

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 688

FISCAL  
NOTE

BY SENATORS IHLENFELD, ROMANO, LINDSAY, AND

WOELFEL

[Introduced March 22, 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 §62-12-26a, relating to mandating extended supervision for defendants  
3 convicted of stalking and related felonious acts; establishing the start date of such  
4 extended supervision; providing monitoring procedure; providing for modifications or  
5 revocations of extended supervision; providing for violations during extended supervision;  
6 and providing for delayed extended supervision.

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

## **ARTICLE 12. PROBATION AND PAROLE.**

### **§62-12-26a. Extended supervision for certain stalking and related felonious acts; 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 felony violation of §61-2-9a of this code shall,  
3 as part of the sentence imposed at final disposition, be required to serve, in addition to any other  
4 penalty or condition imposed by the court, a period of supervised release of up to 50 years:  
5 Provided, That the period of supervised release imposed by the court pursuant to this section for  
6 a defendant convicted after the effective date of this section shall be no less than 10 years:  
7 Provided, however, That pursuant to the provisions of §62-12-26a(f) of this code, a court may  
8 modify, terminate, or revoke any term of supervised release imposed pursuant to §62-12-26a(a)  
9 of this code.

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

14 (c) Any person sentenced to a period of supervised release pursuant to the provisions of  
15 this section shall be supervised by a multijudicial circuit probation officer, if available. Until such  
16 time as a multijudicial circuit probation officer is available, the offender shall be supervised by the

17 probation office of the sentencing court or of the circuit in which he or she resides.

18 (d) A defendant sentenced to a period of supervised release shall be subject to any or all  
19 of the conditions applicable to a person placed upon probation pursuant to the provisions of §62-  
20 12-9 of this code: *Provided*, That any defendant sentenced to a period of supervised release  
21 pursuant to this section shall be required to participate in appropriate offender treatment programs  
22 or counseling during the period of supervised release unless the court deems the offender  
23 treatment programs or counseling to no longer be appropriate or necessary and makes express  
24 findings in support thereof.

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 two years 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 a state  
40 correctional facility all or part of the term of supervised release without credit for time previously  
41 served on supervised release if the court, pursuant to the West Virginia Rules of Criminal  
42 Procedure applicable to revocation of probation, finds by clear and convincing evidence that the

43 defendant violated a condition of supervised release, except that a defendant whose term is  
44 revoked under this subdivision may not be required to serve more than the period of supervised  
45 release;

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

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

55 (h) Supervised release following revocation. — When a term of supervised release is  
56 revoked and the defendant is required to serve a term of imprisonment that is less than the  
57 maximum term of supervised release authorized under §62-12-26a(a) of this code, the court may  
58 include a requirement that the defendant be placed on a term of supervised release after  
59 imprisonment. The length of such term of supervised release shall not exceed the term of  
60 supervised release authorized by this section less any term of imprisonment that was imposed  
61 upon revocation of supervised release.

62 (i) Delayed revocation. — The power of the court to revoke a term of supervised release  
63 for violation of a condition of supervised release and to order the defendant to serve a term of  
64 imprisonment and, subject to the limitations in §62-12-26a(h) of this code a further term of  
65 supervised release extends beyond the expiration of the term of supervised release for any period  
66 necessary for the adjudication of matters arising before its expiration if, before its expiration, a  
67 warrant or summons has been issued on the basis of an allegation of such a violation.

NOTE: The purpose of this bill is to make extended supervision mandatory for felony convictions of stalking and related criminal acts.

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