

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2257

BY DELEGATE STEELE

[Introduced February 10, 2021; referred to the Committee

on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §62-12-30, relating to extended supervision for certain drug offenders;
3 establishing supervised release penalty of up to 10 years for certain drug offenders;
4 establishing when period of supervised release begins; providing for supervision by
5 multijudicial circuit probation officers; clarifying terms of supervised release same as those
6 for probation; establishing a fee for supervised release; establishing that court may modify
7 or revoke supervised release; providing court required probation officer provide written
8 conditions; providing for supervised release following revocation; providing for delayed
9 revocation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-30. Extended supervision for certain drug 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 §60A-4-401(a)(i), or §60A-4-
3 409(b)(1) of this code, or for the possession with intent to deliver the controlled substances of
4 heroin, methamphetamine or fentanyl, or a conviction under §60A-4-411 of this code, or a
5 conviction under §60A-4-416 of this code, may, as part of the sentence imposed at final
6 disposition, be required to serve, in addition to any other penalty or condition imposed by the
7 court, a period of supervised release of up to 10 years: *Provided*, That pursuant to the provisions
8 of subsection (g) of this section, a court may modify, terminate or revoke any term of supervised
9 release imposed pursuant to subsection (a) of this section.

10 (b) The period of supervised release imposed by the provisions of this section shall begin
11 upon the expiration of any period of probation, the expiration of any sentence of incarceration or
12 the expiration of any period of parole supervision imposed or required of the person so convicted,
13 whichever expires later: *Provided*, That no period of additional supervised release may begin until

14 the person so convicted has an opportunity for a hearing requesting modification, termination, or
15 revocation of the supervised release, which hearing may not be held sooner than 60 days prior to
16 the expiration of any period of probation, incarceration, or parole supervision imposed or required,
17 whichever expires later.

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

22 (d) A defendant sentenced to a period of supervised release shall be subject to any or all
23 of the conditions applicable to a person placed upon probation pursuant to the provisions of
24 section nine of this article.

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

28 (f) *Modification of conditions or revocation.* — The court may:

29 (1) Terminate a term of supervised release and discharge the defendant released at any
30 time after the expiration of one year of supervised release, pursuant to the provisions of the West
31 Virginia Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that
32 such action is warranted by the conduct of the defendant released and the interests of justice;

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

39 (3) Revoke a term of supervised release and require the defendant to serve in prison all
40 or part of the term of supervised release with credit for time previously served on supervised
41 release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to
42 revocation of probation, finds by clear and convincing evidence that the defendant violated a
43 condition of supervised release, except that a defendant whose term is revoked under this
44 subdivision may not be required to serve more than the period of supervised release. The
45 defendant shall acquire good time while incarcerated on a violation of supervised release and
46 shall be eligible for parole after incarceration for a violation of supervised release;

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

51 (g) *Written statement of conditions.* — The court shall direct that the probation officer
52 provide the defendant with a written statement at the defendant's sentencing hearing that sets
53 forth all the conditions to which the term of supervised release is subject and that it is sufficiently
54 clear and specific to serve as a guide for the defendant's conduct and for such supervision as is
55 required.

56 (h) *Supervised release following revocation.* — When a term of supervised release is
57 revoked and the defendant is required to serve a term of imprisonment that is less than the
58 maximum term of supervised release authorized under subsection (a) of this section, the court
59 may include a requirement that the defendant be placed on a term of supervised release after
60 imprisonment. The length of such term of supervised release shall not exceed the term of
61 supervised release authorized by this section less any term of imprisonment that was imposed
62 upon revocation of supervised release.

63 (i) *Delayed revocation.* — The power of the court to revoke a term of supervised release
64 for violation of a condition of supervised release and to order the defendant to serve a term of

65 imprisonment and, subject to the limitations in subsection (i) of this section, a further term of
66 supervised release extends beyond the expiration of the term of supervised release for any period
67 necessary for the adjudication of matters arising before its expiration if, before its expiration, a
68 warrant or summons has been issued on the basis of an allegation of such a violation.

NOTE: The purpose of this bill is to require extended supervision for certain drug offenders.

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