

H. B. 3142

(By Delegate Gearheart)

[Introduced March 25, 2013; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §62-12-12b; and to amend and reenact §62-12-13, all relating to eligibility for release on parole of inmates in regional jails that have been committed to prison; establishing a program to expedite the provision of all services, treatment, evaluations, assessments and programs, including a written parole release plan, to be eligible for parole; providing various methods to provide components of the program at regional jails; providing payment of costs for the program; and revising eligibility requirements for parole.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §62-12-12b; and that §62-12-13 of said code be amended and reenacted, all to read as

1 follows:

2 **ARTICLE 12. PROBATION AND PAROLE.**

3 **§62-12-12b. Parole eligibility programs and services for inmates**
4 **detained in a regional jail that have been**
5 **committed to prison.**

6 The Division of Corrections shall develop and implement a
7 comprehensive plan to provide and develop all services, treatment,
8 evaluations, assessments and programs, including a written parole
9 release plan, necessary to address the needs of inmates detained in
10 a regional jail, but committed to the custody of the Commissioner
11 of Corrections, to be eligible for parole. The program shall be
12 developed in consultation with the Regional Jail Authority, and all
13 or any component of the services or program may be offered by video
14 teleconference or webinar technology or may be provided at the
15 regional jail. The division may enter into agreements or make
16 other arrangements with the Regional Jail Authority for providing
17 any component of the program by resources available to, or which
18 can be provided by, the authority. The costs of the program shall
19 be paid out of funds appropriated to the Division of Corrections.

20 **§62-12-13. Powers and duties of board; eligibility for parole;**
21 **procedure for granting parole.**

22 (a) The ~~board of parole~~ Parole Board, whenever it is of the
23 opinion that the best interests of the state and of the inmate will

1 be served, and subject to the limitations ~~hereinafter~~ provided in
2 this section, shall release any inmate on parole for terms and upon
3 conditions ~~as are~~ provided by this article.

4 (b) Any inmate of a state correctional ~~center~~ institution is
5 eligible for parole if he or she:

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

9 (B) He or she:

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

12 (ii) Does not have a prior criminal conviction for a felony
13 crime of violence against the person, a felony offense involving
14 the use of a firearm or a felony offense where the victim was a
15 minor child. As used in this subsection, a "felony crime of
16 violence against the person" and a "felony crime where the victim
17 was a minor child" have the same meaning set forth in section
18 thirteen, article twelve, chapter sixty-two of this section;

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

22 ~~(iv)~~ (iii) Is not serving a sentence for a crime of violence
23 against the person, or more than one felony for a controlled
24 substance offense for which the inmate is serving a consecutive

1 sentence, a felony offense involving the use of a firearm or a
2 felony ~~offence~~ offense where the victim was a minor child; and

3 ~~(v)~~ (iv) Has successfully completed a rehabilitation treatment
4 program created with the assistance of a standardized risk and
5 needs assessment.

6 ~~(I) As used in this section "felony crime of violence against~~
7 ~~the person" means felony offenses set forth in articles two, three-~~
8 ~~e, eight-b or eight-d of chapter sixty-one of this code; and~~

9 ~~(II) As used in this section "felony offense where the victim~~
10 ~~was a minor child" means any felony crime of violence against the~~
11 ~~person and any felony violation set forth in article eight, eight-~~
12 ~~a, eight-c or eight-d of chapter sixty-one of this code.~~

13 (C) Notwithstanding any provision of this code to the
14 contrary, any ~~person~~ inmate who committed, or attempted to commit,
15 a felony with the use, presentment or brandishing of a firearm, is
16 not eligible for parole prior to serving a minimum of three years
17 of his or her sentence or the maximum sentence imposed by the
18 court, whichever is less: *Provided*, That any ~~person~~ inmate who
19 committed, or attempted to commit, any violation of section twelve,
20 article two, chapter sixty-one of this code, with the use,
21 presentment or brandishing of a firearm, is not eligible for parole
22 prior to serving a minimum of five years of his or her sentence or
23 one third of his or her definite term sentence, whichever is
24 greater. Nothing in this paragraph applies to an accessory before

1 the fact or a principal in the second degree who has been convicted
2 as if he or she were a principal in the first degree if, in the
3 commission of or in the attempted commission of the felony, only
4 the principal in the first degree used, presented or brandished a
5 firearm. ~~A person~~ An inmate is not ineligible for parole under the
6 provisions of this paragraph because of the commission or attempted
7 commission of a felony with the use, presentment or brandishing of
8 a firearm unless that fact is clearly stated and included in the
9 indictment or presentment by which the person was charged and was
10 either: (i) Found guilty by the court at the time of trial upon a
11 plea of guilty or nolo contendere; (ii) found guilty by the jury,
12 upon submitting to the jury a special interrogatory for such
13 purpose if the matter was tried before a jury; or (iii) found
14 guilty by the court, if the matter was tried by the court without
15 a jury.

16 For the purpose of this section, the term "firearm" means any
17 instrument which will, or is designed to, or may readily be
18 converted to, expel a projectile by the action of an explosive,
19 gunpowder or any other similar means.

20 (D) The amendments to this subsection adopted in the year
21 1981:

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

24 (ii) Apply with respect to the contents of any indictment or

1 presentment returned on or after August 1 of that year irrespective
2 of when the offense occurred;

3 (iii) Apply with respect to the submission of a special
4 interrogatory to the jury and the finding to be made thereon in any
5 case submitted to the jury on or after August 1 of that year or to
6 the requisite findings of the court upon a plea of guilty or in any
7 case tried without a jury: *Provided*, That the state gives notice
8 in writing of its intent to seek such finding by the jury or court,
9 as the case may be. ~~which~~ The notice shall state with particularity
10 the grounds upon which the finding will be sought as fully as ~~such~~
11 the grounds are otherwise required to be stated in an indictment,
12 unless the grounds ~~therefor~~ upon which the finding will be sought
13 are alleged in the indictment or presentment upon which the matter
14 is being tried; and

15 (iv) Does not apply with respect to cases not affected by the
16 amendments and in ~~such~~ those cases the prior provisions of this
17 section apply and are construed without reference to the
18 amendments.

19 ~~(i)~~ (v) Insofar as the amendments relate to mandatory
20 sentences restricting the eligibility for parole, all matters
21 requiring a mandatory sentence shall be proved beyond a reasonable
22 doubt in all cases tried by the jury or the court;

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

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

4 (4) Has prepared and submitted to the Parole Board a written
5 parole release plan setting forth proposed plans for his or her
6 place of residence, employment and, if appropriate, his or her
7 plans regarding education and post-release counseling and
8 treatment: Provided, That an inmate's application for parole may
9 be considered by the Parole Board without the prior submission of
10 a home plan, but the inmate shall have a home plan approved by the
11 Parole Board prior to his or her release on parole. The
12 Commissioner of Corrections or his or her designee shall review and
13 investigate the plan ~~to be reviewed and investigated~~ and provide
14 recommendations to the Parole Board as to the suitability of the
15 plan: *Provided, That in cases in which there is a mandatory*
16 *thirty-day notification period required prior to the release of the*
17 *inmate, pursuant to section twenty-three of this article, the*
18 Parole Board may conduct an initial interview and deny parole
19 without requiring the development of a plan. In the event the
20 Parole Board ~~does not believe parole should be denied~~ believes
21 parole should be granted, it may defer a final decision pending
22 completion of an investigation and receipt of recommendations.
23 Upon receipt of the plan together with the investigation and
24 recommendation, the Parole Board, through a panel, shall make a

1 final decision regarding the granting or denial of parole; and

2 (5) Has satisfied the Parole Board that if released on parole
3 he or she will not constitute a danger to the community.

4 (c) Except in the case of ~~a person~~ an inmate serving a life
5 sentence, ~~no~~ a person who has been previously twice convicted of a
6 felony may not be released on parole until he or she has served the
7 minimum term provided by law for the crime for which he or she was
8 convicted. ~~A person~~ An inmate sentenced for life may not be
9 paroled until he or she has served ten years, and ~~a person~~ an
10 inmate sentenced for life who has been previously twice convicted
11 of a felony may not be paroled until he or she has served fifteen
12 years: *Provided*, That ~~a person~~ an inmate convicted of first degree
13 murder for an offense committed on or after June 10, 1994, is not
14 eligible for parole until he or she has served fifteen years.

15 (d) In the case of ~~a person~~ an inmate sentenced to any state
16 correctional ~~center, it is the duty of the board~~ institution, the
17 Parole Board, as soon as ~~a person~~ that inmate becomes eligible, ~~to~~
18 shall consider the advisability of his or her release on parole.

19 (e) If, upon consideration, parole is denied, the Parole Board
20 shall promptly notify the inmate of the denial. The Parole Board
21 shall, at the time of denial, notify the inmate of the month and
22 year he or she may apply for reconsideration and review. The
23 Parole Board shall at least once a year reconsider and review the
24 case of every inmate who was denied parole and who is still

1 eligible: *Provided*, That the Parole Board may reconsider and
2 review parole eligibility anytime within three years following the
3 denial of parole of an inmate serving a life sentence with the
4 possibility of parole.

5 (f) Any ~~person~~ inmate serving a sentence on a felony
6 conviction who becomes eligible for parole consideration prior to
7 being transferred to a state correctional ~~center~~ institution may
8 make written application for parole. The terms and conditions for
9 parole consideration established by this article apply to ~~such~~
10 ~~inmates~~ that inmate.

11 (g) The Parole Board shall, with the approval of the Governor,
12 adopt rules governing the procedure in the granting of parole. No
13 provision of this article and none of the rules adopted ~~hereunder~~
14 under this article are intended or may be construed to contravene,
15 limit or otherwise interfere with or affect the authority of the
16 Governor to grant pardons and reprieves, commute sentences, remit
17 fines or otherwise exercise his or her Constitutional powers of
18 executive clemency.

19 (h) (1) The Division of Corrections shall promulgate policies
20 and procedures for developing a rehabilitation treatment plan
21 created with the assistance of a standardized risk and needs
22 assessment. The policies and procedures shall ~~include, but not be~~
23 ~~limited to, policy and procedures for~~ provide for, at a minimum,
24 screening and selecting inmates for rehabilitation treatment and

1 development, ~~and use of~~ using standardized risk and needs
2 assessment and substance abuse assessment tools, and prioritizing
3 the use of residential substance abuse treatment resources based on
4 the results of the standardized risk and needs assessment and a
5 substance abuse assessment.

6 (2) An inmate shall not be paroled under paragraph (B),
7 subdivision (1), subsection (b) of this section solely due to
8 having successfully completed a rehabilitation treatment plan, but
9 completion of all the requirements of a rehabilitation ~~parole~~
10 treatment plan along with compliance with the requirements of
11 subsection (b) of this section ~~shall~~ creates a rebuttable
12 presumption that parole is appropriate. The presumption created by
13 this ~~subsection~~ subdivision may be rebutted by a Parole Board
14 finding that, according to the standardized risk and needs
15 assessment, at the time parole release is sought the inmate still
16 constitutes a reasonable risk to the safety or property of other
17 persons if released. Nothing in subsection (b) of this section or
18 in this subsection may be construed to create a right to parole.

19 (i) Notwithstanding the provisions of subsection (b) of this
20 section, the Parole Board may, ~~in its discretion,~~ grant or deny
21 parole to an inmate against whom a detainer is lodged by a
22 jurisdiction other than West Virginia for service of a sentence of
23 incarceration, upon a written request for parole from the inmate.
24 A denial of parole under this subsection ~~shall preclude~~ precludes

1 consideration for parole for a period of one year or until the
2 provisions of subsection (b) of this section are applicable.

3 (j) ~~Where~~ If an inmate is otherwise eligible for parole
4 pursuant to subsection (b) of this section and has completed the
5 rehabilitation treatment program required under subsection (h) of
6 this section, ~~but~~ the Parole Board ~~determines that~~ may not require
7 the inmate ~~should~~ to participate in an additional program, ~~or~~ but
8 may determine that the inmate must complete an assigned task or
9 tasks prior to actual release on parole. The board may grant
10 parole contingently, effective upon successful completion of the
11 ~~program or~~ assigned task or tasks, without the need for a further
12 hearing. ~~The Commissioner of Corrections shall provide notice to~~
13 ~~the Parole Board of the imminent release of a contingently paroled~~
14 ~~inmate to effectuate appropriate supervision.~~

15 (k) The Division of Corrections ~~is charged with the duty of~~
16 ~~supervising~~ shall supervise all probationers and parolees whose
17 supervision may have been undertaken by this state by reason of any
18 interstate compact entered into pursuant to the Uniform Act For
19 Out-of-State Parolee Supervision.

20 (l)(1) When considering an inmate of a state correctional
21 center for release on parole, the Parole Board panel considering
22 the parole ~~is to~~ shall have before it an authentic copy of or
23 report on the inmate's current criminal record as provided through
24 the West Virginia State Police, the United States Department of

1 Justice or any other reliable criminal information sources and
2 written reports of the warden or superintendent of the state
3 correctional ~~center~~ institution to which the inmate is sentenced:

4 (A) On the inmate's conduct record while in custody, including
5 a detailed statement showing any and all infractions of
6 disciplinary rules by the inmate and the nature and extent of
7 discipline administered ~~therefor~~ for the infractions;

8 (B) On improvement or other changes noted in the inmate's
9 mental and moral condition while in custody, including a statement
10 expressive of the inmate's current attitude toward society in
11 general, toward the judge who sentenced him or her, toward the
12 prosecuting attorney who prosecuted him or her, toward the
13 policeman or other officer who arrested the inmate and toward the
14 crime for which he or she is under sentence and his or her previous
15 criminal record;

16 (C) On the inmate's industrial record while in custody which
17 shall include: The nature of his or her work, occupation or
18 education, the average number of hours per day he or she has been
19 employed or in class while in custody and a recommendation as to
20 the nature and kinds of employment which he or she is best fitted
21 to perform and in which the inmate is most likely to succeed when
22 he or she leaves ~~prison~~ the state correctional institution; and

23 (D) On any physical, mental, ~~and~~ psychological or psychiatric
24 examinations of the inmate. ~~conducted, insofar as practicable,~~

1 ~~within the two months next preceding parole consideration by the~~
2 ~~board.~~

3 (2) The Parole Board panel considering the parole may waive
4 the requirement of any report when not available or not applicable
5 as to any inmate considered for parole but, in every ~~such~~ case,
6 shall enter in ~~the~~ its record ~~thereof~~ its reason for the waiver:
7 *Provided*, That in the case of an inmate who is incarcerated because
8 the inmate has been found guilty of, or has pleaded guilty to, a
9 felony under the provisions of section twelve, article eight,
10 chapter sixty-one of this code or under the provisions of article
11 eight-b or eight-c of said chapter, the Parole Board panel may not
12 waive the report required by this subsection. ~~and~~ The report ~~is to~~
13 shall include a study and diagnosis of the inmate, including an on-
14 going treatment plan requiring active participation in sexual abuse
15 counseling at an approved mental health facility or through some
16 other approved program: *Provided, however*, That nothing disclosed
17 by the ~~person~~ inmate during the study or diagnosis may be made
18 available to any law-enforcement agency, or other party without
19 that ~~person's~~ inmate's consent, or admissible in any court of this
20 state, unless the information disclosed indicates the intention or
21 plans of the parolee to do harm to any person, animal, institution
22 or to property. Progress reports of outpatient treatment are to be
23 made at least every six months to the parole officer supervising
24 the ~~person~~ parolee. In addition, in such cases, the Parole Board

1 shall inform the prosecuting attorney of the county in which the
2 person was convicted of the parole hearing and shall request that
3 the prosecuting attorney inform the Parole Board of the
4 circumstances surrounding a conviction or plea of guilty, plea
5 bargaining and other background information that might be useful in
6 its deliberations.

7 (m) Before releasing any inmate on parole, the ~~board of parole~~
8 Parole Board shall arrange for the inmate to appear in person
9 before a Parole Board panel and the panel may examine and
10 interrogate him or her on any matters pertaining to his or her
11 parole, including reports before the Parole Board made pursuant to
12 the provisions ~~hereof~~ of this section: *Provided*, That an inmate
13 may appear by video teleconference if the members of the Parole
14 Board panel conducting the examination are able to
15 contemporaneously see the inmate and hear all of his or her remarks
16 and if the inmate is able to contemporaneously see each of the
17 members of the panel conducting the examination and hear all of the
18 members' remarks. The panel shall reach its own written
19 conclusions as to the desirability of releasing the inmate on
20 parole and the majority of the panel considering the release ~~shall~~
21 must concur in the decision. The warden or superintendent shall
22 furnish all necessary assistance and cooperate to the fullest
23 extent with the Parole Board. All information, records and reports
24 received by the Parole Board ~~are to~~ shall be kept on permanent

1 file.

2 (n) The Parole Board and its designated agents are at all
3 times to have access to inmates imprisoned in any state
4 correctional ~~center~~ institution or in any jail in this state and
5 may obtain any information or aid necessary to the performance of
6 its duties from other departments and agencies of the state or from
7 any political subdivision ~~thereof~~ of the state.

8 (o) The Parole board shall, if ~~so~~ requested by the Governor,
9 investigate and consider all applications for pardon, reprieve or
10 commutation and shall make recommendation ~~thereon~~ on the
11 applications to the Governor.

12 (p) Prior to making a recommendation for pardon, reprieve or
13 commutation and prior to releasing any inmate on parole, the Parole
14 Board shall notify the sentencing judge and prosecuting attorney at
15 least ten days before the recommendation or parole.

16 (q) ~~Any person released on parole~~ A parolee shall participate
17 as a condition of parole in the litter control program of the
18 county to which he or she is released to the extent directed by the
19 Parole Board, unless the board specifically finds that this
20 alternative service would be inappropriate.

21 ~~(r) Except for the amendments to this section contained in~~
22 ~~subdivision (4), subsection (b) and subsection (i) of this section~~
23 ~~the amendments to this section enacted during the 2010 regular~~
24 ~~session of the Legislature shall become effective on January 1,~~

1 ~~2011.~~

NOTE: The purpose of this bill is provide an expedited procedure for inmates to meet eligibility requirements for release on parole of inmates, including inmates in regional jails that have been committed to prison; establishes a program to expedite the provision of all services, treatment, evaluations, assessments and programs, including a written parole release plan, to be eligible for parole; The bill also provides various methods to provide components of the program at regional jails;. The Division of Corrections is responsible for payment of costs for the program. The bill also revises eligibility requirements for parole generally.

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

§62-12-12b is new; therefore, it has been completely underscored.