

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 620

BY SENATORS CLEMENTS, TRUMP, BALDWIN, AND WELD

[Introduced January 24, 2020; 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; and
2 to amend said code by adding thereto a new section, designated §62-12-13c, all relating
3 to authorizing the Commissioner of the Division of Corrections and Rehabilitation to
4 approve home plans for inmates; authorizing the Commissioner of the Division of
5 Corrections and Rehabilitation to establish a nonviolent offense parole program;
6 establishing eligibility requirements for said program; clarifying that inmates released
7 under said program are subject to the same conditions of release and sanctions;
8 clarifying that inmate's failing to successfully complete the rehabilitation treatment
9 program are ineligible for release; and clarifying that inmates not otherwise released
10 may be eligible for said program at the time of successful completion of the rehabilitation
11 treatment program.

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
2 and of the inmate will be served, and subject to the limitations provided in this section, shall
3 release 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
8 and Rehabilitation into an accelerated parole program. To be eligible to participate in an
9 accelerated 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
14 one felony for a controlled substance offense for which the inmate is serving a consecutive
15 sentence, a felony offense involving the use of a firearm, or a felony offense where the victim
16 was a minor 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
20 committed, or attempted to commit, a felony with the use, presentment, or brandishing of a
21 firearm is not eligible for parole prior to serving a minimum of three years of his or her sentence
22 or the maximum sentence imposed by the court, whichever is less: *Provided*, That any inmate
23 who committed, or attempted to commit, any violation of §61-2-12 of this code, with the use,
24 presentment, or brandishing of a firearm, is not eligible for parole prior to serving a minimum of
25 five years of his or her sentence or one third of his or her definite term sentence, whichever is
26 greater. Nothing in this paragraph applies to an accessory before the fact or a principal in the
27 second degree who has been convicted as if he or she were a principal in the first degree if, in
28 the commission of or in the attempted commission of the felony, only the principal in the first
29 degree used, presented, or brandished a firearm. An inmate is not ineligible for parole under the
30 provisions of this paragraph because of the commission or attempted commission of a felony
31 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

35 matter was tried before a jury; or (iii) found guilty by the court if the matter was tried by the court
36 without 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
40 after 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
45 court, as the case may be. The notice shall state with particularity the grounds upon which the
46 finding will be sought as fully as the grounds are otherwise required to be stated in an
47 indictment, unless the grounds upon which the finding will be sought are alleged in the
48 indictment or presentment 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
54 in 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 §61-2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, or §61-8D-1 *et seq.* of
57 this code.

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

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

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

66 (3) Has prepared and submitted to the Parole Board a written parole release plan setting
67 forth proposed plans for his or her place of residence, employment and, if appropriate, his or her
68 plans regarding education and post-release counseling and treatment which has been approved
69 by the Division of Corrections and Rehabilitation: *Provided*, That an inmate's application for
70 parole may be considered by the board without the prior submission of a home plan, but the
71 inmate shall have a home plan approved by the ~~board~~ division prior to his or her release on
72 parole. The Commissioner of the Division of Corrections and Rehabilitation, or his or her
73 designee, shall review and investigate the plan and provide ~~recommendations~~ findings to the
74 board as to the suitability of the plan: *Provided, however*, That in cases in which there is a
75 mandatory 30-day notification period required prior to the release of the inmate, pursuant to
76 §62-12-23 of this code, the board may conduct an initial interview and deny parole without
77 requiring the development of a plan. In the event the board believes parole should be granted, it
78 may defer a final decision pending completion of an investigation and receipt of
79 ~~recommendations~~ the commissioner's findings. Upon receipt of the plan, together with the
80 investigation and ~~recommendation~~ findings, the board, through a panel, shall make a final
81 decision regarding the granting or denial of parole; and

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

84 (c) Except in the case of an inmate serving a life sentence, a person who has been
85 previously twice convicted of a felony may not be released on parole until he or she has served
86 the minimum term provided by law for the crime for which he or she was convicted. An inmate

87 sentenced for life may not be paroled until he or she has served 10 years, and an inmate
88 sentenced for life who has been previously twice convicted of a felony may not be paroled until
89 he or she has served 15 years: *Provided*, That an inmate convicted of first degree murder for an
90 offense committed on or after June 10, 1994, is not eligible for parole until he or she has served
91 15 years.

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

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

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

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

109 (h) (1) The Division of Corrections and Rehabilitation shall promulgate policies and
110 procedures for developing a rehabilitation treatment plan created with the assistance of a
111 standardized risk and needs assessment. The policies and procedures shall provide for, at a
112 minimum, screening and selecting inmates for rehabilitation treatment and development, using

113 standardized risk and needs assessment and substance abuse assessment tools, and
114 prioritizing the use of residential substance abuse treatment resources based on the results of
115 the standardized risk and needs assessment and a substance abuse assessment. The results
116 of all standardized risk and needs assessments and substance abuse assessments are
117 confidential.

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

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

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

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

141 (2) The Division of Corrections and Rehabilitation shall provide supervision,
142 treatment/recovery, and support services for all persons released to mandatory supervision
143 under ~~section twenty-seven, article five, chapter twenty-eight~~ §15A-4-17 of this code.

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

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

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

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

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

164 or §61-8C-1 *et seq.* of this code, the Parole Board panel may not waive the report required by
165 this subsection. The report shall include a study and diagnosis of the inmate, including an on-
166 going treatment plan requiring active participation in sexual abuse counseling at an approved
167 mental health facility or through some other approved program: *Provided, however,* That
168 nothing disclosed by the inmate during the study or diagnosis may be made available to any
169 law-enforcement agency, or other party without that inmate's consent, or admissible in any court
170 of this state, unless the information disclosed indicates the intention or plans of the parolee to
171 do harm to any person, animal, institution, or to property. Progress reports of outpatient
172 treatment are to be made at least every six months to the parole officer supervising the parolee.
173 In addition, in such cases, the Parole Board shall inform the prosecuting attorney of the county
174 in which the person was convicted of the parole hearing and shall request that the prosecuting
175 attorney inform the Parole Board of the circumstances surrounding a conviction or plea of guilty,
176 plea bargaining, and other background information that might be useful in its deliberations.

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

190 or superintendent shall furnish all necessary assistance and cooperate to the fullest extent with
191 the Parole Board. All information, records, and reports received by the Parole Board shall be
192 kept on permanent file.

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

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

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

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

§62-12-13c. Authority of commissioner to establish a nonviolent offense parole program.

1 (a) The commissioner is authorized to establish a nonviolent offense parole program for
2 any inmate of a state correctional facility in which an inmate may be paroled without action of
3 the Parole Board based upon objective standards as set forth in this section, to commence on
4 July 1, 2021.

5 (b) Notwithstanding any provision of this code to the contrary, any inmate of a state
6 correctional facility is eligible for parole under the nonviolent offense parole program if:

7 (1) He or she has served at least the minimum term of his or her sentence and is eligible
8 for parole as determined by the parole board; and

9 (2) He or she qualifies for the nonviolent offense parole program as authorized by this
10 section.

11 (c) To qualify for the nonviolent offense parole program, the commissioner must
12 determine that the inmate:

13 (1) Is not serving a sentence for a crime of violence against the person, or felony for a
14 controlled substance offense which involves actual or threatened violence to a person, a felony
15 offense involving the use of a firearm, or a felony offense where the victim was a minor child;

16 (2) Has successfully completed an individualized rehabilitation treatment program as
17 determined by the division; and

18 (3) Has otherwise satisfied the requirements for parole eligibility set forth in §62-12-13 of
19 this code.

20 (d) Any person released under the nonviolent offense parole program shall be subject to
21 all conditions of release and sanctions for violations applicable to persons released on parole by
22 the Parole Board, and all parole revocations of persons granted parole pursuant to this section
23 shall be heard in accordance with the provisions of §62-12-19 of this code.

24 (e) The nonviolent offense parole program authorized by subsection (a) of this section
25 requires no action by the Parole Board as to the release decision if the inmate qualifies for the
26 program and has successfully completed his or her rehabilitation treatment program as
27 determined by the commissioner.

28 (f) The commissioner shall develop a policy directive setting forth the processes and
29 procedures to determine successful completion of the rehabilitation treatment program and to
30 provide notice to the inmate. If the inmate fails to successfully complete his or her rehabilitation
31 treatment program, his or her parole shall be determined in accordance with the provisions of
32 §62-12-13 of this code. An inmate who has been denied parole pursuant to the provisions of
33 §62-12-13 of this code and who thereafter successfully completes his or her rehabilitation
34 treatment program prior to his or her next parole review shall be eligible for release under the

- 35 nonviolent offense parole program within a reasonable time after he or she may successfully
36 complete such program as determined by the commissioner, provided the inmate remains
37 qualified for release under the nonviolent offense parole program.

NOTE: The purpose of this bill is to authorize the Commissioner of the Division of Corrections and Rehabilitation to approve home plans for inmates, authorize the Commissioner of the Division of Corrections and Rehabilitation to establish a nonviolent offense parole program, to establish eligibility requirements for said program, to clarify that inmates released under said program are subject to the same conditions of release and sanctions, to clarify that inmate's failing to successfully complete the rehabilitation treatment program are ineligible for release, and to clarify that inmates not otherwise released may be eligible for said program at the time of successful completion of the rehabilitation treatment program.

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