

WEST VIRGINIA LEGISLATURE
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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 374

(SENATORS TRUMP AND D. HALL, *ORIGINAL SPONSORS*)

[PASSED MARCH 6, 2015; IN EFFECT FROM PASSAGE.]

SB 374

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE March 13, 2015 4:57 PM
ADMINISTRATIVE LAW DIVISION

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AN ACT to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating to permitting parole hearings to be conducted without the presence of the inmate when a documented medical condition precludes his or her appearance.

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 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 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 Commissioner
13 of Corrections into an accelerated parole program;

14 (ii) Does not have a prior criminal conviction for a felony
15 crime of violence against the person, a felony offense involving
16 the use of a firearm or a felony offense where the victim was a
17 minor child.

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

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

26 (C) Notwithstanding any provision of this code to the
27 contrary, any inmate who committed, or attempted to commit,
28 a felony with the use, presentment or brandishing of a

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

54 (D) The amendments to this subsection adopted in the
55 year 1981:

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

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

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

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

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

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

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

90 (G) For the purpose of this section, the term "firearm"
91 means any instrument which will, or is designed to, or may

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

242 (2) The Parole Board panel considering the parole may
243 waive the requirement of any report when not available or not
244 applicable as to any inmate considered for parole but, in
245 every case, shall enter in its record its reason for the waiver:
246 *Provided*, That in the case of an inmate who is incarcerated
247 because the inmate has been found guilty of, or has pleaded
248 guilty to, a felony under the provisions of section twelve,
249 article eight, chapter sixty-one of this code or under the
250 provisions of article eight-b or eight-c of said chapter, the
251 Parole Board panel may not waive the report required by this

252 subsection. The report shall include a study and diagnosis of
253 the inmate, including an on-going treatment plan requiring
254 active participation in sexual abuse counseling at an approved
255 mental health facility or through some other approved
256 program: *Provided, however,* That nothing disclosed by the
257 inmate during the study or diagnosis may be made available
258 to any law-enforcement agency, or other party without that
259 inmate's consent, or admissible in any court of this state,
260 unless the information disclosed indicates the intention or
261 plans of the parolee to do harm to any person, animal,
262 institution or to property. Progress reports of outpatient
263 treatment are to be made at least every six months to the
264 parole officer supervising the parolee. In addition, in such
265 cases, the Parole Board shall inform the prosecuting attorney
266 of the county in which the person was convicted of the parole
267 hearing and shall request that the prosecuting attorney inform
268 the Parole Board of the circumstances surrounding a
269 conviction or plea of guilty, plea bargaining and other
270 background information that might be useful in its
271 deliberations.

272 (m) Before releasing any inmate on parole, the Parole
273 Board shall arrange for the inmate to appear in person before
274 a Parole Board panel and the panel may examine and
275 interrogate him or her on any matters pertaining to his or her
276 parole, including reports before the Parole Board made
277 pursuant to the provisions of this section: *Provided,* That an
278 inmate may appear by video teleconference if the members of
279 the Parole Board panel conducting the examination are able
280 to contemporaneously see the inmate and hear all of his or
281 her remarks and if the inmate is able to contemporaneously
282 see each of the members of the panel conducting the
283 examination and hear all of the members' remarks; *Provided,*
284 *however,* That the requirement that an inmate personally
285 appear may be waived where a physician authorized to do so

286 by the Commissioner of Corrections certifies that the inmate,
287 due to a medical condition or disease, is too debilitated, either
288 physically or cognitively, to appear. The panel shall reach its
289 own written conclusions as to the desirability of releasing the
290 inmate on parole and the majority of the panel considering
291 the release must concur in the decision. The warden or
292 superintendent shall furnish all necessary assistance and
293 cooperate to the fullest extent with the Parole Board. All
294 information, records and reports received by the Parole Board
295 shall be kept on permanent file.

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

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

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

310 (2) Notwithstanding any other provision of law to the
311 contrary, if the board grants a person parole, the board shall
312 provide written notice to the prosecuting attorney and circuit
313 judge of the county in which the inmate was prosecuted, that
314 parole has been granted. The notice shall be sent by certified
315 mail, return receipt requested, and include the anticipated
316 date of release and the person's anticipated future residence.

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**317 A written statement of reasons for releasing the person,
318 prepared pursuant to subsection (b) of this section, shall be
319 provided upon request.**

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

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


.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.



In effect from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker of the House of Delegates

The within ..... this the 13th
....., 2015.


.....
Governor

PRESENTED TO THE GOVERNOR

MAR 10 2015

Time 3.13 PM