

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **House Bill 5452**

By Delegate Akers

[By Request of the Department of Homeland Security]

[Introduced February 11, 2026; referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §62-12-10 of the Code of West Virginia, 1931, as amended, relating  
 2 to the standard of proof required for a final parole or probation revocation hearing being  
 3 proof by a preponderance of the evidence.

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

**ARTICLE 12. PROBATION AND PAROLE.**

**§62-12-10. Violation of probation.**

1 (a) If at any time during the period of probation there shall be reasonable cause to believe  
 2 that the probationer has violated any of the conditions of his or her probation, the probation officer  
 3 may arrest him or her with or without an order or warrant, or the court which placed him or her on  
 4 probation, or the judge thereof in vacation, may issue an order for his or her arrest, whereupon he  
 5 or she shall be brought before the court, or the judge thereof in vacation, for a prompt and  
 6 summary hearing. The standard of proof required for a final parole or probation revocation hearing  
 7 is proof by a preponderance of the evidence.

8 (1) If the court or judge finds reasonable cause exists to believe that the probationer:

9 (A) Absconded supervision;

10 (B) Engaged in new criminal conduct other than a minor traffic violation or simple  
 11 possession of a controlled substance; or

12 (C) Violated a special condition of probation designed either to protect the public or a  
 13 victim; the court or judge may revoke the suspension of imposition or execution of sentence,  
 14 impose sentence if none has been imposed and order that sentence be executed.

15 (2) If the judge finds that reasonable cause exists to believe that the probationer violated  
 16 any condition of supervision other than the conditions of probation set forth in subdivision (1) of  
 17 this subsection then, for the first violation, the judge shall impose a period of confinement up to  
 18 sixty days or, for the second violation, a period of confinement up to one hundred twenty days. For  
 19 the third violation, the judge may revoke the suspension of imposition or execution of sentence,  
 20 impose sentence if none has been imposed and order that sentence be executed, with credit for

21 time spent in confinement under this section.

22 (3) In computing the period for which the offender is to be confined, the time between his or  
23 her release on probation and his or her arrest may not be taken to be any part of the term of his or  
24 her sentence.

25 (b) A probationer confined for a first or second violation pursuant to subdivision (2),  
26 subsection (a) of this section may be confined in jail, and the costs of confining felony probationers  
27 shall be paid out of funds appropriated for the Division of Corrections. Whenever the court orders  
28 the incarceration of a probationer pursuant to the provisions of subdivision (2), subsection (a) of  
29 this section, a circuit clerk shall provide a copy of the order of confinement within five days to the  
30 Commissioner of Corrections.

31 (c) If, despite a violation of the conditions of probation, the court or judge is of the opinion  
32 that the interests of justice do not require that the probationer serve his or her sentence or a period  
33 of confinement, the judge may, except when the violation was the commission of a felony, again  
34 release him or her on probation: Provided, That a judge may otherwise depart from the sentence  
35 limitations set forth in subdivision (2), subsection (a) of this section upon making specific written  
36 findings of fact supporting the basis for the departure.

NOTE: The purpose of this bill is to clarify the standard of proof required for a final parole or probation revocation hearing is proof by a preponderance of the evidence.

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