

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2703

2015 Carryover

(BY DELEGATES HAMILTON, MOORE, A. EVANS AND
CANTERBURY)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

1 That §62-12-13 of the Code of West Virginia, 1931, as amended, be amended and
2 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 the best interests of the state and
2 of the inmate will be served, and subject to the limitations provided in this section, shall release
3 any inmate on parole for terms and upon conditions provided by this article.

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

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

7 (B) He or she:

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

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

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

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

19 (C) Notwithstanding any provision of this code to the contrary, any inmate who committed,
20 or attempted to commit, a felony with the use, presentment or brandishing of a firearm, is not
21 eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum
22 sentence imposed by the court, whichever is less: *Provided*, That any inmate who committed,
23 or attempted to commit, any violation of section twelve, article two, chapter sixty-one of this code,
24 with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a
25 minimum of five years of his or her sentence or one third of his or her definite term sentence,
26 whichever is greater. Nothing in this paragraph applies to an accessory before the fact or a
27 principal in the second degree who has been convicted as if he or she were a principal in the first
28 degree if, in the commission of or in the attempted commission of the felony, only the principal in
29 the first degree used, presented or brandished a firearm. An inmate is not ineligible for parole
30 under the provisions of this paragraph because of the commission or attempted commission of a
31 felony with the use, presentment or brandishing of a firearm unless that fact is clearly stated and
32 included in the indictment or presentment by which the person was charged and was either: (i)
33 Found guilty by the court at the time of trial upon a plea of guilty or nolo contendere; (ii) found
34 guilty by the jury, upon submitting to the jury a special interrogatory for such purpose if the matter
35 was tried before a jury; or (iii) found guilty by the court, if the matter was tried by the court without
36 a jury.

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

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

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

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

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

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

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

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

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

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

65 (3) Has prepared and submitted to the Parole Board a written parole release plan setting
66 forth proposed plans for his or her place of residence, employment and, if appropriate, his or her
67 plans regarding education and post-release counseling and treatment: *Provided*, That an inmate's
68 application for parole may be considered by the board without the prior submission of a home
69 plan, but the inmate shall have a home plan approved by the board prior to his or her release on
70 parole. The Commissioner of Corrections or his or her designee shall review and investigate the
71 plan and provide recommendations to the board as to the suitability of the plan: *Provided*,
72 however, that in cases in which there is a mandatory thirty-day notification period required prior
73 to the release of the inmate, pursuant to section twenty-three of this article, the board may conduct
74 an initial interview and deny parole without requiring the development of a plan. In the event the
75 board believes parole should be granted, it may defer a final decision pending completion of an
76 investigation and receipt of recommendations. Upon receipt of the plan together with the
77 investigation and recommendation, the board, through a panel, shall make a final decision
78 regarding the granting or denial of parole; and

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

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

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

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

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

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

106 (h) (1) The Division of Corrections shall promulgate policies and procedures for developing
107 a rehabilitation treatment plan created with the assistance of a standardized risk and needs
108 assessment. The policies and procedures shall provide for, at a minimum, screening and
109 selecting inmates for rehabilitation treatment and development, using standardized risk and needs
110 assessment and substance abuse assessment tools, and prioritizing the use of residential
111 substance abuse treatment resources based on the results of the standardized risk and needs
112 assessment and a substance abuse assessment. The results of all standardized risk and needs

113 assessments and substance abuse assessments are confidential.

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

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

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

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

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

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

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

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

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

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

160 (2) The Parole Board panel considering the parole may waive the requirement of any

161 report when not available or not applicable as to any inmate considered for parole but, in every
162 case, shall enter in its record its reason for the waiver: *Provided*, That in the case of an inmate
163 who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony
164 under the provisions of section twelve, article eight, chapter sixty-one of this code or under the
165 provisions of article eight-b or eight-c of said chapter, the Parole Board panel may not waive the
166 report required by this subsection. The report shall include a study and diagnosis of the inmate,
167 including an on-going treatment plan requiring active participation in sexual abuse counseling at
168 an approved mental health facility or through some other approved program: *Provided, however*,
169 That nothing disclosed by the inmate during the study or diagnosis may be made available to any
170 law-enforcement agency, or other party without that inmate's consent, or admissible in any court
171 of this state, unless the information disclosed indicates the intention or plans of the parolee to do
172 harm to any person, animal, institution or to property. Progress reports of outpatient treatment
173 are to be made at least every six months to the parole officer supervising the parolee. In addition,
174 in such cases, the Parole Board shall inform the prosecuting attorney of the county in which the
175 person was convicted of the parole hearing and shall request that the prosecuting attorney inform
176 the Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining
177 and other background information that might be useful in its deliberations.

178 (m) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate
179 to appear in person before a Parole Board panel and the panel may examine and interrogate him
180 or her on any matters pertaining to his or her parole, including reports before the Parole Board
181 made pursuant to the provisions of this section: *Provided*, That an inmate may appear by video
182 teleconference if the members of the Parole Board panel conducting the examination are able to
183 contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to
184 contemporaneously see each of the members of the panel conducting the examination and hear

185 all of the members' remarks. If an inmate has been certified by a physician, chosen by the
186 Division of Corrections, to be suffering from a terminal condition, disease or syndrome and to be
187 so debilitated or incapacitated as to create a reasonable probability that he or she is and will
188 continue to be physically or cognitively, or both physically and cognitively incapable of appearing
189 in person, the requirement to personally appear is waived. The panel shall reach its own written
190 conclusions as to the desirability of releasing the inmate on parole and the majority of the panel
191 considering the release must concur in the decision. The warden or superintendent shall furnish
192 all necessary assistance and cooperate to the fullest extent with the Parole Board. All
193 information, records and reports received by the Parole Board shall be kept on permanent file.

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

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

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

204 (2) Notwithstanding any other provision of law to the contrary, if the board grants a person
205 parole, the board shall provide written notice to the prosecuting attorney and circuit judge of the
206 county in which the inmate was prosecuted, that parole has been granted. The notice shall be
207 sent by certified mail, return receipt requested, and include the anticipated date of release and
208 the person's anticipated future residence. A written statement of reasons for releasing the

209 person, prepared pursuant to subsection (b) of this section, shall be provided upon request.

210 (q) A parolee shall participate as a condition of parole in the litter control program of the
211 county to which he or she is released to the extent directed by the Parole Board, unless the board
212 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.