

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 408

(By Senator Plymale)

[Originating in the Committee on the Judiciary;
reported January 30, 2014.]

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

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 Parole Board, 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 provided in this section, shall
4 release any inmate on parole for terms and upon conditions
5 provided by this article.

6 (b) Any inmate of a state correctional institution is
7 eligible 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) Is not serving a sentence for a crime of violence
20 against the person, or more than one felony for a controlled
21 substance offense for which the inmate is serving a
22 consecutive sentence, a felony offense involving the use of
23 a firearm or a felony offense where the victim was a minor
24 child; and

25 (iv) Has successfully completed a rehabilitation treatment
26 program created with the assistance of a standardized risk
27 and needs assessment.

28 (C) Notwithstanding any provision of this code to the
29 contrary, any inmate who committed, or attempted to
30 commit, a felony with the use, presentment or brandishing of
31 a firearm, is not eligible for parole prior to serving a
32 minimum of three years of his or her sentence or the
33 maximum sentence imposed by the court, whichever is less:
34 *Provided*, That any inmate who committed, or attempted to
35 commit, any violation of section twelve, article two, chapter

36 sixty-one of this code, with the use, presentment or
37 brandishing of a firearm, is not eligible for parole prior to
38 serving a minimum of five years of his or her sentence or one
39 third of his or her definite term sentence, whichever is
40 greater. Nothing in this paragraph applies to an accessory
41 before the fact or a principal in the second degree who has
42 been convicted as if he or she were a principal in the first
43 degree if, in the commission of or in the attempted
44 commission of the felony, only the principal in the first
45 degree used, presented or brandished a firearm. An inmate
46 is not ineligible for parole under the provisions of this
47 paragraph because of the commission or attempted
48 commission of a felony with the use, presentment or
49 brandishing of a firearm unless that fact is clearly stated and
50 included in the indictment or presentment by which the
51 person was charged and was either: (i) Found guilty by the
52 court at the time of trial upon a plea of guilty or nolo
53 contendere; (ii) found guilty by the jury, upon submitting to
54 the jury a special interrogatory for such purpose if the matter

55 was tried before a jury; or (iii) found guilty by the court, if
56 the matter was tried by the court without a jury.

57 (D) The amendments to this subsection adopted in the
58 year 1981:

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

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

64 (iii) Apply with respect to the submission of a special
65 interrogatory to the jury and the finding to be made thereon
66 in any case submitted to the jury on or after August 1 of that
67 year or to the requisite findings of the court upon a plea of
68 guilty or in any case tried without a jury: *Provided*, That the
69 state gives notice in writing of its intent to seek such finding
70 by the jury or court, as the case may be. The notice shall
71 state with particularity the grounds upon which the finding
72 will be sought as fully as the grounds are otherwise required
73 to be stated in an indictment, unless the grounds upon which

74 the finding will be sought are alleged in the indictment or
75 presentment upon which the matter is being tried; and

76 (iv) Does not apply with respect to cases not affected by
77 the amendments and in those cases the prior provisions of
78 this section apply and are construed without reference to the
79 amendments.

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

84 (E) As used in this section, “felony crime of violence
85 against the person” means felony offenses set forth in article
86 two, three-e, eight-b or eight-d, chapter sixty-one of this
87 code; and

88 (F) As used in this section, “felony offense where the
89 victim was a minor child” means any felony crime of
90 violence against the person and any felony violation set forth
91 in article eight, eight-a, eight-c or eight-d, chapter sixty-one
92 of this code.

93 (G) For the purpose of this section, the term “firearm”
94 means any instrument which will, or is designed to, or may
95 readily be converted to expel a projectile by the action of an
96 explosive, gunpowder or any other similar means.

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

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

102 ~~(4)~~ (3) Has prepared and submitted to the Parole Board a
103 written parole release plan setting forth proposed plans for
104 his or her place of residence, employment and, if appropriate,
105 his or her plans regarding education and post-release
106 counseling and treatment: *Provided*, That an inmate’s
107 application for parole may be considered by the board
108 without the prior submission of a home plan, but the inmate
109 shall have a home plan approved by the board prior to his or
110 her release on parole. The Commissioner of Corrections or
111 his or her designee shall review and investigate the plan and

112 provide recommendations to the board as to the suitability of
113 the plan: *Provided*, That in cases in which there is a
114 mandatory thirty-day notification period required prior to the
115 release of the inmate, pursuant to section twenty-three of this
116 article, the board may conduct an initial interview and deny
117 parole without requiring the development of a plan. In the
118 event the board believes parole should be granted, it may
119 defer a final decision pending completion of an investigation
120 and receipt of recommendations. Upon receipt of the plan
121 together with the investigation and recommendation, the
122 board, through a panel, shall make a final decision regarding
123 the granting or denial of parole; and

124 ~~(5)~~ (4) Has satisfied the board that if released on parole
125 he or she will not constitute a danger to the community.

126 (c) Except in the case of an inmate serving a life
127 sentence, a person who has been previously twice convicted
128 of a felony may not be released on parole until he or she has
129 served the minimum term provided by law for the crime for
130 which he or she was convicted. An inmate sentenced for life

131 may not be paroled until he or she has served ten years, and
132 an inmate sentenced for life who has been previously twice
133 convicted of a felony may not be paroled until he or she has
134 served fifteen years: *Provided*, That an inmate convicted of
135 first degree murder for an offense committed on or after June
136 10, 1994, is not eligible for parole until he or she has served
137 fifteen years.

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

143 (e) If, upon consideration, parole is denied, the board
144 shall promptly notify the inmate of the denial. The board
145 shall, at the time of denial, notify the inmate of the month and
146 year he or she may apply for reconsideration and review.
147 The board shall at least once a year reconsider and review the
148 case of every inmate who was denied parole and who is still
149 eligible: *Provided*, That the board may reconsider and

150 review parole eligibility any time within three years
151 following the denial of parole of an inmate serving a life
152 sentence with the possibility of parole.

153 ~~(f) Any inmate serving a sentence on a felony conviction~~
154 ~~who becomes eligible for parole consideration prior to being~~
155 ~~transferred to a state correctional institution may make~~
156 ~~written application for parole. The terms and conditions for~~
157 ~~parole consideration established by this article apply to that~~
158 ~~inmate.~~

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

163 (g) The board shall, with the approval of the Governor,
164 adopt rules governing the procedure in the granting of parole.
165 No provision of this article and none of the rules adopted
166 under this article are intended or may be construed to
167 contravene, limit or otherwise interfere with or affect the
168 authority of the Governor to grant pardons and reprieves,

169 commute sentences, remit fines or otherwise exercise his or
170 her constitutional powers of executive clemency.

171 (h) (1) The Division of Corrections shall promulgate
172 policies and procedures for developing a rehabilitation
173 treatment plan created with the assistance of a standardized
174 risk and needs assessment. The policies and procedures shall
175 provide for, at a minimum, screening and selecting inmates
176 for rehabilitation treatment and development, using
177 standardized risk and needs assessment and substance abuse
178 assessment tools, and prioritizing the use of residential
179 substance abuse treatment resources based on the results of
180 the standardized risk and needs assessment and a substance
181 abuse assessment. The results of all standardized risk and
182 needs assessments and substance abuse assessments are
183 confidential.

184 (2) An inmate shall not be paroled under paragraph (B),
185 subdivision (1), subsection (b) of this section solely due to
186 having successfully completed a rehabilitation treatment
187 plan, but completion of all the requirements of a

188 rehabilitation treatment plan along with compliance with the
189 requirements of subsection (b) of this section creates a
190 rebuttable presumption that parole is appropriate. The
191 presumption created by this subdivision may be rebutted by
192 a Parole Board finding that, according to the standardized
193 risk and needs assessment, at the time parole release is sought
194 the inmate still constitutes a reasonable risk to the safety or
195 property of other persons if released. Nothing in subsection
196 (b) of this section or in this subsection may be construed to
197 create a right to parole.

198 (i) Notwithstanding the provisions of subsection (b) of
199 this section, the Parole Board may grant or deny parole to an
200 inmate against whom a detainer is lodged by a jurisdiction
201 other than West Virginia for service of a sentence of
202 incarceration, upon a written request for parole from the
203 inmate. A denial of parole under this subsection precludes
204 consideration for parole for a period of one year or until the
205 provisions of subsection (b) of this section are applicable.

206 (j) If an inmate is otherwise eligible for parole pursuant
207 to subsection (b) of this section and has completed the
208 rehabilitation treatment program required under subsection
209 ~~(h)~~ (g) of this section, the Parole Board may not require the
210 inmate to participate in an additional program, but may
211 determine that the inmate must complete an assigned task or
212 tasks prior to actual release on parole. The board may grant
213 parole contingently, effective upon successful completion of
214 the assigned task or tasks, without the need for a further
215 hearing.

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

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

225 (l) (1) When considering an inmate of a state correctional
226 center for release on parole, the Parole Board panel
227 considering the parole shall have before it an authentic copy
228 of or report on the inmate's current criminal record as
229 provided through the West Virginia State Police, the United
230 States Department of Justice or any other reliable criminal
231 information sources and written reports of the warden or
232 superintendent of the state correctional institution to which
233 the inmate is sentenced:

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

238 (B) On improvement or other changes noted in the
239 inmate's mental and moral condition while in custody,
240 including a statement expressive of the inmate's current
241 attitude toward society in general, toward the judge who
242 sentenced him or her, toward the prosecuting attorney who
243 prosecuted him or her, toward the policeman or other officer

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

247 (C) On the inmate's industrial record while in custody
248 which shall include: The nature of his or her work,
249 occupation or education, the average number of hours per
250 day he or she has been employed or in class while in custody
251 and a recommendation as to the nature and kinds of
252 employment which he or she is best fitted to perform and in
253 which the inmate is most likely to succeed when he or she
254 leaves the state correctional institution; and

255 (D) On any physical, mental, psychological or psychiatric
256 examinations of the inmate.

257 (2) The Parole Board panel considering the parole may
258 waive the requirement of any report when not available or
259 not applicable as to any inmate considered for parole but, in
260 every case, shall enter in its record its reason for the waiver:
261 *Provided*, That in the case of an inmate who is incarcerated
262 because the inmate has been found guilty of, or has pleaded

263 guilty to, a felony under the provisions of section twelve,
264 article eight, chapter sixty-one of this code or under the
265 provisions of article eight-b or eight-c of said chapter, the
266 Parole Board panel may not waive the report required by this
267 subsection. The report shall include a study and diagnosis of
268 the inmate, including an on-going treatment plan requiring
269 active participation in sexual abuse counseling at an
270 approved mental health facility or through some other
271 approved program: *Provided, however,* That nothing
272 disclosed by the inmate during the study or diagnosis may be
273 made available to any law-enforcement agency, or other
274 party without that inmate's consent, or admissible in any
275 court of this state, unless the information disclosed indicates
276 the intention or plans of the parolee to do harm to any person,
277 animal, institution or to property. Progress reports of
278 outpatient treatment are to be made at least every six months
279 to the parole officer supervising the parolee. In addition, in
280 such cases, the Parole Board shall inform the prosecuting
281 attorney of the county in which the person was convicted of

282 the parole hearing and shall request that the prosecuting
283 attorney inform the Parole Board of the circumstances
284 surrounding a conviction or plea of guilty, plea bargaining
285 and other background information that might be useful in its
286 deliberations.

287 (m) Before releasing any inmate on parole, the Parole
288 Board shall arrange for the inmate to appear in person before
289 a Parole Board panel and the panel may examine and
290 interrogate him or her on any matters pertaining to his or her
291 parole, including reports before the Parole Board made
292 pursuant to the provisions of this section: *Provided*, That an
293 inmate may appear by video teleconference if the members
294 of the Parole Board panel conducting the examination are
295 able to contemporaneously see the inmate and hear all of his
296 or her remarks and if the inmate is able to contemporaneously
297 see each of the members of the panel conducting the
298 examination and hear all of the members' remarks. The
299 panel shall reach its own written conclusions as to the
300 desirability of releasing the inmate on parole and the majority

301 of the panel considering the release must concur in the
302 decision. The warden or superintendent shall furnish all
303 necessary assistance and cooperate to the fullest extent with
304 the Parole Board. All information, records and reports
305 received by the Parole Board shall be kept on permanent file.

306 (n) The Parole Board and its designated agents are at all
307 times to have access to inmates imprisoned in any state
308 correctional institution or in any jail in this state and may
309 obtain any information or aid necessary to the performance
310 of its duties from other departments and agencies of the state
311 or from any political subdivision of the state.

312 (o) The Parole Board shall, if requested by the Governor,
313 investigate and consider all applications for pardon, reprieve
314 or commutation and shall make recommendation on the
315 applications to the Governor.

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

320 (2) Notwithstanding any other provision of law to the
321 contrary, if the board grants a person parole, the board shall
322 provide written notice to the prosecuting attorney and circuit
323 judge of the county in which the inmate was prosecuted, that
324 parole has been granted. The notice shall be sent by certified
325 mail, return receipt requested, and include the anticipated
326 date of release and the person's anticipated future residence.
327 A written statement of reasons for releasing the person,
328 prepared pursuant to subsection (b) of this section, shall be
329 provided upon request.

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