

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2563

By Delegates Linville, Kelly, Pinson, Honaker, Smith,
Phillips, Hott, Steele, Foster, Adkins and Holstein

[Introduced January 16, 2023; 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 making ineligible for parole someone guilty of a crime in which the victim was a police
 3 officer in the performance of that officer's duties.

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 of
 2 the inmate will be served, and subject to the limitations provided in this section, shall release any
 3 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, a
 15 felony offense involving the use of a firearm, or a felony offense where the victim was a minor child;
 16 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 this
26 paragraph applies to an accessory before the fact or a principal in the second degree who has
27 been convicted as if he or she were a principal in the first degree if, in the commission of or in the
28 attempted commission of the felony, only the principal in the first degree used, presented, or
29 brandished a firearm. An inmate is not ineligible for parole under the provisions of this paragraph
30 because of the commission or attempted commission of a felony with the use, presentment, or
31 brandishing of a firearm unless that fact is clearly stated and included in the indictment or
32 presentment by which the person was charged and was either: (i) Found guilty by the court at the
33 time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury upon submitting to
34 the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found
35 guilty by the court if the matter was tried by the court without a jury.

36 (D) Notwithstanding any provision of this code to the contrary, any inmate who committed,
37 or attempted to commit, a felony against a police officer in the performance of that officer's duties is
38 not eligible for parole.

39 ~~(D)~~ (E) The amendments to this subsection adopted in the year 1981:

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

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

43 (iii) Apply with respect to the submission of a special interrogatory to the jury and the
44 finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to
45 the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided*,
46 That the state gives notice in writing of its intent to seek such finding by the jury or court, as the

47 case may be. The notice shall state with particularity the grounds upon which the finding will be
48 sought as fully as the grounds are otherwise required to be stated in an indictment, unless the
49 grounds upon which the finding will be sought are alleged in the indictment or presentment upon
50 which the matter is being tried;

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

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

57 ~~(E)~~ (F) As used in this section, "felony crime of violence against the person" means felony
58 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 this
59 code.

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

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

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

68 (3) Has prepared and submitted to the Parole Board a written parole release plan setting
69 forth proposed plans for his or her place of residence, employment and, if appropriate, his or her
70 plans regarding education and post-release counseling and treatment which has been approved
71 by the Division of Corrections and Rehabilitation: *Provided*, That an inmate's application for parole
72 may be considered by the board without the prior submission of a home plan, but the inmate shall

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

83 (4) Has satisfied the board that if released on parole he or she will not constitute a danger
84 to the community; and

85 (5) Has successfully completed any individually required rehabilitative and educational
86 programs, as determined by the division, while incarcerated: *Provided,* That, effective September
87 1, 2021, any inmate who satisfies all other parole eligibility requirements but is unable, through no
88 fault of the inmate, to complete his or her required rehabilitative and educational programs while
89 incarcerated, which are eligible to be taken while on parole, may be granted parole with the
90 completion of such specified programs outside of the correctional institutions being a special
91 condition of that person's parole term: *Provided, however,* That the Parole Board may consider
92 whether completion of the inmate's outstanding amount of such programming would interfere with
93 his or her successful reintegration into society.

94 (c) Except in the case of an inmate serving a life sentence, a person who has been
95 previously twice convicted of a felony may not be released on parole until he or she has served the
96 minimum term provided by law for the crime for which he or she was convicted. An inmate
97 sentenced for life may not be paroled until he or she has served 10 years, and an inmate
98 sentenced for life who has been previously twice convicted of a felony may not be paroled until he

99 or she has served 15 years: *Provided*, That an inmate convicted of first degree murder for an
100 offense committed on or after June 10, 1994, is not eligible for parole until he or she has served 15
101 years.

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

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

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

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

119 (h) (1) The Division of Corrections and Rehabilitation shall promulgate policies and
120 procedures for developing a rehabilitation treatment plan created with the assistance of a
121 standardized risk and needs assessment. The policies and procedures shall provide for, at a
122 minimum, screening and selecting inmates for rehabilitation treatment and development, using
123 standardized risk and needs assessment and substance abuse assessment tools, and prioritizing
124 the use of residential substance abuse treatment resources based on the results of the

125 standardized risk and needs assessment and a substance abuse assessment. The results of all
126 standardized risk and needs assessments and substance abuse assessments are confidential.

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

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

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

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

150 (2) The Division of Corrections and Rehabilitation shall provide supervision,

151 treatment/recovery, and support services for all persons released to mandatory supervision under
152 §15A-4-17 of this code.

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

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

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

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

167 (2) The Parole Board panel considering the parole may waive the requirement of any
168 report when not available or not applicable as to any inmate considered for parole but, in every
169 case, shall enter in its record its reason for the waiver: *Provided*, That in the case of an inmate who
170 is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony
171 under the provisions of §61-8-12 of this code or under the provisions of §61-8B-1 *et seq.* or §61-
172 8C-1 *et seq.* of this code, the Parole Board panel may not waive the report required by this
173 subsection. The report shall include a study and diagnosis of the inmate, including an on-going
174 treatment plan requiring active participation in sexual abuse counseling at an approved mental
175 health facility or through some other approved program: *Provided, however*, That nothing
176 disclosed by the inmate during the study or diagnosis may be made available to any law-

177 enforcement agency, or other party without that inmate's consent, or admissible in any court of this
178 state, unless the information disclosed indicates the intention or plans of the parolee to do harm to
179 any person, animal, institution, or to property. Progress reports of outpatient treatment are to be
180 made at least every six months to the parole officer supervising the parolee. In addition, in such
181 cases, the Parole Board shall inform the prosecuting attorney of the county in which the person
182 was convicted of the parole hearing and shall request that the prosecuting attorney inform the
183 Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining, and
184 other background information that might be useful in its deliberations.

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

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

203 of the state or from any political subdivision of the state.

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

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

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

212 (r) The commissioner shall develop, maintain, and make publicly available a general list of
213 rehabilitative and educational programs available outside of the correctional institutions which an
214 inmate may be required to complete as a special condition of parole pursuant to subdivision (5) of
215 subsection (b) of this section, and the manner and method in which such programs shall be
216 completed by the parolee.

NOTE: The purpose of this bill is to make ineligible for parole someone guilty of a crime in which the victim was a police officer in the performance of that officer's duties.

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