

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

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-4-414(b)(c), or (d) of this code, or a conviction under §60A-4-416 of this
6 code, may, as part of the sentence imposed at final disposition, be required to serve, in addition
7 to any other penalty or condition imposed by the court, a period of supervised release of up to 10
8 years: *Provided*, That pursuant to the provisions of subsection (g) of this section, a court may
9 modify, terminate or revoke any term of supervised release imposed pursuant to subsection (a)
10 of this section.

11 (b) The period of supervised release imposed by the provisions of this section shall begin
12 upon the expiration of any period of probation, the expiration of any sentence of incarceration or

13 the expiration of any period of parole supervision imposed or required of the person so convicted,
14 whichever expires later.

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

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

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

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

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

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

36 (3) Revoke a term of supervised release and require the defendant to serve in prison all
37 or part of the term of supervised release with credit for time previously served on supervised
38 release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to

39 revocation of probation, finds by clear and convincing evidence that the defendant violated a
40 condition of supervised release, except that a defendant whose term is revoked under this
41 subdivision may not be required to serve more than the period of supervised release. The
42 defendant shall acquire good time while incarcerated on a violation of supervised release and
43 shall be eligible for parole after incarceration for a violation of supervised release;

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

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

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

60 (i) *Delayed revocation.* — The power of the court to revoke a term of supervised release
61 for violation of a condition of supervised release and to order the defendant to serve a term of
62 imprisonment and, subject to the limitations in subsection (i) of this section, a further term of
63 supervised release extends beyond the expiration of the term of supervised release for any period

- 64 necessary for the adjudication of matters arising before its expiration if, before its expiration, a
65 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.