

Senate Bill No. 374

(By Senators Trump and D. Hall)

[Introduced January 30, 2015; referred to the Committee on the Judiciary.]

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9 A BILL to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating
10 to permitting in absentia parole hearings in certain instances.

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

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

14 **ARTICLE 12. PROBATION AND PAROLE.**

15 **§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.**

16 (a) The Parole Board, whenever it is of the opinion that the best interests of the state and of
17 the inmate will be served, and subject to the limitations provided in this section, shall release any
18 inmate on parole for terms and upon conditions provided by this article.

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

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

22 (B) He or she:

1 (I) Has applied for and been accepted by the Commissioner of Corrections into an accelerated
2 parole program;

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

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

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

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

1 because of the commission or attempted commission of a felony with the use, presentment or
2 brandishing of a firearm unless that fact is clearly stated and included in the indictment or
3 presentment by which the person was charged and was either: (I) Found guilty by the court at the
4 time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury, upon submitting
5 to the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found
6 guilty by the court, if the matter was tried by the court without a jury.

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

8 (I) Apply to all applicable offenses occurring on or after August 1, of that year;

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

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

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

21 (v) Insofar as the amendments relate to mandatory sentences restricting the eligibility for
22 parole, all matters requiring a mandatory sentence shall be proved beyond a reasonable doubt in all

1 cases tried by the jury or the court.

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

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

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

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

12 (3) Has prepared and submitted to the Parole Board a written parole release plan setting forth
13 proposed plans for his or her place of residence, employment and, if appropriate, his or her plans
14 regarding education and post-release counseling and treatment: *Provided*, That an inmate’s
15 application for parole may be considered by the board without the prior submission of a home plan,
16 but the inmate shall have a home plan approved by the board prior to his or her release on parole.
17 The Commissioner of Corrections or his or her designee shall review and investigate the plan and
18 provide recommendations to the board as to the suitability of the plan: *Provided*, That in cases in
19 which there is a mandatory thirty-day notification period required prior to the release of the inmate,
20 pursuant to section twenty-three of this article, the board may conduct an initial interview and deny
21 parole without requiring the development of a plan. In the event the board believes parole should
22 be granted, it may defer a final decision pending completion of an investigation and receipt of

1 recommendations. Upon receipt of the plan together with the investigation and recommendation,
2 the board, through a panel, shall make a final decision regarding the granting or denial of parole; and

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

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

12 (d) In the case of an inmate sentenced to a state correctional institution regardless of the
13 inmate's place of detention or incarceration, the Parole Board, as soon as that inmate becomes
14 eligible, shall consider the advisability of his or her release on parole.

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

21 (f) Any inmate in the custody of the commissioner for service of a sentence who reaches
22 parole eligibility is entitled to a timely parole hearing without regard to the location in which he or

1 she is housed.

2 (g) The board shall, with the approval of the Governor, adopt rules governing the procedure
3 in the granting of parole. No provision of this article and none of the rules adopted under this article
4 are intended or may be construed to contravene, limit or otherwise interfere with or affect the
5 authority of the Governor to grant pardons and reprieves, commute sentences, remit fines or
6 otherwise exercise his or her Constitutional powers of executive clemency.

7 (h) (1) The Division of Corrections shall promulgate policies and procedures for developing
8 a rehabilitation treatment plan created with the assistance of a standardized risk and needs
9 assessment. The policies and procedures shall provide for, at a minimum, screening and selecting
10 inmates for rehabilitation treatment and development, using standardized risk and needs assessment
11 and substance abuse assessment tools, and prioritizing the use of residential substance abuse
12 treatment resources based on the results of the standardized risk and needs assessment and a
13 substance abuse assessment. The results of all standardized risk and needs assessments and
14 substance abuse assessments are confidential.

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

1 parole.

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

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

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

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

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

1 of the warden or superintendent of the state correctional institution to which the inmate is sentenced:

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

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

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

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

16 (2) The Parole Board panel considering the parole may waive the requirement of any report
17 when not available or not applicable as to any inmate considered for parole but, in every case, shall
18 enter in its record its reason for the waiver: *Provided*, That in the case of an inmate who is
19 incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony under the
20 provisions of section twelve, article eight, chapter sixty-one of this code or under the provisions of
21 article eight-b or eight-c of said chapter, the Parole Board panel may not waive the report required
22 by this subsection. The report shall include a study and diagnosis of the inmate, including an on-

1 going treatment plan requiring active participation in sexual abuse counseling at an approved mental
2 health facility or through some other approved program: *Provided, however,* That nothing disclosed
3 by the inmate during the study or diagnosis may be made available to any law-enforcement agency,
4 or other party without that inmate's consent, or admissible in any court of this state, unless the
5 information disclosed indicates the intention or plans of the parolee to do harm to any person,
6 animal, institution or to property. Progress reports of outpatient treatment are to be made at least
7 every six months to the parole officer supervising the parolee. In addition, in such cases, the Parole
8 Board shall inform the prosecuting attorney of the county in which the person was convicted of the
9 parole hearing and shall request that the prosecuting attorney inform the Parole Board of the
10 circumstances surrounding a conviction or plea of guilty, plea bargaining and other background
11 information that might be useful in its deliberations.

12 (m) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate to
13 appear in person before a Parole Board panel and the panel may examine and interrogate him or her
14 on any matters pertaining to his or her parole, including reports before the Parole Board made
15 pursuant to the provisions of this section: *Provided,* That an inmate may appear by video
16 teleconference if the members of the Parole Board panel conducting the examination are able to
17 contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to
18 contemporaneously see each of the members of the panel conducting the examination and hear all
19 of the members' remarks. If an inmate has been certified by a physician, chosen by the Division of
20 Corrections, to be suffering from a terminal condition, disease or syndrome and to be so debilitated
21 or incapacitated as to create a reasonable probability that he or she is and will continue to be
22 physically or cognitively, or both physically and cognitively incapable of appearing in person, the

1 requirement to personally appear is waived. The panel shall reach its own written conclusions as to
2 the desirability of releasing the inmate on parole and the majority of the panel considering the release
3 must concur in the decision. The warden or superintendent shall furnish all necessary assistance and
4 cooperate to the fullest extent with the Parole Board. All information, records and reports received
5 by the Parole Board shall be kept on permanent file.

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

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

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

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

22 (q) A parolee shall participate as a condition of parole in the litter control program of the

- 1 county to which he or she is released to the extent directed by the Parole Board, unless the board
- 2 specifically finds that this alternative service would be inappropriate.

NOTE: The purpose of this bill is to allow in absentia parole hearings in certain instances and waiving a personal appearance by an inmate who is terminally ill and unable to attend permit.

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