WEST VIRGINIA CODE: §62-12-9

§62-12-9. Conditions of release on probation.

(a) Release on probation is conditioned upon the following:

(1) That the probationer may not, during the term of his or her probation, violate any criminal law of this or any other state or of the United States;

(2) That the probationer may not, during the term of his or her probation, leave the state without the consent of the court which placed him or her on probation;

(3) That the probationer complies with the conditions prescribed by the court for his or her supervision by the probation officer;

(4) That in every case in which the probationer has been convicted of an offense set forth in §61-3C-14b, §61-8-12, §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq*. of this code against a child, the probationer may not live in the same residence as any minor child, nor exercise visitation with any minor child, and may have no contact with the victim of the offense: *Provided*, That the probationer may petition the court of the circuit in which he or she was convicted for a modification of this term and condition of his or her probation and the burden rests upon the probationer to demonstrate that a modification is in the best interest of the child;

(5) That the probationer pay a fee, not to exceed $20 per month, to defray costs of supervision: *Provided*, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the fee without undue hardship. All moneys collected as fees from probationers pursuant to this subdivision shall be deposited with the circuit clerk who shall, on a monthly basis, remit the moneys collected to the State Treasurer for deposit in the state General Revenue Fund; and

(6) That the probationer is required to pay the fee described in §62-11C-4 of this code: *Provided*, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the fee without undue hardship.

(b) In addition, the court may impose, subject to modification at any time, any other conditions which it may determine advisable, including, but not limited to, any of the following:

(1) That the probationer make restitution or reparation, in whole or in part, immediately or within the period of probation, to any party injured by the crime for which he or she has been convicted: *Provided*, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay restitution without undue hardship;

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(2) That the probationer pays any fine assessed and the costs of the proceeding in installments directed by the court: *Provided*, That the court conduct a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the costs without undue hardship;

(3) That the probationer makes contributions from his or her earnings, in sums directed by the court, for the support of his or her dependents; and

(4) That the probationer, in the discretion of the court, is required to serve a period of confinement in the jail of the county in which he or she was convicted for a period not to exceed one third of the minimum sentence established by law or one third of the least possible period of confinement in an indeterminate sentence, but in no case may the period of confinement exceed six consecutive months. The court may sentence the defendant within the six-month period to intermittent periods of confinement including, but not limited to, weekends or holidays and may grant to the defendant intermittent periods of release in order that he or she may work at his or her employment or for other reasons or purposes as the court may determine appropriate: *Provided*, That the provisions of §62-11A-1 *et seq*. of this code do not apply to intermittent periods of confinement and release except to the extent directed by the court. If a period of confinement is required as a condition of probation, the court shall make special findings that other conditions of probation are inadequate and that a period of confinement is necessary.

(c) Circuit courts may impose, as a condition of probation, participation in a day report center.

(1) To be eligible, the probationer shall be identified as moderate to high risk of reoffending and moderate to high criminogenic need, as determined by the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under §62-12-6(d) of this code, and applied by a probation officer or day report staff. In eligible cases, circuit courts may impose a term of up to one year: *Provided*, That notwithstanding the results of the standardized risk and needs assessment, a judge may impose, as a term of probation, participation in a day report center program upon making specific written findings of fact as to the reason for departing from the requirements of this subdivision.

(2) The day report center staff shall determine which services a person receives based on the results of the standardized risk and needs assessment and taking into consideration the other conditions of probation set by the court.

(d) For the purposes of this article, "day report center" means a court-operated or court-approved facility where persons ordered to serve a sentence in this type of facility are required to report under the terms and conditions set by the court for purposes which include, but are not limited to, counseling, employment training, alcohol or drug testing, or other medical testing.

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