

Senate Bill No. 408

(By Senator Plymale)

3

4 [Introduced January 22, 2014; referred to the Committee on the
5 Judiciary.]

6

7

8

9

10 A BILL to amend and reenact §62-12-13 of the Code of West Virginia,
11 1931, as amended, relating to powers and duties of the Parole
12 Board; eligibility for parole; and the procedure for granting
13 parole.

14 Be it enacted by the Legislature of West Virginia:

15 That §62-12-13 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

18 §62-12-13. Powers and duties of board; eligibility for parole;
19 procedure for granting parole

20 (a) The Parole Board, whenever it is of the opinion that the
21 best interests of the state and of the inmate will be served, and
22 subject to the limitations provided in this section, shall release
23 any inmate on parole for terms and upon conditions provided by this

1 article.

2 (b) Any inmate of a state correctional institution is eligible
3 for parole if he or she:

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

7 (B) He or she:

8 (I) Has applied for and been accepted by the Commissioner of
9 Corrections into an accelerated parole program;

10 (ii) Does not have a prior criminal conviction for a felony
11 crime of violence against the person, a felony offense involving
12 the use of a firearm or a felony offense where the victim was a
13 minor child.

14 (iii) Is not serving a sentence for a crime of violence
15 against the person, or more than one felony for a controlled
16 substance offense for which the inmate is serving a consecutive
17 sentence, a felony offense involving the use of a firearm or a
18 felony offense where the victim was a minor child; and

19 (iv) Has successfully completed a rehabilitation treatment
20 program created with the assistance of a standardized risk and
21 needs assessment.

22 (C) Notwithstanding any provision of this code to the
23 contrary, any inmate who committed, or attempted to commit, a
24 felony with the use, presentment or brandishing of a firearm, is

1 not eligible for parole prior to serving a minimum of three years
2 of his or her sentence or the maximum sentence imposed by the
3 court, whichever is less: *Provided*, That any inmate who committed,
4 or attempted to commit, any violation of section twelve, article
5 two, chapter sixty-one of this code, with the use, presentment or
6 brandishing of a firearm, is not eligible for parole prior to
7 serving a minimum of five years of his or her sentence or one third
8 of his or her definite term sentence, whichever is greater.
9 Nothing in this paragraph applies to an accessory before the fact
10 or a principal in the second degree who has been convicted as if he
11 or she were a principal in the first degree if, in the commission
12 of or in the attempted commission of the felony, only the principal
13 in the first degree used, presented or brandished a firearm. An
14 inmate is not ineligible for parole under the provisions of this
15 paragraph because of the commission or attempted commission of a
16 felony with the use, presentment or brandishing of a firearm unless
17 that fact is clearly stated and included in the indictment or
18 presentment by which the person was charged and was either: (I)
19 Found guilty by the court at the time of trial upon a plea of
20 guilty or nolo contendere; (ii) found guilty by the jury, upon
21 submitting to the jury a special interrogatory for such purpose if
22 the matter was tried before a jury; or (iii) found guilty by the
23 court, if the matter was tried by the court without a jury.

24 (D) The amendments to this subsection adopted in the year

1 1981:

2 (I) Apply to all applicable offenses occurring on or after
3 August 1 of that year;

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

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

19 (iv) Does not apply with respect to cases not affected by the
20 amendments and in those cases the prior provisions of this section
21 apply and are construed without reference to the amendments.

22 (v) Insofar as the amendments relate to mandatory sentences
23 restricting the eligibility for parole, all matters requiring a
24 mandatory sentence shall be proved beyond a reasonable doubt in all

1 cases tried by the jury or the court.

2 (E) As used in this section, "felony crime of violence against
3 the person" means felony offenses set forth in article two,
4 three-e, eight-b or eight-d, chapter sixty-one of this code; and

5 (F) As used in this section, "felony offense where the victim
6 was a minor child" means any felony crime of violence against the
7 person and any felony violation set forth in article eight,
8 eight-a, eight-c or eight-d, chapter sixty-one of this code.

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

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

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

18 ~~(4) (3)~~ Has prepared and submitted to the Parole Board a
19 written parole release plan setting forth proposed plans for his or
20 her place of residence, employment and, if appropriate, his or her
21 plans regarding education and post-release counseling and
22 treatment: *Provided*, That an inmate's application for parole may
23 be considered by the board without the prior submission of a home
24 plan, but the inmate shall have a home plan approved by the board

1 prior to his or her release on parole. The Commissioner of
2 Corrections or his or her designee shall review and investigate the
3 plan and provide recommendations to the board as to the suitability
4 of the plan: *Provided*, That in cases in which there is a mandatory
5 thirty-day notification period required prior to the release of the
6 inmate, pursuant to section twenty-three of this article, the board
7 may conduct an initial interview and deny parole without requiring
8 the development of a plan. In the event the board believes parole
9 should be granted, it may defer a final decision pending completion
10 of an investigation and receipt of recommendations. Upon receipt
11 of the plan together with the investigation and recommendation, the
12 board, through a panel, shall make a final decision regarding the
13 granting or denial of parole; and

14 (5) (4) Has satisfied the board that if released on parole he
15 or she will not constitute a danger to the community.

16 (c) Except in the case of an inmate serving a life sentence,
17 a person who has been previously twice convicted of a felony may
18 not be released on parole until he or she has served the minimum
19 term provided by law for the crime for which he or she was
20 convicted. An inmate sentenced for life may not be paroled until
21 he or she has served ten years, and an inmate sentenced for life
22 who has been previously twice convicted of a felony may not be
23 paroled until he or she has served fifteen years: *Provided*, That
24 an inmate convicted of first degree murder for an offense committed

1 on or after June 10, 1994, is not eligible for parole until he or
2 she has served fifteen years.

3 (d) In the case of an inmate sentenced to any state
4 correctional institution, the Parole Board, as soon as that inmate
5 becomes eligible, shall consider the advisability of his or her
6 release on parole.

7 (e) If, upon consideration, parole is denied, the board shall
8 promptly notify the inmate of the denial. The board shall, at the
9 time of denial, notify the inmate of the month and year he or she
10 may apply for reconsideration and review. The board shall at least
11 once a year reconsider and review the case of every inmate who was
12 denied parole and who is still eligible: *Provided*, That the board
13 may reconsider and review parole eligibility any time within three
14 years following the denial of parole of an inmate serving a life
15 sentence with the possibility of parole.

16 (f) ~~Any inmate serving a sentence on a felony conviction who~~
17 ~~becomes eligible for parole consideration prior to being~~
18 ~~transferred to a state correctional institution may make written~~
19 ~~application for parole. The terms and conditions for parole~~
20 ~~consideration established by this article apply to that inmate.~~

21 (g) (f) The board shall, with the approval of the Governor,
22 adopt rules governing the procedure in the granting of parole. No
23 provision of this article and none of the rules adopted under this
24 article are intended or may be construed to contravene, limit or

1 otherwise interfere with or affect the authority of the Governor to
2 grant pardons and reprieves, commute sentences, remit fines or
3 otherwise exercise his or her constitutional powers of executive
4 clemency.

5 (h) (q) (1) The Division of Corrections shall promulgate
6 policies and procedures for developing a rehabilitation treatment
7 plan created with the assistance of a standardized risk and needs
8 assessment. The policies and procedures shall provide for, at a
9 minimum, screening and selecting inmates for rehabilitation
10 treatment and development, using standardized risk and needs
11 assessment and substance abuse assessment tools, and prioritizing
12 the use of residential substance abuse treatment resources based on
13 the results of the standardized risk and needs assessment and a
14 substance abuse assessment. The results of all standardized risk
15 and needs assessments and substance abuse assessments are
16 confidential.

17 (2) An inmate shall not be paroled under paragraph (B),
18 subdivision (1), subsection (b) of this section solely due to
19 having successfully completed a rehabilitation treatment plan, but
20 completion of all the requirements of a rehabilitation treatment
21 plan along with compliance with the requirements of subsection (b)
22 of this section creates a rebuttable presumption that parole is
23 appropriate. The presumption created by this subdivision may be
24 rebutted by a Parole Board finding that, according to the

1 standardized risk and needs assessment, at the time parole release
2 is sought the inmate still constitutes a reasonable risk to the
3 safety or property of other persons if released. Nothing in
4 subsection (b) of this section or in this subsection may be
5 construed to create a right to parole.

6 ~~(I)~~ (h) Notwithstanding the provisions of subsection (b) of
7 this section, the Parole Board may grant or deny parole to an
8 inmate against whom a detainer is lodged by a jurisdiction other
9 than West Virginia for service of a sentence of incarceration, upon
10 a written request for parole from the inmate. A denial of parole
11 under this subsection precludes consideration for parole for a
12 period of one year or until the provisions of subsection (b) of
13 this section are applicable.

14 ~~(j)~~ (I) If an inmate is otherwise eligible for parole pursuant
15 to subsection (b) of this section and has completed the
16 rehabilitation treatment program required under subsection ~~(h)~~ (g)
17 of this section, the Parole Board may not require the inmate to
18 participate in an additional program, but may determine that the
19 inmate must complete an assigned task or tasks prior to actual
20 release on parole. The board may grant parole contingently,
21 effective upon successful completion of the assigned task or tasks,
22 without the need for a further hearing.

23 ~~(k)~~ (j) (1) The Division of Corrections shall supervise all
24 probationers and parolees whose supervision may have been

1 undertaken by this state by reason of any interstate compact
2 entered into pursuant to the Uniform Act for Out-of-State Parolee
3 Supervision.

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

8 (l) (1) When considering an inmate of a state correctional
9 center for release on parole, the Parole Board panel considering
10 the parole shall have before it an authentic copy of or report on
11 the inmate's current criminal record as provided through the West
12 Virginia State Police, the United States Department of Justice or
13 any other reliable criminal information sources and written reports
14 of the warden or superintendent of the state correctional
15 institution to which the inmate is sentenced:

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

20 (B) On improvement or other changes noted in the inmate's
21 mental and moral condition while in custody, including a statement
22 expressive of the inmate's current attitude toward society in
23 general, toward the judge who sentenced him or her, toward the
24 prosecuting attorney who prosecuted him or her, toward the

1 policeman or other officer who arrested the inmate and toward the
2 crime for which he or she is under sentence and his or her previous
3 criminal record;

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

11 (D) On any physical, mental, psychological or psychiatric
12 examinations of the inmate.

13 (2) The Parole Board panel considering the parole may waive
14 the requirement of any report when not available or not applicable
15 as to any inmate considered for parole but, in every case, shall
16 enter in its record its reason for the waiver: *Provided*, That in
17 the case of an inmate who is incarcerated because the inmate has
18 been found guilty of, or has pleaded guilty to, a felony under the
19 provisions of section twelve, article eight, chapter sixty-one of
20 this code or under the provisions of article eight-b or eight-c of
21 said chapter, the Parole Board panel may not waive the report
22 required by this subsection. The report shall include a study and
23 diagnosis of the inmate, including an on-going treatment plan
24 requiring active participation in sexual abuse counseling at an

1 approved mental health facility or through some other approved
2 program: *Provided, however,* That nothing disclosed by the inmate
3 during the study or diagnosis may be made available to any
4 law-enforcement agency, or other party without that inmate's
5 consent, or admissible in any court of this state, unless the
6 information disclosed indicates the intention or plans of the
7 parolee to do harm to any person, animal, institution or to
8 property. Progress reports of outpatient treatment are to be made
9 at least every six months to the parole officer supervising the
10 parolee. In addition, in such cases, the Parole Board shall inform
11 the prosecuting attorney of the county in which the person was
12 convicted of the parole hearing and shall request that the
13 prosecuting attorney inform the Parole Board of the circumstances
14 surrounding a conviction or plea of guilty, plea bargaining and
15 other background information that might be useful in its
16 deliberations.

17 ~~(m)~~ (1) Before releasing any inmate on parole, the Parole
18 Board shall arrange for the inmate to appear in person before a
19 Parole Board panel and the panel may examine and interrogate him or
20 her on any matters pertaining to his or her parole, including
21 reports before the Parole Board made pursuant to the provisions of
22 this section: *Provided,* That an inmate may appear by video
23 teleconference if the members of the Parole Board panel conducting
24 the examination are able to contemporaneously see the inmate and

1 hear all of his or her remarks and if the inmate is able to
2 contemporaneously see each of the members of the panel conducting
3 the examination and hear all of the members' remarks. The panel
4 shall reach its own written conclusions as to the desirability of
5 releasing the inmate on parole and the majority of the panel
6 considering the release must concur in the decision. The warden or
7 superintendent shall furnish all necessary assistance and cooperate
8 to the fullest extent with the Parole Board. All information,
9 records and reports received by the Parole Board shall be kept on
10 permanent file.

11 (n) (m) The Parole Board and its designated agents are at all
12 times to have access to inmates imprisoned in any state
13 correctional institution or in any jail in this state and may
14 obtain any information or aid necessary to the performance of its
15 duties from other departments and agencies of the state or from any
16 political subdivision of the state.

17 (o) (n) The Parole Board shall, if requested by the Governor,
18 investigate and consider all applications for pardon, reprieve or
19 commutation and shall make recommendation on the applications to
20 the Governor.

21 (p) (o) (1) Prior to making a recommendation for pardon,
22 reprieve or commutation, the board shall notify the sentencing
23 judge and prosecuting attorney at least ten days before the
24 recommendation.

1 (2) Notwithstanding any other provision of law to the
2 contrary, if the board grants a person parole, the board shall
3 provide written notice to the prosecuting attorney and circuit
4 judge of the county in which the inmate was prosecuted, that parole
5 has been granted. The notice shall be sent by certified mail,
6 return receipt requested, and include the anticipated date of
7 release and the person's anticipated future residence. A written
8 statement of reasons for releasing the person, prepared pursuant to
9 subsection (b) of this section, shall be provided upon request.

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

NOTE: The purpose of this bill is to remove the eligibility for parole based on a record of good conduct for a period of at least three months immediately preceding the date of an inmate's release on parole. The bill also removes the section that provides that an inmate serving a sentence on a felony conviction who becomes eligible for parole consideration prior to being transferred to a correctional institution may make written application for parole.

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