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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

SENATE BILL NO. 292

(By Senator Wooten, et al)



PASSED APRIL 11^{OK} 12¹⁶²², 1997

In Effect NINETY DAYS FROM Passage

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LEGISLATIVE

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Senate Bill No. 292

(BY SENATORS WOOTON, BALL, BOWMAN, DITTMAR, FANNING,
HUNTER, SCHOONOVER, SNYDER, WHITE, BUCKALEW,
DEEM, KIMBLE AND SCOTT)

[Passed April 11, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact sections twelve, thirteen and eighteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the parole board; providing that no more than two board members may be from the same congressional district; providing that no person convicted of first degree murder shall be eligible for parole until he or she has served fifteen years; providing that review of an inmate who was initially refused parole must be by at least three members of the board; providing that the parole board may designate, within a three-year period, when inmates serving life sentences may be reconsidered for parole; providing that parole provisions of this article apply only to felons; providing

that at least three board members shall interview an inmate for parole and that an inmate shall be released upon a concurrence of a majority of the interviewing board members; adding certain offenses to those which disqualify a parole violator from being discharged from parole; and cleaning up archaic language.

Be it enacted by the Legislature of West Virginia:

That sections twelve, thirteen and eighteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-12. Parole board generally.

1 There shall be a state board of parole, known as the
2 “West Virginia parole board”. The board shall consist of
3 five members, each of whom shall have been a resident of
4 this state for at least five consecutive years prior to his or
5 her appointment. No more than three of the board
6 members may at any one time belong to the same political
7 party. The board shall be appointed by the governor, by
8 and with the advice and consent of the Senate. Appoint-
9 ments following the effective date of this section shall be
10 made in such a manner that each congressional district is
11 represented and so that no more than two members of the
12 board reside in any one congressional district. Each
13 member of the board shall have a degree in criminal
14 justice or like experience and academic training and shall
15 be otherwise competent to perform the duties of his or her
16 office. The members shall be appointed for overlapping
17 terms of six years. Any member qualified under this
18 section is eligible for reappointment. The members of the
19 board shall devote their full time and attention to their
20 board duties. Any single member of the board is empow-
21 ered to hold any hearing provided for in this article, where
22 a transcript of the hearing, including exhibits and docu-
23 mentary evidence, and the recommendation of the member
24 holding the hearing is submitted to the board for decision.

**§62-12-13. Powers and duties of board; eligibility for parole;
procedure for granting parole.**

1 (a) The board of parole, whenever it is of the opinion
2 that the best interests of the state and of the inmate will
3 be subserved thereby, and subject to the limitations
4 hereinafter provided, shall release any such inmate on
5 parole for such terms and upon such conditions as are
6 provided by this article. Any inmate of a state correc-
7 tional center, to be eligible for parole:

8 (1) (A) Shall have served the minimum term of his or her
9 indeterminate sentence, or shall have served one fourth of
10 his or her definite term sentence, as the case may be,
11 except that in no case shall any person who committed, or
12 attempted to commit a felony with the use, presentment or
13 brandishing of a firearm, be eligible for parole prior to
14 serving a minimum of three years of his or her sentence or
15 the maximum sentence imposed by the court, whichever is
16 less: *Provided*, That any person who committed, or
17 attempted to commit, any violation of section twelve,
18 article two, chapter sixty-one of this code, with the use,
19 presentment or brandishing of a firearm, shall not be
20 eligible for parole prior to serving a minimum of five years
21 of his or her sentence or one third of his or her definite
22 term sentence, whichever shall be the greater. Nothing in
23 this section shall apply to an accessory before the fact or
24 a principal in the second degree who has been convicted as
25 if he or she were a principal in the first degree if, in the
26 commission of or in the attempted commission of the
27 felony, only the principal in the first degree used, pre-
28 sented or brandished a firearm. No person is ineligible for
29 parole under the provisions of this subdivision because of
30 the commission or attempted commission of a felony with
31 the use, presentment or brandishing of a firearm unless
32 such fact is clearly stated and included in the indictment
33 or presentment by which such person was charged and
34 was either: (i) Found by the court at the time of trial upon
35 a plea of guilty or nolo contendere; or (ii) found by the
36 jury, upon submitting to such jury a special interrogatory
37 for such purpose if the matter was tried before a jury; or
38 (iii) found by the court, if the matter was tried by the
39 court without a jury.

40 For the purpose of this section, the term "firearm" shall

41 mean any instrument which will, or is designed to, or may
42 readily be converted to, expel a projectile by the action of
43 an explosive, gunpowder or any other similar means.

44 (B) The amendments to this subsection adopted in the
45 year one thousand nine hundred eighty-one:

46 (i) Shall apply to all applicable offenses occurring on or
47 after the first day of August of that year;

48 (ii) Shall apply with respect to the contents of any
49 indictment or presentment returned on or after the first
50 day of August of that year irrespective of when the offense
51 occurred;

52 (iii) Shall apply with respect to the submission of a
53 special interrogatory to the jury and the finding to be
54 made thereon in any case submitted to such jury on or
55 after the first day of August of that year or to the requisite
56 findings of the court upon a plea of guilty or in any case
57 tried without a jury: *Provided*, That the state shall give
58 notice in writing of its intent to seek such finding by the
59 jury or court, as the case may be, which notice shall state
60 with particularity the grounds upon which such finding
61 shall be sought as fully as such grounds are otherwise
62 required to be stated in an indictment, unless the grounds
63 therefor are alleged in the indictment or presentment upon
64 which the matter is being tried;

65 (iv) Shall not apply with respect to cases not affected by
66 such amendment and in such cases the prior provisions of
67 this section shall apply and be construed without refer-
68 ence to such amendment.

69 Insofar as such amendments relate to mandatory
70 sentences restricting the eligibility for parole, all such
71 matters requiring such sentence shall be proved beyond a
72 reasonable doubt in all cases tried by the jury or the court.

73 (2) Shall not be under punishment or in solitary confine-
74 ment for any infraction of prison rules;

75 (3) Shall have maintained a record of good conduct in
76 prison for a period of at least three months immediately
77 preceding the date of his or her release on parole;

78 (4) Shall have submitted to the board a written parole
79 release plan setting forth proposed plans for his or her
80 place of residence, employment and, if appropriate, his or
81 her plans regarding education and post-release counseling
82 and treatment, said parole release plan having been
83 approved by the commissioner of corrections or his or her
84 authorized representative;

85 (5) Shall have satisfied the board that if released on
86 parole he or she will not constitute a danger to the com-
87 munity.

88 Except in the case of one serving a life sentence, no
89 person who has been previously twice convicted of a
90 felony may be released on parole until he or she has served
91 the minimum term provided by law for the crime for
92 which he or she was convicted. No person sentenced for
93 life may be paroled until he or she has served ten years,
94 and no person sentenced for life who has been previously
95 twice convicted of a felony may be paroled until he or she
96 has served fifteen years: *Provided*, That no person con-
97 victed of first degree murder for an offense committed on
98 or after the tenth day of June, one thousand nine hundred
99 ninety-four, shall be eligible for parole until he or she has
100 served fifteen years. In the case of a person sentenced to
101 any state correctional center, it shall be the duty of the
102 board, as soon as such person becomes eligible, to consider
103 the advisability of his or her release on parole. If, upon
104 such consideration, parole be denied, the board shall at
105 least once a year reconsider and review the case of every
106 inmate so eligible, which reconsideration and review shall
107 be by at least three members of the board: *Provided*,
108 *however*, That the board may reconsider and review
109 parole eligibility any time within three years following the
110 denial of parole of a person serving a life sentence. The
111 board shall, at the time of denial, notify the person of the
112 month and year they may apply for reconsideration and
113 review. If parole be denied, the inmate shall be promptly
114 notified.

115 (b) Any person serving a sentence on a felony conviction
116 who becomes eligible for parole consideration prior to
117 being transferred to a state correctional center may make

118 written application for parole. The terms and conditions
119 for parole consideration established by this article shall be
120 applied to such inmates.

121 (c) The board shall, with the approval of the governor,
122 adopt rules and regulations governing the procedure in the
123 granting of parole. No provision of this article and none
124 of the rules and regulations adopted hereunder are
125 intended or shall be construed to contravene, limit or
126 otherwise interfere with or affect the authority of the
127 governor to grant pardons and reprieves, commute
128 sentences, remit fines or otherwise exercise his or her
129 constitutional powers of executive clemency.

130 The department of corrections shall be charged with the
131 duty of supervising all probationers and parolees whose
132 supervision may have been undertaken by this state by
133 reason of any interstate compact entered into pursuant to
134 the uniform act for out of state parolee supervision.

135 (d) When considering an inmate of a state correctional
136 center for release on parole, the parole board shall have
137 before it an authentic copy of or report on the inmate's
138 current criminal record as provided through the West
139 Virginia state police, the United States department of
140 justice or other reliable criminal information sources and
141 written reports of the warden or superintendent of the
142 state correctional center to which such inmate is sen-
143 tenced:

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

148 (2) On improvement or other changes noted in the
149 inmate's mental and moral condition while in custody,
150 including a statement expressive of the inmate's current
151 attitude toward society in general, toward the judge who
152 sentenced him or her, toward the prosecuting attorney
153 who prosecuted him or her, toward the policeman or other
154 officer who arrested the inmate and toward the crime for
155 which he or she is under sentence and his or her previous
156 criminal record;

157 (3) On the inmate's industrial record while in custody
158 which shall include: The nature of his or her work, occu-
159 pation or education, the average number of hours per day
160 he or she has been employed or in class while in custody
161 and a recommendation as to the nature and kinds of
162 employment which he or she is best fitted to perform and
163 in which the inmate is most likely to succeed when he or
164 she leaves prison;

165 (4) On physical, mental and psychiatric examinations of
166 the inmate conducted, insofar as practicable, within the
167 two months next preceding parole consideration by the
168 board.

169 The board may waive the requirement of any such report
170 when not available or not applicable as to any inmate
171 considered for parole but, in every such case, shall enter in
172 the record thereof its reason for such waiver: *Provided*,
173 That in the case of an inmate who is incarcerated because
174 such inmate has been found guilty of, or has pleaded
175 guilty to a felony under the provisions of section twelve,
176 article eight, chapter sixty-one of this code or under the
177 provisions of article eight-b or eight-c, chapter sixty-one
178 of this code, the board may not waive the report required
179 by this subsection and the report shall include a study and
180 diagnosis which shall include an on-going treatment plan
181 requiring active participation in sexual abuse counseling
182 at an approved mental health facility or through some
183 other approved program: *Provided, however*, That
184 nothing disclosed by the person during such study or
185 diagnosis shall be made available to any law-enforcement
186 agency, or other party without that person's consent, or
187 admissible in any court of this state, unless such informa-
188 tion disclosed shall indicate the intention or plans of the
189 parolee to do harm to any person, animal, institution, or
190 to property. Progress reports of outpatient treatment shall
191 be made at least every six months to the parole officer
192 supervising such person. In addition, in such cases, the
193 parole board shall inform the prosecuting attorney of the
194 county in which the person was convicted of the parole
195 hearing and shall request that the prosecuting attorney
196 inform the parole board of the circumstances surrounding

197 a conviction or plea of guilty, plea bargaining and other
198 background information that might be useful in its
199 deliberations.

200 Before releasing any inmate on parole, the board of
201 parole shall arrange for the inmate to appear in person
202 before at least three members of the board and the board
203 may examine and interrogate him or her on any matters
204 pertaining to his or her parole, including reports before
205 the board made pursuant to the provisions hereof. The
206 board shall reach its own written conclusions as to the
207 desirability of releasing such inmate on parole and the
208 majority of the board members considering the release
209 shall concur in the decision. The warden or superinten-
210 dent shall furnish all necessary assistance and cooperate
211 to the fullest extent with the parole board. All informa-
212 tion, records and reports received by the board shall be
213 kept on permanent file.

214 The board and its designated agents shall at all times
215 have access to inmates imprisoned in any state correc-
216 tional center or in any city, county or regional jail in this
217 state, and shall have the power to obtain any information
218 or aid necessary to the performance of its duties from
219 other departments and agencies of the state or from any
220 political subdivision thereof.

221 The board shall, if so requested by the governor, investi-
222 gate and consider all applications for pardon, reprieve or
223 commutation and shall make recommendation thereon to
224 the governor.

225 Prior to making such recommendation and prior to
226 releasing any inmate on parole, the board shall notify the
227 sentencing judge and prosecuting attorney at least ten
228 days before such recommendation or parole. Any person
229 released on parole shall participate as a condition of
230 parole in the litter control program of the county to the
231 extent directed by the board, unless the board specifically
232 finds that this alternative service would be inappropriate.

§62-12-18. Period of parole; discharge.

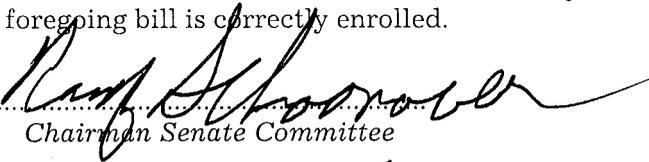
1 The period of parole shall be the maximum of any

2 sentence, less deductions for good conduct and work as
3 provided by law, for which the paroled inmate, at the time
4 of release, was subject to imprisonment under his or her
5 definite or indeterminate sentence, as the case may be:
6 *Provided*, That any time after a parolee has been on parole
7 for a period of one year from the date of his or her release,
8 the board may, when in its judgment the ends of parole
9 have been attained and the best interests of the state and
10 the parolee will be served thereby, release the parolee
11 from further supervision and discharge him or her from
12 parole: *Provided, however*, That no inmate sentenced to
13 serve a life term of imprisonment and released on parole
14 shall be discharged from supervision and parole in a
15 period less than five years from the date of his or her
16 release on parole.

17 No parolee who has violated the terms of his or her
18 release on parole by confession to, or being convicted of,
19 in any state of the United States, the District of Columbia,
20 or the territorial possessions of the United States, the
21 crime of treason, murder, aggravated robbery, first degree
22 sexual assault, second degree sexual assault, a sexual
23 offense against a minor, incest or offenses with the same
24 essential elements if known by other terms in other
25 jurisdictions shall be discharged from parole. A parolee
26 serving a sentence in any correctional facility of another
27 state or the United States may, unless incarcerated for one
28 of the above ~~except in the~~ enumerated crimes, be dis-
29 charged from parole while so serving his or her sentence
30 in said correctional facility, or be continued on parole or
31 returned to West Virginia as a parole violator, in the
32 discretion of the parole board.

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For DEH

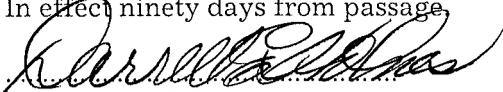
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

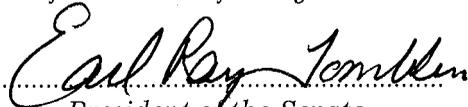

.....
Chairman House Committee

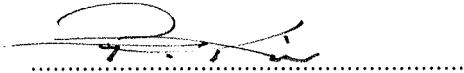
Originated in the Senate.

In effect ninety days from passage

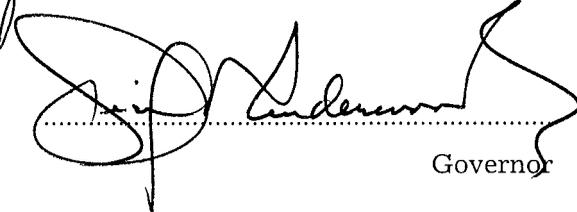

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this the *1st*
May day of, 1997.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/97

Time 11:17am