

SB 347

FILED

2009 MAY -8 PM 4: 21

WEST VIRGINIA LEGISLATURE
SECRETARY OF STATE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

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ENROLLED

Senate Bill No. 347

(BY SENATORS KESSLER, BROWNING, FOSTER, JENKINS,
LAIRD, MINARD, OLIVERIO, PALUMBO, SNYDER,
STOLLINGS, WILLIAMS, YOST, BARNES,
CARUTH, DEEM AND HALL)

[Passed April 11, 2009; in effect ninety days from passage.]

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AN ACT to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating to making corrections to internal code references and other terminology related to extended supervision for certain sex offenders.

Be it enacted by the Legislature of West Virginia:

That §62-12-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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
2 the contrary, any defendant convicted after the effective
3 date of this section of a violation of section twelve, article
4 eight, chapter sixty-one of this code or a felony violation

5 of the provisions of article eight-b, eight-c or eight-d of
6 said chapter shall, as part of the sentence imposed at final
7 disposition, be required to serve, in addition to any other
8 penalty or condition imposed by the court, a period of
9 supervised release of up to fifty years: *Provided*, That the
10 period of supervised release imposed by the court pursuant
11 to this section for a defendant convicted after the effective
12 date of this section as amended and reenacted during the
13 first extraordinary session of the Legislature, 2006, of a
14 violation of section three or seven, article eight-b, chapter
15 sixty-one of this code and sentenced pursuant to section
16 nine-a of said article, shall be no less than ten years:
17 *Provided, however*, That a defendant designated after the
18 effective date of this section as amended and reenacted
19 during the first extraordinary session of the Legislature,
20 2006, as a sexually violent predator pursuant to the
21 provisions of section two-a, article twelve, chapter fifteen
22 of this code shall be subject, in addition to any other
23 penalty or condition imposed by the court, to supervised
24 release for life: *Provided further*, That, pursuant to the
25 provisions of subsection (g) of this section, a court may
26 modify, terminate or revoke any term of supervised release
27 imposed pursuant to subsection (a) of this section.

28 (b) Any person required to be on supervised release for
29 a minimum term of ten years or for life pursuant to the
30 provisos of subsection (a) of this section also shall be
31 further prohibited from:

32 (1) Establishing a residence or accepting employment
33 within one thousand feet of a school or child care facility
34 or within one thousand feet of the residence of a victim or
35 victims of any sexually violent offenses for which the
36 person was convicted;

37 (2) Establishing a residence or any other living accom-
38 modation in a household in which a child under sixteen
39 resides if the person has been convicted of a sexually

40 violent offense against a child, unless the person is one of
41 the following:

42 (i) The child's parent;

43 (ii) The child's grandparent; or

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

56 (c) The period of supervised release imposed by the
57 provisions of this section shall begin upon the expiration
58 of any period of probation, the expiration of any sentence
59 of incarceration or the expiration of any period of parole
60 supervision imposed or required of the person so con-
61 victed, whichever expires later.

62 (d) Any person sentenced to a period of supervised
63 release pursuant to the provisions of this section shall be
64 supervised by the probation office of the sentencing court
65 or by the community corrections program established in
66 said circuit unless jurisdiction is transferred elsewhere by
67 order of the sentencing court.

68 (e) A defendant sentenced to a period of supervised
69 release shall be subject to any or all of the conditions
70 applicable to a person placed upon probation pursuant to
71 the provisions of section nine of this article: *Provided*,
72 That any defendant sentenced to a period of supervised

73 release pursuant to this section shall be required to
74 participate in appropriate offender treatment programs or
75 counseling during the period of supervised release unless
76 the court deems the offender treatment programs or
77 counseling to no longer be appropriate or necessary and
78 makes express findings in support thereof.

79 Within ninety days of the effective date of this section
80 as amended and reenacted during the first extraordinary
81 session of the Legislature, 2006, the Secretary of the
82 Department of Health and Human Resources shall propose
83 rules and emergency rules for legislative approval in
84 accordance with the provisions of article three, chapter
85 twenty-nine-a of this code establishing qualifications for
86 sex offender treatment programs and counselors based on
87 accepted treatment protocols among licensed mental
88 health professionals.

89 (f) The sentencing court may, based upon defendant's
90 ability to pay, impose a supervision fee to offset the cost of
91 supervision. Said fee shall not exceed \$50 per month.
92 Said fee may be modified periodically based upon the
93 defendant's ability to pay.

94 (g) *Modification of conditions or revocation.* – The
95 court may:

96 (1) Terminate a term of supervised release and dis-
97 charge the defendant released at any time after the
98 expiration of two years of supervised release, pursuant to
99 the provisions of the West Virginia Rules of Criminal
100 Procedure relating to the modification of probation, if it
101 is satisfied that such action is warranted by the conduct of
102 the defendant released and the interests of justice;

103 (2) Extend a period of supervised release if less than the
104 maximum authorized period was previously imposed or
105 modify, reduce or enlarge the conditions of supervised
106 release, at any time prior to the expiration or termination

107 of the term of supervised release, consistent with the
108 provisions of the West Virginia Rules of Criminal Proce-
109 dure relating to the modification of probation and the
110 provisions applicable to the initial setting of the terms and
111 conditions of post-release supervision;

112 (3) Revoke a term of supervised release and require the
113 defendant to serve in prison all or part of the term of
114 supervised release without credit for time previously
115 served on supervised release if the court, pursuant to the
116 West Virginia Rules of Criminal Procedure applicable to
117 revocation of probation, finds by clear and convincing
118 evidence that the defendant violated a condition of
119 supervised release, except that a defendant whose term is
120 revoked under this subdivision may not be required to
121 serve more than the period of supervised release;

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

128 (h) *Written statement of conditions.* – The court shall
129 direct that the probation officer provide the defendant
130 with a written statement at the defendant's sentencing
131 hearing that sets forth all the conditions to which the term
132 of supervised release is subject and that it is sufficiently
133 clear and specific to serve as a guide for the defendant's
134 conduct and for such supervision as is required.

135 (i) *Supervised release following revocation.* – When a
136 term of supervised release is revoked and the defendant is
137 required to serve a term of imprisonment that is less than
138 the maximum term of supervised release authorized under
139 subsection (a) of this section, the court may include a
140 requirement that the defendant be placed on a term of
141 supervised release after imprisonment. The length of such

142 term of supervised release shall not exceed the term of
143 supervised release authorized by this section less any term
144 of imprisonment that was imposed upon revocation of
145 supervised release.

146 (j) *Delayed revocation.* – The power of the court to
147 revoke a term of supervised release for violation of a
148 condition of supervised release and to order the defendant
149 to serve a term of imprisonment and, subject to the
150 limitations in subsection (i) of this section, a further term
151 of supervised release extends beyond the expiration of the
152 term of supervised release for any period necessary for the
153 adjudication of matters arising before its expiration if,
154 before its expiration, a warrant or summons has been
155 issued on the basis of an allegation of such a violation.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is appended* this the *5th*
Day of *May*, 2009.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 7 2009

Time 11:15am