

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4791

By Delegates Kump, Hite, E. Pritt, Hornby, Martin, C.

Pritt, Kimble, Householder, Chiarelli, Street, and

Linville

[Introduced January 16, 2024; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating
2 to removing the possibility of parole for those convicted of child abuse.

Be it enacted by the Legislature of West Virginia:

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 the best interests of the state and of
2 the inmate will be served, and subject to the limitations provided in this section, shall release any
3 inmate on parole for terms and upon conditions provided by this article.

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

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

7 (B) He or she has applied for and been accepted by the Commissioner of Corrections and
8 Rehabilitation into an accelerated parole program. To be eligible to participate in an accelerated
9 parole program, the commissioner must determine that the inmate:

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

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

17 (iii) Has successfully completed a rehabilitation treatment program created with the
18 assistance of a standardized risk and needs assessment.

19 (C) Any inmate who has been convicted of the crime of "child abuse" as it is defined in §61-
20 8D-3 of this code will not be eligible for parole regardless of the years served towards completion
21 of a sentence. Notwithstanding any provision of this code to the contrary, any inmate who

22 committed, or attempted to commit, a felony with the use, presentment, or brandishing of a firearm
23 is not eligible for parole prior to serving a minimum of three years of his or her sentence or the
24 maximum sentence imposed by the court, whichever is less: *Provided*, That any inmate who
25 committed, or attempted to commit, any violation of §61-2-12 of this code, with the use,
26 presentment, or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five
27 years of his or her sentence or one third of his or her definite term sentence, whichever is greater.
28 Nothing in this paragraph applies to an accessory before the fact or a principal in the second
29 degree who has been convicted as if he or she were a principal in the first degree if, in the
30 commission of or in the attempted commission of the felony, only the principal in the first degree
31 used, presented, or brandished a firearm. An inmate is not ineligible for parole under the
32 provisions of this paragraph because of the commission or attempted commission of a felony with
33 the use, presentment, or brandishing of a firearm unless that fact is clearly stated and included in
34 the indictment or presentment by which the person was charged and was either: (i) Found guilty by
35 the court at the time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury
36 upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a
37 jury; or (iii) found guilty by the court if the matter was tried by the court without a jury.

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

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

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

42 (iii) Apply with respect to the submission of a special interrogatory to the jury and the
43 finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to
44 the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided*,
45 That the state gives notice in writing of its intent to seek such finding by the jury or court, as the
46 case may be. The notice shall state with particularity the grounds upon which the finding will be
47 sought as fully as the grounds are otherwise required to be stated in an indictment, unless the

48 grounds upon which the finding will be sought are alleged in the indictment or presentment upon
49 which the matter is being tried;

50 (iv) Does not apply with respect to cases not affected by the amendments and in those
51 cases the prior provisions of this section apply and are construed without reference to the
52 amendments; and

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

56 (E) As used in this section, "felony crime of violence against the person" means felony
57 offenses set forth in §61-2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, or §61-8D-1 *et seq.* of this
58 code.

59 (F) As used in this section, "felony offense where the victim was a minor child" means any
60 felony crime of violence against the person and any felony violation set forth in §61-8-1 *et seq.*,
61 §61-8A-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code.

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

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

67 (3) Has prepared and submitted to the Parole Board a written parole release plan setting
68 forth proposed plans for his or her place of residence, employment and, if appropriate, his or her
69 plans regarding education and post-release counseling and treatment which has been approved
70 by the Division of Corrections and Rehabilitation: *Provided*, That an inmate's application for parole
71 may be considered by the board without the prior submission of a home plan, but the inmate shall
72 have a home plan approved by the division prior to his or her release on parole. The
73 Commissioner of the Division of Corrections and Rehabilitation, or his or her designee, shall

74 review and investigate the plan and provide findings to the board as to the suitability of the plan:
75 *Provided, however,* That in cases in which there is a mandatory 30-day notification period required
76 prior to the release of the inmate, pursuant to §62-12-23 of this code, the board may conduct an
77 initial interview and deny parole without requiring the development of a plan. In the event the board
78 believes parole should be granted, it may defer a final decision pending completion of an
79 investigation and receipt of the commissioner's findings. Upon receipt of the plan, together with the
80 investigation and findings, the board, through a panel, shall make a final decision regarding the
81 granting or denial of parole;

82 (4) Has satisfied the board that if released on parole he or she will not constitute a danger
83 to the community; and

84 (5) Has successfully completed any individually required rehabilitative and educational
85 programs, as determined by the division, while incarcerated: *Provided,* That, effective September
86 1, 2021, any inmate who satisfies all other parole eligibility requirements but is unable, through no
87 fault of the inmate, to complete his or her required rehabilitative and educational programs while
88 incarcerated, which are eligible to be taken while on parole, may be granted parole with the
89 completion of such specified programs outside of the correctional institutions being a special
90 condition of that person's parole term: *Provided, however,* That the Parole Board may consider
91 whether completion of the inmate's outstanding amount of such programming would interfere with
92 his or her successful reintegration into society.

93 (c) Except in the case of an inmate serving a life sentence, a person who has been
94 previously twice convicted of a felony may not be released on parole until he or she has served the
95 minimum term provided by law for the crime for which he or she was convicted. An inmate
96 sentenced for life may not be paroled until he or she has served 10 years, and an inmate
97 sentenced for life who has been previously twice convicted of a felony may not be paroled until he
98 or she has served 15 years. ~~Provided, That a inmate convicted of first degree murder for an~~
99 ~~offense committed on or after June 10, 1994, is not eligible for parole until he or she has served 15~~

100 ~~years~~ A person convicted of any offense considered "child abuse" as it is defined in §61-8D-3 of
101 this code will also be ineligible for parole regardless of the years he or she has served towards a
102 sentence.

103 (d) In the case of an inmate sentenced to a state correctional facility regardless of the
104 inmate's place of detention or incarceration, the Parole Board, as soon as that inmate becomes
105 eligible, shall consider the advisability of his or her release on parole.

106 (e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of the
107 denial. The board shall, at the time of denial, notify the inmate of the month and year he or she may
108 apply for reconsideration and review. The board shall at least once a year reconsider and review
109 the case of every inmate who was denied parole and who is still eligible: *Provided*, That the board
110 may reconsider and review parole eligibility any time within three years following the denial of
111 parole of an inmate serving a life sentence with the possibility of parole.

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

115 (g) The board shall, with the approval of the Governor, adopt rules governing the procedure
116 in the granting of parole. No provision of this article and none of the rules adopted under this article
117 are intended or may be construed to contravene, limit, or otherwise interfere with or affect the
118 authority of the Governor to grant pardons and reprieves, commute sentences, remit fines, or
119 otherwise exercise his or her constitutional powers of executive clemency.

120 (h)(1) The Division of Corrections and Rehabilitation shall promulgate policies and
121 procedures for developing a rehabilitation treatment plan created with the assistance of a
122 standardized risk and needs assessment. The policies and procedures shall provide for, at a
123 minimum, screening and selecting inmates for rehabilitation treatment and development, using
124 standardized risk and needs assessment and substance abuse assessment tools, and prioritizing
125 the use of residential substance abuse treatment resources based on the results of the

126 standardized risk and needs assessment and a substance abuse assessment. The results of all
127 standardized risk and needs assessments and substance abuse assessments are confidential.

128 (2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of
129 this section solely due to having successfully completed a rehabilitation treatment plan, but
130 completion of all the requirements of a rehabilitation treatment plan along with compliance with the
131 requirements of subsection (b) of this section creates a rebuttable presumption that parole is
132 appropriate. The presumption created by this subdivision may be rebutted by a Parole Board
133 finding that, according to the standardized risk and needs assessment, at the time parole release
134 is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if
135 released. Nothing in subsection (b) of this section or in this subsection may be construed to create
136 a right to parole.

137 (i) Notwithstanding the provisions of subsection (b) of this section, the Parole Board may
138 grant or deny parole to an inmate against whom a detainer is lodged by a jurisdiction other than
139 West Virginia for service of a sentence of incarceration, upon a written request for parole from the
140 inmate. A denial of parole under this subsection precludes consideration for parole for a period of
141 one year or until the provisions of subsection (b) of this section are applicable.

142 (j) If an inmate is otherwise eligible for parole pursuant to subsection (b) of this section, and
143 has completed the rehabilitation treatment program required under subdivision (1), subsection (h)
144 of this section, the Parole Board may not require the inmate to participate in an additional program,
145 but may determine that the inmate must complete an assigned task or tasks prior to actual release
146 on parole. The board may grant parole contingently, effective upon successful completion of the
147 assigned task or tasks, without the need for a further hearing.

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

151 (2) The Division of Corrections and Rehabilitation shall provide supervision,

152 treatment/recovery, and support services for all persons released to mandatory supervision under
153 §15A-4-17 of this code.

154 (l)(1) When considering an inmate of a state correctional facility for release on parole, the
155 Parole Board panel considering the parole shall have before it an authentic copy of, or report on,
156 the inmate's current criminal record as provided through the West Virginia State Police, the United
157 States Department of Justice, or any other reliable criminal information sources and written
158 reports of the superintendent of the state correctional institution to which the inmate is sentenced:

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

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

167 (C) On any physical, mental, psychological, or psychiatric examinations of the inmate.

168 (2) The Parole Board panel considering the parole may waive the requirement of any
169 report when not available or not applicable as to any inmate considered for parole but, in every
170 case, shall enter in its record its reason for the waiver: *Provided*, That in the case of an inmate who
171 is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony
172 under the provisions of §61-8-12 of this code or under the provisions of §61-8B-1 *et seq.* or §61-
173 8C-1 *et seq.* of this code, the Parole Board panel may not waive the report required by this
174 subsection. The report shall include a study and diagnosis of the inmate, including an on-going
175 treatment plan requiring active participation in sexual abuse counseling at an approved mental
176 health facility or through some other approved program: *Provided, however*, That nothing
177 disclosed by the inmate during the study or diagnosis may be made available to any law-

178 enforcement agency, or other party without that inmate's consent, or admissible in any court of this
179 state, unless the information disclosed indicates the intention or plans of the parolee to do harm to
180 any person, animal, institution, or to property. Progress reports of outpatient treatment are to be
181 made at least every six months to the parole officer supervising the parolee. In addition, in such
182 cases, the Parole Board shall inform the prosecuting attorney of the county in which the person
183 was convicted of the parole hearing and shall request that the prosecuting attorney inform the
184 Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining, and
185 other background information that might be useful in its deliberations.

186 (m) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate to
187 appear in person before a Parole Board panel and the panel may examine and interrogate him or
188 her on any matters pertaining to his or her parole, including reports before the Parole Board made
189 pursuant to the provisions of this section: *Provided*, That an inmate may appear by video
190 teleconference if the members of the Parole Board panel conducting the examination are able to
191 contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to
192 contemporaneously see each of the members of the panel conducting the examination and hear
193 all of the members' remarks: *Provided, however*, That the requirement that an inmate personally
194 appear may be waived where a physician authorized to do so by the Commissioner of the Division
195 of Corrections and Rehabilitation certifies that the inmate, due to a medical condition or disease, is
196 too debilitated, either physically or cognitively, to appear. The panel shall reach its own written
197 conclusions as to the desirability of releasing the inmate on parole and the majority of the panel
198 considering the release must concur in the decision. The superintendent shall furnish all
199 necessary assistance and cooperate to the fullest extent with the Parole Board. All information,
200 records, and reports received by the Parole Board shall be kept on permanent file.

201 (n) The Parole Board and its designated agents are at all times to have access to inmates
202 imprisoned in any state correctional facility or in any jail in this state and may obtain any
203 information or aid necessary to the performance of its duties from other departments and agencies

204 of the state or from any political subdivision of the state.

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

208 (p) Prior to making a recommendation for pardon, reprieve or commutation, the board shall
209 notify the sentencing judge and prosecuting attorney at least 10 days before the recommendation.

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

213 (r) The commissioner shall develop, maintain, and make publicly available a general list of
214 rehabilitative and educational programs available outside of the correctional institutions which an
215 inmate may be required to complete as a special condition of parole pursuant to subdivision (5) of
216 subsection (b) of this section, and the manner and method in which such programs shall be
217 completed by the parolee.

NOTE: The purpose of this bill is to remove the possibility of parole for those convicted of child abuse.

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