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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## House Bill No. 2476

(By Delegates Perry, Beach, Hartman, Pino and Leach)



Passed April 9, 2005

In Effect Ninety Days from Passage

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**E N R O L L E D**

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FOR

**H. B. 2476**

(BY DELEGATES PERRY, BEACH, HARTMAN, PINO AND LEACH)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §62-12-19 of the Code of West Virginia, 1931, as amended, relating generally to parole and parole proceedings; authorizing the Commissioner of the Division of Corrections to issue subpoenas for persons and records necessary to prove a violation of the terms and conditions of a parolee's parole.

*Be it enacted by the Legislature of West Virginia:*

That §62-12-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 12. PROBATION AND PAROLE.**

**§62-12-19. Violation of parole.**

1 (a) If at any time during the period of parole there is  
2 reasonable cause to believe that the parolee has violated any of  
3 the conditions of his or her release on parole, the parole officer  
4 may arrest him or her with or without an order or warrant, or  
5 the Commissioner of Corrections may issue a written order or  
6 warrant for his or her arrest, which written order or warrant is  
7 sufficient for his or her arrest by any officer charged with the  
8 duty of executing an ordinary criminal process. The Commis-  
9 sioner's written order or warrant delivered to the sheriff against  
10 the paroled prisoner shall be a command to keep custody of the  
11 parolee for the jurisdiction of the Division of Corrections and  
12 during the period of custody, the parolee may be admitted to  
13 bail by the court before which the parolee was sentenced. If the  
14 parolee is not released on a bond, the costs of confining the  
15 paroled prisoner shall be paid out of the funds appropriated for  
16 the Division of Corrections.

17 (b) When a parolee is under arrest for violation of the  
18 conditions of his or her parole, he or she shall be given a  
19 prompt and summary hearing, at which the parolee and his or  
20 her counsel are given an opportunity to attend. If at the hearing  
21 it appears to the satisfaction of the Board that the parolee has  
22 violated any condition of his or her release on parole, or any  
23 rules or conditions of his or her supervision, the Board may  
24 revoke his or her parole and may require him or her to serve in  
25 prison the remainder or any portion of his or her maximum  
26 sentence for which, at the time of his or her release, he or she  
27 was subject to imprisonment: *Provided*, That if the violation of  
28 the conditions of parole or rules for his or her supervision is not  
29 a felony as set out in section eighteen of this article, the Board  
30 may, if in its judgment the best interests of justice do not  
31 require revocation, reinstate him or her on parole. The Division  
32 of Corrections shall effect release from custody upon approval  
33 of a home plan. Notwithstanding any provision of this code to  
34 the contrary, when reasonable cause has been found to believe  
35 that a parolee has violated the conditions of his or her parole but

36 the violation does not constitute felonious conduct, the Com-  
37 missioner may, in his or her discretion and with the written  
38 consent of the parolee, allow the parolee to remain on parole  
39 with additional conditions or restrictions. The additional  
40 conditions or restrictions may include, but are not limited to,  
41 participation in any program described in subsection (d),  
42 section five, article eleven-c of this chapter. Compliance by the  
43 parolee with the conditions of parole precludes revocation of  
44 parole for the conduct which constituted the violation. Failure  
45 of the parolee to comply with the conditions or restrictions and  
46 all other conditions of release is an additional violation of  
47 parole and the parolee may be proceeded against under the  
48 provisions of this section for the original violation as well as  
49 any subsequent violations.

50 (c) When a parolee has violated the conditions of his or her  
51 release on parole by confession to, or being convicted of, any  
52 of the crimes set forth in section eighteen of this article, he or  
53 she shall be returned to the custody of the Division of Correc-  
54 tions to serve the remainder of his or her maximum sentence,  
55 during which remaining part of his or her sentence he or she is  
56 ineligible for further parole.

57 (d) Whenever the parole of a paroled prisoner has been  
58 revoked, the Commissioner shall upon receipt of the Board's  
59 written order of revocation, convey and transport the paroled  
60 prisoner to a state correctional institution. A paroled prisoner  
61 whose parole has been revoked shall remain in custody of the  
62 sheriff until delivery to a corrections officer sent and duly  
63 authorized by the Commissioner for the removal of the paroled  
64 prisoner to a state penal institution; the cost of confining the  
65 paroled prisoner shall be paid out of the funds appropriated for  
66 the Division of Corrections.

67 (e) When a paroled prisoner is convicted of, or confesses to,  
68 any one of the crimes enumerated in section eighteen of this

69 article, it is the duty of the Board to cause him or her to be  
70 returned to this state for a summary hearing as provided by this  
71 article. Whenever a parolee has absconded supervision, the  
72 Commissioner shall issue a warrant for his or her apprehension  
73 and return to this state for the hearing provided for in this  
74 article: *Provided*, That the Board may, if it determines the best  
75 interests of justice do not require revocation, cause the paroled  
76 absconder to be reinstated to parole.

77 (f) A warrant filed by the Commissioner shall stay the  
78 running of his or her sentence until the parolee is returned to the  
79 custody of the Division of Corrections and physically in West  
80 Virginia.

81 (g) Whenever a parolee who has absconded supervision or  
82 has been transferred out of this state for supervision pursuant to  
83 section one, article six, chapter twenty-eight of this code is  
84 returned to West Virginia due to a violation of parole and costs  
85 are incurred by the Division of Corrections, the Commissioner  
86 may assess reasonable costs from the parolee's inmate funds or  
87 the parolee as reimbursement to the Division of Corrections for  
88 the costs of returning him or her to West Virginia.

89 (h) Conviction of a felony for conduct occurring during the  
90 period of parole is proof of violation of the conditions of parole  
91 and the hearing procedures required by the provisions of this  
92 section are inapplicable.

93 (i) The Commissioner of the Division of Corrections may  
94 issue subpoenas for persons and records necessary to prove a  
95 violation of the terms and conditions of a parolee's parole either  
96 at a preliminary hearing or at a final hearing before the Parole  
97 Board. The subpoenas shall be served in the same manner  
98 provided in the Rules of Criminal Procedure. The subpoenas  
99 may be enforced by the Commissioner through application or  
100 petition of the Commissioner to the circuit court for contempt  
101 or other relief.

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

*Candy White*

Chairman Senate Committee

*R. Rube B...*

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*Marcel E. Adams*

Clerk of the Senate

*Bryant M. Bond*

Clerk of the House of Delegates

*Carl Ray Tomblin*

President of the Senate

*[Signature]*

Speaker of the House of Delegates

The within is approved this the 3rd  
day of May, 2005.

*[Signature]*

Governor

PRESENTED TO THE  
GOVERNOR

MAY 2 2005

Time 9:55 hr