

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2257**

BY DELEGATES STEELE, PINSON AND PACK

[Introduced January 12, 2022; referred to the  
Committee on the Judiciary]



1 A BILL to amend the Code of West Virginia, as amended, by adding thereto a new section,  
2 designated §62-12-30, relating to extended supervision for certain drug offenders;  
3 specifying that the section shall apply to a person with a second or subsequent conviction;  
4 establishing supervised release penalty of up to 10 years for certain drug offenders;  
5 establishing when period of supervised release begins; providing for supervision by  
6 multijudicial circuit probation officers; clarifying terms of supervised release same as those  
7 for probation; establishing a fee for supervised release; establishing that court may modify  
8 or revoke supervised release; providing court required probation officer provide written  
9 conditions; providing for supervised release following revocation; providing for delayed  
10 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) The provisions of this section shall apply to any person convicted of a second or  
2 subsequent offense for any of the provisions of this code set forth in this section or under a  
3 statutory provision of another state, under the United States Code, or under the Uniform Code of  
4 Military Justice which requires proof of the same essential elements.

5 (b) Notwithstanding any other provision of this code to the contrary, any defendant  
6 convicted after the effective date of this section of a violation of §60A-4-401(a)(i), §60A-4-  
7 409(b)(1) of this code, or §60A-4-415 of this code with respect to the controlled substances of  
8 fentanyl, alone or in combination with another controlled substance, shall, as part of the sentence  
9 imposed at final disposition, be required to serve, in addition to any other penalty or condition  
10 imposed by the court, a period of supervised release of up to 10 years: *Provided*, That pursuant  
11 to the provisions of subsection (g) of this section, a court may modify, terminate or revoke any  
12 term of supervised release imposed pursuant to subsection (a) of this section. For purposes of

13 this section, the term “fentanyl” includes carfentanil, any substance containing any quantity of  
14 carfentanil, or any of its salts, isomers, or salts of isomers, or any other fentanyl analog that is not  
15 otherwise scheduled in this Chapter 60A of the code.

16 (c) The period of supervised release imposed by the provisions of this section shall begin  
17 upon the expiration of any period of probation, the expiration of any sentence of incarceration or  
18 the expiration of any period of parole supervision imposed or required of the person so convicted,  
19 whichever expires later.

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

24 (e) A defendant sentenced to a period of supervised release shall be subject to any or all  
25 of the conditions applicable to a person placed upon probation pursuant to the provisions of §61-  
26 2-9 of this code.

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

30 (g) *Modification of conditions or revocation.* — The court may:

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

35 (2) Extend a period of supervised release if less than the maximum authorized period was  
36 previously imposed or modify, reduce or enlarge the conditions of supervised release, at any time  
37 prior to the expiration or termination of the term of supervised release, consistent with the  
38 provisions of the West Virginia Rules of Criminal Procedure relating to the modification of

39 probation and the provisions applicable to the initial setting of the terms and conditions of post-  
40 release supervision;

41 (3) Revoke a term of supervised release and require the defendant to serve in prison all  
42 or part of the term of supervised release without credit for time previously served on supervised  
43 release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to  
44 revocation of probation, finds by clear and convincing evidence that the defendant violated a  
45 condition of supervised release, except that a defendant whose term is revoked under this  
46 subdivision may not be required to serve more than the period of supervised release: *Provided,*  
47 That a person serving a term of incarceration pursuant to this subsection shall not be eligible for  
48 the commutation set forth in §15A-4-17 of this code, and shall not be eligible for parole on the  
49 term of incarceration;

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

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

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

64 supervised release authorized by this section less any term of imprisonment that was imposed  
65 upon revocation of supervised release.

66 (i) *Delayed revocation.* — The power of the court to revoke a term of supervised release  
67 for violation of a condition of supervised release and to order the defendant to serve a term of  
68 imprisonment and, subject to the limitations in subsection (i) of this section, a further term of  
69 supervised release extends beyond the expiration of the term of supervised release for any period  
70 necessary for the adjudication of matters arising before its expiration if, before its expiration, a  
71 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.