

1 **H. B. 2933**

2
3 (By Delegates L. Phillips, P. Smith, Marcum,
4 Barill, White, Moye, Skinner and Poore)

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6 [Introduced March 14, 2013; referred to the
7 Committee on the Judiciary.]

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9
10 A BILL to amend and reenact §62-12-13 and §62-12-23 and of the
11 Code of West Virginia, 1931, as amended, all relating to the
12 Parole Board’s duty to notify prosecuting attorneys of an
13 offender’s parole hearing and release.

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

15 That §62-12-13 and §62-12-23 the Code of West Virginia, 1931,
16 as amended, be amended and reenacted, all 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
24 by this article.

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

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

6 (B) He or she:

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

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

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

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

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

24 (I) As used in this section "felony crime of violence against

1 the person" means felony offenses set forth in articles two, three-
2 e, eight-b or eight-d of chapter sixty-one of this code; and

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

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

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

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

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

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

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

19 (4) Has prepared and submitted to the board a written parole
20 release plan setting forth proposed plans for his or her place of
21 residence, employment and, if appropriate, his or her plans
22 regarding education and post-release counseling and treatment. The
23 Commissioner of Corrections or his or her designee shall review the
24 plan to be reviewed and investigated and provide recommendations to

1 the board as to the suitability of the plan: *Provided*, That in
2 cases in which there is a mandatory thirty-day notification period
3 required prior to the release of the inmate, pursuant to section
4 twenty-three of this article, the board may conduct an initial
5 interview and deny parole without requiring the development of a
6 plan. In the event the board does not believe parole should be
7 denied, it may defer a final decision pending completion of an
8 investigation and receipt of recommendations. Upon receipt of the
9 plan together with the investigation and recommendation, the board,
10 through a panel, shall make a final decision regarding the granting
11 or denial of parole; and

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

14 (c) Except in the case of a person serving a life sentence, no
15 person who has been previously twice convicted of a felony may be
16 released on parole until he or she has served the minimum term
17 provided by law for the crime for which he or she was convicted.
18 A person sentenced for life may not be paroled until he or she has
19 served ten years, and a person sentenced for life who has been
20 previously twice convicted of a felony may not be paroled until he
21 or she has served fifteen years: *Provided*, That a person convicted
22 of first degree murder for an offense committed on or after June
23 10, 1994, is not eligible for parole until he or she has served
24 fifteen years.

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

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

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

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

1 exercise his or her constitutional powers of executive clemency.

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

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

1 consideration for a period of one year or until the provisions of
2 subsection (b) of this section are applicable.

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

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

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

1 which the inmate is sentenced:

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

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

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

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

24 (2) The board panel considering the parole may waive the

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

1 guilty, plea bargaining and other background information that might
2 be useful in its deliberations.

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

20 (n) The board and its designated agents are at all times to
21 have access to inmates imprisoned in any state correctional center
22 or in any jail in this state and may obtain any information or aid
23 necessary to the performance of its duties from other departments
24 and agencies of the state or from any political subdivision

1 thereof.

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

5 (p) (1) Prior to making a recommendation for pardon, reprieve
6 or commutation, ~~and prior to releasing any inmate on parole~~ the
7 board shall notify the sentencing judge and prosecuting attorney at
8 least ten days before the recommendation or parole.

9 (2) Notwithstanding any other provision of law to the
10 contrary, if the board grants parole, the board shall provide
11 written notice to the prosecuting attorney of the county in which
12 the inmate was prosecuted, that parole has been granted. The
13 notice shall be sent by certified mail, return receipt requested
14 and include the anticipated date of release and the person's
15 anticipated future residence. A written statement of reasons for
16 releasing the prisoner, prepared pursuant to subsection (b), of
17 this section, shall be provided upon request.

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

22 (r) Except for the amendments to this section contained in
23 subdivision (4), subsection (b) and subsection (i) of this section
24 the amendments to this section enacted during the 2010 regular

1 session of the Legislature shall become effective on January 1,
2 2011.

3 **§62-12-23. Notification of parole hearing; victim's right to be**
4 **heard; notification of release on parole.**

5 (a) Following the sentencing of a person who has been
6 convicted of murder, aggravated robbery, sexual assault in the
7 first or second degree, kidnapping, child abuse resulting in
8 injury, child neglect resulting in injury, arson or a sexual
9 offense against a minor, the prosecuting attorney who prosecuted
10 the offender shall prepare a Parole Hearing Notification Form.
11 This form shall contain the following information:

12 (1) The name of the county in which the offender was
13 prosecuted and sentenced;

14 (2) The name of the court in which the offender was prosecuted
15 and sentenced;

16 (3) The name of the prosecuting attorney or assistant
17 prosecuting attorney who prosecuted the offender;

18 (4) The name of the judge who presided over the criminal case
19 and who sentenced the offender;

20 (5) The names of the law-enforcement agencies and officers who
21 were primarily involved with the investigation of the crime for
22 which the offender was sentenced; and

23 (6) The names, addresses and telephone numbers of the victims
24 of the crime for which the offender was sentenced or the names,

1 addresses and telephone numbers of the immediate family members of
2 each victim of the crime, including, but not limited to, each
3 victim's spouse, father, mother, brothers, sisters and any adult
4 household member residing with the victim.

5 (b) The prosecuting attorney shall retain the original of the
6 Parole Hearing Notification Form and shall provide copies of it to
7 the circuit court which sentenced the offender, the Parole Board,
8 the Commissioner of Corrections and to all persons whose names and
9 addresses are listed on the form.

10 (c) At least forty-five days prior to the date of a parole
11 hearing, the Parole Board shall notify all persons who are listed
12 on the Parole Hearing Notification Form, including the office of
13 the prosecuting attorney that prosecuted the offender, of the date,
14 time and place of the hearing. Such notice shall be sent by
15 certified mail, return receipt requested. The notice shall state
16 that the victims of the crime have the right to submit a written
17 statement to the Parole Board and to attend the parole hearing to
18 be heard regarding the propriety of granting parole to the
19 prisoner. The notice shall also state that only the victims may
20 submit written statements and speak at the parole hearing unless a
21 victim is deceased, is a minor or is otherwise incapacitated.

22 (d) The panel considering the parole shall inquire during the
23 parole hearing as to whether the victims of the crime or their
24 representatives, as provided in this section, are present. If so,

1 the panel shall permit those persons to speak at the hearing
2 regarding the propriety of granting parole for the prisoner.

3 (e) If the panel grants parole, it shall immediately set a
4 date on which the prisoner will be released. Such date shall be no
5 earlier than thirty days after the date on which parole is granted.
6 On the date on which parole is granted, the Parole Board shall
7 notify all persons listed on the Parole Hearing Notification Form,
8 including the office of the prosecuting attorney that prosecuted
9 the offender, that parole has been granted and the date of release.
10 This notice shall be sent by certified mail, return receipt
11 requested. A written statement of reasons for releasing the
12 prisoner, prepared pursuant to ~~subdivision (4)~~, subsection (b),
13 section thirteen of this article, shall be provided upon request to
14 all persons listed on the Parole Hearing Notification Form,
15 including the office of the prosecuting attorney that prosecuted
16 the offender.

NOTE: The purpose of this bill is to provide notification to
a prosecuting attorney of an offender's parole hearing and release.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.