

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2505**

BY DELEGATE STEELE

[Introduced January 17, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §62-12-19 of the Code of West Virginia, 1931, as amended, relating  
 2 to the ineligibility for probation of certain defendants convicted of two or more prior,  
 3 unrelated felonies.

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

**ARTICLE 12. PROBATION AND PAROLE.**

**§62-12-9. Conditions of release on probation.**

1 (a) Release on probation is conditioned upon the following:

2 (1) That the probationer may not, during the term of his or her probation, violate any  
 3 criminal law of this or any other state or of the United States;

4 (2) That the probationer may not, during the term of his or her probation, leave the state  
 5 without the consent of the court which placed him or her on probation;

6 (3) That the probationer complies with the conditions prescribed by the court for his or her  
 7 supervision by the probation officer;

8 (4) That in every case in which the probationer has been convicted of an offense defined  
 9 in ~~section twelve, article eight, chapter sixty-one of this code or article eight-b or eight-d of said~~  
 10 ~~chapter, §61-8-12, §61-8B-1 et seq., or §61-8D-1 et seq., of this code,~~ against a child, the  
 11 probationer may not live in the same residence as any minor child, nor exercise visitation with any  
 12 minor child and may have no contact with the victim of the offense: *Provided*, That the probationer  
 13 may petition the court of the circuit in which he or she was convicted for a modification of this term  
 14 and condition of his or her probation and the burden rests upon the probationer to demonstrate  
 15 that a modification is in the best interest of the child;

16 (5) That the probationer pay a fee, not to exceed \$20 per month, to defray costs of  
 17 supervision: *Provided*, That the court conducts a hearing prior to imposition of probation and  
 18 makes a determination on the record that the offender is able to pay the fee without undue  
 19 hardship. All moneys collected as fees from probationers pursuant to this subdivision shall be  
 20 deposited with the circuit clerk who shall, on a monthly basis, remit the moneys collected to the

21 State Treasurer for deposit in the State General Revenue Fund; ~~and~~

22 (6) That the probationer is required to pay the fee described in ~~section four, article eleven-~~  
23 ~~e of this chapter: §62-11C-4 of this code: *Provided*, That the court conducts a hearing prior to~~  
24 imposition of probation and ~~makes a determination~~ determines on the record that the offender is  
25 able to pay the fee without undue hardship; and

26 (b) The court shall not grant probation to a defendant previously convicted of two or more  
27 prior, unrelated felonies.

28 ~~(b)~~ (c) In addition, the court may impose, subject to modification at any time, any other  
29 conditions which it may determine advisable, including, but not limited to, any of the following:

30 (1) That the probationer make restitution or reparation, in whole or in part, immediately or  
31 within the period of probation, to any party injured by the crime for which he or she has been  
32 convicted: *Provided*, That the court conducts a hearing prior to imposition of probation and ~~makes~~  
33 ~~a determination~~ determines on the record that the offender is able to pay restitution without undue  
34 hardship;

35 (2) That the probationer pays any fine assessed and the costs of the proceeding in  
36 installments directed by the court: *Provided*, That the court conducts a hearing prior to imposition  
37 of probation and ~~makes a determination~~ determines on the record that the offender is able to pay  
38 the costs without undue hardship;

39 (3) That the probationer makes contributions from his or her earnings, in sums directed by  
40 the court, for the support of his or her dependents; and

41 (4) That the probationer, in the ~~discretion of the court~~ court's discretion, is required to serve  
42 a period of confinement in the jail of the county in which he or she was convicted for a period not  
43 to exceed one third of the minimum sentence established by law or one third of the least possible  
44 period of confinement in an indeterminate sentence, but in no case may the period of confinement  
45 exceed six consecutive months. The court may sentence the defendant within the six-month  
46 period to intermittent periods of confinement including, but not limited to, weekends or holidays

47 and may grant to the defendant intermittent periods of release in order that he or she may work  
48 at his or her employment or for other reasons or purposes as the court may determine appropriate:  
49 *Provided*, That the provisions of ~~article eleven-a of this chapter~~ §62-11A-1 et seq. of this code do  
50 not apply to intermittent periods of confinement and release except to the extent directed by the  
51 court. If a period of confinement is required as a condition of probation, the court shall make  
52 special findings that other conditions of probation are inadequate and that a period of confinement  
53 is necessary.

54 (c) Circuit courts may impose, as a condition of probation, participation in a day report  
55 center.

56 (1) To be eligible, the probationer must be identified as moderate to high risk of reoffending  
57 and moderate to high criminogenic need, as determined by the standardized risk and needs  
58 assessment adopted by the Supreme Court of Appeals of West Virginia under ~~subsection (d),~~  
59 ~~section six of this article,~~ §62-12-6(d) of this code, and applied by a probation officer or day report  
60 staff. In eligible cases, circuit courts may impose a term of up to one year: *Provided*, That  
61 ~~notwithstanding~~ despite the results of the standardized risk and needs assessment, a judge may  
62 impose, as a term of probation, participation in a day report center program upon making specific  
63 written findings of fact as to the reason for departing from the requirements of this subdivision.

64 (2) The day report center staff shall determine which services a person receives based on  
65 the results of the standardized risk and needs assessment and taking into consideration the other  
66 conditions of probation set by the court.

67 (d) For the purposes of this article, “day report center” means a court-operated or court-  
68 approved facility where persons ordered to serve a sentence in this type of facility are required to  
69 report under the terms and conditions set by the court for purposes which include, but are not  
70 limited to, counseling, employment training, alcohol or drug testing or other medical testing.

NOTE: The purpose of this bill is to deny probation to a criminal defendant previously

convicted of two or more prior, unrelated felonies.

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