defendant is required to serve a term of imprisonment that is less than the
104 maximum term of supervised release authorized under §62-12-26(a) of this code, the court may
105 include a requirement that the defendant be placed on a term of supervised release after
106 imprisonment. The length of such term of supervised release shall not exceed the term of
107 supervised release authorized by this section less any term of imprisonment that was imposed
108 upon revocation of supervised release.

109 ~~(j)~~ (k) *Delayed revocation.* — The power of the court to revoke a term of supervised release
110 for violation of a condition of supervised release and to order the defendant to serve a term of
111 imprisonment and, subject to the limitations in ~~subsection (i) of this section~~ §62-12-26(j) of this
112 code, a further term of supervised release extends beyond the expiration of the term of supervised
113 release for any period necessary for the adjudication of matters arising before its expiration if,
114 before its expiration, a warrant or summons has been issued on the basis of an allegation of such
115 a violation.

NOTE: The purpose of this bill is to prohibit certain sex offenders from being in a supervisory position over children.

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