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E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 408

(SENATOR PLYMALE, *ORIGINAL SPONSOR*)

[PASSED MARCH 5, 2014; IN EFFECT FROM PASSAGE.]

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AN ACT to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating to powers and duties of the Parole Board; eligibility for parole; clarifying the procedures for granting parole; and clarifying that a parole-eligible inmate is entitled to a timely parole hearing regardless on where he or she is housed.

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 Parole Board, whenever it is of the opinion that
- 2 the best interests of the state and of the inmate will be served,
- 3 and subject to the limitations provided in this section, shall

4 release any inmate on parole for terms and upon conditions
5 provided by this article.

6 (b) Any inmate of a state correctional institution is
7 eligible 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 her
10 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 felony
16 crime of violence against the person, a felony offense
17 involving the use of a firearm or a felony offense where the
18 victim was a minor child.

19 (iii) Is not serving a sentence for a crime of violence
20 against the person, or more than one felony for a controlled
21 substance offense for which the inmate is serving a
22 consecutive sentence, a felony offense involving the use of a
23 firearm or a felony offense where the victim was a minor
24 child; and

25 (iv) Has successfully completed a rehabilitation treatment
26 program created with the assistance of a standardized risk and
27 needs assessment.

28 (C) Notwithstanding any provision of this code to the
29 contrary, any inmate who committed, or attempted to commit,
30 a felony with the use, presentment or brandishing of a
31 firearm, is not eligible for parole prior to serving a minimum

32 of three years of his or her sentence or the maximum sentence
33 imposed by the court, whichever is less: *Provided*, That any
34 inmate who committed, or attempted to commit, any violation
35 of section twelve, article two, chapter sixty-one of this code,
36 with the use, presentment or brandishing of a firearm, is not
37 eligible for parole prior to serving a minimum of five years of
38 his or her sentence or one third of his or her definite term
39 sentence, whichever is greater. Nothing in this paragraph
40 applies to an accessory before the fact or a principal in the
41 second degree who has been convicted as if he or she were a
42 principal in the first degree if, in the commission of or in the
43 attempted commission of the felony, only the principal in the
44 first degree used, presented or brandished a firearm. An
45 inmate is not ineligible for parole under the provisions of this
46 paragraph because of the commission or attempted
47 commission of a felony with the use, presentment or
48 brandishing of a firearm unless that fact is clearly stated and
49 included in the indictment or presentment by which the
50 person was charged and was either: (i) Found guilty by the
51 court at the time of trial upon a plea of guilty or nolo
52 contendere; (ii) found guilty by the jury, upon submitting to
53 the jury a special interrogatory for such purpose if the matter
54 was tried before a jury; or (iii) found guilty by the court, if
55 the matter was tried by the court without a jury.

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

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

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

63 (iii) Apply with respect to the submission of a special
64 interrogatory to the jury and the finding to be made thereon
65 in any case submitted to the jury on or after August 1 of that
66 year or to the requisite findings of the court upon a plea of
67 guilty or in any case tried without a jury: *Provided*, That the
68 state gives notice in writing of its intent to seek such finding
69 by the jury or court, as the case may be. The notice shall
70 state with particularity the grounds upon which the finding
71 will be sought as fully as the grounds are otherwise required
72 to be stated in an indictment, unless the grounds upon which
73 the finding will be sought are alleged in the indictment or
74 presentment upon which the matter is being tried; and

75 (iv) Does not apply with respect to cases not affected by
76 the amendments and in those cases the prior provisions of this
77 section apply and are construed without reference to the
78 amendments.

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

83 (E) As used in this section, “felony crime of violence
84 against the person” means felony offenses set forth in article
85 two, three-e, eight-b or eight-d, chapter sixty-one of this
86 code; and

87 (F) As used in this section, “felony offense where the
88 victim was a minor child” means any felony crime of
89 violence against the person and any felony violation set forth
90 in article eight, eight-a, eight-c or eight-d, chapter sixty-one
91 of this code.

92 (G) For the purpose of this section, the term “firearm”
93 means any instrument which will, or is designed to, or may

94 readily be converted to expel a projectile by the action of an
95 explosive, gunpowder or any other similar means.

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

98 (3) Has prepared and submitted to the Parole Board a
99 written parole release plan setting forth proposed plans for his
100 or her place of residence, employment and, if appropriate, his
101 or her plans regarding education and post-release counseling
102 and treatment: *Provided*, That an inmate's application for
103 parole may be considered by the board without the prior
104 submission of a home plan, but the inmate shall have a home
105 plan approved by the board prior to his or her release on
106 parole. The Commissioner of Corrections or his or her
107 designee shall review and investigate the plan and provide
108 recommendations to the board as to the suitability of the plan:
109 *Provided*, That in cases in which there is a mandatory
110 thirty-day notification period required prior to the release of
111 the inmate, pursuant to section twenty-three of this article, the
112 board may conduct an initial interview and deny parole
113 without requiring the development of a plan. In the event the
114 board believes parole should be granted, it may defer a final
115 decision pending completion of an investigation and receipt
116 of recommendations. Upon receipt of the plan together with
117 the investigation and recommendation, the board, through a
118 panel, shall make a final decision regarding the granting or
119 denial of parole; and

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

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

126 she was convicted. An inmate sentenced for life may not be
127 paroled until he or she has served ten years, and an inmate
128 sentenced for life who has been previously twice convicted
129 of a felony may not be paroled until he or she has served
130 fifteen years: *Provided*, That an inmate convicted of first
131 degree murder for an offense committed on or after June 10,
132 1994, is not eligible for parole until he or she has served
133 fifteen years.

134 (d) In the case of an inmate sentenced to a state
135 correctional institution regardless of the inmate's place of
136 detention or incarceration, the Parole Board, as soon as that
137 inmate becomes eligible, shall consider the advisability of his
138 or her release on parole.

139 (e) If, upon consideration, parole is denied, the board
140 shall promptly notify the inmate of the denial. The board
141 shall, at the time of denial, notify the inmate of the month and
142 year he or she may apply for reconsideration and review.
143 The board shall at least once a year reconsider and review the
144 case of every inmate who was denied parole and who is still
145 eligible: *Provided*, That the board may reconsider and review
146 parole eligibility any time within three years following the
147 denial of parole of an inmate serving a life sentence with the
148 possibility of parole.

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

153 (g) The board shall, with the approval of the Governor,
154 adopt rules governing the procedure in the granting of parole.
155 No provision of this article and none of the rules adopted
156 under this article are intended or may be construed to
157 contravene, limit or otherwise interfere with or affect the

158 authority of the Governor to grant pardons and reprieves,
159 commute sentences, remit fines or otherwise exercise his or
160 her constitutional powers of executive clemency.

161 (h) (1) The Division of Corrections shall promulgate
162 policies and procedures for developing a rehabilitation
163 treatment plan created with the assistance of a standardized
164 risk and needs assessment. The policies and procedures shall
165 provide for, at a minimum, screening and selecting inmates
166 for rehabilitation treatment and development, using
167 standardized risk and needs assessment and substance abuse
168 assessment tools, and prioritizing the use of residential
169 substance abuse treatment resources based on the results of
170 the standardized risk and needs assessment and a substance
171 abuse assessment. The results of all standardized risk and
172 needs assessments and substance abuse assessments are
173 confidential.

174 (2) An inmate shall not be paroled under paragraph (B),
175 subdivision (1), subsection (b) of this section solely due to
176 having successfully completed a rehabilitation treatment plan,
177 but completion of all the requirements of a rehabilitation
178 treatment plan along with compliance with the requirements
179 of subsection (b) of this section creates a rebuttable
180 presumption that parole is appropriate. The presumption
181 created by this subdivision may be rebutted by a Parole
182 Board finding that, according to the standardized risk and
183 needs assessment, at the time parole release is sought the
184 inmate still constitutes a reasonable risk to the safety or
185 property of other persons if released. Nothing in subsection
186 (b) of this section or in this subsection may be construed to
187 create a right to parole.

188 (i) Notwithstanding the provisions of subsection (b) of
189 this section, the Parole Board may grant or deny parole to an
190 inmate against whom a detainer is lodged by a jurisdiction

191 other than West Virginia for service of a sentence of
192 incarceration, upon a written request for parole from the
193 inmate. A denial of parole under this subsection precludes
194 consideration for parole for a period of one year or until the
195 provisions of subsection (b) of this section are applicable.

196 (j) If an inmate is otherwise eligible for parole pursuant
197 to subsection (b) of this section and has completed the
198 rehabilitation treatment program required under subsection
199 (g) of this section, the Parole Board may not require the
200 inmate to participate in an additional program, but may
201 determine that the inmate must complete an assigned task or
202 tasks prior to actual release on parole. The board may grant
203 parole contingently, effective upon successful completion of
204 the assigned task or tasks, without the need for a further
205 hearing.

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

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

215 (l) (1) When considering an inmate of a state correctional
216 center for release on parole, the Parole Board panel
217 considering the parole shall have before it an authentic copy
218 of or report on the inmate's current criminal record as
219 provided through the West Virginia State Police, the United
220 States Department of Justice or any other reliable criminal
221 information sources and written reports of the warden or

222 superintendent of the state correctional institution to which
223 the inmate is sentenced:

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

228 (B) On improvement or other changes noted in the
229 inmate's mental and moral condition while in custody,
230 including a statement expressive of the inmate's current
231 attitude toward society in general, toward the judge who
232 sentenced him or her, toward the prosecuting attorney who
233 prosecuted him or her, toward the policeman or other officer
234 who arrested the inmate and toward the crime for which he or
235 she is under sentence and his or her previous criminal record;

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

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

246 (2) The Parole Board panel considering the parole may
247 waive the requirement of any report when not available or not
248 applicable as to any inmate considered for parole but, in
249 every case, shall enter in its record its reason for the waiver:
250 *Provided*, That in the case of an inmate who is incarcerated
251 because the inmate has been found guilty of, or has pleaded
252 guilty to, a felony under the provisions of section twelve,

253 article eight, chapter sixty-one of this code or under the
254 provisions of article eight-b or eight-c of said chapter, the
255 Parole Board panel may not waive the report required by this
256 subsection. The report shall include a study and diagnosis of
257 the inmate, including an on-going treatment plan requiring
258 active participation in sexual abuse counseling at an approved
259 mental health facility or through some other approved
260 program: *Provided, however,* That nothing disclosed by the
261 inmate during the study or diagnosis may be made available
262 to any law-enforcement agency, or other party without that
263 inmate's consent, or admissible in any court of this state,
264 unless the information disclosed indicates the intention or
265 plans of the parolee to do harm to any person, animal,
266 institution or to property. Progress reports of outpatient
267 treatment are to be made at least every six months to the
268 parole officer supervising the parolee. In addition, in such
269 cases, the Parole Board shall inform the prosecuting attorney
270 of the county in which the person was convicted of the parole
271 hearing and shall request that the prosecuting attorney inform
272 the Parole Board of the circumstances surrounding a
273 conviction or plea of guilty, plea bargaining and other
274 background information that might be useful in its
275 deliberations.

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

288 shall reach its own written conclusions as to the desirability
289 of releasing the inmate on parole and the majority of the
290 panel considering the release must concur in the decision.
291 The warden or superintendent shall furnish all necessary
292 assistance and cooperate to the fullest extent with the Parole
293 Board. All information, records and reports received by the
294 Parole Board shall be kept on permanent file.

295 (n) The Parole Board and its designated agents are at all
296 times to have access to inmates imprisoned in any state
297 correctional institution or in any jail in this state and may
298 obtain any information or aid necessary to the performance
299 of its duties from other departments and agencies of the state
300 or from any political subdivision of the state.

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

305 (p) (1) Prior to making a recommendation for pardon,
306 reprieve or commutation, the board shall notify the
307 sentencing judge and prosecuting attorney at least ten days
308 before the recommendation.

309 (2) Notwithstanding any other provision of law to the
310 contrary, if the board grants a person parole, the board shall
311 provide written notice to the prosecuting attorney and circuit
312 judge of the county in which the inmate was prosecuted, that
313 parole has been granted. The notice shall be sent by certified
314 mail, return receipt requested, and include the anticipated
315 date of release and the person's anticipated future residence.
316 A written statement of reasons for releasing the person,
317 prepared pursuant to subsection (b) of this section, shall be
318 provided upon request.

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

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

.....
Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect 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

The within this
the Day of, 2014.

.....
Governor