

H. B. 2933

(BY DELEGATE(S) L. PHILLIPS, P. SMITH, MARCUM,
BARILL, WHITE, MOYE, SKINNER AND POORE)

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

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

Be it enacted by the Legislature of West Virginia:

That §62-12-13 and §62-12-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all 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 the
- 2 best interests of the state and of the inmate will be served, and

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

6 (b) Any inmate of a state correctional center is eligible for
7 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 Commissioner
13 of Corrections into an accelerated parole program;

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

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

22 (iv) Is not serving a sentence for a crime of violence against
23 the person, or more than one felony for a controlled substance

24 offense for which the inmate is serving a consecutive sentence,
25 a felony offense involving the use of a firearm, or a felony
26 offense where the victim was a minor child; and

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

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

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

37 (C) Notwithstanding any provision of this code to the
38 contrary, any person who committed, or attempted to commit a
39 felony with the use, presentment or brandishing of a firearm, is
40 not eligible for parole prior to serving a minimum of three years
41 of his or her sentence or the maximum sentence imposed by the
42 court, whichever is less: *Provided*, That any person who
43 committed, or attempted to commit, any violation of section

44 twelve, article two, chapter sixty-one of this code, with the use,
45 presentment or brandishing of a firearm, is not eligible for parole
46 prior to serving a minimum of five years of his or her sentence
47 or one third of his or her definite term sentence, whichever is
48 greater. Nothing in this paragraph applies to an accessory before
49 the fact or a principal in the second degree who has been
50 convicted as if he or she were a principal in the first degree if, in
51 the commission of or in the attempted commission of the felony,
52 only the principal in the first degree used, presented or
53 brandished a firearm. A person is not ineligible for parole under
54 the provisions of this paragraph because of the commission or
55 attempted commission of a felony with the use, presentment or
56 brandishing of a firearm unless that fact is clearly stated and
57 included in the indictment or presentment by which the person
58 was charged and was either: (i) Found by the court at the time of
59 trial upon a plea of guilty or nolo contendere; (ii) found by the
60 jury, upon submitting to the jury a special interrogatory for such
61 purpose if the matter was tried before a jury; or (iii) found by the
62 court, if the matter was tried by the court without a jury.

63 For the purpose of this section, the term “firearm” means
64 any instrument which will, or is designed to, or may readily be

65 converted to, expel a projectile by the action of an explosive,
66 gunpowder or any other similar means.

67 (D) The amendments to this subsection adopted in the year
68 1981:

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

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

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

86 (iv) Does not apply with respect to cases not affected by the
87 amendments and in such cases the prior provisions of this
88 section apply and are construed without reference to the
89 amendments.

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

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

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

99 (4) Has prepared and submitted to the board a written parole
100 release plan setting forth proposed plans for his or her place of
101 residence, employment and, if appropriate, his or her plans
102 regarding education and post-release counseling and treatment.

103 The Commissioner of Corrections or his or her designee shall
104 review the plan to be reviewed and investigated and provide
105 recommendations to the board as to the suitability of the plan:

106 *Provided*, That in cases in which there is a mandatory thirty-day
107 notification period required prior to the release of the inmate,
108 pursuant to section twenty-three of this article, the board may
109 conduct an initial interview and deny parole without requiring
110 the development of a plan. In the event the board does not
111 believe parole should be denied, it may defer a final decision
112 pending completion of an investigation and receipt of
113 recommendations. Upon receipt of the plan together with the
114 investigation and recommendation, the board, through a panel,
115 shall make a final decision regarding the granting or denial of
116 parole; and

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

119 (c) Except in the case of a person serving a life sentence, no
120 person who has been previously twice convicted of a felony may
121 be released on parole until he or she has served the minimum
122 term provided by law for the crime for which he or she was
123 convicted. A person sentenced for life may not be paroled until
124 he or she has served ten years, and a person sentenced for life
125 who has been previously twice convicted of a felony may not be

126 paroled until he or she has served fifteen years: *Provided*, That
127 a person convicted of first degree murder for an offense
128 committed on or after June 10, 1994, is not eligible for parole
129 until he or she has served fifteen years.

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

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

143 (f) Any person serving a sentence on a felony conviction
144 who becomes eligible for parole consideration prior to being
145 transferred to a state correctional center may make written

146 application for parole. The terms and conditions for parole
147 consideration established by this article apply to such inmates.

148 (g) The board shall, with the approval of the Governor, adopt
149 rules governing the procedure in the granting of parole. No
150 provision of this article and none of the rules adopted hereunder
151 are intended or may be construed to contravene, limit or
152 otherwise interfere with or affect the authority of the Governor
153 to grant pardons and reprieves, commute sentences, remit fines
154 or otherwise exercise his or her constitutional powers of
155 executive clemency.

156 (h) The Division of Corrections shall promulgate policies
157 and procedures for developing a rehabilitation treatment plan
158 created with the assistance of a standardized risk and needs
159 assessment. The policies and procedures shall include, but not be
160 limited to, policy and procedures for screening and selecting
161 inmates for rehabilitation treatment and development and use of
162 standardized risk and needs assessment tools. An inmate shall
163 not be paroled solely due to having successfully completed a
164 rehabilitation treatment plan but completion of all the
165 requirements of a rehabilitation parole plan along with

166 compliance with the requirements of subsection (b) of this
167 section shall create a rebuttable presumption that parole is
168 appropriate. The presumption created by this subsection may be
169 rebutted by a Parole Board finding that at the time parole release
170 is sought the inmate still constitutes a reasonable risk to the
171 safety or property of other persons if released. Nothing in
172 subsection (b) of this section or in this subsection may be
173 construed to create a right to parole.

174 (i) Notwithstanding the provisions of subsection (b) of this
175 section, the Parole Board may, in its discretion, grant or deny
176 parole to an inmate against whom a detainer is lodged by a
177 jurisdiction other than West Virginia for service of a sentence of
178 incarceration, upon a written request for parole from the inmate.
179 A denial of parole under this subsection shall preclude
180 consideration for a period of one year or until the provisions of
181 subsection (b) of this section are applicable.

182 (j) Where an inmate is otherwise eligible for parole pursuant
183 to subsection (b) of this section but the Parole Board determines
184 that the inmate should participate in an additional program or
185 complete an assigned task or tasks prior to actual release on

186 parole, the board may grant parole contingently, effective upon
187 successful completion of the program or assigned task or tasks,
188 without the need for a further hearing. The Commissioner of
189 Corrections shall provide notice to the Parole Board of the
190 imminent release of a contingently paroled inmate to effectuate
191 appropriate supervision.

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

197 (l)(1) When considering an inmate of a state correctional
198 center for release on parole, the Parole Board panel considering
199 the parole is to have before it an authentic copy of or report on
200 the inmate's current criminal record as provided through the
201 West Virginia State Police, the United States Department of
202 Justice or other reliable criminal information sources and written
203 reports of the warden or superintendent of the state correctional
204 center to which the inmate is sentenced:

205 (A) On the inmate's conduct record while in custody,
206 including a detailed statement showing any and all infractions of

207 disciplinary rules by the inmate and the nature and extent of
208 discipline administered therefor;

209 (B) On improvement or other changes noted in the inmate's
210 mental and moral condition while in custody, including a
211 statement expressive of the inmate's current attitude toward
212 society in general, toward the judge who sentenced him or her,
213 toward the prosecuting attorney who prosecuted him or her,
214 toward the policeman or other officer who arrested the inmate
215 and toward the crime for which he or she is under sentence and
216 his or her previous criminal record;

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

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

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

247 at least every six months to the parole officer supervising the
248 person. In addition, in such cases, the Parole Board shall inform
249 the prosecuting attorney of the county in which the person was
250 convicted of the parole hearing and shall request that the
251 prosecuting attorney inform the Parole Board of the
252 circumstances surrounding a conviction or plea of guilty, plea
253 bargaining and other background information that might be
254 useful in its deliberations.

255 (m) Before releasing any inmate on parole, the board of
256 parole shall arrange for the inmate to appear in person before a
257 Parole Board panel and the panel may examine and interrogate
258 him or her on any matters pertaining to his or her parole,
259 including reports before the board made pursuant to the
260 provisions hereof: *Provided*, That an inmate may appear by
261 video teleconference if the members of the panel conducting the
262 examination are able to contemporaneously see the inmate and
263 hear all of his or her remarks and if the inmate is able to
264 contemporaneously see each of the members of the panel
265 conducting the examination and hear all of the members'
266 remarks. The panel shall reach its own written conclusions as to

267 the desirability of releasing the inmate on parole and the
268 majority of the panel considering the release shall concur in the
269 decision. The warden or superintendent shall furnish all
270 necessary assistance and cooperate to the fullest extent with the
271 Parole Board. All information, records and reports received by
272 the board are to be kept on permanent file.

273 (n) The board and its designated agents are at all times to
274 have access to inmates imprisoned in any state correctional
275 center or in any jail in this state and may obtain any information
276 or aid necessary to the performance of its duties from other
277 departments and agencies of the state or from any political
278 subdivision thereof.

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

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

288 (2) Notwithstanding any other provision of law to the
289 contrary, if the board grants parole, the board shall provide
290 written notice to the prosecuting attorney of the county in which
291 the inmate was prosecuted, that parole has been granted. The
292 notice shall be sent by certified mail, return receipt requested
293 and include the anticipated date of release and the person's
294 anticipated future residence. A written statement of reasons for
295 releasing the prisoner, prepared pursuant to subsection (b), of
296 this section, shall be provided upon request.

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

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

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

1 (a) Following the sentencing of a person who has been
2 convicted of murder, aggravated robbery, sexual assault in the

3 first or second degree, kidnapping, child abuse resulting in
4 injury, child neglect resulting in injury, arson or a sexual offense
5 against a minor, the prosecuting attorney who prosecuted the
6 offender shall prepare a Parole Hearing Notification Form. This
7 form shall contain the following information:

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

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

12 (3) The name of the prosecuting attorney or assistant
13 prosecuting attorney who prosecuted the offender;

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

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

19 (6) The names, addresses and telephone numbers of the
20 victims of the crime for which the offender was sentenced or the
21 names, addresses and telephone numbers of the immediate
22 family members of each victim of the crime, including, but not

23 limited to, each victim's spouse, father, mother, brothers, sisters
24 and any adult household member residing with the victim.

25 (b) The prosecuting attorney shall retain the original of the
26 Parole Hearing Notification Form and shall provide copies of it
27 to the circuit court which sentenced the offender, the Parole
28 Board, the Commissioner of Corrections and to all persons
29 whose names and addresses are listed on the form.

30 (c) At least forty-five days prior to the date of a parole
31 hearing, the Parole Board shall notify all persons who are listed
32 on the Parole Hearing Notification Form, including the office of
33 the prosecuting attorney that prosecuted the offender, of the date,
34 time and place of the hearing. Such notice shall be sent by
35 certified mail, return receipt requested. The notice shall state that
36 the victims of the crime have the right to submit a written
37 statement to the Parole Board and to attend the parole hearing to
38 be heard regarding the propriety of granting parole to the
39 prisoner. The notice shall also state that only the victims may
40 submit written statements and speak at the parole hearing unless
41 a victim is deceased, is a minor or is otherwise incapacitated.

42 (d) The panel considering the parole shall inquire during the
43 parole hearing as to whether the victims of the crime or their

44 representatives, as provided in this section, are present. If so, the
45 panel shall permit those persons to speak at the hearing
46 regarding the propriety of granting parole for the prisoner.

47 (e) If the panel grants parole, it shall immediately set a date
48 on which the prisoner will be released. Such date shall be no
49 earlier than thirty days after the date on which parole is granted.
50 On the date on which parole is granted, the Parole Board shall
51 notify all persons listed on the Parole Hearing Notification Form,
52 including the office of the prosecuting attorney that prosecuted
53 the offender, that parole has been granted and the date of release.
54 This notice shall be sent by certified mail, return receipt
55 requested. A written statement of reasons for releasing the
56 prisoner, prepared pursuant to ~~subdivision (4)~~, subsection (b),
57 section thirteen of this article, shall be provided upon request to
58 all persons listed on the Parole Hearing Notification Form,
59 including the office of the prosecuting attorney that prosecuted
60 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.

