

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 428

BY SENATOR WELD

[Introduced February 23, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §15A-9-1 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §62-12-12 of said code, all relating to transferring the Parole Board to
3 the Office of Administrative Hearings; specifying that the Chief Hearing Examiner be a
4 resident of the state for five years prior to appointment; removing limitations of practice for
5 the Chief Hearing Examiner; requiring that the Governor appoint the Chief Hearing
6 Examiner; requiring that the Governor set the salary of the Chief Hearing Examiner;
7 increasing the number of members of the Parole Board to 10; making the Chief Hearing
8 Examiner a member of the Parole Board; removing the political party affiliation
9 requirement; removing the residency requirements pertaining to congressional districts;
10 requiring that the Chief Hearing Officer shall be chair of the board; clarifying that the
11 remaining nine members of the board serve at the will and pleasure of the Governor, with
12 the advice and consent of the Senate; specifying the powers and duties of the vice
13 chairperson shall be limited to Parole Board duties; removing the authority of the chair to
14 hire an administrative employee; authorizing the Chief Hearing Officer to sit on parole
15 panels as necessary; clarifying that the qualifications for board members may include
16 being a graduate of a federal or state law-enforcement academy; removing the
17 requirement that Parole Board members be appointed for overlapping six-year terms;
18 clarifying that temporary members serve at the will and pleasure of the Governor;
19 exempting the board from open meetings; and requiring that parole hearings be open to
20 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;

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

20 (3) To delegate the powers and duties of his or her office solely with respect to the duties
21 of the Parole Board to the vice chairperson or other members of the board, who shall act under
22 the direction of the chairperson and for whose acts he or she is responsible: *Provided*, That if the

23 position of chairperson becomes vacant by death, resignation, or otherwise, the vice chairperson
24 shall assume all the powers and duties of the chairperson until such time as a new chairperson
25 is appointed pursuant to the provisions of this subsection;

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

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

30 (c) The remaining nine members of the Board, shall be appointed by the Governor, by and
31 with the advice and consent of the Senate, and shall serve at the will and pleasure of the
32 Governor.

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

39 ~~(d)~~ (e) ~~Any person initially~~ Members appointed pursuant to subsection (c) of this section
40 ~~appointed to the board on or after July 1, 2012,~~ shall have a degree from an accredited college
41 or university, or be a graduate of a federal or state law enforcement academy, or have at least
42 five years of actual experience in the fields of corrections, law enforcement, sociology, law,
43 education, psychology, social work, or medicine, or a combination thereof, and shall be otherwise
44 competent to perform the duties of his or her office. ~~All members currently serving on the board~~
45 ~~shall continue the terms they are currently serving, unless otherwise removed. The members shall~~
46 ~~be appointed for overlapping terms of six years.~~ The members of the board, appointed pursuant
47 to subsection (c) of this section shall devote their full time and attention to their board duties.
48 ~~Members of the Parole Board as of the effective date of this section shall be eligible for~~

49 ~~reappointment at the discretion of the secretary.~~

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

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

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

68 (i) Notwithstanding any other provisions of this code to the contrary, the meetings of the
69 Parole Board are not subject to the provisions of §6-9A-1 et seq. of this code: *Provided*, That
70 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; remove the political party affiliation requirement; remove the residency requirements pertaining to congressional districts; require that the Chief Hearing Officer shall be chair of the Board; clarify that the remaining nine members of the Board serve at the will and pleasure of 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; remove 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; remove the requirement that Parole Board members 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.