

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Senate Bill 515**

SENATOR TRUMP, *original sponsor*

[Passed April 7, 2017; in effect 90 days from passage]



1 AN ACT to amend and reenact §62-12-13 and §62-12-23 of the Code of West Virginia, 1931, as  
2 amended, all relating generally to parole; eliminating redundant and outdated reporting  
3 requirements regarding parolees; and modifying notice requirements to certain persons  
4 for parole hearings and inmate release.

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

1 That §62-12-13 and §62-12-23 of the Code of West Virginia, 1931, as amended, be  
2 amended and reenacted, all to read as follows:

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

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

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

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

41 (iii) Apply with respect to the submission of a special interrogatory to the jury and the  
42 finding to be made thereon in any case submitted to the jury on or after August 1 of that year or

43 to the requisite findings of the court upon a plea of guilty or in any case tried without a jury:  
44 *Provided*, That the state gives notice in writing of its intent to seek such finding by the jury or court,  
45 as the case may be. The notice shall state with particularity the grounds upon which the finding  
46 will be sought as fully as the grounds are otherwise required to be stated in an indictment, unless  
47 the grounds upon which the finding will be sought are alleged in the indictment or presentment  
48 upon which the matter is being tried;

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

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

55 (E) As used in this section, “felony crime of violence against the person” means felony  
56 offenses set forth in article two, three-e, eight-b or eight-d, chapter sixty-one of 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 article eight, eight-  
59 a, eight-c or eight-d, chapter sixty-one 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: *Provided*, That an inmate’s  
68 application for parole may be considered by the board without the prior submission of a home

69 plan, but the inmate shall have a home plan approved by the board prior to his or her release on  
70 parole. The Commissioner of Corrections or his or her designee shall review and investigate the  
71 plan and provide recommendations to the board as to the suitability of the plan: *Provided,*  
72 *however,* That in cases in which there is a mandatory thirty-day notification period required prior  
73 to the release of the inmate, pursuant to section twenty-three of this article, the board may conduct  
74 an initial interview and deny parole without requiring the development of a plan. In the event the  
75 board believes parole should be granted, it may defer a final decision pending completion of an  
76 investigation and receipt of recommendations. Upon receipt of the plan together with the  
77 investigation and recommendation, the board, through a panel, shall make a final decision  
78 regarding the granting or denial of parole; and

79 (4) Has satisfied the board that if released on parole he or she will not constitute a danger  
80 to the community.

81 (c) Except in the case of an inmate serving a life sentence, a person who has been  
82 previously twice convicted of a felony may not be released on parole until he or she has served  
83 the minimum term provided by law for the crime for which he or she was convicted. An inmate  
84 sentenced for life may not be paroled until he or she has served ten years, and an inmate  
85 sentenced for life who has been previously twice convicted of a felony may not be paroled until  
86 he or she has served fifteen years: *Provided,* That an inmate convicted of first degree murder for  
87 an offense committed on or after June 10, 1994, is not eligible for parole until he or she has served  
88 fifteen years.

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

92 (e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of  
93 the denial. The board shall, at the time of denial, notify the inmate of the month and year he or  
94 she may apply for reconsideration and review. The board shall at least once a year reconsider

95 and review the case of every inmate who was denied parole and who is still eligible: *Provided,*  
96 That the board may reconsider and review parole eligibility any time within three years following  
97 the denial of parole of an inmate serving a life sentence with the possibility of parole.

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

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

106 (h) (1) The Division of Corrections shall promulgate policies and procedures for developing  
107 a rehabilitation treatment plan created with the assistance of a standardized risk and needs  
108 assessment. The policies and procedures shall provide for, at a minimum, screening and selecting  
109 inmates for rehabilitation treatment and development, using standardized risk and needs  
110 assessment and substance abuse assessment tools, and prioritizing the use of residential  
111 substance abuse treatment resources based on the results of the standardized risk and needs  
112 assessment and a substance abuse assessment. The results of all standardized risk and needs  
113 assessments and substance abuse assessments are confidential.

114 (2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of  
115 this section solely due to having successfully completed a rehabilitation treatment plan, but  
116 completion of all the requirements of a rehabilitation treatment plan along with compliance with  
117 the requirements of subsection (b) of this section creates a rebuttable presumption that parole is  
118 appropriate. The presumption created by this subdivision may be rebutted by a Parole Board  
119 finding that, according to the standardized risk and needs assessment, at the time parole release  
120 is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if

121 released. Nothing in subsection (b) of this section or in this subsection may be construed to create  
122 a right to parole.

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

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

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

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

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

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

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

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

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

171 the Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining  
172 and other background information that might be useful in its deliberations.

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

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

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

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

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

**§62-12-23. Notification of parole hearing; victim's right to be heard; notification of release  
on parole.**

1 (a) Following the sentencing of a person who has been convicted of murder, aggravated  
2 robbery, sexual assault in the first or second degree, kidnapping, child abuse resulting in injury,  
3 child neglect resulting in injury, arson or a sexual offense against a minor, the prosecuting attorney  
4 who prosecuted the offender shall prepare a parole hearing notification form. This form shall  
5 contain the following information:

6 (1) The name of the county in which the offender was prosecuted and sentenced;

7 (2) The name of the court in which the offender was prosecuted and sentenced;

8 (3) The name of the prosecuting attorney or assistant prosecuting attorney who  
9 prosecuted the offender;

10 (4) The name of the judge who presided over the criminal case and who sentenced the  
11 offender;

12 (5) The names of the law-enforcement agencies and officers who were primarily involved  
13 with the investigation of the crime for which the offender was sentenced; and

14 (6) The names, addresses and telephone numbers of the victims of the crime for which  
15 the offender was sentenced or the names, addresses and telephone numbers of the immediate  
16 family members of each victim of the crime, including, but not limited to, each victim's spouse,  
17 father, mother, brothers, sisters and any adult household member residing with the victim.

18 (b) The prosecuting attorney shall retain the original of the parole hearing notification form  
19 and shall provide copies of it to the circuit court which sentenced the offender, the Parole Board,  
20 the Commissioner of Corrections and to all persons whose names and addresses are listed on  
21 the form.

22 (c) At least forty-five days prior to the date of a parole hearing, the Parole Board shall  
23 notify all persons who are listed on the parole hearing notification form, including the circuit court  
24 which sentenced the offender, the prosecuting attorney's office that prosecuted the offender and  
25 the law-enforcement agency and officer primarily involved in the offense underlying the sentence,  
26 of the date, time and place of the hearing. Such notice shall be sent by regular mail, properly  
27 addressed and postage prepaid, by electronic mail, or by facsimile. Notice to the victims of the  
28 crime for which the offender was sentenced or the immediate family members of each victim of  
29 the crime shall be sent by certified mail, return receipt requested. The notice shall state that the  
30 victims of the crime have the right to submit a written statement to the Parole Board and to attend  
31 the parole hearing to be heard regarding the propriety of granting parole to the prisoner. The  
32 notice shall also state that only the victims may submit written statements and speak at the parole  
33 hearing unless a victim is deceased, is a minor or is otherwise incapacitated.

34 (d) The panel considering the parole shall inquire during the parole hearing as to whether  
35 the victims of the crime or their representatives, as provided in this section, are present. If so, the  
36 panel shall permit those persons to speak at the hearing regarding the propriety of granting parole  
37 for the prisoner.

38 (e) If the panel grants parole, it shall immediately set a date on which the prisoner will be  
39 released. Such date shall be no earlier than thirty days after the date on which parole is granted.  
40 On the date on which parole is granted, the Parole Board shall notify all persons listed on the  
41 parole hearing notification form, including the circuit court which sentenced the offender and office  
42 of the prosecuting attorney that prosecuted the offender, that parole has been granted and the  
43 date of release. This notice shall be sent by the method prescribed in subsection (c) of this section.  
44 A written statement of reasons for releasing the prisoner, prepared pursuant to subsection (b),  
45 section thirteen of this article, shall be provided upon request to all persons listed on the parole  
46 hearing notification form, including the circuit court which sentenced the offender and office of the  
47 prosecuting attorney that prosecuted the offender.

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

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 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 of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2017.

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*Governor*