

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 361

FISCAL  
NOTE

BY SENATORS GRADY, WOELFEL, IHLENFELD, PLYMALE,  
PHILLIPS, SMITH, TRUMP, ROBERTS, KARNES, RUCKER,  
LINDSAY, AZINGER, AND WOODRUM

[Introduced February 19, 2021; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating  
2 to required extended supervised release of those convicted of soliciting a minor or  
3 convicted of using obscene material with intent to seduce a minor.

*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.*, §61-8A-1  
4 *et seq.*, and §61-3C-14b of this code shall, as part of the sentence imposed at final disposition,  
5 be required to serve, in addition to any other penalty or condition imposed by the court, a period  
6 of supervised release of up to 50 years: *Provided*, That the period of supervised release imposed  
7 by the court pursuant to this section for a defendant convicted after the effective date of this  
8 section as amended and reenacted during the first extraordinary session of the Legislature, 2006,  
9 of a violation of §61-8B-3 or §61-8B-7 of this code and sentenced pursuant to §62-12-9(a) of this  
10 code, shall be no less than 10 years: *Provided*, however, That a defendant designated after the  
11 effective date of this section as amended and reenacted during the first extraordinary session of  
12 the Legislature, 2006, as a sexually violent predator pursuant to the provisions of §15-12-2a of  
13 this code shall be subject, in addition to any other penalty or condition imposed by the court, to  
14 supervised release for life: *Provided* further, That pursuant to the provisions of §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 of this code is also prohibited from being in a supervisory position,  
49 playing a supervisory role or being responsible for groups of children, including, but not limited to,  
50 religious organizations, Boy Scouts, Girl Scouts, 4H organizations, sporting and scholastic teams,  
51 music, sporting, and theatre groups and camps, and summer day camps.

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

56 (e) Any person sentenced to a period of supervised release pursuant to the provisions of  
57 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 (f) A defendant sentenced to a period of supervised release shall be subject to any or all  
61 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 (g) The sentencing court may, based upon defendant's ability to pay, impose a supervision  
74 fee to offset the cost of supervision. Said fee shall not exceed \$50 per month. Said fee may be  
75 modified periodically based upon the defendant's ability to pay.

76 (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 (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 (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 (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 §62-12-26(j) of this code a further term of  
112 supervised release extends beyond the expiration of the term of supervised release for any period  
113 necessary for the adjudication of matters arising before its expiration if, before its expiration, a  
114 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 supervised release, up to 50 years, of those convicted of soliciting a minor under §61-3C-14b or convicted of using obscene material with intent to seduce a minor under §61-8A-1 *et seq.*

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