

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2453

FISCAL
NOTE

BY DELEGATE ROWE

[Introduced January 16, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend §62-12-13 of the Code of West Virginia, 1931, as amended, relating to eligibility
2 for parole; providing that any inmate of a state correctional institution is eligible to petition
3 for parole when good time credits and actual time served equal 30 years.

Be it enacted by the Legislature of West Virginia:

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 has good time credits and
7 actual time served which together equal 30 years; or

8 (B) He or she has applied for and been accepted by the Commissioner of Corrections into
9 an accelerated parole program. To be eligible to participate in an accelerated parole program, the
10 commissioner must determine that the inmate:

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

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

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

20 (C) Notwithstanding any provision of this code to the contrary, any inmate who committed,

21 or attempted to commit, a felony with the use, presentment or brandishing of a firearm is not
22 eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum
23 sentence imposed by the court, whichever is less: *Provided*, That any inmate who committed, or
24 attempted to commit, any violation of §61-2-12 of this code, with the use, presentment or
25 brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or
26 her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in
27 this paragraph applies to an accessory before the fact or a principal in the second degree who
28 has been convicted as if he or she were a principal in the first degree if, in the commission of or
29 in the attempted commission of the felony, only the principal in the first degree used, presented
30 or brandished a firearm. An inmate is not ineligible for parole under the provisions of this
31 paragraph because of the commission or attempted commission of a felony with the use,
32 presentment or brandishing of a firearm unless that fact is clearly stated and included in the
33 indictment or presentment by which the person was charged and was either: (i) Found guilty by
34 the court at the time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury
35 upon submitting to the jury a special interrogatory for such purpose if the matter was tried before
36 a jury; or (iii) found guilty by the court if the matter was tried by the court without 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; and

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 §61-2-1 *et seq.* §61-3(e)-1 *et seq.*; §61-8b 1 *et seq.* or §61-8d-1 *et seq.* of
57 this code.

58 (F) As used in this section, "felony offense where the victim was a minor child" means any
59 felony crime of violence against the person and any felony violation set forth in §61-8-1 *et seq.*
60 §61-8a-1 *et seq.* §61-8c-1 *et seq.* or §61-8d-1 *et seq.* of this code.

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

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

66 (3) Has prepared and submitted to the Parole Board a written parole release plan setting
67 forth proposed plans for his or her place of residence, employment and, if appropriate, his or her
68 plans regarding education and post-release counseling and treatment: *Provided*, That an inmate's
69 application for parole may be considered by the board without the prior submission of a home
70 plan, but the inmate shall have a home plan approved by the board prior to his or her release on
71 parole. The Commissioner of Corrections or his or her designee shall review and investigate the
72 plan and provide recommendations to the board as to the suitability of the plan: *Provided*,

73 *however*, That in cases in which there is a mandatory 30-day notification period required prior to
74 the release of the inmate, pursuant to §62-12-23 of this code, the board may conduct an initial
75 interview and deny parole without requiring the development of a plan. In the event the board
76 believes parole should be granted, it may defer a final decision pending completion of an
77 investigation and receipt of recommendations. Upon receipt of the plan together with the
78 investigation and recommendation, the board, through a panel, shall make a final decision
79 regarding the granting or denial of parole; and

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

82 (c) Except in the case of an inmate serving a life sentence, a person who has been
83 previously twice convicted of a felony may not be released on parole until he or she has served
84 the minimum term provided by law for the crime for which he or she was convicted. An inmate
85 sentenced for life may not be paroled until he or she has served 10 years, and an inmate
86 sentenced for life who has been previously twice convicted of a felony may not be paroled until
87 he or she has served 15 years: *Provided*, That an inmate convicted of first degree murder for an
88 offense committed on or after June 10, 1994, is not eligible for parole until he or she has served
89 15 years.

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

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

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

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

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

115 (2) An inmate shall not be paroled under §62-12-13(b)(1)(B) of this code solely due to
116 having successfully completed a rehabilitation treatment plan, but completion of all the
117 requirements of a rehabilitation treatment plan along with compliance with the requirements of
118 §62-12-13(b) of this code creates a rebuttable presumption that parole is appropriate. The
119 presumption created by this subdivision may be rebutted by a Parole Board finding that, according
120 to the standardized risk and needs assessment, at the time parole release is sought the inmate
121 still constitutes a reasonable risk to the safety or property of other persons if released. Nothing in
122 §62-12-13(b) of this code or in this subsection may be construed to create a right to parole.

123 (i) Notwithstanding the provisions of subsection §62-12-13(b) of this code, the Parole
124 Board may grant or deny parole to an inmate against whom a detainer is lodged by a jurisdiction

125 other than West Virginia for service of a sentence of incarceration, upon a written request for
126 parole from the inmate. A denial of parole under this subsection precludes consideration for parole
127 for a period of one year or until the provisions of §62-12-13(b) of this code are applicable.

128 (j) If an inmate is otherwise eligible for parole pursuant to §62-12-13(b) of this code and
129 has completed the rehabilitation treatment program required under §62-12-13(h)(1) of this code,
130 the Parole Board may not require the inmate to participate in an additional program, but may
131 determine that the inmate must complete an assigned task or tasks prior to actual release on
132 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 §28-5-27 of this code.

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

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

148 (B) On the inmate's industrial record while in custody which shall include: The nature of
149 his or her work, occupation or education, the average number of hours per day he or she has
150 been employed or in class while in custody and a recommendation as to the nature and kinds of

151 employment which he or she is best fitted to perform and in which the inmate is most likely to
152 succeed when he or she leaves the state correctional institution; and

153 (C) On any physical, mental, psychological or psychiatric examinations of the inmate.

154 (2) The Parole Board panel considering the parole may waive the requirement of any
155 report when not available or not applicable as to any inmate considered for parole but, in every
156 case, shall enter in its record its reason for the waiver: *Provided*, That in the case of an inmate
157 who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony
158 under the provisions of §61-8-12 of this code or under the provisions of §61-8b-1 *et seq.* or §61-
159 8c-1 *et seq.* of this code, the Parole Board panel may not waive the report required by this
160 subsection. The report shall include a study and diagnosis of the inmate, including an on-going
161 treatment plan requiring active participation in sexual abuse counseling at an approved mental
162 health facility or through some other approved program: *Provided, however*, That nothing
163 disclosed by the inmate during the study or diagnosis may be made available to any law-
164 enforcement agency, or other party without that inmate's consent, or admissible in any court of
165 this state, unless the information disclosed indicates the intention or plans of the parolee to do
166 harm to any person, animal, institution or to property. Progress reports of outpatient treatment are
167 to be made at least every six months to the parole officer supervising the parolee. In addition, in
168 such cases, the Parole Board shall inform the prosecuting attorney of the county in which the
169 person was convicted of the parole hearing and shall request that the prosecuting attorney inform
170 the Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining
171 and other background information that might be useful in its deliberations.

172 (m) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate
173 to appear in person before a Parole Board panel and the panel may examine and interrogate him
174 or her on any matters pertaining to his or her parole, including reports before the Parole Board
175 made pursuant to the provisions of this section: *Provided*, That an inmate may appear by video
176 teleconference if the members of the Parole Board panel conducting the examination are able to

177 contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to
178 contemporaneously see each of the members of the panel conducting the examination and hear
179 all of the members' remarks: *Provided, however,* That the requirement that an inmate personally
180 appear may be waived where a physician authorized to do so by the Commissioner of Corrections
181 certifies that the inmate, due to a medical condition or disease, is too debilitated, either physically
182 or cognitively, to appear. The panel shall reach its own written conclusions as to the desirability
183 of releasing the inmate on parole and the majority of the panel considering the release must
184 concur in the decision. The warden or superintendent shall furnish all necessary assistance and
185 cooperate to the fullest extent with the Parole Board. All information, records and reports received
186 by the Parole Board shall be kept on permanent file.

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

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

194 (p) Prior to making a recommendation for pardon, reprieve or commutation, the board shall
195 notify the sentencing judge and prosecuting attorney at least 10 days before the recommendation.

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

NOTE: The purpose of this bill is to make all convicts eligible to petition for parole when their good time credits and actual time served equal 30 years.

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