

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 408**

4 (By Senator Plymale)

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6 [Originating in the Committee on the Judiciary;

7 reported January 30, 2014.]

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12 A BILL to amend and reenact §62-12-13 of the Code of West Virginia,
13 1931, as amended, relating to powers and duties of the Parole
14 Board; eligibility for parole; clarifying the procedures for
15 granting parole; and clarifying that a parole-eligible inmate
16 is entitled to a timely parole hearing regardless on where he
17 or she is housed.

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

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

21 **ARTICLE 12. PROBATION AND PAROLE.**

22 **§62-12-13. Powers and duties of board; eligibility for parole;**
23 **procedure for granting parole.**

24 (a) The Parole Board, whenever it is of the opinion that the
25 best interests of the state and of the inmate will be served, and

1 subject to the limitations provided in this section, shall release
2 any inmate on parole for terms and upon conditions provided by this
3 article.

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

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

9 (B) He or she:

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

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

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

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

24 (C) Notwithstanding any provision of this code to the
25 contrary, any inmate who committed, or attempted to commit, a
26 felony with the use, presentment or brandishing of a firearm, is

1 not eligible for parole prior to serving a minimum of three years
2 of his or her sentence or the maximum sentence imposed by the
3 court, whichever is less: *Provided*, That any inmate who committed,
4 or attempted to commit, any violation of section twelve, article
5 two, chapter sixty-one of this code, with the use, presentment or
6 brandishing of a firearm, is not eligible for parole prior to
7 serving a minimum of five years of his or her sentence or one third
8 of his or her definite term sentence, whichever is greater.
9 Nothing in this paragraph applies to an accessory before the fact
10 or a principal in the second degree who has been convicted as if he
11 or she were a principal in the first degree if, in the commission
12 of or in the attempted commission of the felony, only the principal
13 in the first degree used, presented or brandished a firearm. An
14 inmate is not ineligible for parole under the provisions of this
15 paragraph because of the commission or attempted commission of a
16 felony with the use, presentment or brandishing of a firearm unless
17 that fact is clearly stated and included in the indictment or
18 presentment by which the person was charged and was either: (i)
19 Found guilty by the court at the time of trial upon a plea of
20 guilty or nolo contendere; (ii) found guilty by the jury, upon
21 submitting to the jury a special interrogatory for such purpose if
22 the matter was tried before a jury; or (iii) found guilty by the
23 court, if the matter was tried by the court without a jury.

24 (D) The amendments to this subsection adopted in the year
25 1981:

26 (i) Apply to all applicable offenses occurring on or after

1 August 1 of that year;

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

5 (iii) Apply with respect to the submission of a special
6 interrogatory to the jury and the finding to be made thereon in any
7 case submitted to the jury on or after August 1 of that year or to
8 the requisite findings of the court upon a plea of guilty or in any
9 case tried without a jury: *Provided*, That the state gives notice
10 in writing of its intent to seek such finding by the jury or court,
11 as the case may be. The notice shall state with particularity the
12 grounds upon which the finding will be sought as fully as the
13 grounds are otherwise required to be stated in an indictment,
14 unless the grounds upon which the finding will be sought are
15 alleged in the indictment or presentment upon which the matter is
16 being tried; and

17 (iv) Does not apply with respect to cases not affected by the
18 amendments and in those cases the prior provisions of this section
19 apply and are construed without reference to the amendments.

20 (v) Insofar as the amendments relate to mandatory sentences
21 restricting the eligibility for parole, all matters requiring a
22 mandatory sentence shall be proved beyond a reasonable doubt in all
23 cases tried by the jury or the court.

24 (E) As used in this section, "felony crime of violence against
25 the person" means felony offenses set forth in article two,
26 three-e, eight-b or eight-d, chapter sixty-one of this code; and

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

5 (G) For the purpose of this section, the term "firearm" means
6 any instrument which will, or is designed to, or may readily be
7 converted to expel a projectile by the action of an explosive,
8 gunpowder or any other similar means.

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

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

14 ~~(4)~~ (3) Has prepared and submitted to the Parole Board a
15 written parole release plan setting forth proposed plans for his or
16 her place of residence, employment and, if appropriate, his or her
17 plans regarding education and post-release counseling and
18 treatment: *Provided*, That an inmate's application for parole may
19 be considered by the board without the prior submission of a home
20 plan, but the inmate shall have a home plan approved by the board
21 prior to his or her release on parole. The Commissioner of
22 Corrections or his or her designee shall review and investigate the
23 plan and provide recommendations to the board as to the suitability
24 of the plan: *Provided*, That in cases in which there is a mandatory
25 thirty-day notification period required prior to the release of the
26 inmate, pursuant to section twenty-three of this article, the board

1 may conduct an initial interview and deny parole without requiring
2 the development of a plan. In the event the board believes parole
3 should be granted, it may defer a final decision pending completion
4 of an investigation and receipt of recommendations. Upon receipt
5 of the plan together with the investigation and recommendation, the
6 board, through a panel, shall make a final decision regarding the
7 granting or denial of parole; and

8 ~~(5)~~ (4) Has satisfied the board that if released on parole he
9 or she will not constitute a danger to the community.

10 (c) Except in the case of an inmate serving a life sentence,
11 a person who has been previously twice convicted of a felony may
12 not be released on parole until he or she has served the minimum
13 term provided by law for the crime for which he or she was
14 convicted. An inmate sentenced for life may not be paroled until
15 he or she has served ten years, and an inmate sentenced for life
16 who has been previously twice convicted of a felony may not be
17 paroled until he or she has served fifteen years: *Provided*, That
18 an inmate convicted of first degree murder for an offense committed
19 on or after June 10, 1994, is not eligible for parole until he or
20 she has served fifteen years.

21 (d) In the case of an inmate sentenced to ~~any~~ a state
22 correctional institution regardless of the inmate's place of
23 detention or incarceration, the Parole Board, as soon as that
24 inmate becomes eligible, shall consider the advisability of his or
25 her release on parole.

26 (e) If, upon consideration, parole is denied, the board shall

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

9 ~~(f) Any inmate serving a sentence on a felony conviction who~~
10 ~~becomes eligible for parole consideration prior to being~~
11 ~~transferred to a state correctional institution may make written~~
12 ~~application for parole. The terms and conditions for parole~~
13 ~~consideration established by this article apply to that inmate.~~

14 (f) Any inmate in the custody of the commissioner for service
15 of a sentence who reaches parole eligibility is entitled to a
16 timely parole hearing without regard to the location in which he or
17 she is housed.

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

26 (h) (1) The Division of Corrections shall promulgate policies

1 and procedures for developing a rehabilitation treatment plan
2 created with the assistance of a standardized risk and needs
3 assessment. The policies and procedures shall provide for, at a
4 minimum, screening and selecting inmates for rehabilitation
5 treatment and development, using standardized risk and needs
6 assessment and substance abuse assessment tools, and prioritizing
7 the use of residential substance abuse treatment resources based on
8 the results of the standardized risk and needs assessment and a
9 substance abuse assessment. The results of all standardized risk
10 and needs assessments and substance abuse assessments are
11 confidential.

12 (2) An inmate shall not be paroled under paragraph (B),
13 subdivision (1), subsection (b) of this section solely due to
14 having successfully completed a rehabilitation treatment plan, but
15 completion of all the requirements of a rehabilitation treatment
16 plan along with compliance with the requirements of subsection (b)
17 of this section creates a rebuttable presumption that parole is
18 appropriate. The presumption created by this subdivision may be
19 rebutted by a Parole Board finding that, according to the
20 standardized risk and needs assessment, at the time parole release
21 is sought the inmate still constitutes a reasonable risk to the
22 safety or property of other persons if released. Nothing in
23 subsection (b) of this section or in this subsection may be
24 construed to create a right to parole.

25 (i) Notwithstanding the provisions of subsection (b) of this
26 section, the Parole Board may grant or deny parole to an inmate

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

7 (j) If an inmate is otherwise eligible for parole pursuant to
8 subsection (b) of this section and has completed the rehabilitation
9 treatment program required under subsection ~~(h)~~ (g) of this
10 section, the Parole Board may not require the inmate to participate
11 in an additional program, but may determine that the inmate must
12 complete an assigned task or tasks prior to actual release on
13 parole. The board may grant parole contingently, effective upon
14 successful completion of the assigned task or tasks, without the
15 need for a further hearing.

16 (k) (1) The Division of Corrections shall supervise all
17 probationers and parolees whose supervision may have been
18 undertaken by this state by reason of any interstate compact
19 entered into pursuant to the Uniform Act for Out-of-State Parolee
20 Supervision.

21 (2) The Division of Corrections shall provide supervision,
22 treatment/recovery and support services for all persons released to
23 mandatory supervision under section twenty-seven, article five,
24 chapter twenty-eight of this code.

25 (l) (1) When considering an inmate of a state correctional
26 center for release on parole, the Parole Board panel considering

1 the parole shall have before it an authentic copy of or report on
2 the inmate's current criminal record as provided through the West
3 Virginia State Police, the United States Department of Justice or
4 any other reliable criminal information sources and written reports
5 of the warden or superintendent of the state correctional
6 institution to which the inmate is sentenced:

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

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

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

26 (D) On any physical, mental, psychological or psychiatric

1 examinations of the inmate.

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

1 surrounding a conviction or plea of guilty, plea bargaining and
2 other background information that might be useful in its
3 deliberations.

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

22 (n) The Parole Board and its designated agents are at all
23 times to have access to inmates imprisoned in any state
24 correctional institution or in any jail in this state and may
25 obtain any information or aid necessary to the performance of its
26 duties from other departments and agencies of the state or from any

1 political subdivision of the state.

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

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

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

18 (q) A parolee shall participate as a condition of parole in
19 the litter control program of the county to which he or she is
20 released to the extent directed by the Parole Board, unless the
21 board specifically finds that this alternative service would be
22 inappropriate.