

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 361

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PHILLIPS, SMITH, TRUMP, ROBERTS, KARNES, RUCKER,
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[Originating in the Committee on the Judiciary;
reported on March 19, 2021]

1 A BILL to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating
2 to extended supervised release for certain offenders generally; requiring extended
3 supervision for persons convicted of distribution of obscene matter to minors, soliciting a
4 minor via computer, and soliciting a minor by use of obscene matter; and removing
5 antiquated language.

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.*, of this
4 code shall, as part of the sentence imposed at final disposition, be required to serve, in addition
5 to any other penalty or condition imposed by the court, a period of supervised release of up to 50
6 years: *Provided*, That the period of supervised release imposed by the court pursuant to this
7 section for a defendant convicted after the effective date of this section as amended and
8 reenacted during the first extraordinary session of the Legislature, 2006, of a violation of §61-8B-
9 3 or §61-8B-7 of this code and sentenced pursuant to §62-12-9(a) of this code, shall be no less
10 than 10 years: *Provided, however*, That a defendant designated after the effective date of this
11 section as amended and reenacted during the first extraordinary session of the Legislature, 2006,
12 as a sexually violent predator pursuant to the provisions of §15-12-2a of this code shall be subject,
13 in addition to any other penalty or condition imposed by the court, to supervised release for life:
14 *Provided further*, That a defendant convicted of a violation of §61-8A-2, §61-8A-4, or §61-3C-14b
15 of this code on and after the effective date of the amendment to this section enacted during the
16 2021 regular session of the Legislature is subject to the provisions of this section: *And Provided*

17 *further*, That pursuant to the provisions of subsections (a) and (h) of this section, a court may
18 modify, terminate, or revoke any term of supervised release imposed pursuant to this subsection.

19 (b) Any person required to be on supervised release between the minimum term of 10
20 years and life pursuant to the provisos of §62-12-26(a) of this code also shall be further prohibited
21 from:

22 (1) Establishing a residence or accepting employment within 1,000 feet of a school or child
23 care facility or within 1,000 feet of the residence of a victim or victims of any sexually violent
24 offenses for which the person was convicted;

25 (2) Loitering within 1,000 feet of a school or child care facility or within 1,000 feet of the
26 residence of a victim or victims of any sexually violent offenses for which the person was
27 convicted: *Provided*, That the imposition of this prohibition ~~shall apply~~ applies to a defendant
28 convicted after the effective date of this section as amended and reenacted during the regular
29 session of the Legislature, 2015: *Provided, however*, That as used ~~herein~~ in this subdivision
30 "loitering" means to enter or remain on property while having no legitimate purpose or, if a
31 legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that
32 purpose: *Provided further*, That nothing in this subdivision shall be construed to prohibit or limit a
33 person's presence within 1,000 feet of a location or facility referenced in this subdivision if the
34 person is present for the purposes of supervision, counseling, or other activity in which the person
35 is directed to participate as a condition of supervision or where the person has the express
36 permission of his or her supervising officer to be present;

37 (3) Establishing a residence or any other living accommodation in a household in which a
38 child under 16 resides if the person has been convicted of a sexually violent offense against a
39 child, unless the person is one of the following:

40 (i) The child's parent;

41 (ii) The child's grandparent; or

42 (iii) The child's stepparent and the person was the stepparent of the child prior to being
43 convicted of a sexually violent offense, the person's parental rights to any children in the home
44 have not been terminated, the child is not a victim of a sexually violent offense perpetrated by the
45 person, and the court determines that the person is not likely to cause harm to the child or children
46 with whom such person will reside: *Provided*, That nothing in this subsection shall preclude a
47 court from imposing residency or employment restrictions as a condition of supervised release on
48 defendants other than those subject to the provision of this subsection.

49 (c) In addition to any other prohibitions, any person found guilty of violating the provisions
50 of §61-8B-3 or §61-8B-7 of this code is also prohibited from being in a supervisory position,
51 playing a supervisory role, or being responsible for groups of children, including, but not limited
52 to, religious organizations, Boy Scouts, Girl Scouts, 4H organizations, sporting and scholastic
53 teams, music, sporting, and theatre groups and camps, and summer day camps.

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

58 (e) Any person sentenced to a period of supervised release pursuant to the provisions of
59 this section shall be supervised by a multi-judicial circuit probation officer, if available. ~~Until such~~
60 ~~time as~~ a multi-judicial circuit probation officer is available, the offender shall be supervised by
61 the probation office of the sentencing court or of the circuit in which he or she resides.

62 (f) A defendant sentenced to a period of supervised release ~~shall be~~ is subject to any or
63 all of the conditions applicable to a person placed upon probation pursuant to the provisions of
64 §62-12-9 of this code: *Provided*, That any defendant sentenced to a period of supervised release
65 pursuant to this section shall ~~be required to~~ participate in appropriate offender treatment programs
66 or counseling during the period of supervised release unless the court ~~deems~~ determines the

67 offender treatment programs or counseling to no longer be appropriate or necessary and makes
68 express findings in support thereof.

69 ~~Within 90 days of the effective date of this section as amended and reenacted during the~~
70 ~~first extraordinary session of the Legislature, 2006, the Secretary of the Department of Health and~~
71 ~~Human Resources shall propose rules and emergency rules for legislative approval in accordance~~
72 ~~with the provisions of §29A-3-1 et seq. of this code establishing qualifications for sex offender~~
73 ~~treatment programs and counselors based on accepted treatment protocols among licensed~~
74 ~~mental health professionals.~~

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

78 (h) *Modification of conditions or revocation.* — The court may:

79 (1) Terminate a term of supervised release and discharge the defendant released at any
80 time after the expiration of two years of supervised release, pursuant to the provisions of the West
81 Virginia Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that
82 such action is warranted by the conduct of the defendant released and the interests of justice;

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

89 (3) Revoke a term of supervised release and require the defendant to serve in prison all
90 or part of the term of supervised release without credit for time previously served on supervised
91 release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to
92 revocation of probation, finds by clear and convincing evidence that the defendant violated a

93 condition of supervised release, except that a defendant whose term is revoked under this
94 subdivision may not be required to serve more than the period of supervised release; or

95 (4) Order the defendant to remain at his or her place of residence during nonworking hours
96 and, if the court ~~se~~ directs, to have compliance monitored by telephone or electronic signaling
97 devices, except that an order under this ~~paragraph~~ subdivision may be imposed only as an
98 alternative to incarceration.

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

104 (j) *Supervised release following revocation.* — When a term of supervised release is
105 revoked and the defendant is required to serve a term of imprisonment that is less than the
106 maximum term of supervised release authorized under §62-12-26(a) of this code, the court may
107 include a requirement that the defendant be placed on a term of supervised release after
108 imprisonment. The length of ~~such~~ the term of supervised release shall not exceed the term of
109 supervised release authorized by this section less any term of imprisonment that was imposed
110 upon revocation of supervised release.

111 (k) *Delayed revocation.* — The power of the court to revoke a term of supervised release
112 for violation of a condition of supervised release and to order the defendant to serve a term of
113 imprisonment and, subject to the limitations in §62-12-26(j) of this code, a further term of
114 supervised release extends beyond the expiration of the term of supervised release for any period
115 necessary for the adjudication of matters arising before its expiration if, before its expiration, a
116 warrant or summons has been issued on the basis of an allegation of ~~such~~ a violation.