

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2704

FISCAL  
NOTE

BY DELEGATE ROWE

[Introduced January 28, 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.