

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

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House Bill 3078

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[Introduced March 10, 2021; 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 the powers and duties of the parole board, the procedure for granting parole and the
3 conditions of reason on parole.

Be it enacted by the Legislature of West Virginia:

§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
12 a 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 division prior to his or her release on parole. The
71 Commissioner of the Division of Corrections and Rehabilitation, or his or her designee, shall

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

82 (5) Has successfully completed any required rehabilitative and educational programs while
83 in prison: *Provided,* That the Commissioner shall develop and maintain a list, available to the
84 public, of programs available outside the prison which shall be appropriate to complete an
85 inmate's required rehabilitative and educational program as a special condition of parole, and
86 satisfy this special condition of parole and the manner and method in which such programs shall
87 be completed by the parolee: *Provided, however,* That, effective September 1, 2021, any inmate
88 who satisfies all other parole eligibility requirements but is unable to complete required
89 rehabilitative and educational programs while in prison, which are eligible to be taken while on
90 parole may be granted parole with the completion of such rehabilitative and educational programs
91 outside the correctional facility being a special condition of that person's parole term. An inmate
92 may not be paroled under the special terms of this subdivision if the Parole Board finds that he or
93 she has not completed the majority of his or her rehabilitative and educational programming and
94 that the amount of rehabilitative and educational programming which must still be completed
95 would interfere with his or her successful reintegration into society.

96 (c) Except in the case of an inmate serving a life sentence, a person who has been
97 previously twice convicted of a felony may not be released on parole until he or she has served

98 the minimum term provided by law for the crime for which he or she was convicted. An inmate
99 sentenced for life may not be paroled until he or she has served 10 years, and an inmate
100 sentenced for life who has been previously twice convicted of a felony may not be paroled until
101 he or she has served 15 years: *Provided*, That an inmate convicted of first degree murder for an
102 offense committed on or after June 10, 1994, is not eligible for parole until he or she has served
103 15 years.

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

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

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

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

121 (h) (1) The Division of Corrections and Rehabilitation shall promulgate policies and
122 procedures for developing a rehabilitation treatment plan created with the assistance of a
123 standardized risk and needs assessment. The policies and procedures shall provide for, at a

124 minimum, screening and selecting inmates for rehabilitation treatment and development, using
125 standardized risk and needs assessment and substance abuse assessment tools, and prioritizing
126 the use of residential substance abuse treatment resources based on the results of the
127 standardized risk and needs assessment and a substance abuse assessment. The results of all
128 standardized risk and needs assessments and substance abuse assessments are confidential.

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

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

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

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

152 (2) The Division of Corrections and Rehabilitation shall provide supervision,
153 treatment/recovery, and support services for all persons released to mandatory supervision under
154 §15A-4-17 of this code.

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

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

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

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

169 (2) The Parole Board panel considering the parole may waive the requirement of any
170 report when not available or not applicable as to any inmate considered for parole but, in every
171 case, shall enter in its record its reason for the waiver: *Provided*, That in the case of an inmate
172 who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony
173 under the provisions of §61-8-12 of this code or under the provisions of §61-8B-1 *et seq.* or §61-
174 8C-1 *et seq.* of this code, the Parole Board panel may not waive the report required by this

175 subsection. The report shall include a study and diagnosis of the inmate, including an on-going
176 treatment plan requiring active participation in sexual abuse counseling at an approved mental
177 health facility or through some other approved program: *Provided, however,* That nothing
178 disclosed by the inmate during the study or diagnosis may be made available to any law-
179 enforcement agency, or other party without that inmate's consent, or admissible in any court of
180 this state, unless the information disclosed indicates the intention or plans of the parolee to do
181 harm to any person, animal, institution, or to property. Progress reports of outpatient treatment
182 are to be made at least every six months to the parole officer supervising the parolee. In addition,
183 in such cases, the Parole Board shall inform the prosecuting attorney of the county in which the
184 person was convicted of the parole hearing and shall request that the prosecuting attorney inform
185 the Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining,
186 and other background information that might be useful in its deliberations.

187 (m) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate
188 to appear in person before a Parole Board panel and the panel may examine and interrogate him
189 or her on any matters pertaining to his or her parole, including reports before the Parole Board
190 made pursuant to the provisions of this section: *Provided,* That an inmate may appear by video
191 teleconference if the members of the Parole Board panel conducting the examination are able to
192 contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to
193 contemporaneously see each of the members of the panel conducting the examination and hear
194 all of the members' remarks: *Provided, however,* That the requirement that an inmate personally
195 appear may be waived where a physician authorized to do so by the Commissioner of the Division
196 of Corrections and Rehabilitation certifies that the inmate, due to a medical condition or disease,
197 is too debilitated, either physically or cognitively, to appear. The panel shall reach its own written
198 conclusions as to the desirability of releasing the inmate on parole and the majority of the panel
199 considering the release must concur in the decision. The superintendent shall furnish all

200 necessary assistance and cooperate to the fullest extent with the Parole Board. All information,
201 records, and reports received by the Parole Board shall be kept on permanent file.

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

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

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

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

NOTE: The purpose of this bill is to add a proviso in the code that would allow an inmate to be released from prison and complete required rehabilitative and educational classes while on parole as a condition of parole.

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