

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2747

BY DELEGATES FAST, CRISS, D. KELLY, REYNOLDS,

HOTT, WESTFALL AND TONEY

[Introduced February 24, 2021; referred to the

Committee on Veterans' Affairs and Homeland

Security then the Judiciary]

1 A BILL to amend and reenact §15A-9-1 and §62-12-12 of the Code of West Virginia, 1931, as
2 amended, relating to transferring the Parole Board to the Office of Administrative
3 Hearings; specifying that the Chief Hearing Examiner be a resident of the State for five
4 years prior to appointment; removing limitations of practice for the Chief Hearing
5 Examiner; requiring that the Governor appoint the Chief Hearing Examiner; requiring that
6 the Governor set the salary of the Chief Hearing Examiner; increasing the number of
7 members of the Parole Board to ten; making the Chief Hearing Examiner a member of the
8 Parole Board; clarifying that no more than five of the board members, appointed to full
9 time positions on the board may at any one time belong to the same political party;
10 removing the residency requirements pertaining to congressional districts; requiring that
11 the Chief Hearing Officer shall be chair of the Board; clarifying that the remaining nine
12 members of the Board serve after being appointed by the Governor, with the advice and
13 consent of the Senate; specifying the powers and duties of the vice chairperson shall be
14 limited to Parole Board duties; clarifying the authority of the chair to hire an administrative
15 employee; authorizing the Chief Hearing Officer to sit on parole panels as necessary;
16 clarifying that the qualifications for board members may include being a graduate of a
17 federal or state law enforcement academy; clarifying that temporary members serve at the
18 will and pleasure of the Governor; exempting the Board from Open Meetings; and
19 requiring that parole hearings be open to the public.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15A. DEPARTMENT OF HOMELAND SECURITY.

ARTICLE 9. OFFICE OF ADMINISTRATIVE HEARINGS.

§15A-9-1. Office created; appointment of Chief Hearing Examiner.

1 (a) The Office of Administrative Hearings is created as a separate operating agency within
2 the Department of Homeland Security.

3 (b) The ~~Secretary~~ Governor, shall appoint a director of the office who shall serve as the
4 administrative head of the office and as chief hearing examiner.

5 (c) Prior to appointment, the Chief Hearing Examiner shall be a citizen of the United States
6 and a resident of this state for at least five consecutive years prior to appointment, and who is
7 admitted to the practice of law in this state.

8 (d) The salary of the Chief Hearing Examiner shall be set by the Governor. ~~Secretary of~~
9 ~~the Department of Homeland Security. The salary shall be within the salary range for comparable~~
10 ~~administrators as determined by the State Personnel Board created by section six, article six,~~
11 ~~chapter twenty-nine of this code~~

12 (e) The Chief Hearing Examiner during his or her term shall:

13 ~~(1) Devote his or her full time to the duties of the position.~~

14 ~~(2) Not otherwise engage in the active practice of law, or be associated with any group or~~
15 ~~entity which is itself engaged in the active practice of law: *Provided*, That nothing in this paragraph~~
16 ~~may be construed to prohibit the Chief Hearing Examiner from being a member of a national,~~
17 ~~state or local bar association or committee, or of any other similar group or organization, or to~~
18 ~~prohibit the Chief Hearing Examiner from engaging in the practice of law by representing himself,~~
19 ~~herself or his or her immediate family in their personal affairs in matters not subject to this article.~~

20 ~~(3) (1)~~ Not engage directly or indirectly in any activity, occupation or business interfering
21 or inconsistent with his or her duties as Chief Hearing Examiner;

22 ~~(4) (2)~~ Not hold any other appointed public office or any elected public office or any other
23 position of public trust; and

24 ~~(5) (3)~~ Not be a candidate for any elected public office, or serve on or under any committee
25 of any political party.

26 (f) The Chief Hearing Examiner serves at the will and pleasure of the Governor. ~~Secretary~~

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-12. Parole Board generally.

1 (a) The West Virginia Parole Board is continued as part of the ~~Division of Corrections and~~
2 ~~Rehabilitation~~ Department of Homeland Security, Office of Administrative Hearings. The board
3 shall consist of ~~ten~~ nine members, each of whom shall have been a resident of this state for at
4 least five consecutive years prior to his or her appointment. ~~No more than five of the board~~
5 ~~members may at any one time belong to the same political party, except as provided in subsection~~
6 ~~(b) of this section. The board, shall be appointed by the Governor, by and with the advice and~~
7 ~~consent of the Senate and shall serve at the will and pleasure of the Governor.~~

8 ~~Appointments shall be made in such a manner that each congressional district is~~
9 ~~represented and so that no more than four and no less than two members of the board reside in~~
10 ~~any one congressional district~~

11 (b) The ~~Governor shall appoint one of the nine members to~~ Chief Hearing Examiner
12 appointed pursuant to §15A-9-1 of this code shall be one of the members of the Board, and shall
13 ~~serve as chairperson. at the Governor's will and pleasure~~ The chairperson may only vote in the
14 instance of a tie: *Provided*, That if the chairperson is sitting on a parole panel, pursuant to
15 subdivision (4) of this subsection, the chair shall cast a vote. In addition to all other powers,
16 duties, and responsibilities granted and assigned to the chairperson by law and rule, the
17 chairperson has the following powers and duties:

18 (1) To provide for the management of facilities and personnel of the board, and to employ
19 one full-time administrative employee who shall be a classified exempt employee;

20 (2) To supervise the administration and operation of the board;

21 (3) To delegate the powers and duties of his or her office solely with respect to the duties
22 of the Parole Board to the vice chairperson or other members of the board, who shall act under

23 the direction of the chairperson and for whose acts he or she is responsible: *Provided*, That if the
24 position of chairperson becomes vacant by death, resignation, or otherwise, the vice chairperson
25 shall assume all the powers and duties of the chairperson until such time as a new chairperson
26 is appointed pursuant to the provisions of this subsection;

27 (4) To ~~employ one full time administrative employee, who shall be a classified exempt~~
28 employee sit on panels of the board as circumstances require; and

29 (5) To exercise all other powers and perform all other duties necessary and proper in
30 carrying out his or her responsibilities as chairperson.

31 (c) The remaining nine members of the Board shall be appointed by the Governor, by and
32 with the advice and consent of the Senate., and shall serve at the will and pleasure of the
33 Governor. No more than five of the board members, appointed pursuant to this subsection, may
34 at any one time belong to the same political party.

35 ~~(e)~~ (d) The board, from its membership but excluding the chair, shall elect a vice
36 chairperson, at least once every year, to serve as chair in the absence of a chairperson. In the
37 absence of or at the direction of the chairperson, the vice chairperson may exercise the powers
38 and duties of the chairperson. The vice chairperson shall, while performing the duties and
39 responsibilities of the chairperson, have all of the statutorily authorized power and duties of the
40 chairperson solely with respect to the duties of the Parole Board.

41 ~~(d)~~ (e) ~~Any person initially~~ Members appointed pursuant to subsection (c) of this section
42 appointed to the board on or after July 1, 2012, shall have a degree from an accredited college
43 or university, or be a graduate of a federal or state law enforcement academy, or have at least
44 five years of actual experience in the fields of corrections, law enforcement, sociology, law,
45 education, psychology, social work, or medicine, or a combination thereof, and shall be otherwise
46 competent to perform the duties of his or her office: *Provided, That at least 3 members should*
47 *have at least five years of experience in the field of mental health, social work, or reentry services:*
48 *Provided further, That this requirement applies to appointments made on or after July 1, 2021 and*

49 does not require the removal of members serving on or before July 1, 2021. All members currently
50 serving on the board shall continue the terms they are currently serving, unless otherwise
51 removed. The members shall be appointed for overlapping terms of six years. The members of
52 the board, appointed pursuant to subsection (c) of this section, shall devote their full time and
53 attention to their board duties. ~~Members of the Parole Board as of the effective date of this section~~
54 ~~shall be eligible for reappointment at the discretion of the secretary.~~

55 (e) (f) The Governor may, if he or she is informed that a vacancy is imminent, appoint a
56 member to fill the imminent vacancy prior to it becoming vacant: *Provided*, That the new member
57 may be appointed no more than 30 days prior to the vacancy occurring and only for purposes of
58 training. He or she may not assume the powers and duties of the position until the vacancy has
59 actually occurred.

60 (f) (g) The Governor may appoint no more than five persons to a list of substitute board
61 members, ~~and these substitute members shall serve at the will and pleasure of the Governor.~~
62 Substitute board members shall meet the qualifications set forth in subsection (d) of this section.
63 The persons on the list shall be used in a rotating fashion. If a full-time board member is unable
64 to serve, a substitute board member may serve in his or her place. These substitute board
65 members shall have the same powers and duties of the fulltime board members while acting as
66 a substitute. These members shall be reimbursed for expenses and paid a per diem rate set by
67 the secretary.

68 (g) (h) The Division of Corrections and Rehabilitation shall provide administrative and
69 other services to the board as the board requires. Expenses of the board shall be included within
70 the annual budget of the Division of Corrections and Rehabilitation: *Provided*, That the salaries of
71 the members appointed pursuant to subsection ~~(b)~~ (c) of this section are to be included in a
72 separate budget for the Parole Board.

- 73 (i) Notwithstanding any other provisions of this code to the contrary, the meetings of the
74 Parole Board are not subject to the provisions of §6-9A-1 et seq. of this code: *Provided,*
75 That parole hearings shall be open to the public.

NOTE: The purpose of this bill is to transfer the Parole Board to the Office of Administrative Hearings; specify that the Chief Hearing Examiner be a resident of the State for five years prior to appointment; remove limitations of practice for the Chief Hearing Examiner; require that the governor appoint the Chief Hearing Examiner; require that the Governor set the salary of the Chief Hearing Examiner; increase the number of members of the Parole Board to ten; make the Chief Hearing Examiner a member of the Parole Board; clarifying that no more than five of the board members, appointed to full time positions on the board may at any one time belong to the same political party; remove the residency requirements pertaining to congressional districts; require that the Chief Hearing Officer shall be chair of the Board; clarifying that the remaining nine members of the Board serve after being appointed by the Governor, with the advice and consent of the Senate; specify the powers and duties of the vice chairperson shall be limited to Parole Board duties; clarifying the authority of the chair to hire an administrative employee;; authorize the Chief Hearing Officer to sit on parole panels as necessary; clarify that the qualifications for board members may include being a graduate of a federal or state law enforcement academy; clarifying that Parole Board members other than the chair be appointed for overlapping six year terms; clarify that temporary members serve at the will and pleasure of the governor; exempt the Board from Open Meetings; and require that parole hearings be open to the public.

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