

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011



ENROLLED

House Bill No. 2001

(By Delegates Boggs and Armstead)



Passed January 25, 2011

In Effect From Passage

ENROLLED

H. B. 2001

(BY DELEGATES BOGGS AND ARMSTEAD)

[Passed January 25, 2011; in effect from passage.]

AN ACT to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating to powers and duties of the board of parole; providing that inmates serving life sentences with possibility of parole may be reconsidered by the parole board anytime within three years of denial of parole; and making technical corrections to the section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

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

- 1 (a) The board of parole, whenever it is of the opinion that
- 2 the best interests of the state and of the inmate will be served,

3 and subject to the limitations hereinafter provided, shall
4 release any inmate on parole for terms and upon conditions
5 as are provided by this article.

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

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

11 (B) He or she:

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

15 (ii) Does not have a prior criminal conviction for a felony
16 crime of violence against the person, a felony offense
17 involving the use of a firearm, or a felony offense where the
18 victim was a minor child;

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

23 (iv) Is not serving a sentence for a crime of violence
24 against the person, or more than one felony for a controlled
25 substance offense for which the inmate is serving a
26 consecutive sentence, a felony offense involving the use of a
27 firearm, or a felony offense where the victim was a minor
28 child; and

29 (v) Has successfully completed a rehabilitation treatment
30 program created with the assistance of a standardized risk
31 and needs assessment;

32 (I) As used in this section “felony crime of violence
33 against the person” means felony offenses set forth in articles
34 two, three-e, eight-b or eight-d of chapter sixty-one of this
35 code; and

36 (II) As used in this section “felony offense where the
37 victim was a minor child” means any felony crime of
38 violence against the person and any felony violation set forth
39 in article eight, eight-a, eight-c or eight-d of chapter sixty-one
40 of this code.

41 (C) Notwithstanding any provision of this code to the
42 contrary, any person who committed, or attempted to commit
43 a felony with the use, presentment or brandishing of a
44 firearm, is not eligible for parole prior to serving a minimum
45 of three years of his or her sentence or the maximum
46 sentence imposed by the court, whichever is less: *Provided,*
47 That any person who committed, or attempted to commit, any
48 violation of section twelve, article two, chapter sixty-one of
49 this code, with the use, presentment or brandishing of a
50 firearm, is not eligible for parole prior to serving a minimum
51 of five years of his or her sentence or one third of his or her
52 definite term sentence, whichever is greater. Nothing in this
53 paragraph applies to an accessory before the fact or a
54 principal in the second degree who has been convicted as if
55 he or she were a principal in the first degree if, in the
56 commission of or in the attempted commission of the felony,
57 only the principal in the first degree used, presented or
58 brandished a firearm. A person is not ineligible for parole
59 under the provisions of this paragraph because of the
60 commission or attempted commission of a felony with the
61 use, presentment or brandishing of a firearm unless that fact
62 is clearly stated and included in the indictment or
63 presentment by which the person was charged and was either:
64 (i) Found by the court at the time of trial upon a plea of guilty
65 or nolo contendere; (ii) found by the jury, upon submitting to

66 the jury a special interrogatory for such purpose if the matter
67 was tried before a jury; or (iii) found by the court, if the
68 matter was tried by the court without a jury.

69 For the purpose of this section, the term “firearm” means
70 any instrument which will, or is designed to, or may readily
71 be converted to, expel a projectile by the action of an
72 explosive, gunpowder or any other similar means.

73 (D) The amendments to this subsection adopted in the
74 year 1981:

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

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

80 (iii) Apply with respect to the submission of a special
81 interrogatory to the jury and the finding to be made thereon
82 in any case submitted to the jury on or after August 1 of that
83 year or to the requisite findings of the court upon a plea of
84 guilty or in any case tried without a jury: *Provided*, That the
85 state gives notice in writing of its intent to seek such finding
86 by the jury or court, as the case may be, which notice shall
87 state with particularity the grounds upon which the finding
88 will be sought as fully as such grounds are otherwise required
89 to be stated in an indictment, unless the grounds therefor are
90 alleged in the indictment or presentment upon which the
91 matter is being tried; and

92 (iv) Does not apply with respect to cases not affected by
93 the amendments and in such cases the prior provisions of this
94 section apply and are construed without reference to the
95 amendments.

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

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

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

105 (4) Has prepared and submitted to the board a written parole
106 release plan setting forth proposed plans for his or her place of
107 residence, employment and, if appropriate, his or her plans
108 regarding education and post-release counseling and treatment.
109 The Commissioner of Corrections or his or her designee shall
110 review the plan to be reviewed and investigated and provide
111 recommendations to the board as to the suitability of the plan:
112 *Provided*, That in cases in which there is a mandatory thirty-day
113 notification period required prior to the release of the inmate,
114 pursuant to section twenty-three of this article, the board may
115 conduct an initial interview and deny parole without requiring
116 the development of a plan. In the event the board does not
117 believe parole should be denied, it may defer a final decision
118 pending completion of an investigation and receipt of
119 recommendations. Upon receipt of the plan together with the
120 investigation and recommendation, the board, through a panel,
121 shall make a final decision regarding the granting or denial of
122 parole; and

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

125 (c) Except in the case of a person serving a life sentence,
126 no person who has been previously twice convicted of a

127 felony may be released on parole until he or she has served
128 the minimum term provided by law for the crime for which
129 he or she was convicted. A person sentenced for life may not
130 be paroled until he or she has served ten years, and a person
131 sentenced for life who has been previously twice convicted
132 of a felony may not be paroled until he or she has served
133 fifteen years: *Provided*, That a person convicted of first
134 degree murder for an offense committed on or after June 10,
135 1994, is not eligible for parole until he or she has served
136 fifteen years.

137 (d) In the case of a person sentenced to any state
138 correctional center, it is the duty of the board, as soon as a
139 person becomes eligible, to consider the advisability of his or
140 her release on parole.

141 (e) If, upon consideration, parole is denied, the board
142 shall promptly notify the inmate of the denial. The board
143 shall, at the time of denial, notify the inmate of the month and
144 year he or she may apply for reconsideration and review.
145 The board shall at least once a year reconsider and review the
146 case of every inmate who was denied parole and is still
147 eligible: *Provided*, That the board may reconsider and
148 review parole eligibility anytime within three years following
149 the denial of parole of an inmate serving a life sentence with
150 the possibility of parole.

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

156 (g) The board shall, with the approval of the Governor,
157 adopt rules governing the procedure in the granting of parole.
158 No provision of this article and none of the rules adopted

159 hereunder are intended or may be construed to contravene,
160 limit or otherwise interfere with or affect the authority of the
161 Governor to grant pardons and reprieves, commute sentences,
162 remit fines or otherwise exercise his or her constitutional
163 powers of executive clemency.

164 (h) The Division of Corrections shall promulgate policies
165 and procedures for developing a rehabilitation treatment plan
166 created with the assistance of a standardized risk and needs
167 assessment. The policies and procedures shall include, but not
168 be limited to, policy and procedures for screening and selecting
169 inmates for rehabilitation treatment and development and use of
170 standardized risk and needs assessment tools. An inmate shall
171 not be paroled solely due to having successfully completed a
172 rehabilitation treatment plan but completion of all the
173 requirements of a rehabilitation parole plan along with
174 compliance with the requirements of subsection (b) of this
175 section shall create a rebuttable presumption that parole is
176 appropriate. The presumption created by this subsection may be
177 rebutted by a Parole Board finding that at the time parole release
178 is sought the inmate still constitutes a reasonable risk to the
179 safety or property of other persons if released. Nothing in
180 subsection (b) of this section or in this subsection may be
181 construed to create a right to parole.

182 (i) Notwithstanding the provisions of subsection (b) of
183 this section, the Parole Board may, in its discretion, grant or
184 deny parole to an inmate against whom a detainer is lodged
185 by a jurisdiction other than West Virginia for service of a
186 sentence of incarceration, upon a written request for parole
187 from the inmate. A denial of parole under this subsection
188 shall preclude consideration for a period of one year or until
189 the provisions of subsection (b) of this section are applicable.

190 (j) Where an inmate is otherwise eligible for parole
191 pursuant to subsection (b) of this section but the Parole Board

192 determines that the inmate should participate in an additional
193 program or complete an assigned task or tasks prior to actual
194 release on parole, the board may grant parole contingently,
195 effective upon successful completion of the program or
196 assigned task or tasks, without the need for a further hearing.
197 The Commissioner of Corrections shall provide notice to the
198 Parole Board of the imminent release of a contingently
199 paroled inmate to effectuate appropriate supervision.

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

205 (l)(1) When considering an inmate of a state correctional
206 center for release on parole, the Parole Board panel
207 considering the parole is to have before it an authentic copy
208 of or report on the inmate's current criminal record as
209 provided through the West Virginia State Police, the United
210 States Department of Justice or other reliable criminal
211 information sources and written reports of the warden or
212 superintendent of the state correctional center to which the
213 inmate is sentenced:

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

218 (B) On improvement or other changes noted in the
219 inmate's mental and moral condition while in custody,
220 including a statement expressive of the inmate's current
221 attitude toward society in general, toward the judge who
222 sentenced him or her, toward the prosecuting attorney who
223 prosecuted him or her, toward the policeman or other officer

224 who arrested the inmate and toward the crime for which he or
225 she is under sentence and his or her previous criminal record;

226 (C) On the inmate's industrial record while in custody
227 which shall include: The nature of his or her work,
228 occupation or education, the average number of hours per day
229 he or she has been employed or in class while in custody and
230 a recommendation as to the nature and kinds of employment
231 which he or she is best fitted to perform and in which the
232 inmate is most likely to succeed when he or she leaves
233 prison;

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

237 (2) The board panel considering the parole may waive the
238 requirement of any report when not available or not
239 applicable as to any inmate considered for parole but, in
240 every such case, shall enter in the record thereof its reason for
241 the waiver: *Provided*, That in the case of an inmate who is
242 incarcerated because the inmate has been found guilty of, or
243 has pleaded guilty to a felony under the provisions of section
244 twelve, article eight, chapter sixty-one of this code or under
245 the provisions of article eight-b or eight-c of said chapter, the
246 board panel may not waive the report required by this
247 subsection and the report is to include a study and diagnosis
248 including an on-going treatment plan requiring active
249 participation in sexual abuse counseling at an approved
250 mental health facility or through some other approved
251 program: *Provided, however*, That nothing disclosed by the
252 person during the study or diagnosis may be made available
253 to any law-enforcement agency, or other party without that
254 person's consent, or admissible in any court of this state,
255 unless the information disclosed indicates the intention or
256 plans of the parolee to do harm to any person, animal,

257 institution or to property. Progress reports of outpatient
258 treatment are to be made at least every six months to the
259 parole officer supervising the person. In addition, in such
260 cases, the Parole Board shall inform the prosecuting attorney
261 of the county in which the person was convicted of the parole
262 hearing and shall request that the prosecuting attorney inform
263 the Parole Board of the circumstances surrounding a
264 conviction or plea of guilty, plea bargaining and other
265 background information that might be useful in its
266 deliberations.

267 (m) Before releasing any inmate on parole, the board of
268 parole shall arrange for the inmate to appear in person before
269 a Parole Board panel and the panel may examine and
270 interrogate him or her on any matters pertaining to his or her
271 parole, including reports before the board made pursuant to the
272 provisions hereof: *Provided*, That an inmate may appear by
273 video teleconference if the members of the panel conducting
274 the examination are able to contemporaneously see the inmate
275 and hear all of his or her remarks and if the inmate is able to
276 contemporaneously see each of the members of the panel
277 conducting the examination and hear all of the members'
278 remarks. The panel shall reach its own written conclusions as
279 to the desirability of releasing the inmate on parole and the
280 majority of the panel considering the release shall concur in the
281 decision. The warden or superintendent shall furnish all
282 necessary assistance and cooperate to the fullest extent with the
283 Parole Board. All information, records and reports received by
284 the board are to be kept on permanent file.

285 (n) The board and its designated agents are at all times to
286 have access to inmates imprisoned in any state correctional
287 center or in any jail in this state and may obtain any
288 information or aid necessary to the performance of its duties
289 from other departments and agencies of the state or from any
290 political subdivision thereof.

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

295 (p) Prior to making a recommendation for pardon,
296 reprieve or commutation and prior to releasing any inmate on
297 parole, the board shall notify the sentencing judge and
298 prosecuting attorney at least ten days before the
299 recommendation or parole.

300 (q) Any person released on parole shall participate as a
301 condition of parole in the litter control program of the county
302 to the extent directed by the board, unless the board
303 specifically finds that this alternative service would be
304 inappropriate.

305 (r) Except for the amendments to this section contained
306 in subdivision (4), subsection (b) and subsection (i) of this
307 section the amendments to this section enacted during the
308 2010 regular session of the Legislature shall become effective
309 on January 1, 2011.

We, the undersigned, hereby certify that the foregoing bill is correctly enrolled.

*Chairman, House Select Committee
on Enrolled Bills*

*Chairman, Senate Committee
on Enrolled Bills*

Originating in the House.

In effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

The within _____ this the _____
day of _____, 2011.

Governor