

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5538**

By Delegate Kelly and Kump

[Introduced February 09, 2024; Referred to the  
Committee on Jails and Prisons then the Judiciary]

1 A BILL to amend and reenact §62-12-13 of the Code of West Virginia, as amended, relating to  
 2 modifying the parole eligibility for inmates serving life sentences and those who have been  
 3 convicted of first degree murder.

*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) Notwithstanding any provision of this code to the contrary, any inmate who committed,  
 20 or attempted to commit, a felony with the use, presentment, or brandishing of a firearm is not

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

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

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

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

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

47 which the matter is being tried;

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

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

54 (E) As used in this section, "felony crime of violence against the person" means felony  
55 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  
56 code.

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

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

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

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

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

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

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

91 (c) Except in the case of an inmate serving a life sentence, a person who has been  
92 previously twice convicted of a felony may not be released on parole until he or she has served the  
93 minimum term provided by law for the crime for which he or she was convicted. An inmate  
94 sentenced for life may not be paroled until he or she has served ~~40~~ 20 years, and an inmate  
95 sentenced for life who has been previously twice convicted of a felony may not be paroled until he  
96 or she has served ~~45~~ 25 years: *Provided,* That an inmate convicted of first degree murder for an  
97 offense committed on or after ~~June 10, 1994~~ July 1, 2024, is not eligible for parole until he or she  
98 has served ~~45~~ 25 years.

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

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

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

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

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

124 (2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of

125 this section solely due to having successfully completed a rehabilitation treatment plan, but  
126 completion of all the requirements of a rehabilitation treatment plan along with compliance with the  
127 requirements of subsection (b) of this section creates a rebuttable presumption that parole is  
128 appropriate. The presumption created by this subdivision may be rebutted by a Parole Board  
129 finding that, according to the standardized risk and needs assessment, at the time parole release  
130 is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if  
131 released. Nothing in subsection (b) of this section or in this subsection may be construed to create  
132 a right to parole.

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

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

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

147 (2) The Division of Corrections and Rehabilitation shall provide supervision,  
148 treatment/recovery, and support services for all persons released to mandatory supervision under  
149 §15A-4-17 of this code.

150 (l) (1) When considering an inmate of a state correctional facility for release on parole, the

151 Parole Board panel considering the parole shall have before it an authentic copy of, or report on,  
152 the inmate's current criminal record as provided through the West Virginia State Police, the United  
153 States Department of Justice, or any other reliable criminal information sources and written  
154 reports of the superintendent of the state correctional institution to which the inmate is sentenced:

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

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

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

164 (2) The Parole Board panel considering the parole may waive the requirement of any  
165 report when not available or not applicable as to any inmate considered for parole but, in every  
166 case, shall enter in its record its reason for the waiver: *Provided*, That in the case of an inmate who  
167 is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony  
168 under the provisions of §61-8-12 of this code or under the provisions of §61-8B-1 *et seq.* or §61-  
169 8C-1 *et seq.* of this code, the Parole Board panel may not waive the report required by this  
170 subsection. The report shall include a study and diagnosis of the inmate, including an on-going  
171 treatment plan requiring active participation in sexual abuse counseling at an approved mental  
172 health facility or through some other approved program: *Provided, however*, That nothing  
173 disclosed by the inmate during the study or diagnosis may be made available to any law-  
174 enforcement agency, or other party without that inmate's consent, or admissible in any court of this  
175 state, unless the information disclosed indicates the intention or plans of the parolee to do harm to  
176 any person, animal, institution, or to property. Progress reports of outpatient treatment are to be



177 made at least every six months to the parole officer supervising the parolee. In addition, in such  
178 cases, the Parole Board shall inform the prosecuting attorney of the county in which the person  
179 was convicted of the parole hearing and shall request that the prosecuting attorney inform the  
180 Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining, and  
181 other background information that might be useful in its deliberations.

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

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

201 (o) The Parole Board shall, if requested by the Governor, investigate and consider all  
202 applications for pardon, reprieve, or commutation and shall make recommendation on the

203 applications to the Governor.

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

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

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

NOTE: The purpose of bill is to modify parole eligibility for inmates serving life sentences  
and those who have been convicted of first degree murder.

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