WEST VIRGINIA CODE CHAPTER 62 ARTICLE 12

WV Legislature

§62-12-1. Courts having authority to place offenders on probation.

Any circuit court of this state shall have authority as provided in this article to place on probation any person convicted of a crime.

WV Legislature

§62-12-2. Eligibility for probation.

(a) All persons who are found guilty of or plead guilty to any felony, the maximum penalty for which is less than life imprisonment, and all persons who are found guilty of or plead guilty to any misdemeanor are eligible for probation, notwithstanding the provisions of §61-11-18 and §61-11-19 of this code: *Provided*, That persons convicted of offenses set forth in §60A-4-409(c), §60A-4-414(b), §60A-4-416(a)(2), and §60A-4-419 are not eligible for probation.

(b) The provisions of subsection (a) of this section to the contrary notwithstanding, any person who commits or attempts to commit a felony with the use, presentment, or brandishing of a firearm is not eligible for probation. Nothing in this section may apply to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented, or brandished a firearm.

(c)(1) The existence of any fact which would make any person ineligible for probation under subsection (b) of this section because of the commission or attempted commission of a felony with the use, presentment, or brandishing of a firearm may not be applicable unless the fact is clearly stated and included in the indictment or presentment by which that person is charged and is either:

(A) Found by the court upon a plea of guilty or nolo contendere;

(B) Found by the jury, if the matter is tried before a jury, upon submitting to the jury a special interrogatory for that purpose; or

(C) Found by the court, if the matter is tried by the court, without a jury.

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

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

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

(C) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided*, That the state shall give notice in writing of its intent to seek that finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which the finding is sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried; and

WV Legislature

(D) May not apply with respect to cases not affected by the amendment and in those cases the prior provisions of this section shall apply and be construed without reference to the amendment.

Insofar as the amendments relate to mandatory sentences without probation, all matters requiring that sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

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

(e) Any person who has been found guilty of, or pleaded guilty to, a violation of §61-3C-14b, §61-8-12, §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-5 of this code may only be eligible for probation after undergoing a physical, mental, and psychiatric or psychological study and diagnosis which shall include an ongoing treatment plan requiring active participation in sexual abuse counseling at a mental health facility or through some other approved program: *Provided*, That nothing disclosed by the person during that study or diagnosis may be made available to any law-enforcement agency or other party without that person's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the probationer to do harm to any person, animal, institution, or property, in which case the information may be released only to those persons necessary for protection of the person, animal, institution, or property.

Within 90 days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, the Secretary of the Department of Human Services shall propose rules and emergency rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(f) Any person who has been convicted of a violation of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, §61-8D-5, §61-8D-6, §61-2-14, §61-8-12, and §61-8-13 of this code, or of a felony violation involving a minor of §61-8-6 or §61-8-7 of this code, or of a similar provision in another jurisdiction, shall register upon release on probation. Any person who has been convicted of an attempt to commit any of the offenses set forth in this subsection shall also be registered upon release on probation.

(g) The probation officer shall within three days of release of the offender send written notice to the State Police of the release of the offender. The notice shall include:

(1) The full name of the person;

(2) The address where the person shall reside;

WV Legislature

(3) The person's Social Security number;

(4) A recent photograph of the person;

(5) A brief description of the crime for which the person was convicted;

(6) Fingerprints; and

(7) For any person determined to be a sexually violent predator as defined in §15-12-2a of this code, the notice shall also include:

(A) Identifying factors, including physical characteristics;

(B) A history of the offense; and

(C) Documentation of any treatment received for the mental abnormality or personality disorder.

WV Legislature

§62-12-3. Suspension of sentence and release on probation.

Whenever, upon the conviction of any person eligible for probation under the preceding section, it shall appear to the satisfaction of the court that the character of the offender and the circumstances of the case indicate that he is not likely again to commit crime and that the public good does not require that he be fined or imprisoned, the court, upon application or of its own motion, may suspend the imposition or execution of sentence and release the offender on probation for such period and upon such conditions as are provided by this article; but in no case, except as provided by the following section, shall the court have authority to suspend the execution of a sentence after the convicted person has been imprisoned for sixty days under the sentence. Any person released on probation must participate as a condition of probation in the litter control program of the county to the extent directed by the court, unless the court specifically finds that this alternative service would be inappropriate.

WV Legislature

§62-12-4. Probation of offenders convicted in courts other than courts of record.

Whenever any person is found guilty of, or pleads guilty to, a crime in a court which is not a court of record, he may, at any time thereafter, file with the court of record to which an appeal would lie, or with the judge thereof in vacation, his petition in writing, together with a transcript of the docket of the court in which he was convicted, requesting that he be placed on probation. Upon the filing of such petition and transcript, said court of record or the judge thereof, shall have power to suspend the execution of the sentence of the lower court and to release the petitioner on probation upon such conditions as to said court or judge may seem fitting.

WV Legislature

§62-12-5. Probation officers and assistants.

(a) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with its rules, is authorized to appoint one or more probation officers and clerical assistants.

(b) The appointment of probation officers and clerical assistants shall be in writing and entered on the order book of the court by the judge making such appointment and a copy of the order of appointment shall be delivered to the Administrative Director of the Supreme Court of Appeals. The order of appointment shall state the annual salary, fixed by the judge and approved by the Supreme Court of Appeals, to be paid to the appointed probation officer or clerical assistants.

(c) The salary of probation officers and clerical assistants shall be paid at least twice per month, as the Supreme Court of Appeals by rule may direct, and they shall be reimbursed for all reasonable and necessary expenses actually incurred in the line of duty in the field. The salary and expenses shall be paid by the state from the judicial accounts thereof. The county commission shall provide adequate office space for the probation officer and his or her assistants to be approved by the appointing court. The equipment and supplies as may be needed by the probation officer and his or her assistants shall be provided by the state and the cost thereof shall be charged against the judicial accounts of the state.

(d) A judge may not appoint any probation officer, assistant probation officer, or clerical assistant who is related to him or her either by consanguinity or affinity.

(e) Subject to the approval of the Supreme Court of Appeals and in accordance with its rules, a judge of a circuit court whose circuit comprises more than one county may appoint a probation officer and a clerical assistant in each county of the circuit or may appoint the same persons to serve in these respective positions in two or more counties in the circuit.

(f) Nothing contained in this section alters, modifies, affects, or supersedes the appointment or tenure of any probation officer, medical assistant, or psychiatric assistant appointed by any court under any special act of the Legislature heretofore enacted, and the salary or compensation of those persons shall remain as specified in the most recent amendment of any special act until changed by the court, with approval of the Supreme Court of Appeals, by order entered of record, and any such salary or compensation shall be paid out of the State Treasury.

(g) In order to carry out the supervision responsibilities set forth in §62-26-12 of this code, the Administrative Director of the Supreme Court of Appeals, or his or her designee, in accordance with the court's procedures, may hire multijudicial-circuit probation officers, to be employed through the court's Division of Probation Services. Such officers may also supervise probationers who are on probation for sexual offences with the approval of the administrative director of the Supreme Court of Appeals or his or her designee.

WV Legislature

(h) In recognition of the duties of their employment supervising confinement and supervised release, and the inherent arrest powers for violation of the same which constitute law enforcement, state probation officers are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. § 926B.

(i) Any state probation officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. § 926B if the following criteria are met:

(1) The Supreme Court of Appeals has a written policy authorizing probation officers to carry a concealed firearm for self-defense purposes.

(2) There is in place a requirement that the state probation officers annually qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(3) The Supreme Court of Appeals issues a photographic identification and certification card which identify the state probation officers as qualified law-enforcement employees pursuant to the provisions of §30-29-12 of this code.

(j) Any policy instituted pursuant to this subsection shall include provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(k) Any state probation officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(l) It is the intent of the Legislature in enacting the amendments to this section during the 2022 regular session of the Legislature to authorize state probation officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

(m) The privileges authorized by the amendments to this section enacted during the 2022 regular session of the Legislature are wholly within the discretion of the Supreme Court of Appeals.

(n) The Administrative Director of the Supreme Court of Appeals, or his or her designee, may hire field training probation officers to provide uniform training to new and current probation officers statewide. A field training probation officer shall have all the powers granted to a probation officer under this code while performing his or her duties.

WV Legislature

§62-12-5a.

Repealed.

Acts, 1975 Reg. Sess., Ch. 126.

WV Legislature

§62-12-6. Powers and duties of probation officers.

(a) Each probation officer shall:

(1) Investigate all cases which the court refers to the officer for investigation and shall report in writing on each case;

(2) Conduct a standardized risk and needs assessment, using the instrument adopted by the Supreme Court of Appeals of West Virginia, for any probationer for whom an assessment has not been conducted either prior to placement on probation or by a specialized assessment officer. The results of all standardized risk and needs assessments are confidential;

(3) Supervise the probationer and enforce probation according to assessment and supervision standards adopted by the Supreme Court of Appeals of West Virginia;

(4) Furnish to each person released on probation under the officer's supervision a written statement of the probationer's conditions of probation together with a copy of the rules prescribed by the Supreme Court of Appeals;

(5) Stay informed concerning the conduct and condition of each probationer under the officer's supervision and report on the conduct and condition of each probationer in writing as often as the court requires;

(6) Use all practicable and suitable methods to aid and encourage the probationer to improve his or her conduct and condition;

(7) Perform random drug and alcohol testing on probationers under his or her supervision as directed by the circuit court;

(8) Maintain detailed work records; and

(9) Perform any other duties the court requires.

(b) The probation officer may, with or without an order or warrant, arrest any probationer as provided in section 10 of this article, and arrest any person on supervised release when there is reasonable cause to believe that the person on supervised release has violated a condition of release. A person on supervised release who is arrested shall be brought before the court for a prompt and summary hearing.

(c) Notwithstanding any provision of this code to the contrary:

(1) Any probation officer appointed on or after July 1, 2002, may carry handguns in the course of the officer's official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency and Correction. The qualifications shall include the successful completion of handgun training, which is comparable to the handgun training provided to law-enforcement officers by the State Police and includes a minimum of

WV Legislature

four hours' training in handgun safety.

(2) Probation officers may only carry handguns in the course of their official duties after meeting the specialized qualifications set forth in subdivision (1) of this subsection.

(d) The Supreme Court of Appeals of West Virginia may adopt a standardized risk and needs assessment with risk cut-off scores for use by probation officers, taking into consideration the assessment instrument adopted by the Division of Corrections and Rehabilitation under subsection (h), section 13 of this article and the responsibility of the Division of Justice and Community Services to evaluate the use of the standardized risk and needs assessment. The results of any standardized risk and needs assessment are confidential.

WV Legislature

§62-12-7. Pretrial and preliminary investigation; report on prospective probationers.

(a) The Supreme Court of Appeals of West Virginia may adopt a standardized pretrial risk assessment for use by the Regional Jail Authority to assist magistrates and circuit courts in making pretrial decisions under article one-c of this chapter.

(b) Unless otherwise directed by the court, the probation officer shall, in the form adopted by the Supreme Court of Appeals of West Virginia, make a careful investigation of, and a written report with recommendations concerning, any prospective probationer. Insofar as practicable, this report shall include information concerning the offender's court and criminal record, occupation, family background, education, habits and associations, mental and physical condition, the names, relationship, ages and condition of those dependent upon him or her for support and any other facts that may aid the court in determining the propriety and conditions of his or her release on probation. A person convicted of a felony or of any offense described in article eight-b or eight-d, chapter sixty-one of this code against a minor child may not be released on probation until this report has been presented to and considered by the court. The court may request a report concerning any person convicted of a misdemeanor. The presentence report of any person convicted of an offense, described in said articles or section twelve, article eight of said chapter, may include a statement from a therapist, psychologist or physician who is providing treatment to the child. A copy of all reports shall be filed with the Parole Board.

WV Legislature

§62-12-7a. Presentence diagnosis and classification; power of court; custody of convicted person; provision for presentence reports; penalty for escape.

Notwithstanding any other provision of law, when any person has been found guilty of, or pleads guilty to, a felony, or any offense described in article eight-d or eight-b, chapter sixty-one of this code, against a minor child, the court may, prior to pronouncing of sentence, direct that the person be delivered into the custody of the commissioner of corrections, for the purpose of diagnosis and classification for a period not to exceed sixty days: Provided, That the court shall require that a presentence report be completed by the probation officer assigned to that person and be made available to the commissioner of corrections prior to delivery of the person to a statutorily approved diagnosis and classification unit of the Division of Corrections. While at the diagnosis and classification unit the person shall undergo examination, diagnosis and classification and shall then be remanded and delivered to the custody of the sheriff of the county wherein he or she was found guilty or entered such plea. Within ten days following the termination of the examination, diagnosis and classification, the commissioner of corrections shall make or cause to be made a report to the court wherein the person was found guilty, or entered a plea of guilty, containing the results, findings, conclusions and recommendations of the commissioner with respect to such person.

Whenever a person is remanded into the custody of the commissioner of corrections pursuant to this section, the person shall be given credit on any sentence subsequently imposed by the court equal to the time spent in such custody.

WV Legislature

§62-12-8. Record of order as to release on probation.

Orders granting or refusing release on probation shall contain a brief statement by the court of the reasons for its action and shall be entered of record. A copy of all orders granting release on probation, of all orders refusing such release in felony cases, and of all orders revoking any previous order shall be sent by the clerk of the court to the board of probation and parole within five days after the making of the order.

WV Legislature

§62-12-9. Conditions of release on probation.

(a) Release on probation is conditioned upon the following:

(1) That the probationer may not, during the term of his or her probation, violate any criminal law of this or any other state or of the United States;

(2) That the probationer may not, during the term of his or her probation, leave the state without the consent of the court which placed him or her on probation;

(3) That the probationer complies with the conditions prescribed by the court for his or her supervision by the probation officer;

(4) That in every case in which the probationer has been convicted of an offense set forth in §61-3C-14b, §61-8-12, §61-8A-1 *et seq*., §61-8B-1 *et seq*., §61-8C-1 *et seq*., and §61-8D-1 *et seq*. of this code against a child, the probationer may not live in the same residence as any minor child, nor exercise visitation with any minor child, and may have no contact with the victim of the offense: *Provided*, That the probationer may petition the court of the circuit in which he or she was convicted for a modification of this term and condition of his or her probation and the burden rests upon the probationer to demonstrate that a modification is in the best interest of the child;

(5) That the probationer pay a fee, not to exceed $20 per month, to defray costs of supervision: *Provided*, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the fee without undue hardship. All moneys collected as fees from probationers pursuant to this subdivision shall be deposited with the circuit clerk who shall, on a monthly basis, remit the moneys collected to the State Treasurer for deposit in the state General Revenue Fund; and

(6) That the probationer is required to pay the fee described in §62-11C-4 of this code: *Provided*, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the fee without undue hardship.

(b) In addition, the court may impose, subject to modification at any time, any other conditions which it may determine advisable, including, but not limited to, any of the following:

(1) That the probationer make restitution or reparation, in whole or in part, immediately or within the period of probation, to any party injured by the crime for which he or she has been convicted: *Provided*, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay restitution without undue hardship;

(2) That the probationer pays any fine assessed and the costs of the proceeding in installments directed by the court: *Provided*, That the court conduct a hearing prior to imposition of probation and makes a determination on the record that the offender is able to

WV Legislature

pay the costs without undue hardship;

(3) That the probationer makes contributions from his or her earnings, in sums directed by the court, for the support of his or her dependents; and

(4) That the probationer, in the discretion of the court, is required to serve a period of confinement in the jail of the county in which he or she was convicted for a period not to exceed one third of the minimum sentence established by law or one third of the least possible period of confinement in an indeterminate sentence, but in no case may the period of confinement exceed six consecutive months. The court may sentence the defendant within the six-month period to intermittent periods of confinement including, but not limited to, weekends or holidays and may grant to the defendant intermittent periods of release in order that he or she may work at his or her employment or for other reasons or purposes as the court may determine appropriate: *Provided*, That the provisions of §62-11A-1 *et seq*. of this code do not apply to intermittent periods of confinement and release except to the extent directed by the court. If a period of confinement is required as a condition of probation, the court shall make special findings that other conditions of probation are inadequate and that a period of confinement is necessary.

(c) Circuit courts may impose, as a condition of probation, participation in a day report center.

(1) To be eligible, the probationer shall be identified as moderate to high risk of reoffending and moderate to high criminogenic need, as determined by the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under §62-12-6(d) of this code, and applied by a probation officer or day report staff. In eligible cases, circuit courts may impose a term of up to one year: *Provided*, That notwithstanding the results of the standardized risk and needs assessment, a judge may impose, as a term of probation, participation in a day report center program upon making specific written findings of fact as to the reason for departing from the requirements of this subdivision.

(2) The day report center staff shall determine which services a person receives based on the results of the standardized risk and needs assessment and taking into consideration the other conditions of probation set by the court.

(d) For the purposes of this article, "day report center" means a court-operated or court-approved facility where persons ordered to serve a sentence in this type of facility are required to report under the terms and conditions set by the court for purposes which include, but are not limited to, counseling, employment training, alcohol or drug testing, or other medical testing.

WV Legislature

§62-12-10. Violation of probation.

(a) If at any time during the period of probation there shall be reasonable cause to believe that the probationer has violated any of the conditions of his or her probation, the probation officer may arrest him or her with or without an order or warrant, or the court which placed him or her on probation, or the judge thereof in vacation, may issue an order for his or her arrest, whereupon he or she shall be brought before the court, or the judge thereof in vacation, for a prompt and summary hearing.

(1) If the court or judge finds reasonable cause exists to believe that the probationer:

(A) Absconded supervision;

(B) Engaged in new criminal conduct other than a minor traffic violation or simple possession of a controlled substance; or

(C) Violated a special condition of probation designed either to protect the public or a victim; the court or judge may revoke the suspension of imposition or execution of sentence, impose sentence if none has been imposed and order that sentence be executed.

(2) If the judge finds that reasonable cause exists to believe that the probationer violated any condition of supervision other than the conditions of probation set forth in subdivision (1) of this subsection then, for the first violation, the judge shall impose a period of confinement up to sixty days or, for the second violation, a period of confinement up to one hundred twenty days. For the third violation, the judge may revoke the suspension of imposition or execution of sentence, impose sentence if none has been imposed and order that sentence be executed, with credit for time spent in confinement under this section.

(3) In computing the period for which the offender is to be confined, the time between his or her release on probation and his or her arrest may not be taken to be any part of the term of his or her sentence.

(b) A probationer confined for a first or second violation pursuant to subdivision (2), subsection (a) of this section may be confined in jail, and the costs of confining felony probationers shall be paid out of funds appropriated for the Division of Corrections. Whenever the court orders the incarceration of a probationer pursuant to the provisions of subdivision (2), subsection (a) of this section, a circuit clerk shall provide a copy of the order of confinement within five days to the Commissioner of Corrections.

(c) If, despite a violation of the conditions of probation, the court or judge is of the opinion that the interests of justice do not require that the probationer serve his or her sentence or a period of confinement, the judge may, except when the violation was the commission of a felony, again release him or her on probation: Provided, That a judge may otherwise depart from the sentence limitations set forth in subdivision (2), subsection (a) of this section upon making specific written findings of fact supporting the basis for the departure.

WV Legislature

§62-12-11. Probation period.

The period of probation together with any extension thereof shall not exceed seven years. Upon the termination of the probation period, the probation officer shall report to the court the conduct of the probationer during the period of his or her probation, and the court may thereupon discharge the probationer or extend the probation period. Whenever, before the end of the probation period, the probationer has satisfactorily complied with all the conditions of his or her probation and it appears to the court that it is no longer necessary to continue his or her supervision, the court may discharge him or her. All orders extending the probation period and all orders of discharge shall be entered in the records of the court, and a copy of all such orders shall be sent by the clerk of the court to the board within five days after the making of the order.

WV Legislature

§62-12-12. Parole Board generally.

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

(b) The Governor shall appoint one of the nine members to serve as chairperson at the Governor's will and pleasure. In addition to all other powers, duties, and responsibilities granted and assigned to the chairperson by law and rule, the chairperson has the following powers and duties:

(1) To provide for the management of facilities and personnel of the board;

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

(3) To delegate the powers and duties of his or her office to the vice chairperson or other members of the board, who shall act under the direction of the chairperson and for whose acts he or she is responsible: *Provided*, That if the position of chairperson becomes vacant by death, resignation, or otherwise, the vice chairperson shall assume all the powers and duties of the chairperson until such time as a new chairperson is appointed pursuant to the provisions of this subsection;

(4) To employ one full-time administrative employee, who shall be a classified exempt; and

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

(c) The board, from its membership, shall elect a vice chairperson, at least once every year, to serve as chair in the absence of a chairperson. In the absence of or at the direction of the chairperson, the vice chairperson may exercise the powers and duties of the chairperson. The vice chairperson shall, while performing the duties and responsibilities of the chairperson, have all of the statutorily authorized power and duties of the chairperson.

(d) Members of the board shall have at least an undergraduate degree from an accredited college or university or at least five years of actual experience in the fields of corrections, law enforcement, sociology, law, education, psychology, social work, or medicine, or a combination thereof, and shall be otherwise competent to perform the duties of his or her office: *Provided*, That at least three members initially appointed after July 1, 2021, shall have five or more years experience in the fields of mental health, social work, or inmate reentry services. All members currently serving on the board shall continue the terms they are currently serving, unless otherwise removed. The members shall be appointed for

WV Legislature

overlapping terms of six years. Members are eligible for reappointment. The members of the board shall devote their full time and attention to their board duties.

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

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

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

(h) Notwithstanding any provision of this code to the contrary, meetings of the parole board are not subject to the provisions of §6-9A-1 *et seq*. of this code: *Provided*, That hearings before the parole board shall be open to the public.

WV Legislature

§62-12-12a. Parole board panels.

(a) The board shall sit in panels of three members for the purpose of conducting hearings and making determinations concerning the release of any inmate on parole, conducting hearings and making determinations regarding the revocation of parole, considering any eligible parolee for release from further supervision and discharge from parole, conducting parole interviews and conducting any other hearing provided for in this article. Membership on each panel shall be appointed on a rotating basis by the chairperson of the board. Two members of each panel shall constitute a quorum for the transaction of official business.

(b) When the board sits in panels as herein authorized, each panel shall act in the same manner and under the same authority as the full board. All authority, duties, powers and responsibilities of the board on any matter brought before the panel for hearing shall be exercised by the panel as though heard and decided by the full board. Decisions of each panel shall constitute a decision of the board. All procedures of the board relating to the conduct of hearings shall apply to hearings before the panels of the board.

WV Legislature

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The Parole Board, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and subject to the limitations provided in this section, shall release any inmate on parole for terms and upon conditions provided by this article.

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

(1) (A) Has served the minimum term of his or her indeterminate sentence or has served one fourth of his or her definite term sentence; or

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

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

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

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

(C) Notwithstanding any provision of this code to the contrary, any inmate who committed, or attempted to commit, a felony with the use, presentment, or brandishing of a firearm is not eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: *Provided*, That any inmate who committed, or attempted to commit, any violation of §61-2-12 of this code, with the use, presentment, or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this paragraph applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented, or brandished a firearm. An inmate is not ineligible for parole under the provisions of this paragraph because of the commission or attempted commission of a felony with the use, presentment, or brandishing of a firearm unless that fact is clearly stated and included in the indictment or presentment by which the person was charged and was: (i) Found guilty by the court at the time of trial upon a plea of guilty or nolo contendere; (ii) Found guilty by the jury upon submitting to the

WV Legislature

jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) Found guilty by the court if the matter was tried by the court without a jury.

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

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

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

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

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

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

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

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

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

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

(3) Has prepared and submitted to the Parole Board a written parole release plan setting forth proposed plans for his or her place of residence, employment, and, if appropriate, his or her plans regarding education and post-release counseling and treatment which has been approved by the Division of Corrections and Rehabilitation: *Provided*, That an inmate's

WV Legislature

application for parole may be considered by the board without the prior submission of a home plan, but the inmate shall have a home plan approved by the division prior to his or her release on parole. The Commissioner of the Division of Corrections and Rehabilitation, or his or her designee, shall review and investigate the plan and provide findings to the board as to the suitability of the plan: *Provided, however*, That in cases in which there is a mandatory 30-day notification period required prior to the release of the inmate, pursuant to §62-12-23 of this code, the board may conduct an initial interview and deny parole without requiring the development of a plan. In the event the board believes parole should be granted, it may defer a final decision pending completion of an investigation and receipt of the commissioner's findings. Upon receipt of the plan, together with the investigation and findings, the board, through a panel, shall make a final decision regarding the granting or denial of parole;

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

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

(c)(1) Except in the case of an inmate serving a life sentence, a person who has been previously twice convicted of a felony may not be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. An inmate sentenced for life may not be paroled until he or she has served 10 years, and an inmate sentenced for life who has been previously twice convicted of a felony may not be paroled until he or she has served 15 years: *Provided*, That an inmate convicted of first degree murder for an offense committed on or after June 10, 1994 is not eligible for parole until he or she has served 15 years.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, an inmate sentenced for life for offenses committed on or after July 1, 2026, may not be paroled until he or she has served 20 years, and an inmate sentenced for life for offenses committed on or after July 1, 2026, who has been previously twice convicted of a felony may not be paroled until he or she has served 25 years.

(3) Notwithstanding subdivision (1) or (2) of this subsection, an inmate convicted of first degree murder for an offense committed on or after July 1, 2026, is not eligible for parole until he or she has served 25 years.

WV Legislature

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

(2) The Parole Board panel considering the parole may waive the requirement of any report when not available or not applicable as to any inmate considered for parole but, in every case, shall enter in its record its reason for the waiver: *Provided*, That in the case of an inmate who is incarcerated because the inmate has been found guilty of, or has pleaded

WV Legislature

guilty to, a felony under the provisions of §61-8-12 of this code or under the provisions of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-5 of this code, the Parole Board panel may not waive the report required by this subsection. The report shall include a study and diagnosis of the inmate, including an on-going treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: *Provided, however*, That nothing disclosed by the inmate during the study or diagnosis may be made available to any law-enforcement agency, or other party without that inmate's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the parolee to do harm to any person, animal, institution, or property. Progress reports of outpatient treatment are to be made at least every six months to the parole officer supervising the parolee. In addition, in such cases, the Parole Board shall inform the prosecuting attorney of the county in which the person was convicted of the parole hearing and shall request that the prosecuting attorney inform the Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining, and other background information that might be useful in its deliberations.

(m) (1) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate to appear in person before a Parole Board panel and the panel may examine and interrogate him or her on any matters pertaining to his or her parole, including reports before the Parole Board made pursuant to the provisions of this section: *Provided*, That an inmate may appear by video teleconference if the members of the Parole Board panel conducting the examination are able to contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to contemporaneously see each of the members of the panel conducting the examination and hear all of the members' remarks: *Provided, however*, That the requirement that an inmate personally appear may be waived where a physician authorized to do so by the Commissioner of the Division of Corrections and Rehabilitation certifies that the inmate, due to a medical condition or disease, is too debilitated, either physically or cognitively, to appear. The panel shall reach its own written conclusions as to the desirability of releasing the inmate on parole and the majority of the panel considering the release must concur in the decision. The superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the Parole Board. All information, records, and reports received by the Parole Board shall be kept on permanent file.

(2) At a hearing to consider the propriety of granting parole for an inmate of a state correctional facility, a victim or victim’s representative, or a prosecuting attorney or his or her assistants or appointees, may elect to appear in person or by electronic teleconference. The Division of Corrections and Rehabilitation may promulgate policies and procedures to implement the provisions of this subdivision.

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

(o) The Parole Board shall, if requested by the Governor, investigate and consider all

WVLegislature

applications for pardon, reprieve, or commutation and shall make recommendation on the applications to the Governor.

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

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

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

WV Legislature

§62-12-13a. Eligibility date for parole.

When the prisoner has received an indeterminate sentence, the minimum sentence shall be considered as an eligibility date for parole consideration but does not confer in the prisoner the right to be released as of that date.

WV Legislature

§62-12-13b. Special parole considerations for persons convicted as juveniles.

(a) When a person who is serving a sentence imposed as the result of an offense or offenses committed when he or she was less than eighteen years of age becomes eligible for parole pursuant to applicable provisions of this code, including, but not limited to, section twenty-three, article eleven, chapter sixty-one thereof, the parole board shall ensure that the procedures governing its consideration of the person's application for parole ensure that he or she is provided a meaningful opportunity to obtain release and shall adopt rules and guidelines to do so that are consistent with existing case law.

(b) During a parole hearing involving a person described in subsection (a) of this section, in addition to other factors required by law to be considered by the parole board, the parole board shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner during incarceration. The board shall also consider the following:

(1) A review of educational and court documents;

(2) Participation in available rehabilitative and educational programs while in prison;

(3) Age at the time of the offense;

(4) Immaturity at the time of the offense;

(5) Home and community environment at the time of the offense;

(6) Efforts made toward rehabilitation;

(7) Evidence of remorse; and

(8) Any other factors or circumstances the board considers relevant.

WV Legislature

§62-12-13c. Authority of commissioner to establish a nonviolent offense parole program.

(a) The commissioner may establish a nonviolent offense parole program for any inmate of a state correctional facility in which an inmate may be paroled without action of the Parole Board based upon objective standards as set forth in this section, to commence on July 1, 2021.

(b) Notwithstanding any provision of this code to the contrary, any inmate of a state correctional facility is eligible for parole under the nonviolent offense parole program if:

(1) He or she has served at least the minimum term of his or her sentence and is eligible for parole as determined by the parole board; and

(2) He or she qualifies for the nonviolent offense parole program as authorized by this section.

(c) To qualify for the nonviolent offense parole program, the commissioner must determine that the inmate:

(1) Is not serving a sentence for a crime of violence against the person, crime of violence against an animal, or felony for a controlled substance offense which involves actual or threatened violence to a person, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child: *Provided*, That an inmate is ineligible to participate in the nonviolent offense parole program if the sentence from which parole is being considered is aggregated, concurrently or consecutively, with an offense determined disqualifying under this subdivision.

(2) Has successfully completed an individualized rehabilitation treatment program as determined by the division;

(3) Has not previously been released on parole pursuant to this section from the same sentence; and

(4) Has otherwise satisfied the requirements for parole eligibility set forth in §62-12-13 of this code.

(d) Any person released under the nonviolent offense parole program is subject to all conditions of release and sanctions for violations applicable to persons released on parole by the Parole Board, and all parole revocations of persons granted parole pursuant to this section shall be heard in accordance with the provisions of §62-12-19 of this code.

(e) The nonviolent offense parole program authorized by subsection (a) of this section requires no action by the Parole Board as to the release decision if the inmate qualifies for the program and has successfully completed his or her rehabilitation treatment program as determined by the commissioner.

WV Legislature

(f) The commissioner shall develop a policy directive setting forth the processes and procedures to determine successful completion of the rehabilitation treatment program and to provide notice to the inmate. If the inmate fails to successfully complete his or her rehabilitation treatment program, his or her parole shall be determined in accordance with the provisions of §62-12-13 of this code. An inmate who has been denied parole pursuant to the provisions of §62-12-13 of this code and who thereafter successfully completes his or her rehabilitation treatment program prior to his or her next parole review is eligible for release under the nonviolent offense parole program within a reasonable time after he or she has successfully completed the program as determined by the commissioner, provided the inmate remains qualified for release under the nonviolent offense parole program.

WV Legislature

§62-12-14

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

WV Legislature

§62-12-14a

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

WV Legislature

§62-12-15

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

WV Legislature

§62-12-16.

Repealed.

Acts, 1955 Reg. Sess., Ch. 42.

WV Legislature

§62-12-17. Conditions of release on probation and parole.

(a) Release and supervision on parole of any person, including the supervision by the Division of Corrections and Rehabilitation of any person paroled by any other state or by the federal government, shall be upon the following conditions:

(1) That the parolee may not, during the period of his or her parole, violate any criminal law of this or any other state or of the United States;

(2) That the parolee may not, during the period of his or her parole, leave the state without the consent of the Division of Corrections and Rehabilitation;

(3) That the parolee complies with the rules prescribed by the Division of Corrections and Rehabilitation for his or her supervision by the parole officer;

(4) That in every case in which the parolee for a conviction is seeking parole from an offense against a child, defined in §61-8-12 of this code, §61-8B-1 *et seq.* or §61-8D-1 *et seq.* of this code, or similar convictions from other jurisdictions where the parolee is returning or attempting to return to this state pursuant to the provisions of §15A-7-4 of this code, the parolee may not live in the same residence as any minor child nor exercise visitation with any minor child nor may he or she have any contact with the victim of the offense; and

(5) That the parolee, and all federal or foreign state probationers and parolees whose supervision may have been undertaken by this state, pay a fee, based on his or her ability to pay, not to exceed $50 per month to defray the costs of supervision.

(b) The Commissioner of the Division of Corrections and Rehabilitation shall keep a record of all actions taken and account for moneys received. All moneys shall be deposited in a special account in the State Treasury to be known as the Parolee's Supervision Fee Fund. Expenditures from the fund shall be for the purposes of providing the parole supervision required by the provisions of this code and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(c) The Division of Corrections and Rehabilitation shall consider the following factors in determining whether a parolee or probationer is financially able to pay the fee:

(1) Current income prospects for the parolee or probationer, taking into account seasonal variations in income;

(2) Liquid assets of the parolee or probationer, assets of the parolee or probationer that may provide collateral to obtain funds and assets of the parolee or probationer that may be

WV Legislature

liquidated to provide funds to pay the fee;

(3) Fixed debts and obligations of the parolee or probationer, including federal, state and local taxes and medical expenses;

(4) Child care, transportation and other reasonably necessary expenses of the parolee or probationer related to employment; and

(5) The reasonably foreseeable consequences for the parolee or probationer if a waiver of, or reduction in, the fee is denied.

(d) In addition, the Division of Corrections and Rehabilitation may impose, subject to modification at any time, any other conditions which the division considers advisable.

(e) The Division of Corrections and Rehabilitation may order substance abuse treatment as a condition or as a modification of parole, only if the standardized risk and needs assessment indicates the offender has a high risk for reoffending and a need for substance abuse treatment.

(f) The Division of Corrections and Rehabilitation may impose, as an initial condition of parole, a term of reporting to a day report center or other community corrections program only if the standardized risk and needs assessment indicates a moderate to high risk of reoffending and moderate to high criminogenic need. Any parolee required to report to a day report center or other community corrections program is subject to all the rules and regulations of the center or program and may be removed at the discretion of the center's or program's director. The Commissioner of the Division of Corrections and Rehabilitation shall enter into a master agreement with the Division of Administrative Services, Justice and Community Services section to provide reimbursement to counties for the use of community corrections programs by eligible parolees. Any placement by the Division of Corrections and Rehabilitation of a parolee in a day report center or other community corrections program may only be done with the center or program director's consent and the parolee is subject to all of the rules and regulations of the center or program and may be removed by the director.

www.legislature

§62-12-18. Period of parole; discharge.

The period of parole shall be the maximum of any sentence, less deductions for good conduct and work as provided by law, for which the paroled inmate, at the time of release, was subject to imprisonment under his or her definite or indeterminate sentence, as the case may be: *Provided*, That at any time after a parolee has been on parole for a minimum of one-year from the date of his or her release, the Commissioner of the Division of Corrections and Rehabilitation, or his or her designee, may submit a request to the chairperson of the parole board for a parolee's early discharge from parole along with appropriate documentation as to the parolee's good conduct while on parole. The chairperson may, after a review of the request and submission from the commissioner, or his or her designee, when in his or her judgment, the ends of parole have been attained and the best interests of the state and the parolee will be served by the early discharge, release the parolee from further supervision and discharge him or her from parole: *Provided, however*, That an inmate sentenced to serve a life term of imprisonment and released on parole may not be discharged from supervision and parole in a period less than five years from the date of his or her release on parole.

A parolee who has violated the terms of his or her release on parole by confession to, or being convicted of, in any state of the United States, the District of Columbia, or the territorial possessions of the United States, the crime of treason, murder, aggravated robbery, first degree sexual assault, second degree sexual assault, a sexual offense against a minor, incest, or offenses with the same essential elements if known by other terms in other jurisdictions may not be discharged from parole. A parolee serving a sentence in any correctional facility of another state or the United States may, unless incarcerated for one of the above enumerated crimes, be discharged from parole while serving his or her sentence in a correctional facility or be continued on parole or returned to West Virginia as a parole violator, in the discretion of the parole board.

WV Legislature

§62-12-19. Violation of parole.

(a) If at any time during the period of parole there is reasonable cause to believe that the parolee has violated any of the conditions of his or her release on parole, the parole officer may arrest him or her with or without an order or warrant, or the Commissioner of Corrections may issue a written order or warrant for his or her arrest. The written order or warrant is sufficient for his or her arrest by any officer charged with the duty of executing an ordinary criminal process. The commissioner's written order or warrant delivered to the sheriff against the parolee shall be a command to keep custody of the parolee for the jurisdiction of the Division of Corrections. During the period of custody, the parolee may be admitted to bail by the court before which the parolee was sentenced. If the parolee is not released on a bond, the costs of confining the paroled prisoner shall be paid out of the funds appropriated for the Division of Corrections.

(1) If reasonable cause is found to exist that a parolee has violated a term or terms of his or her release on parole that does not constitute:

(A) Absconding supervision;

(B) New criminal conduct other than a minor traffic violation or simple possession of a controlled substance; or

(C) Violation of a special condition of parole designed either to protect the public or a victim; the parole officer may, after consultation with and written approval by the director of parole services, for the first violation, require the parolee to serve a period of confinement up to sixty days or, for the second violation, a period of confinement up to one hundred twenty days: Provided, That the Division of Corrections shall notify the Parole Board when a parolee is serving such a term of confinement and the Parole Board may deny further confinement. A parolee serving a term of confinement in the first or second instance may be confined in jail or any other facility designated by the commissioner, but shall be committed to the custody of the Commissioner of Corrections, and the costs of confining the parolee shall be paid out of funds appropriated for the Division of Corrections: Provided, however, That upon written request, the parolee shall be afforded the right to a hearing within forty-five days before the Parole Board regarding whether he or she violated the conditions of his or her release on parole.

(2) When a parolee is in custody for a violation of the conditions of his or her parole, he or she shall be given a prompt and summary hearing before a Parole Board panel upon his or her written request, at which the parolee and his or her counsel shall be given an opportunity to attend.

(A) If at the hearing it is determined that reasonable cause exists to believe that the parolee has:

(i) Absconded supervision;

www.Legislature

(ii) Committed new criminal conduct other than a minor traffic violation or simple possession of a controlled substance; or

(iii) Violated a special condition of parole design to protect either the public or a victim; the panel may revoke his or her parole and may require him or her to serve in a state correctional institution the remainder or any portion of his or her maximum sentence for which, at the time of his or her release, he or she was subject to imprisonment.

(B) If the Parole Board panel finds that reasonable cause exists to believe that the parolee has violated a condition of release or supervision other than the conditions of parole set forth in subparagraph (A), subdivision (2) of this subsection, the panel shall require the parolee to serve, for the first violation, a period of confinement up to sixty days or, for the second violation, a period of confinement up to one hundred twenty days unless the Parole Board makes specific written findings of fact that a departure from the specific limitations of this paragraph is warranted: Provided, That if the violation of the conditions of parole or rules for his or her supervision is not a felony as set out in section eighteen of this article, the panel may, if in its judgment the best interests of justice do not require a period of confinement, reinstate him or her on parole. The Division of Corrections shall effect release from custody upon approval of a home plan.

(b) Notwithstanding any provision of this code to the contrary, when reasonable cause has been found to believe that a parolee has violated the conditions of his or her parole but the violation does not constitute felonious conduct, the commissioner may, with the written consent of the parolee, allow the parolee to remain on parole with additional conditions or restrictions. The additional conditions or restrictions may include, but are not limited to, participation in any program described in subsection (d), section five, article eleven-c of this chapter. If the parolee complies with the conditions of parole the commissioner may not revoke his or her parole for the conduct which constituted the violation. If the parolee fails to comply with the conditions or restrictions and all other conditions of release, that failure is an additional violation of parole and the commissioner may proceed against the parolee under the provisions of this section for the original violation as well as any subsequent violations.

(c) When a parolee has violated the conditions of his or her release on parole by confession to, or being convicted of, any of the crimes set forth in section eighteen of this article, he or she shall be returned to the custody of the Division of Corrections to serve the remainder of his or her maximum sentence, during which remaining part of his or her sentence he or she is ineligible for further parole.

(d) Whenever a person's parole has been revoked, the commissioner shall, upon receipt of the panel's written order of revocation, convey and transport the paroled prisoner to a state correctional institution. A parolee whose parole has been revoked shall remain in custody until delivery to a corrections officer sent and duly authorized by the commissioner for the removal of the parolee to a state correctional institution. The cost of confining the parolee shall be paid out of the funds appropriated for the Division of Corrections.

(e) When a parolee is convicted of, or confesses to, any one of the crimes enumerated in section eighteen of this article, it is the duty of the Parole Board to cause him or her to be returned to this state for a summary hearing as provided by this article. Whenever a parolee has absconded supervision, the commissioner shall issue a warrant for his or her apprehension and return to this state for the hearing provided in this article: Provided, That the panel considering revocation may, if it determines the best interests of justice do not require revocation, cause the parolee to be reinstated to parole.

(f) A warrant filed by the commissioner shall stay the running of his or her sentence until the parolee is returned to the custody of the Division of Corrections and is physically in West Virginia.

(g) Whenever a parolee who has absconded supervision or has been transferred out of this state for supervision pursuant to section one, article six, chapter twenty-eight of this code is returned to West Virginia due to a violation of parole and costs are incurred by the Division of Corrections, the commissioner may assess reasonable costs from the parolee's inmate funds or the parolee as reimbursement to the Division of Corrections for the costs of returning him or her to West Virginia.

(h) Conviction of a felony for conduct occurring during the period of parole is proof of violation of the conditions of parole and the hearing procedures required by the provisions of this section are inapplicable.

(i) The Commissioner of Corrections may issue subpoenas for persons and records necessary to prove a violation of the terms and conditions of a parolee's parole either at a preliminary hearing or at a final hearing before a Parole Board panel. The subpoenas shall be served in the same manner provided in the Supreme Court of Appeals of West Virginia Rules of Criminal Procedure. The subpoenas may be enforced by the commissioner through application or petition of the commissioner to the circuit court for contempt or other relief.

WV Legislature

§62-12-20. To whom article applies.

The provisions of this article shall be applied to all persons who shall be convicted of a crime committed after this article takes effect. All persons convicted of a crime committed before this article takes effect, whether convicted before or after that time, shall remain subject to the law in effect when the crime was committed, but any such person who consents to be subject to this article may avail himself of its provisions.

WV Legislature

§62-12-21. Repeal of inconsistent laws;"director" construed to mean "board."

All other laws or parts of laws inconsistent with this article are hereby repealed: Provided, however, That nothing in this article shall be construed to affect in any way the laws relating to juvenile probation and parole. Wherever in the official Code of West Virginia the words "director of probation and parole" are used they shall be construed to mean the board of probation and parole.

WV Legislature

§62-12-22. Appointment of counsel for parole violators; authority to appoint; payment of counsel.

Any person accused of a violation of his parole, as set forth in this article, may be represented by counsel at any hearing held for the purpose of determining whether his parole should be revoked. In the event the person accused of a violation of his parole is unable to pay for counsel and desires to have counsel appointed for him he shall present his application for the appointment of counsel and an affidavit reflecting his inability to pay for such counsel to the circuit court in the county in which such person is confined or in the county in which the hearing is to be held for the purpose of determining whether his parole should be revoked, or to the judge thereof in vacation. If it appears to the satisfaction of the court or judge that such person is in fact unable to pay for counsel, such court or judge may appoint counsel to represent such person. Counsel so appointed shall be paid for his services and expenses in accordance with the provisions of article twenty-one, chapter twenty- nine of this code.

WV Legislature

§62-12-23. Notification of parole hearing; victim's right to be heard; notification of release on parole.

(a) Following the sentencing of a person who has been convicted of murder, aggravated robbery, sexual assault in the first or second degree, kidnapping, child abuse resulting in injury, child neglect resulting in injury, arson or a sexual offense against a minor, the prosecuting attorney who prosecuted the offender shall prepare a parole hearing notification form. This form shall contain the following information:

(1) The name of the county in which the offender was prosecuted and sentenced;

(2) The name of the court in which the offender was prosecuted and sentenced;

(3) The name of the prosecuting attorney or assistant prosecuting attorney who prosecuted the offender;

(4) The name of the judge who presided over the criminal case and who sentenced the offender;

(5) The names of the law-enforcement agencies and officers who were primarily involved with the investigation of the crime for which the offender was sentenced; and

(6) The names, addresses and telephone numbers of the victims of the crime for which the offender was sentenced or the names, addresses and telephone numbers of the immediate family members of each victim of the crime, including, but not limited to, each victim's spouse, father, mother, brothers, sisters and any adult household member residing with the victim.

(b) The prosecuting attorney shall retain the original of the parole hearing notification form and shall provide copies of it to the circuit court which sentenced the offender, the Parole Board, the Commissioner of Corrections and to all persons whose names and addresses are listed on the form.

(c) At least forty-five days prior to the date of a parole hearing, the Parole Board shall notify all persons who are listed on the parole hearing notification form, including the circuit court which sentenced the offender, the prosecuting attorney's office that prosecuted the offender and the law-enforcement agency and officer primarily involved in the offense underlying the sentence, of the date, time and place of the hearing. Such notice shall be sent by regular mail, properly addressed and postage prepaid, by electronic mail, or by facsimile. Notice to the victims of the crime for which the offender was sentenced or the immediate family members of each victim of the crime shall be sent by certified mail, return receipt requested. The notice shall state that the victims of the crime have the right to submit a written statement to the Parole Board and to attend the parole hearing to be heard regarding the propriety of granting parole to the prisoner. The notice shall also state that only the victims may submit written statements and speak at the parole hearing unless a victim is deceased,

WV Legislature

is a minor or is otherwise incapacitated.

(d) The panel considering the parole shall inquire during the parole hearing as to whether the victims of the crime or their representatives, as provided in this section, are present. If so, the panel shall permit those persons to speak at the hearing regarding the propriety of granting parole for the prisoner.

(e) If the panel grants parole, it shall immediately set a date on which the prisoner will be released. Such date shall be no earlier than thirty days after the date on which parole is granted. On the date on which parole is granted, the Parole Board shall notify all persons listed on the parole hearing notification form, including the circuit court which sentenced the offender and office of the prosecuting attorney that prosecuted the offender, that parole has been granted and the date of release. This notice shall be sent by the method prescribed in subsection (c) of this section. A written statement of reasons for releasing the prisoner, prepared pursuant to subsection (b), section thirteen of this article, shall be provided upon request to all persons listed on the parole hearing notification form, including the circuit court which sentenced the offender and office of the prosecuting attorney that prosecuted the offender.

WV Legislature

§62-12-24. Request to continue for good cause and timely notice required.

(a) Any inmate scheduled for a parole interview shall, if he or she desires to continue the interview, file with the institutional parole officer a written waiver of his or her right to an interview on the date set on a form provided by the commissioner of corrections at least thirty days prior to the interview date. A copy of the waiver shall be supplied to the board of parole.

(b) The board shall propose for promulgation a legislative rule pursuant to article three, chapter twenty-nine-a of this code setting forth criteria constituting emergency circumstances where a waiver of interview filed less than thirty days prior to the scheduled interview shall constitute good cause for a continuance.

(c) Any inmate failing to appear for his or her scheduled parole interview who has not waived his or her interview pursuant to subsection (a) or (b) of this section shall be deemed to have waived his or her right to a parole interview for a period of twelve months from the date of the interview at which he or she failed to appear. The panel conducting the interview shall have discretion to reset the interview with notice to the inmate and any other person or persons entitled by law to notice, prior to the expiration of the twelve-month waiver period.

WV Legislature

§62-12-25

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

WV Legislature

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

(a) Notwithstanding any other provision of this code to the contrary, any defendant convicted after the effective date of this section of a violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et seq*., §61-8C-1 *et seq*., and §61-8D-1 *et seq*., of this code shall, as part of the sentence imposed at final disposition, be required to serve, in addition to any other penalty or condition imposed by the court, a period of supervised release of up to 50 years: *Provided*, That the period of supervised release imposed by the court pursuant to this section for a defendant convicted after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, of a violation of §61-8B-3 or §61-8B-7 of this code and sentenced pursuant to §62-12-9(a) of this code, shall be no less than 10 years: *Provided, however*, That a defendant designated after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, as a sexually violent predator pursuant to the provisions of §15-12-2a of this code shall be subject, in addition to any other penalty or condition imposed by the court, to supervised release for life: *Provided further*, That a defendant convicted of a violation of §61-8A-2, §61-8A-4, or §61-3C-14b of this code on and after the effective date of the amendment to this section enacted during the 2021 regular session of the Legislature is subject to the provisions of this section: *And Provided further*, That pursuant to the provisions of subsections (a) and (h) of this section, a court may modify, terminate, or revoke any term of supervised release imposed pursuant to this subsection.

(b) Any person required to be on supervised release between the minimum term of 10 years and life pursuant to the provisos of §62-12-26(a) of this code also shall be further prohibited from:

(1) Establishing a residence or accepting employment within 1,000 feet of a school or child care facility or within 1,000 feet of the residence of a victim or victims of any sexually violent offenses for which the person was convicted;

(2) Loitering within 1,000 feet of a school or child care facility or within 1,000 feet of the residence of a victim or victims of any sexually violent offenses for which the person was convicted: *Provided*, That the imposition of this prohibition applies to a defendant convicted after the effective date of this section as amended and reenacted during the regular session of the Legislature, 2015: *Provided, however*, That as used in this subdivision "loitering" means to enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose: *Provided further*, That nothing in this subdivision shall be construed to prohibit or limit a person's presence within 1,000 feet of a location or facility referenced in this subdivision if the person is present for the purposes of supervision, counseling, or other activity in which the person is directed to participate as a condition of supervision or where the person has the express permission of his or her supervising officer to be present;

(3) Establishing a residence or any other living accommodation in a household in which a

child under 16 resides if the person has been convicted of a sexually violent offense against a child, unless the person is one of the following:

(i) The child's parent;

(ii) The child's grandparent; or

(iii) The child's stepparent and the person was the stepparent of the child prior to being convicted of a sexually violent offense, the person's parental rights to any children in the home have not been terminated, the child is not a victim of a sexually violent offense perpetrated by the person, and the court determines that the person is not likely to cause harm to the child or children with whom such person will reside: *Provided*, That nothing in this subsection shall preclude a court from imposing residency or employment restrictions as a condition of supervised release on defendants other than those subject to the provision of this subsection.

(c) In addition to any other prohibitions, any person found guilty of violating the provisions of §61-8B-3 or §61-8B-7 of this code is also prohibited from being in a supervisory position, playing a supervisory role, or being responsible for groups of children, including, but not limited to, religious organizations, Boy Scouts, Girl Scouts, 4H organizations, sporting and scholastic teams, music, sporting, and theatre groups and camps, and summer day camps.

(d) The period of supervised release imposed by the provisions of this section shall begin upon the expiration of any period of probation, the expiration of any sentence of incarceration or the expiration of any period of parole supervision imposed or required of the person so convicted, whichever expires later.

(e) Any person sentenced to a period of supervised release pursuant to the provisions of this section shall be supervised by a multi-judicial circuit probation officer, if available. Until a multi-judicial circuit probation officer is available, the offender shall be supervised by the probation office of the sentencing court or of the circuit in which he or she resides.

(f) A defendant sentenced to a period of supervised release is subject to any or all of the conditions applicable to a person placed upon probation pursuant to the provisions of §62-12-9 of this code: *Provided*, That any defendant sentenced to a period of supervised release pursuant to this section shall participate in appropriate offender treatment programs or counseling during the period of supervised release unless the court determines the offender treatment programs or counseling to no longer be appropriate or necessary and makes express findings in support thereof.

(g) The sentencing court may, based upon defendant's ability to pay, impose a supervision fee to offset the cost of supervision. The fee shall not exceed $50 per month. The fee may be modified periodically based upon the defendant's ability to pay.

(h) *Modification of conditions or revocation*. — The court may:

WV Legislature

(1) Terminate a term of supervised release and discharge the defendant released at any time after the expiration of two years of supervised release, pursuant to the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interests of justice;

(2) Extend a period of supervised release if less than the maximum authorized period was previously imposed or modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, consistent with the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) Revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on supervised release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to revocation of probation, finds by clear and convincing evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this subdivision may not be required to serve more than the period of supervised release; or

(4) Order the defendant to remain at his or her place of residence during nonworking hours and, if the court directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this subdivision may be imposed only as an alternative to incarceration.

(i) *Written statement of conditions*. — The court shall direct that the probation officer provide the defendant with a written statement at the defendant's sentencing hearing that sets forth all the conditions to which the term of supervised release is subject and that it is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(j) *Supervised release following revocation*. — When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of supervised release authorized under §62-12-26(a) of this code, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of the term of supervised release shall not exceed the term of supervised release authorized by this section less any term of imprisonment that was imposed upon revocation of supervised release.

(k) *Delayed revocation*. — The power of the court to revoke a term of supervised release for violation of a condition of supervised release and to order the defendant to serve a term of imprisonment and, subject to the limitations in §62-12-26(j) of this code, a further term of supervised release extends beyond the expiration of the term of supervised release for any period necessary for the adjudication of matters arising before its expiration if, before its

WV Legislature

expiration, a warrant or summons has been issued on the basis of an allegation of a violation.

WV Legislature

§62-12-27. Mandatory prerelease risk assessment of certain sex offenders.

Prior to discharging an inmate convicted of a violation of section twelve, article eight, chapter sixty-one of this code or a felony violation of the provisions of article eight-b or eight-d of said chapter at the expiration of the term of their sentence, the Division of Corrections shall perform an assessment to determine the statistical risk that the inmate will reoffend after being released from the division's custody. Prior to releasing the inmate, the division shall forward the results of the assessment to the inmate's supervising entity.

WV Legislature

§62-12-28. Authorizing Supreme Court to develop pilot pretrial release programs.

(a) The West Virginia Supreme Court of Appeals is hereby authorized to develop pretrial release programs in all the circuits of this state with the aim of reducing regional jail populations of short-term detainees while ensuring the safety of law-abiding citizens.

(b) The programs authorized by subsection (a) of this section shall be available only to persons charged with non-violent misdemeanors.

(c) Any program developed pursuant to this section shall require input from arresting officers and shall allow for electronic authorization by magistrates of a charged person's participation.

(d) In developing the programs in the state for examples of successful practices authorized by this section the court is requested to review any existing programs.

(e) As part of any pretrial release program, the court is requested to develop an electronic system for pretrial court date reminders, through text messages, emails, or other electronic means, to reduce the risk of failure to appear, which should be available to all defendants on pretrial release and their counsel of record.

(f) The Supreme Court of Appeals is hereby requested to provide annual reports to the President of the Senate and the Speaker of the House of Delegates as to the efficacy of the programs.

WV Legislature

§62-12-29. Shared information for community supervision.

(a) The Administrative Director of the Supreme Court of Appeals of West Virginia is requested to assemble a community supervision committee, to include representatives of the judiciary, probation, parole, day report centers, magistrates, sheriffs, corrections, and other members at the discretion of the director. The administrative director shall appoint a chair from among the members and attend the meeting ex officio.

(b) The committee shall:

(1) Design and deploy a method for probation officers, parole officers, day report centers, and others providing community supervision to electronically share offender information and assessments;

(2) Coordinate information reporting and access across agencies continuing supervision;

(3) Collect and share information about assessed and collected restitution among agencies continuing supervision;

(4) Collect sentencing-level data to enable the study of sentencing practices across the state;

(5) Coordinate with the Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency, and Correction in the discharge of these duties; and

(6) Research and recommend a means for the development and deployment of an electronic system for pretrial court date reminders, through text messages, emails, or other electronic means, to reduce the risk of failure to appear, which should be available to all defendants on pretrial release and their counsel of record.

(c) The committee shall annually submit a report on its activities during the previous year, on or before September 30, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature.

WV Legislature