

E N G R O S S E D

**H. B. 2001**

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(BY DELEGATES BOGGS AND ARMSTEAD)

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[Introduced January 12, 2011; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating to powers and duties of the board of parole; providing that inmates serving life sentences shall be considered for parole only once every three years.

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

That §62-12-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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 board of parole, whenever it is of the opinion  
2           that the best interests of the state and of the inmate will be  
3           served, and subject to the limitations hereinafter provided,  
4           shall release any inmate on parole for terms and upon  
5           conditions as are provided by this article.

6           (b) Any inmate of a state correctional center is eligible  
7           for parole if he or she:

8           (1)(A) Has served the minimum term of his or her  
9           indeterminate sentence or has served one fourth of his or  
10          her definite term sentence, as the case may be; or

11          (B) He or she:

12          (i) Has applied for and been accepted by the  
13          Commissioner of Corrections into an accelerated parole  
14          program;

15          (ii) Does not have a prior criminal conviction for a  
16          felony crime of violence against the person, a felony

17 offense involving the use of a firearm, or a felony offense  
18 where the victim was a minor child;

19 (iii) Has no record of institutional disciplinary rule  
20 violations for a period of one hundred twenty days prior to  
21 parole consideration unless the requirement is waived by  
22 the commissioner;

23 (iv) Is not serving a sentence for a crime of violence  
24 against the person, or more than one felony for a controlled  
25 substance offense for which the inmate is serving a  
26 consecutive sentence, a felony offense involving the use of a  
27 firearm, or a felony offense where the victim was a minor  
28 child; and

29 (v) Has successfully completed a rehabilitation  
30 treatment program created with the assistance of a  
31 standardized risk and needs assessment.

32 (I) As used in this paragraph “felony crime of violence  
33 against the person” means felony offenses set forth in  
34 articles two, three-e, eight-b or eight-d of chapter sixty-  
35 one of this code;

36 and

37 (II) As used in this paragraph “felony offense where  
38 the victim was a minor child” means any felony crime of  
39 violence against the person and any felony violation set  
40 forth in article eight, eight-a, eight-c or eight-d of chapter  
41 sixty-one of this code.

42 (C) Notwithstanding any provision of this code to the  
43 contrary, any person who committed, or attempted to  
44 commit a felony with the use, presentment or brandishing  
45 of a firearm, is not eligible for parole prior to serving a  
46 minimum of three years of his or her sentence or the  
47 maximum sentence imposed by the court, whichever is  
48 less: *Provided*, That any person who committed, or  
49 attempted to commit, any violation of section twelve,  
50 article two, chapter sixty-one of this code, with the use,  
51 presentment or brandishing of a firearm, is not eligible for  
52 parole prior to serving a minimum of five years of his or  
53 her sentence or one third of his or her definite term

54 sentence, whichever is greater. Nothing in this section  
55 applies to an accessory before the fact or a principal in the  
56 second degree who has been convicted as if he or she were  
57 a principal in the first degree if, in the commission of or in  
58 the attempted commission of the felony, only the principal  
59 in the first degree used, presented or brandished a firearm.  
60 A person is not ineligible for parole under the provisions  
61 of this subdivision because of the commission or  
62 attempted commission of a felony with the use,  
63 presentment or brandishing of a firearm unless that fact is  
64 clearly stated and included in the indictment or  
65 presentment by which the person was charged and was  
66 either: (i) Found by the court at the time of trial upon a  
67 plea of guilty or nolo contendere; or (ii) found by the jury,  
68 upon submitting to the jury a special interrogatory for such  
69 purpose if the matter was tried before a jury; (iii) found by  
70 the court, if the matter was tried by the court without a  
71 jury.

72 For the purpose of this section, the term "firearm"  
73 means any instrument which will, or is designed to, or  
74 may readily be converted to, expel a projectile by the  
75 action of an explosive, gunpowder or any other similar  
76 means.

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

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

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

84 (iii) Apply with respect to the submission of a special  
85 interrogatory to the jury and the finding to be made  
86 thereon in any case submitted to the jury on or after  
87 August 1 of that year or to the requisite findings of the  
88 court upon a plea of guilty or in any case tried without a  
89 jury: *Provided*, That the state gives notice in writing of its

90 intent to seek such finding by the jury or court, as the case  
91 may be, which notice shall state with particularity the  
92 grounds upon which the finding will be sought as fully as  
93 such grounds are otherwise required to be stated in an  
94 indictment, unless the grounds therefor are alleged in the  
95 indictment or presentment upon which the matter is being  
96 tried; and

97 (iv) Does not apply with respect to cases not affected  
98 by the amendments and in such cases the prior provisions  
99 of this section apply and are construed without reference  
100 to the amendments.

101 (1) Insofar as the amendments relate to mandatory  
102 sentences restricting the eligibility for parole, all matters  
103 requiring a mandatory sentence shall be proved beyond a  
104 reasonable doubt in all cases tried by the jury or the court;

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

107           (3) Has maintained a record of good conduct in prison  
108   for a period of at least three months immediately  
109   preceding the date of his or her release on parole;

110           (4) Has prepared and submitted to the board a written  
111   parole release plan setting forth proposed plans for his or her  
112   place of residence, employment and, if appropriate, his or her  
113   plans regarding education and post-release counseling and  
114   treatment. The Commissioner of Corrections or his or her  
115   designee shall review the plan to be reviewed and investigated  
116   and provide recommendations to the board as to the suitability  
117   of the plan: *Provided*, That in cases in which there is a  
118   mandatory thirty-day notification period required prior to the  
119   release of the inmate, pursuant to section twenty-three of this  
120   article, the board may conduct an initial interview and deny  
121   parole without requiring the development of a plan. In the  
122   event the board does not believe parole should be denied, it  
123   may defer a final decision pending completion of an  
124   investigation and receipt of recommendations. Upon receipt of



125 the plan together with the investigation and recommendation,  
126 the board, through a panel, shall make a final decision  
127 regarding the granting or denial of parole; and

128 (5) Has satisfied the board that if released on parole he  
129 or she will not constitute a danger to the community.

130 (c) Except in the case of a person serving a life sentence,  
131 no person who has been previously twice convicted of a  
132 felony may be released on parole until he or she has served  
133 the minimum term provided by law for the crime for which  
134 he or she was convicted. A person sentenced for life may not  
135 be paroled until he or she has served ten years, and a person  
136 sentenced for life who has been previously twice convicted  
137 of a felony may not be paroled until he or she has served  
138 fifteen years: *Provided*, That a person convicted of first  
139 degree murder for an offense committed on or after June 10,  
140 1994, is not eligible for parole until he or she has served  
141 fifteen years.

142       (d) In the case of a person sentenced to any state  
143       correctional center, it is the duty of the board, as soon as  
144       a person becomes eligible, to consider the advisability of  
145       his or her release on parole.

146       (e) If, upon consideration, parole is denied, the board  
147       shall promptly notify the inmate of the denial. The board  
148       shall, at the time of denial, notify the ~~person~~ inmate of the  
149       month and year he or she may apply for reconsideration  
150       and review. The board shall at least once a year reconsider  
151       and review the case of every inmate who was denied  
152       parole and is still eligible: Provided, That the board shall  
153       only reconsider and review once every three years the case  
154       for parole of an inmate serving a life sentence.

155       (f) Any person serving a sentence on a felony  
156       conviction who becomes eligible for parole consideration  
157       prior to being transferred to a state correctional center may  
158       make written application for parole. The terms and  
159       conditions for parole consideration established by this  
160       article apply to such inmates.

161           (g) The board shall, with the approval of the Governor,  
162   adopt rules governing the procedure in the granting of  
163   parole. No provision of this article and none of the rules  
164   adopted hereunder are intended or may be construed to  
165   contravene, limit or otherwise interfere with or affect the  
166   authority of the Governor to grant pardons and reprieves,  
167   commute sentences, remit fines or otherwise exercise his  
168   or her constitutional powers of executive clemency.

169           (h) The Division of Corrections shall promulgate policies  
170   and procedures for developing a rehabilitation treatment plan  
171   created with the assistance of a standardized risk and needs  
172   assessment. The policies and procedures shall include, but  
173   not be limited to, policy and procedures for screening and  
174   selecting inmates for rehabilitation treatment and  
175   development and use of standardized risk and needs  
176   assessment tools. An inmate shall not be paroled solely due  
177   to having successfully completed a rehabilitation treatment  
178   plan but completion of all the requirements of a rehabilitation

179 parole plan along with compliance with the requirements of  
180 subsection (b) of this section shall create a rebuttable  
181 presumption that parole is appropriate. The presumption  
182 created by this subsection may be rebutted by a Parole Board  
183 finding that at the time parole release is sought the inmate  
184 still constitutes a reasonable risk to the safety or property of  
185 other persons if released. Nothing in subsection (b) of this  
186 section or in this subsection may be construed to create a  
187 right to parole.

188 (i) Notwithstanding the provisions of subsection (b) of  
189 this section, the Parole Board may, in its discretion, grant  
190 or deny parole to an inmate against whom a detainer is  
191 lodged by a jurisdiction other than West Virginia for  
192 service of a sentence of incarceration, upon a written  
193 request for parole from the inmate. A denial of parole  
194 under this subsection shall preclude consideration for a  
195 period of one year or until the provisions of subsection (b)  
196 of this section are applicable.

197           (j) Where an inmate is otherwise eligible for parole  
198       pursuant to subsection (b) of this section but the Parole  
199       Board determines that the inmate should participate in an  
200       additional program or complete an assigned task or tasks  
201       prior to actual release on parole, the board may grant  
202       parole contingently, effective upon successful completion  
203       of the program or assigned task or tasks, without the need  
204       for a further hearing. The Commissioner of Corrections  
205       shall provide notice to the Parole Board of the imminent  
206       release of a contingently paroled inmate to effectuate  
207       appropriate supervision.

208           (k) The Division of Corrections is charged with the  
209       duty of supervising all probationers and parolees whose  
210       supervision may have been undertaken by this state by  
211       reason of any interstate compact entered into pursuant to  
212       the uniform act for out-of-state parolee supervision.

213           (l)(1) When considering an inmate of a state  
214       correctional center for release on parole, the Parole Board

215 panel considering the parole is to have before it an  
216 authentic copy of or report on the inmate's current criminal  
217 record as provided through the West Virginia State Police,  
218 the United States Department of Justice or other reliable  
219 criminal information sources and written reports of the  
220 warden or superintendent of the state correctional center  
221 to which the inmate is sentenced:

222 (A) On the inmate's conduct record while in custody,  
223 including a detailed statement showing any and all  
224 infractions of disciplinary rules by the inmate and the  
225 nature and extent of discipline administered therefor;

226 (B) On improvement or other changes noted in the  
227 inmate's mental and moral condition while in custody,  
228 including a statement expressive of the inmate's current  
229 attitude toward society in general, toward the judge who  
230 sentenced him or her, toward the prosecuting attorney who  
231 prosecuted him or her, toward the policeman or other  
232 officer who arrested the inmate and toward the crime for

233 which he or she is under sentence and his or her previous  
234 criminal record;

235 (C) On the inmate's industrial record while in custody  
236 which shall include: The nature of his or her work,  
237 occupation or education, the average number of hours per  
238 day he or she has been employed or in class while in  
239 custody and a recommendation as to the nature and kinds  
240 of employment which he or she is best fitted to perform  
241 and in which the inmate is most likely to succeed when he  
242 or she leaves prison;

243 (D) On physical, mental and psychiatric examinations  
244 of the inmate conducted, insofar as practicable, within the  
245 two months next preceding parole consideration by the  
246 board.

247 (2) The board panel considering the parole may waive  
248 the requirement of any report when not available or not  
249 applicable as to any inmate considered for parole but, in  
250 every such case, shall enter in the record thereof its reason

251 for the waiver: *Provided*, That in the case of an inmate  
252 who is incarcerated because the inmate has been found  
253 guilty of, or has pleaded guilty to a felony under the  
254 provisions of section twelve, article eight, chapter sixty-  
255 one of this code or under the provisions of article eight-b  
256 or eight-c of said chapter, the board panel may not waive  
257 the report required by this subsection and the report is to  
258 include a study and diagnosis including an on-going  
259 treatment plan requiring active participation in sexual  
260 abuse counseling at an approved mental health facility or  
261 through some other approved program: *Provided*,  
262 *however*, That nothing disclosed by the person during the  
263 study or diagnosis may be made available to any law-  
264 enforcement agency, or other party without that person's  
265 consent, or admissible in any court of this state, unless the  
266 information disclosed indicates the intention or plans of  
267 the parolee to do harm to any person, animal, institution or  
268 to property. Progress reports of outpatient treatment are to



269 be made at least every six months to the parole officer  
270 supervising the person. In addition, in such cases, the  
271 Parole Board shall inform the prosecuting attorney of the  
272 county in which the person was convicted of the parole  
273 hearing and shall request that the prosecuting attorney  
274 inform the Parole Board of the circumstances surrounding  
275 a conviction or plea of guilty, plea bargaining and other  
276 background information that might be useful in its  
277 deliberations.

278 (m) Before releasing any inmate on parole, the board  
279 of parole shall arrange for the inmate to appear in person  
280 before a Parole Board panel and the panel may examine  
281 and interrogate him or her on any matters pertaining to his  
282 or her parole, including reports before the board made  
283 pursuant to the provisions hereof: *Provided*, That an  
284 inmate may appear by video teleconference if the  
285 members of the panel conducting the examination are able  
286 to contemporaneously see the inmate and hear all of his or

287 her remarks and if the inmate is able to  
288 contemporaneously see each of the members of the panel  
289 conducting the examination and hear all of the members'  
290 remarks. The panel shall reach its own written conclusions  
291 as to the desirability of releasing the inmate on parole and  
292 the majority of the panel considering the release shall  
293 concur in the decision. The warden or superintendent  
294 shall furnish all necessary assistance and cooperate to the  
295 fullest extent with the Parole Board. All information,  
296 records and reports received by the board are to be kept on  
297 permanent file.

298 (n) The board and its designated agents are at all times  
299 to have access to inmates imprisoned in any state  
300 correctional center or in any jail in this state and may  
301 obtain any information or aid necessary to the  
302 performance of its duties from other departments and  
303 agencies of the state or from any political subdivision  
304 thereof.

305           (o) The board shall, if so requested by the Governor,  
306 investigate and consider all applications for pardon,  
307 reprieve or commutation and shall make recommendation  
308 thereon to the Governor.

309           (p) Prior to making a recommendation for pardon,  
310 reprieve or commutation and prior to releasing any inmate  
311 on parole, the board shall notify the sentencing judge and  
312 prosecuting attorney at least ten days before the  
313 recommendation or parole.

314           (q) Any person released on parole shall participate as  
315 a condition of parole in the litter control program of the  
316 county to the extent directed by the board, unless the board  
317 specifically finds that this alternative service would be  
318 inappropriate.

319           (r) Except for the amendments to this section contained  
320 in subdivision (4), subsection (b) and subsection (i) of this  
321 section the amendments to this section enacted during the

322 2010 regular session of the Legislature shall become  
323 effective on January 1, 2011.

NOTE: The purpose of this bill is to limit the authority of the Parole Board to consider releasing an inmate serving a life sentence who has qualified for release on parole, to once every three years.

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