

1 **H. B. 4568**

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3 (By Delegates Manypenny, Fleischauer and Doyle)
4 [Introduced February 16, 2012; referred to the
5 Committee on the Judiciary then Finance.]
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10 A BILL to amend and reenact §62-12-13 of the Code of West Virginia,
11 1931, as amended, relating to providing rehabilitation
12 treatment programs to inmates imprisoned in any jail in the
13 state.

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

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

17 **ARTICLE 12. PROBATION AND PAROLE.**

18 **§62-12-13. Powers and duties of board; eligibility for parole;**
19 **procedure for granting parole.**

20 (a) The board of parole, whenever it is of the opinion that
21 the best interests of the state and of the inmate will be served,
22 and subject to the limitations hereinafter provided, shall release
23 any inmate on parole for terms and upon conditions as are provided

1 by this article.

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

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

7 (B) He or she:

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

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

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

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

22 (v) Has successfully completed a rehabilitation treatment
23 program created with the assistance of a standardized risk and
24 needs assessment: Provided, That the Division of Corrections shall

1 provide rehabilitation treatment programs at jails for inmates
2 sentenced to a state correctional center but imprisoned at any jail
3 in this state;

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

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

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

1 of or in the attempted commission of the felony, only the principal
2 in the first degree used, presented or brandished a firearm. A
3 person is not ineligible for parole under the provisions of this
4 paragraph because of the commission or attempted commission of a
5 felony with the use, presentment or brandishing of a firearm unless
6 that fact is clearly stated and included in the indictment or
7 presentment by which the person was charged and was either: (i)
8 Found by the court at the time of trial upon a plea of guilty or
9 nolo contendere; (ii) found by the jury, upon submitting to the
10 jury a special interrogatory for such purpose if the matter was
11 tried before a jury; or (iii) found by the court, if the matter was
12 tried by the court without a jury.

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

17 (D) The amendments to this subsection adopted in the year
18 1981:

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

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

24 (iii) Apply with respect to the submission of a special

1 interrogatory to the jury and the finding to be made thereon in any
2 case submitted to the jury on or after August 1 of that year or to
3 the requisite findings of the court upon a plea of guilty or in any
4 case tried without a jury: *Provided*, That the state gives notice
5 in writing of its intent to seek such finding by the jury or court,
6 as the case may be, which notice shall state with particularity the
7 grounds upon which the finding will be sought as fully as such
8 grounds are otherwise required to be stated in an indictment,
9 unless the grounds therefor are alleged in the indictment or
10 presentment upon which the matter is being tried; and

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

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

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

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

23 (4) Has prepared and submitted to the board a written parole
24 release plan setting forth proposed plans for his or her place of

1 residence, employment and, if appropriate, his or her plans
2 regarding education and post-release counseling and treatment. The
3 Commissioner of Corrections or his or her designee shall review the
4 plan to be reviewed and investigated and provide recommendations to
5 the board as to the suitability of the plan: *Provided*, That in
6 cases in which there is a mandatory thirty-day notification period
7 required prior to the release of the inmate, pursuant to section
8 twenty-three of this article, the board may conduct an initial
9 interview and deny parole without requiring the development of a
10 plan. In the event the board does not believe parole should be
11 denied, it may defer a final decision pending completion of an
12 investigation and receipt of recommendations. Upon receipt of the
13 plan together with the investigation and recommendation, the board,
14 through a panel, shall make a final decision regarding the granting
15 or denial of parole; and

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

18 (c) Except in the case of a person serving a life sentence, no
19 person who has been previously twice convicted of a felony may be
20 released on parole until he or she has served the minimum term
21 provided by law for the crime for which he or she was convicted.
22 A person sentenced for life may not be paroled until he or she has
23 served ten years, and a person sentenced for life who has been
24 previously twice convicted of a felony may not be paroled until he

1 or she has served fifteen years: *Provided*, That a person convicted
2 of first degree murder for an offense committed on or after June
3 10, 1994, is not eligible for parole until he or she has served
4 fifteen years.

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

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

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

23 (g) The board shall, with the approval of the Governor, adopt
24 rules governing the procedure in the granting of parole. No

1 provision of this article and none of the rules adopted hereunder
2 are intended or may be construed to contravene, limit or otherwise
3 interfere with or affect the authority of the Governor to grant
4 pardons and reprieves, commute sentences, remit fines or otherwise
5 exercise his or her constitutional powers of executive clemency.

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

23 (i) Notwithstanding the provisions of subsection (b) of this
24 section, the Parole Board may, in its discretion, grant or deny

1 parole to an inmate against whom a detainer is lodged by a
2 jurisdiction other than West Virginia for service of a sentence of
3 incarceration, upon a written request for parole from the inmate.
4 A denial of parole under this subsection shall preclude
5 consideration for a period of one year or until the provisions of
6 subsection (b) of this section are applicable.

7 (j) Where an inmate is otherwise eligible for parole pursuant
8 to subsection (b) of this section but the Parole Board determines
9 that the inmate should participate in an additional program or
10 complete an assigned task or tasks prior to actual release on
11 parole, the board may grant parole contingently, effective upon
12 successful completion of the program or assigned task or tasks,
13 without the need for a further hearing. The Commissioner of
14 Corrections shall provide notice to the Parole Board of the
15 imminent release of a contingently paroled inmate to effectuate
16 appropriate supervision.

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

22 (l) (1) When considering an inmate of a state correctional
23 center for release on parole, the Parole Board panel considering
24 the parole is to have before it an authentic copy of or report on

1 the inmate's current criminal record as provided through the West
2 Virginia State Police, the United States Department of Justice or
3 other reliable criminal information sources and written reports of
4 the warden or superintendent of the state correctional center to
5 which the inmate is sentenced:

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

10 (B) On improvement or other changes noted in the inmate's
11 mental and moral condition while in custody, including a statement
12 expressive of the inmate's current attitude toward society in
13 general, toward the judge who sentenced him or her, toward the
14 prosecuting attorney who prosecuted him or her, toward the
15 policeman or other officer who arrested the inmate and toward the
16 crime for which he or she is under sentence and his or her previous
17 criminal record;

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

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

4 (2) The board panel considering the parole may waive the
5 requirement of any report when not available or not applicable as
6 to any inmate considered for parole but, in every such case, shall
7 enter in the record thereof its reason for the waiver: *Provided,*
8 That in the case of an inmate who is incarcerated because the
9 inmate has been found guilty of, or has pleaded guilty to a felony
10 under the provisions of section twelve, article eight, chapter
11 sixty-one of this code or under the provisions of article eight-b
12 or eight-c of said chapter, the board panel may not waive the
13 report required by this subsection and the report is to include a
14 study and diagnosis including an on-going treatment plan requiring
15 active participation in sexual abuse counseling at an approved
16 mental health facility or through some other approved program:
17 *Provided, however,* That nothing disclosed by the person during the
18 study or diagnosis may be made available to any law-enforcement
19 agency, or other party without that person's consent, or admissible
20 in any court of this state, unless the information disclosed
21 indicates the intention or plans of the parolee to do harm to any
22 person, animal, institution or to property. Progress reports of
23 outpatient treatment are to be made at least every six months to
24 the parole officer supervising the person. In addition, in such

1 cases, the Parole Board shall inform the prosecuting attorney of
2 the county in which the person was convicted of the parole hearing
3 and shall request that the prosecuting attorney inform the Parole
4 Board of the circumstances surrounding a conviction or plea of
5 guilty, plea bargaining and other background information that might
6 be useful in its deliberations.

7 (m) Before releasing any inmate on parole, the board of parole
8 shall arrange for the inmate to appear in person before a Parole
9 Board panel and the panel may examine and interrogate him or her on
10 any matters pertaining to his or her parole, including reports
11 before the board made pursuant to the provisions hereof: *Provided,*
12 That an inmate may appear by video teleconference if the members of
13 the panel conducting the examination are able to contemporaneously
14 see the inmate and hear all of his or her remarks and if the inmate
15 is able to contemporaneously see each of the members of the panel
16 conducting the examination and hear all of the members' remarks.
17 The panel shall reach its own written conclusions as to the
18 desirability of releasing the inmate on parole and the majority of
19 the panel considering the release shall concur in the decision.
20 The warden or superintendent shall furnish all necessary assistance
21 and cooperate to the fullest extent with the Parole Board. All
22 information, records and reports received by the board are to be
23 kept on permanent file.

24 (n) The board and its designated agents are at all times to

1 have access to inmates imprisoned in any state correctional center
2 or in any jail in this state and may obtain any information or aid
3 necessary to the performance of its duties from other departments
4 and agencies of the state or from any political subdivision
5 thereof.

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

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

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

17 (r) Except for the amendments to this section contained in
18 subdivision (4), subsection (b) and subsection (i) of this section
19 the amendments to this section enacted during the 2010 regular
20 session of the Legislature shall become effective on January 1,
21 2011.

NOTE: The purpose of this bill is to require the Division of
Corrections to provide rehabilitation treatment programs to inmates

who are sentenced to a state correctional center but who are imprisoned in any jail in this state.

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