

1 **ENROLLED**

2 **H. B. 2001**

3
4 (By Delegates Boggs and Armstead)

5
6 [Passed January 25, 2011; in effect from passage.]
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10 AN ACT to amend and reenact §62-12-13 of the Code of West Virginia,
11 1931, as amended, relating to powers and duties of the board
12 of parole; providing that inmates serving life sentences with
13 possibility of parole may be reconsidered by the parole board
14 anytime within three years of denial of parole; and making
15 technical corrections to the section.

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

17 That §62-12-13 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 **ARTICLE 12. PROBATION AND PAROLE.**

20 **§62-12-13. Powers and duties of board; eligibility for parole;**
21 **procedure for granting parole.**

22 (a) The board of parole, whenever it is of the opinion that
23 the best interests of the state and of the inmate will be served,
24 and subject to the limitations hereinafter provided, shall release

1 any inmate on parole for terms and upon conditions as are provided
2 by this article.

3 (b) Any inmate of a state correctional center is eligible for
4 parole if he or she:

5 (1) (A) Has served the minimum term of his or her indeterminate
6 sentence or has served one fourth of his or her definite term
7 sentence, as the case may be; or

8 (B) He or she:

9 (i) Has applied for and been accepted by the Commissioner of
10 Corrections into an accelerated parole program;

11 (ii) Does not have a prior criminal conviction for a felony
12 crime of violence against the person, a felony offense involving
13 the use of a firearm, or a felony offense where the victim was a
14 minor child;

15 (iii) Has no record of institutional disciplinary rule
16 violations for a period of one hundred twenty days prior to parole
17 consideration unless the requirement is waived by the commissioner;

18 (iv) Is not serving a sentence for a crime of violence against
19 the person, or more than one felony for a controlled substance
20 offense for which the inmate is serving a consecutive sentence, a
21 felony offense involving the use of a firearm, or a felony offence
22 where the victim was a minor child; and

23 (v) Has successfully completed a rehabilitation treatment
24 program created with the assistance of a standardized risk and
25 needs assessment;

1 (I) As used in this section "felony crime of violence against
2 the person" means felony offenses set forth in articles two, three-
3 e, eight-b or eight-d of chapter sixty-one of this code; and

4 (II) As used in this section "felony offense where the victim
5 was a minor child" means any felony crime of violence against the
6 person and any felony violation set forth in article eight, eight-
7 a, eight-c or eight-d of chapter sixty-one of this code.

8 (C) Notwithstanding any provision of this code to the
9 contrary, any person who committed, or attempted to commit a felony
10 with the use, presentment or brandishing of a firearm, is not
11 eligible for parole prior to serving a minimum of three years of
12 his or her sentence or the maximum sentence imposed by the court,
13 whichever is less: *Provided*, That any person who committed, or
14 attempted to commit, any violation of section twelve, article two,
15 chapter sixty-one of this code, with the use, presentment or
16 brandishing of a firearm, is not eligible for parole prior to
17 serving a minimum of five years of his or her sentence or one third
18 of his or her definite term sentence, whichever is greater.
19 Nothing in this paragraph applies to an accessory before the fact
20 or a principal in the second degree who has been convicted as if he
21 or she were a principal in the first degree if, in the commission
22 of or in the attempted commission of the felony, only the principal
23 in the first degree used, presented or brandished a firearm. A
24 person is not ineligible for parole under the provisions of this
25 paragraph because of the commission or attempted commission of a

1 felony with the use, presentment or brandishing of a firearm unless
2 that fact is clearly stated and included in the indictment or
3 presentment by which the person was charged and was either: (i)
4 Found by the court at the time of trial upon a plea of guilty or
5 nolo contendere; (ii) found by the jury, upon submitting to the
6 jury a special interrogatory for such purpose if the matter was
7 tried before a jury; or (iii) found by the court, if the matter was
8 tried by the court without a jury.

9 For the purpose of this section, the term "firearm" means any
10 instrument which will, or is designed to, or may readily be
11 converted to, expel a projectile by the action of an explosive,
12 gunpowder or any other similar means.

13 (D) The amendments to this subsection adopted in the year
14 1981:

15 (i) Apply to all applicable offenses occurring on or after
16 August 1 of that year;

17 (ii) Apply with respect to the contents of any indictment or
18 presentment returned on or after August 1 of that year irrespective
19 of when the offense occurred;

20 (iii) Apply with respect to the submission of a special
21 interrogatory to the jury and the finding to be made thereon in any
22 case submitted to the jury on or after August 1 of that year or to
23 the requisite findings of the court upon a plea of guilty or in any
24 case tried without a jury: *Provided*, That the state gives notice
25 in writing of its intent to seek such finding by the jury or court,

1 as the case may be, which notice shall state with particularity the
2 grounds upon which the finding will be sought as fully as such
3 grounds are otherwise required to be stated in an indictment,
4 unless the grounds therefor are alleged in the indictment or
5 presentment upon which the matter is being tried; and

6 (iv) Does not apply with respect to cases not affected by the
7 amendments and in such cases the prior provisions of this section
8 apply and are construed without reference to the amendments.

9 (1) Insofar as the amendments relate to mandatory sentences
10 restricting the eligibility for parole, all matters requiring a
11 mandatory sentence shall be proved beyond a reasonable doubt in all
12 cases tried by the jury or the court;

13 (2) Is not in punitive segregation or administrative
14 segregation as a result of disciplinary action;

15 (3) Has maintained a record of good conduct in prison for a
16 period of at least three months immediately preceding the date of
17 his or her release on parole;

18 (4) Has prepared and submitted to the board a written parole
19 release plan setting forth proposed plans for his or her place of
20 residence, employment and, if appropriate, his or her plans
21 regarding education and post-release counseling and treatment. The
22 Commissioner of Corrections or his or her designee shall review the
23 plan to be reviewed and investigated and provide recommendations to
24 the board as to the suitability of the plan: *Provided*, That in
25 cases in which there is a mandatory thirty-day notification period

1 required prior to the release of the inmate, pursuant to section
2 twenty-three of this article, the board may conduct an initial
3 interview and deny parole without requiring the development of a
4 plan. In the event the board does not believe parole should be
5 denied, it may defer a final decision pending completion of an
6 investigation and receipt of recommendations. Upon receipt of the
7 plan together with the investigation and recommendation, the board,
8 through a panel, shall make a final decision regarding the granting
9 or denial of parole; and

10 (5) Has satisfied the board that if released on parole he or
11 she will not constitute a danger to the community.

12 (c) Except in the case of a person serving a life sentence, no
13 person who has been previously twice convicted of a felony may be
14 released on parole until he or she has served the minimum term
15 provided by law for the crime for which he or she was convicted.
16 A person sentenced for life may not be paroled until he or she has
17 served ten years, and a person sentenced for life who has been
18 previously twice convicted of a felony may not be paroled until he
19 or she has served fifteen years: *Provided*, That a person convicted
20 of first degree murder for an offense committed on or after June
21 10, 1994, is not eligible for parole until he or she has served
22 fifteen years.

23 (d) In the case of a person sentenced to any state
24 correctional center, it is the duty of the board, as soon as a
25 person becomes eligible, to consider the advisability of his or her

1 release on parole.

2 (e) If, upon consideration, parole is denied, the board shall
3 promptly notify the inmate of the denial. The board shall, at the
4 time of denial, notify the inmate of the month and year he or she
5 may apply for reconsideration and review. The board shall at least
6 once a year reconsider and review the case of every inmate who was
7 denied parole and is still eligible: *Provided*, That the board may
8 reconsider and review parole eligibility anytime within three years
9 following the denial of parole of an inmate serving a life sentence
10 with the possibility of parole.

11 (f) Any person serving a sentence on a felony conviction who
12 becomes eligible for parole consideration prior to being
13 transferred to a state correctional center may make written
14 application for parole. The terms and conditions for parole
15 consideration established by this article apply to such inmates.

16 (g) The board shall, with the approval of the Governor, adopt
17 rules governing the procedure in the granting of parole. No
18 provision of this article and none of the rules adopted hereunder
19 are intended or may be construed to contravene, limit or otherwise
20 interfere with or affect the authority of the Governor to grant
21 pardons and reprieves, commute sentences, remit fines or otherwise
22 exercise his or her constitutional powers of executive clemency.

23 (h) The Division of Corrections shall promulgate policies and
24 procedures for developing a rehabilitation treatment plan created
25 with the assistance of a standardized risk and needs assessment.

1 The policies and procedures shall include, but not be limited to,
2 policy and procedures for screening and selecting inmates for
3 rehabilitation treatment and development and use of standardized
4 risk and needs assessment tools. An inmate shall not be paroled
5 solely due to having successfully completed a rehabilitation
6 treatment plan but completion of all the requirements of a
7 rehabilitation parole plan along with compliance with the
8 requirements of subsection (b) of this section shall create a
9 rebuttable presumption that parole is appropriate. The presumption
10 created by this subsection may be rebutted by a Parole Board
11 finding that at the time parole release is sought the inmate still
12 constitutes a reasonable risk to the safety or property of other
13 persons if released. Nothing in subsection (b) of this section or
14 in this subsection may be construed to create a right to parole.

15 (i) Notwithstanding the provisions of subsection (b) of this
16 section, the Parole Board may, in its discretion, grant or deny
17 parole to an inmate against whom a detainer is lodged by a
18 jurisdiction other than West Virginia for service of a sentence of
19 incarceration, upon a written request for parole from the inmate.
20 A denial of parole under this subsection shall preclude
21 consideration for a period of one year or until the provisions of
22 subsection (b) of this section are applicable.

23 (j) Where an inmate is otherwise eligible for parole pursuant
24 to subsection (b) of this section but the Parole Board determines
25 that the inmate should participate in an additional program or

1 complete an assigned task or tasks prior to actual release on
2 parole, the board may grant parole contingently, effective upon
3 successful completion of the program or assigned task or tasks,
4 without the need for a further hearing. The Commissioner of
5 Corrections shall provide notice to the Parole Board of the
6 imminent release of a contingently paroled inmate to effectuate
7 appropriate supervision.

8 (k) The Division of Corrections is charged with the duty of
9 supervising all probationers and parolees whose supervision may
10 have been undertaken by this state by reason of any interstate
11 compact entered into pursuant to the uniform act for out-of-state
12 parolee supervision.

13 (l)(1) When considering an inmate of a state correctional
14 center for release on parole, the Parole Board panel considering
15 the parole is to have before it an authentic copy of or report on
16 the inmate's current criminal record as provided through the West
17 Virginia State Police, the United States Department of Justice or
18 other reliable criminal information sources and written reports of
19 the warden or superintendent of the state correctional center to
20 which the inmate is sentenced:

21 (A) On the inmate's conduct record while in custody, including
22 a detailed statement showing any and all infractions of
23 disciplinary rules by the inmate and the nature and extent of
24 discipline administered therefor;

25 (B) On improvement or other changes noted in the inmate's

1 mental and moral condition while in custody, including a statement
2 expressive of the inmate's current attitude toward society in
3 general, toward the judge who sentenced him or her, toward the
4 prosecuting attorney who prosecuted him or her, toward the
5 policeman or other officer who arrested the inmate and toward the
6 crime for which he or she is under sentence and his or her previous
7 criminal record;

8 (C) On the inmate's industrial record while in custody which
9 shall include: The nature of his or her work, occupation or
10 education, the average number of hours per day he or she has been
11 employed or in class while in custody and a recommendation as to
12 the nature and kinds of employment which he or she is best fitted
13 to perform and in which the inmate is most likely to succeed when
14 he or she leaves prison;

15 (D) On physical, mental and psychiatric examinations of the
16 inmate conducted, insofar as practicable, within the two months
17 next preceding parole consideration by the board.

18 (2) The board panel considering the parole may waive the
19 requirement of any report when not available or not applicable as
20 to any inmate considered for parole but, in every such case, shall
21 enter in the record thereof its reason for the waiver: *Provided,*
22 That in the case of an inmate who is incarcerated because the
23 inmate has been found guilty of, or has pleaded guilty to a felony
24 under the provisions of section twelve, article eight, chapter
25 sixty-one of this code or under the provisions of article eight-b

1 or eight-c of said chapter, the board panel may not waive the
2 report required by this subsection and the report is to include a
3 study and diagnosis including an on-going treatment plan requiring
4 active participation in sexual abuse counseling at an approved
5 mental health facility or through some other approved program:
6 *Provided, however,* That nothing disclosed by the person during the
7 study or diagnosis may be made available to any law-enforcement
8 agency, or other party without that person's consent, or admissible
9 in any court of this state, unless the information disclosed
10 indicates the intention or plans of the parolee to do harm to any
11 person, animal, institution or to property. Progress reports of
12 outpatient treatment are to be made at least every six months to
13 the parole officer supervising the person. In addition, in such
14 cases, the Parole Board shall inform the prosecuting attorney of
15 the county in which the person was convicted of the parole hearing
16 and shall request that the prosecuting attorney inform the Parole
17 Board of the circumstances surrounding a conviction or plea of
18 guilty, plea bargaining and other background information that might
19 be useful in its deliberations.

20 (m) Before releasing any inmate on parole, the board of parole
21 shall arrange for the inmate to appear in person before a Parole
22 Board panel and the panel may examine and interrogate him or her on
23 any matters pertaining to his or her parole, including reports
24 before the board made pursuant to the provisions hereof: *Provided,*
25 That an inmate may appear by video teleconference if the members of

1 the panel conducting the examination are able to contemporaneously
2 see the inmate and hear all of his or her remarks and if the inmate
3 is able to contemporaneously see each of the members of the panel
4 conducting the examination and hear all of the members' remarks.
5 The panel shall reach its own written conclusions as to the
6 desirability of releasing the inmate on parole and the majority of
7 the panel considering the release shall concur in the decision.
8 The warden or superintendent shall furnish all necessary assistance
9 and cooperate to the fullest extent with the Parole Board. All
10 information, records and reports received by the board are to be
11 kept on permanent file.

12 (n) The board and its designated agents are at all times to
13 have access to inmates imprisoned in any state correctional center
14 or in any jail in this state and may obtain any information or aid
15 necessary to the performance of its duties from other departments
16 and agencies of the state or from any political subdivision
17 thereof.

18 (o) The board shall, if so requested by the Governor,
19 investigate and consider all applications for pardon, reprieve or
20 commutation and shall make recommendation thereon to the Governor.

21 (p) Prior to making a recommendation for pardon, reprieve or
22 commutation and prior to releasing any inmate on parole, the board
23 shall notify the sentencing judge and prosecuting attorney at least
24 ten days before the recommendation or parole.

25 (q) Any person released on parole shall participate as a

1 condition of parole in the litter control program of the county to
2 the extent directed by the board, unless the board specifically
3 finds that this alternative service would be inappropriate.

4 (r) Except for the amendments to this section contained in
5 subdivision (4), subsection (b) and subsection (i) of this section
6 the amendments to this section enacted during the 2010 regular
7 session of the Legislature shall become effective on January 1,
8 2011.