

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4592

BY DELEGATE C. MILLER

[Introduced February 13, 2018; 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 62-12-30, relating to probation and parole; adding certain sanctions for
 3 violations of probation and parole; providing for a system of graduated sanctions;
 4 establishing the conditions of community supervision; granting authority to impose
 5 graduated sanctions; providing for the monitoring of graduated sanctions; defining terms;
 6 and requiring rule-making.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-30. Swift and certain sanctions; graduated sanctions; conditions’ authority; monitoring; definitions; rule-making.

1 (a) Definitions. -- In this section, unless the context clearly requires a different meaning:

2 “Agency” means:

3 (A) The state agency responsible for supervising individuals placed on probation by the
 4 courts or serving a period of parole or post-release supervision from a jail; and

5 (B) Regional, local or county governmental agencies responsible for supervising
 6 individuals placed on probation by a court or serving a period of parole or post-release supervision
 7 from a jail, provided the agencies receive state funding.

8 “Chief supervision officer” means the highest-ranking field probation or parole
 9 administrator in each judicial circuit.

10 “Court” means a court of record having original criminal jurisdiction.

11 “Community supervision” means:

12 (A) The placement of a defendant under a continuum of programs and sanctions with
 13 conditions imposed by a court for a specified period during which:

14 (i) Criminal proceedings are deferred without an adjudication of guilt;

15 (ii) A sentence of imprisonment or confinement, imprisonment and fine, or confinement
 16 and fine, is probated and the imposition of sentence is suspended, in whole or in part; or

17 (B) The placement of an individual under a continuum of programs and sanctions after
18 release from prison or jail with conditions imposed by the releasing authority for a specified period.

19 “Graduated sanction” means any of a wide range of nonprison offender accountability
20 measures and programs including, but not limited to, electronic supervision tools, drug and
21 alcohol testing or monitoring, day or evening reporting centers, restitution centers, forfeiture of
22 earned compliance credits, rehabilitative interventions such as substance abuse or mental health
23 treatment, reporting requirements to supervision officers, community service or work crews,
24 secure or unsecure residential treatment facilities or halfway houses and short-term or intermittent
25 incarceration.

26 “Positive reinforcement” means any of a wide range of rewards and incentives including,
27 but not limited to, awarding certificates of achievement, reducing reporting requirements, deferring
28 a monthly supervision fee payment, awarding earned compliance credits, removing supervision
29 conditions such as home detention or curfew or asking the offender to be a mentor to others.

30 “Supervision officer” means a person appointed or employed by the agency to supervise
31 individuals placed on community supervision.

32 “Supervised individual” means an individual placed on probation by a court or serving a
33 period of parole or post-release supervision from a jail.

34 (b) Policy on community supervision. -- It is the policy of this state that supervised
35 individuals shall be subject to:

36 (1) Violation revocation proceedings and possible incarceration for failure to comply with
37 the conditions of supervision when such failure constitutes a significant risk to prior victims of the
38 supervised individual or the community at large, and cannot be appropriately managed in the
39 community; or

40 (2) Sanctions other than revocation and incarceration as appropriate to the severity of the
41 violation behavior, the risk of future criminal behavior by the offender and the need for and
42 availability of interventions which may assist the offender to remain compliant and crime-free in

43 the community.

44 (c) System of graduated sanctions. --

45 (1) The agency shall, by January 1, 2019, adopt a single system of graduated sanctions
46 for violations of conditions of community supervision. The system shall set forth a menu of
47 presumptive sanctions for the most common types of supervision violations including, but not
48 limited to, failure to report, failure to pay fines, fees and victim restitution, failure to participate in
49 a required program or service, failure to complete community service, violation of a protective or
50 no contact order and failure to refrain from the use of alcohol or controlled substances. The
51 system of sanctions shall consider factors such as the severity of the current violation, the
52 supervised individual's previous criminal record, the number and severity of any previous
53 supervision violations, the supervised individual's assessed risk level and the extent to which
54 graduated sanctions were imposed for previous violations. The system also shall define positive
55 reinforcements that supervised individuals will receive for compliance with conditions of
56 supervision.

57 (2) The agency shall establish, by rule-making in accordance with §29A-3-1 et seq. of this
58 code, an administrative process to review and approve or reject, prior to imposition, graduated
59 sanctions that deviate from those prescribed.

60 (3) The agency shall establish, by rules, an administrative process to review graduated
61 sanctions contested by supervised individuals under subsection (e) of this section. The review
62 shall be conducted by an impartial agency employee or representative who has been selected,
63 appointed and trained to hear cases regarding graduated sanctions for violations of supervision
64 conditions.

65 (d) Conditions of community supervision. -- For individuals placed on probation, the judge
66 of the court having jurisdiction of the case shall determine the conditions of community supervision
67 and may impose as a condition of community supervision that the agency supervising the
68 individual may, in accordance with subsection (e) of this section, impose graduated sanctions

69 adopted by the agency for violations of the conditions of community supervision.

70 (e) Authority to impose graduated sanctions. --

71 (1) Notwithstanding any rule or law to the contrary, the agency may:

72 (A) Modify the conditions of community supervision for the limited purpose of imposing
73 graduated sanctions; and

74 (B) Place a supervised individual who violates the conditions of community supervision in
75 a state or local correctional or detention facility or residential center for a period of not more than
76 five days consecutively and not more than 30 days in any one calendar year.

77 (2) A supervision officer intending to modify the conditions of community supervision by
78 imposing a graduated sanction shall issue to the supervised individual a notice of the intended
79 sanction. The notice shall inform the supervised individual of the technical violation or violations
80 alleged, the date or dates of the violation or violations and the graduated sanction to be imposed.

81 (3) The imposition of a graduated sanction or sanctions by a community supervision officer
82 must comport with the system of graduated sanctions adopted by the agency under subsection
83 (d) of this section. Upon receipt of the notice, the supervised individual shall immediately accept
84 or object to the sanction or sanctions proposed by the officer. The failure of the supervised
85 individual to comply with a sanction constitutes a violation of probation, parole or post-release
86 supervision. If the supervised individual objects to the imposition of the sanction or sanctions, the
87 individual is entitled to an administrative review to be conducted by the agency within five days of
88 the issuance of the notice. If the agency affirms the recommendation contained in the notice, then
89 the sanction or sanctions becomes effective immediately.

90 (4) If the graduated sanction involves confinement in a correctional or detention facility,
91 confinement must be approved by the chief supervision officer but the supervised individual may
92 be taken into custody for up to four hours while such approval is obtained. If the supervised
93 individual is employed, the supervision officer shall, to the extent feasible, impose this sanction
94 on weekend days or other days and times when the supervised individual is not working.

95 (5) A sanction that confines a supervised individual in a correctional or detention facility
96 for a period of more than five consecutive days, or extends the term of community supervision,
97 may not be imposed as a graduated sanction except pursuant to an order of the court or the
98 releasing authority.

99 (6) A notice of a graduated sanction may not be issued for any violation of probation,
100 parole or post-release supervision which could warrant an additional, separate felony charge
101 except that a notice of a graduated sanction may be issued for a positive drug test.

102 (7) Upon successful completion of a graduated sanction or sanctions, a court may not
103 revoke the term of community supervision or impose additional sanctions for the same violation.

104 (8) If a supervision officer modifies the conditions of community supervision by imposing
105 a graduated sanction, the officer shall:

106 (A) Deliver a copy of the modified conditions to the supervised individual;

107 (B) File a copy of the modified conditions with the sentencing court or releasing authority;

108 and

109 (C) Note the date of delivery of the copy in the supervised individual's file.

110 (f) *Monitoring graduated sanctions.* -- The chief supervision officer shall review
111 confinement sanctions recommended by supervision officers on a quarterly basis to assess
112 disparities that may exist among officers, evaluate the effectiveness of the sanction as measured
113 by the supervised individuals' subsequent conduct and monitor the impact on the agency's
114 number and type of revocations for violations of the conditions of supervision.

NOTE: The purpose of this bill is to add certain sanctions for violations of probation and parole. The bill provides for a system of graduated sanctions. The bill establishes the conditions of community supervision. The bill grants authority to impose graduated sanctions. The bill provides for the monitoring of graduated sanctions. The bill defines terms. The bill requires rule-making.

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