

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2109

**FISCAL
NOTE**

BY DELEGATE CANESTRARO

[Introduced January 9, 2019; Referred
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §62-12-10 of the Code of West Virginia, 1931, as amended, relating
 2 to extending the maximum period of confinement a judge may impose for certain, first-
 3 time probationary violations from 60 days to six months; and providing judges greater
 4 sentencing discretion for certain, subsequent violations of probation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-10. Violation of probation.

1 (a) If at any time during the period of probation there shall be reasonable cause to believe
 2 that the probationer has violated any of the conditions of his or her probation, the probation officer
 3 may arrest him or her with or without an order or warrant, or the court which placed him or her on
 4 probation, or the judge thereof in vacation, may issue an order for his or her arrest, whereupon
 5 he or she shall be brought before the court, or the judge thereof in vacation, for a prompt and
 6 summary hearing.

7 (1) If the court or judge finds reasonable cause exists to believe that the probationer:

8 (A) Absconded supervision;

9 (B) Engaged in new criminal conduct other than a minor traffic violation or simple
 10 possession of a controlled substance; or

11 (C) Violated a special condition of probation designed either to protect the public or a
 12 victim; the court or judge may revoke the suspension of imposition or execution of sentence,
 13 impose sentence if none has been imposed and order that sentence be executed.

14 (2) If the judge finds that reasonable cause exists to believe that the probationer violated
 15 any condition of supervision other than the conditions of probation set forth in §62-12-10(a)(1) of
 16 this code then, for the first violation, the judge shall impose a period of confinement up to ~~sixty~~
 17 ~~days or, for the second violation six months. For subsequent violations, a period of confinement~~
 18 ~~up to one hundred twenty days. For the third violation the judge may revoke the suspension of~~
 19 impose sentence if none has been imposed and order that

20 sentence be executed, with credit for time spent in confinement under this section.

21 (3) In computing the period for which the offender is to be confined, the time between his
22 or her release on probation and his or her arrest may not be taken to be any part of the term of
23 his or her sentence.

24 (b) A probationer confined for a first or second violation pursuant to §62-12-10(a)(2) of this
25 code may be confined in jail, and the costs of confining felony probationers shall be paid out of
26 funds appropriated for the Division of Corrections. Whenever the court orders the incarceration of
27 a probationer pursuant to the provisions of §62-12-10(a)(2) of this code, a circuit clerk shall
28 provide a copy of the order of confinement within five days to the Commissioner of Corrections.

29 (c) If, despite a violation of the conditions of probation, the court or judge is of the opinion
30 that the interests of justice do not require that the probationer serve his or her sentence or a period
31 of confinement, the judge may, except when the violation was the commission of a felony, again
32 release him or her on probation: *Provided*, That a judge may otherwise depart from the sentence
33 limitations set forth in §62-12-10(a)(2) of this code upon making specific written findings of fact
34 supporting the basis for the departure.

NOTE: The purpose of this bill is to extend the maximum period of confinement a judge may impose for certain, first-time probationary violations from 60 days to six months. The bill also provides judges greater sentencing discretion for certain, subsequent violations of probation.

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