

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4556

FISCAL
NOTE

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PYLES

(BY REQUEST OF THE WV DEPARTMENT OF MILITARY
AFFAIRS AND PUBLIC SAFETY)

[Introduced January 28, 2020; 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; and to
2 amend said code by adding thereto a new section designated §62-12-13c, all relating to
3 authorizing the Commissioner of the Division of Corrections and Rehabilitation to approve
4 home plans for inmates, authorizing the Commissioner of the Division of Corrections and
5 Rehabilitation to establish a nonviolent offense parole program; establishing eligibility
6 requirements for said program; clarifying that inmates released under said program are
7 subject to the same conditions of release and sanctions; clarifying that inmate's failing to
8 successfully complete the rehabilitation treatment program are ineligible for release; and
9 clarifying that inmates not otherwise released may be eligible for said program at the time
10 of successful completion of the rehabilitation treatment program.

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

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

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

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

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

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

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

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

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

54 (E) As used in this section, "felony crime of violence against the person" means felony
55 offenses set forth in §61-2-1 et seq., §61-3E-1 et seq., §61-8B-1 et seq., or §61-8D-1 et seq., of
56 this code.

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 §61-8-1 et seq.,
59 §61-8A-1 et seq., §61-8C-1 et seq., or §61-8D-1 et seq., 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 which has been approved
68 by the Division of Corrections and Rehabilitation: *Provided*, That an inmate's application for parole
69 may be considered by the board without the prior submission of a home plan, but the inmate shall
70 have a home plan approved by the ~~board~~ division prior to his or her release on parole. The
71 Commissioner of Corrections and Rehabilitation or his or her designee shall review and
72 investigate the plan and provide ~~recommendations~~ findings to the board as to the suitability of the
73 plan: *Provided, however*, That in cases in which there is a mandatory 30-day notification period
74 required prior to the release of the inmate, pursuant to §62-12-23 of this code, the board may
75 conduct an initial interview and deny parole without requiring the development of a plan. In the
76 event the board believes parole should be granted, it may defer a final decision pending
77 completion of an investigation and receipt of ~~recommendations~~ the commissioner's findings. Upon
78 receipt of the plan together with the investigation and ~~recommendation~~ findings, the board,
79 through a panel, shall make a final decision 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 and Rehabilitation shall promulgate policies and
108 procedures for developing a rehabilitation treatment plan created with the assistance of a
109 standardized risk and needs assessment. The policies and procedures shall provide for, at a
110 minimum, screening and selecting inmates for rehabilitation treatment and development, using
111 standardized risk and needs assessment and substance abuse assessment tools, and prioritizing
112 the use of residential substance abuse treatment resources based on the results of the
113 standardized risk and needs assessment and a substance abuse assessment. The results of all
114 standardized risk and needs assessments and substance abuse assessments are confidential.

115 (2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of
116 this section solely due to having successfully completed a rehabilitation treatment plan, but
117 completion of all the requirements of a rehabilitation treatment plan along with compliance with

118 the requirements of subsection (b) of this section creates a rebuttable presumption that parole is
119 appropriate. The presumption created by this subdivision may be rebutted by a Parole Board
120 finding that, according to the standardized risk and needs assessment, at the time parole release
121 is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if
122 released. Nothing in subsection (b) of this section or in this subsection may be construed to create
123 a right to parole.

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

129 (j) If an inmate is otherwise eligible for parole pursuant to subsection (b) of this section
130 and has completed the rehabilitation treatment program required under subdivision (1),
131 subsection (h) of this section, the Parole Board may not require the inmate to participate in an
132 additional program, but may determine that the inmate must complete an assigned task or tasks
133 prior to actual release on parole. The board may grant parole contingently, effective upon
134 successful completion of the assigned task or tasks, without the need for a further hearing.

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

138 (2) The Division of Corrections and Rehabilitation shall provide supervision,
139 treatment/recovery and support services for all persons released to mandatory supervision under
140 ~~section twenty-seven, article five, chapter twenty-eight~~ §15A-4-17 of this code.

141 (l) (1) When considering an inmate of a state correctional facility for release on parole, the
142 Parole Board panel considering the parole shall have before it an authentic copy of or report on
143 the inmate's current criminal record as provided through the West Virginia State Police, the United

144 States Department of Justice or any other reliable criminal information sources and written reports
145 of the ~~warden~~ or superintendent of the state correctional institution to which the inmate is
146 sentenced:

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

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

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

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

170 such cases, the Parole Board shall inform the prosecuting attorney of the county in which the
171 person was convicted of the parole hearing and shall request that the prosecuting attorney inform
172 the Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining
173 and other background information that might be useful in its deliberations.

174 (m) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate
175 to appear in person before a Parole Board panel and the panel may examine and interrogate him
176 or her on any matters pertaining to his or her parole, including reports before the Parole Board
177 made pursuant to the provisions of this section: *Provided*, That an inmate may appear by video
178 teleconference if the members of the Parole Board panel conducting the examination are able to
179 contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to
180 contemporaneously see each of the members of the panel conducting the examination and hear
181 all of the members' remarks: *Provided, however*, That the requirement that an inmate personally
182 appear may be waived where a physician authorized to do so by the Commissioner of Corrections
183 and Rehabilitation certifies that the inmate, due to a medical condition or disease, is too
184 debilitated, either physically or cognitively, to appear. The panel shall reach its own written
185 conclusions as to the desirability of releasing the inmate on parole and the majority of the panel
186 considering the release must concur in the decision. The ~~warden or~~ superintendent shall furnish
187 all necessary assistance and cooperate to the fullest extent with the Parole Board. All information,
188 records and reports received by the Parole Board shall be kept on permanent file.

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

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

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

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

§62-12-13c. Authority of Commissioner to establish a nonviolent offense parole program.

1 (a) The commissioner is authorized to establish a nonviolent offense parole program for
2 any inmate of a state correctional institution in which an inmate may be paroled without action of
3 the Parole Board based upon objective standards as set forth in this section, to commence on
4 July 1, 2021.

5 (b) Notwithstanding any provision of this code to the contrary, any inmate of a state
6 correctional institution is eligible for parole under the nonviolent offense parole program if:

7 (1) (A) He or she has served at least the minimum term of his or her sentence and is
8 eligible for parole as determined by the parole board; and

9 (B) He or she qualifies for the nonviolent offense parole program as authorized by this
10 section.

11 (c) To qualify for the nonviolent offense parole program, the commissioner must determine
12 that the inmate:

13 (1) Is not serving a sentence for a crime of violence against the person, or felony for a
14 controlled substance offense which involves actual or threatened violence to a person, a felony
15 offense involving the use of a firearm, or a felony offense where the victim was a minor child;

16 (2) Has successfully completed an individualized rehabilitation treatment program as
17 determined by the division; and

18 (3) Has otherwise satisfied the requirements for parole eligibility set forth in §62-12-13 of
19 this code.

20 (d) Any person released under the nonviolent offense parole program shall be subject to
21 all conditions of release and sanctions for violations applicable to persons released on parole by
22 the Parole Board, and all parole revocations of persons granted parole pursuant to this section
23 shall be heard in accordance with the provisions of §62-12-19 of this code.

24 (e) The nonviolent offense parole program authorized by subsection (a) of this section
25 requires no action by the Parole Board as to the release decision if the inmate qualifies for the
26 program and has successfully completed his or her rehabilitation treatment program as
27 determined by the commissioner.

28 (f) The commissioner shall develop a policy directive setting forth the processes and
29 procedures to determine successful completion of the rehabilitation treatment program and to
30 provide notice to the inmate. If the inmate fails to successfully complete his or her rehabilitation
31 treatment program, his or her parole shall be determined in accordance with the provisions of
32 §62-12-13 of this code. An inmate who been denied parole pursuant to the provisions of §62-12-
33 13 of this code and who thereafter successfully completes his or her rehabilitation treatment
34 program prior to his or her next parole review shall be eligible for release under the nonviolent
35 offense parole program within a reasonable time after he or she may successfully complete such
36 program as determined by the commissioner, provided the inmate remains qualified for release
37 under the nonviolent offense parole program.

NOTE: The purpose of this bill is to authorize the Commissioner of the Division of Corrections and Rehabilitation to approve home plans for inmates, authorize the Commissioner of the Division of Corrections and Rehabilitation to establish a nonviolent offense parole program, to establish eligibility requirements for said program, to clarify that inmates released under said program are subject to the same conditions of release and sanctions, to clarify that inmate's failing to successfully complete the rehabilitation treatment program are ineligible for release, and to clarify that inmates not otherwise released may be eligible for said program at the time of successful completion of the rehabilitation treatment program.

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