

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939

ENROLLED

HOUSE BILL No. 6

*(Originating in the Committee on the
Judiciary)*

(By Mr. _____)

PASSED

Feb. 21,

1939

In Effect

from

Passage

ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 6

(Originating in the Committee on the Judiciary)

[Passed February 21, 1939; in effect from passage.]

AN ACT to amend chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article twelve, relating to probation and parole, and to repeal section twenty-two, article eleven, chapter sixty-one and section twenty-eight, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding thereto a new article to be numbered article twelve, to read as follows:

Article 12. Probation and Parole.

Section 1. *Courts Having Authority to Place Offenders on*

2 *Probation.* Any court of record of this State having original

3 jurisdiction of criminal actions shall have authority as pro-
4 vided in this article to place on probation any person con-
5 victed of a crime.

Sec. 2. *Eligibility for Probation.* All persons not pre-
2 viously convicted of felony who are found guilty of or plead
3 guilty to any felony the maximum penalty for which is less
4 than life imprisonment, and all persons whether previously
5 convicted or not who are found guilty of or plead guilty to
6 any misdemeanor shall be eligible for probation.

Sec. 3. *Suspension of Sentence and Release on Probation.*
2 Whenever, upon the conviction of any person eligible for pro-
3 bation under the preceding section, it shall appear to the
4 satisfaction of the court that the character of the offender and
5 the circumstances of the case indicate that he is not likely
6 again to commit crime and that the public good does not re-
7 quire that he be fined or imprisoned, the court, upon applica-
8 tion or of its own motion, may suspend the imposition or
9 execution of sentence and release the offender on probation
10 for such period and upon such conditions as are provided by
11 this article; but in no case, except as provided by the follow-
12 ing section, shall the court have authority to suspend the
13 execution of a sentence after the convicted person has been

14 imprisoned for ten days under the sentence.

Sec. 4. *Probation of Offenders Convicted in Courts other*
 2 *than Courts of Record.* Whenever any person is found guilty
 3 of or pleads guilty to a crime in a court which is not a court
 4 of record, he may at any time within thirty days after im-
 5 position of sentence file with the court of record to which an
 6 appeal would lie, or with the judge thereof in vacation, his
 7 petition in writing together with a transcript of the docket
 8 of the court in which he was convicted, requesting that he be
 9 placed on probation, whereupon the court, or the judge
 10 thereof, shall have power to suspend the execution of
 11 sentence and to release the petitioner on probation.

Sec. 5. *Probation Officers.* The judge of any court having
 2 authority to place offenders on probation may appoint a court
 3 or county probation officer. In making this appointment,
 4 the judge may, if he so desires, select the sheriff of any county,
 5 who by virtue of such appointment shall *ex officio* be proba-
 6 tion officer for the county. In lieu of or in addition to the
 7 probation officer provided for by this section, the judge may
 8 avail himself of services of state probation and parole officers.

Sec. 6. *Powers and Duties of Court or County Probation*

2 *Officers.* Each court or county probation officer shall in-
3 vestigate all cases referred to him for investigation by the
4 court and shall report in writing thereon. He shall furnish
5 to each person released on probation under his supervision a
6 written statement of the conditions of his probation together
7 with a copy of the rules and regulations prescribed by the
8 court for the supervision of probationers. He shall keep him-
9 self informed concerning the conduct and condition of those
10 under his supervision and shall report thereon in writing as
11 often as the court may require. He shall use all practicable
12 and suitable methods to aid and encourage them and to bring
13 about improvement in their conduct and condition. He shall
14 keep detailed records of his work, shall keep accurate and
15 complete accounts of and give receipts for all money collected
16 from persons under his supervision, and shall pay over the
17 money to such persons as the court may designate. He shall
18 give bond with good security, to be approved by the court,
19 in a penalty of not less than one thousand nor more than three
20 thousand dollars, as the court may determine. He shall also
21 perform such other duties as the court may require. He shall

22 have authority, with or without an order or warrant, to arrest
23 any probationer.

Sec. 7. *Preliminary Investigation; Report on Prospective*
2 *Probationers.* When directed by the court, the probation
3 officer shall make a careful investigation of, and a written re-
4 port with recommendations concerning, any prospective proba-
5 tioner. Insofar as practicable this report shall include
6 information concerning the offenders' court and criminal
7 record, occupation, family background, education, habits
8 and associations, mental and physical condition, the names,
9 relationship, ages and condition of those dependent upon
10 him for support, and such other facts as may aid the
11 court in determining the propriety and conditions of his
12 release on probation. No person convicted of felony shall be
13 released on probation until this report shall have been pre-
14 sented to and considered by the court. The court may in its
15 discretion request such a report concerning any person con-
16 victed of a misdemeanor. A copy of all reports shall be filed
17 with the Director of Probation and Parole.

Sec. 8. *Record of Order as to Release on Probation.* Orders
2 granting or refusing release on probation shall contain a brief

3 statement by the court of the reasons for its action and shall be
4 entered of record. A copy of all orders granting release on
5 probation, of all orders refusing such release in felony cases,
6 and of all orders revoking any previous order shall be sent by
7 the clerk of the court to the Director of Probation and Parole
8 within five days after the making of the order.

Sec. 9. *Conditions of Release on Probation.* Release on
2 probation shall be upon the following conditions:

3 (1) That the probationer shall not, during the term of
4 his probation, violate any criminal law of this or any other
5 State, or of the United States.

6 (2) That he shall not, during the term of his probation,
7 leave the State without the consent of the court which placed
8 him on probation.

9 (3) That he shall comply with the rules and regulations
10 prescribed by the court or by the Director of Probation and
11 Parole, as the case may be, for his supervision by the proba-
12 tion officer.

13 (4) That he shall enter into a bond in such sum as the court
14 may direct, with or without sureties, to perform the conditions
15 of his probation, which bond shall be payable to the State of

16 West Virginia and shall be for the protection of all persons
17 injured by any breach of the conditions of probation.

18 In addition, the court may impose, subject to modification
19 at any time, any other conditions which it may deem advisable,
20 including any of the following:

21 (1) That he shall make restitution or reparation, in whole
22 or in part, immediately or within the period of probation, to
23 any party injured by the crime for which he has been con-
24 convicted.

25 (2) That he shall pay any fine assessed and the costs of
26 the proceeding in such installments as the court may direct.

27 (3) That he shall make contribution from his earnings, in
28 such sums as the court may direct, for the support of his de-
29 pendants.

Sec. 10. *Violation of Probation; Revocation and Arrest.* If

2 at any time during the period of probation there shall be
3 reasonable cause to believe that the probationer has violated
4 any of the conditions of his probation, the probation officer
5 may arrest him with or without an order or warrant, or
6 the court which placed him on probation, or the judge
7 thereof in vacation, may issue an order for his arrest, where-

8 upon he shall be brought before the court for a prompt
9 and summary hearing. If it shall then appear to the satis-
10 faction of the court that any condition of probation has been
11 violated, the court may revoke the suspension of imposition
12 or execution of sentence, impose sentence if none has been
13 imposed, and order that sentence be executed. In computing
14 the period for which the offender is to be imprisoned, the time
15 between his release on probation and his arrest shall not be
16 taken to be any part of the term of his sentence. If, despite
17 a violation of the conditions of probation, the court shall be
18 of the opinion that the interests of justice do not require that
19 the probationer serve his sentence, it may, except when the
20 violation was the commission of a felony, again release him
21 on probation.

Sec. 11. *Probation Period; Termination or Extension; Dis-*
2 *charge; Record.* The period of probation together with any
3 extension thereof shall not exceed five years, unless the
4 maximum period for which the probationer might have been
5 imprisoned is more than five years, in which case it may be for
6 such maximum period. Upon the termination of the pro-
7 bation period, the probation officer shall report to the court

8 the conduct of the probationer during the period of his
9 probation, and the court may thereupon discharge the pro-
10 bationer or extend the probation period. Whenever, before
11 the end of the probation period the probationer has satis-
12 factorily complied with all the conditions of his probation and
13 it appears to the court that it is no longer necessary to con-
14 tinue his supervision, the court may discharge him. All
15 orders extending the probation period and all orders of dis-
16 charge shall be entered in the records of the court, and a copy
17 of all such orders shall be sent by the clerk of the court to the
18 Director of Probation and Parole within five days after the
19 making of the order.

Sec. 12. *Director of Probation and Parole.* The Governor,
2 by and with the advice and consent of the Senate, shall
3 appoint a Director of Probation and Parole, whose term of
4 office shall be four years. In the event of the inability of the
5 Director to act, the Governor may appoint some person to act
6 temporarily in his stead. The Director shall not engage in
7 any other business or profession, nor hold any other public
8 office, nor shall he hold an office in any political party. He
9 shall receive an annual salary, to be fixed by the Governor,

10 not to exceed six thousand dollars and necessary expenses in-
11 curred in the discharge of his official duties.

Sec. 13. *Powers and Duties of the Director.* The Director
2 of Probation and Parole, whenever he shall be of the opinion
3 that the best interests of the State and of the prisoner will be
4 subserved thereby, shall have authority to release on parole,
5 with the approval of the Governor, for such term and upon
6 such conditions as are provided by this article, any person
7 who is eligible for parole. In the case of a person sentenced
8 to any penal or correctional institution of this State, it shall
9 be the duty of the Director, as soon as such person becomes
10 eligible to consider the advisability of his release on parole,
11 and in the event of a refusal to grant parole the Director shall
12 reconsider the case at least once every year thereafter as long
13 as such person shall remain a prisoner. In the case of a
14 person sentenced to any city or county jail in the State the
15 Director shall act only upon written application for parole.
16 No order of the Director granting release on parole shall be
17 valid unless signed by the Governor.

18 The Director shall, with the approval of the Governor,
19 adopt rules and regulations governing the procedure in the
20 granting of parole. He shall secure all available information

21 which may aid in determining the advisability of releasing a
22 prisoner on parole, including such a report as is required by
23 section seven of this article in the case of prospective proba-
24 tioners.

25 The Director shall have general supervisory control over
26 all court or county probation officers. He shall be charged
27 with the duty of supervising all criminals released on proba-
28 tion and placed in the charge of a state probation and parole
29 officer, and of all criminals released on parole under this or
30 any former law of this State. He shall also be charged with
31 the duty of supervising all probationers and parolees whose
32 supervision may have been undertaken by this State by rea-
33 son of any interstate compact entered into pursuant to the
34 uniform act for out-of-state parolee supervision. The Director
35 shall prescribe rules and regulations for the supervision of
36 probationers and parolees. All information, records and re-
37 ports received by him shall be kept on permanent file.

38 The Director and his designated agents shall at all times
39 have access to criminals imprisoned in any penal or correc-
40 tional institution of this State or in any city or county jail in
41 this State, and shall have power to obtain any information or

42 aid necessary to the performance of their duties from other
43 departments and agencies of the State or of any political sub-
44 division thereof.

45 The Director shall, if so requested by the Governor, in-
46 vestigate and consider all applications for pardon, reprieve or
47 commutation, and shall make recommendations thereon to the
48 Governor.

Sec. 14. *Officers and Staff.* The Director of Probation and
2 Parole shall have authority to appoint such state probation and
3 parole officers as may be necessary to the proper administra-
4 tion of this article, and to employ clerical assistants. He shall
5 determine the qualifications of probation and parole officers
6 and may from time to time conduct competitive examinations
7 as a basis for their selection.

8 The state probation and parole officers shall receive annual
9 salaries of not less than twenty-four hundred dollars nor
10 more than thirty-six hundred dollars, to be fixed in each case
11 by the Director. The Director shall also fix the salaries of all
12 clerical assistants. All persons appointed or employed by
13 the Director shall be paid all necessary expenses incurred in
14 the discharge of their duties.

Sec. 15. *Powers and Duties of State Probation and Parole*

2 *Officers.* Each state probation and parole officer shall in-
3 vestigate all cases referred to him for investigation by any
4 court or by the Director of Probation and Parole and shall
5 report in writing thereon. He shall furnish to each person
6 released on probation or parole under his supervision a
7 written statement of the conditions of his probation or parole
8 together with a copy of the rules and regulations prescribed
9 by the court or by the Director, as the case may be, for the
10 supervision of probationers and parolees. He shall keep him-
11 self informed concerning the conduct and condition of each
12 person under his supervision and shall report thereon in writ-
13 ing as often as the court or the Director may require. He shall
14 use all practicable and suitable methods to aid and encourage
15 persons on probation or parole and to bring about improve-
16 ment in their conduct and condition. He shall keep detailed
17 records of his work, shall keep accurate and complete accounts
18 of and give receipts for all money collected from persons under
19 his supervision, and shall pay over the money to such persons
20 as the court or Director may designate. He shall give bond
21 with good security, to be approved by the Director, in a

22 penalty of not less than one thousand nor more than three
23 thousand dollars, as the Director may determine. He shall also
24 perform such other duties as the Director may require. He
25 shall have authority, with or without an order or warrant, to
26 arrest any probationer or parolee.

Sec. 16. *Eligibility for Parole.* Any person imprisoned in
2 any penal or correctional institution of this State or in any
3 city or county jail in this State under a sentence less than a
4 life sentence, whether definite or indeterminate, who has not
5 previously been twice convicted of felony, shall, except as
6 provided by section nineteen of this article, be eligible for
7 parole at any time. Except as provided in the case of one
8 serving a life sentence, no person who has previously been
9 twice convicted of felony may be released on parole until he
10 has served the minimum term provided by law for the crime
11 for which he was convicted. No person sentenced for life
12 may be paroled until he has served ten years, and no person
13 sentenced for life who has previously been twice convicted
14 of felony may be paroled until he has served fifteen years.

Sec. 17. *Conditions of Release on Parole.* Release on parole
2 shall be upon the following conditions:

3 (1) That the parolee shall not, during the period of his
4 parole, violate any criminal law of this or any other State, or
5 of the United States.

6 (2) That he shall not, during the period of his parole,
7 leave the State without the consent of the Director of Pro-
8 bation and Parole.

9 (3) That he shall comply with the rules and regulations
10 prescribed by the Director for his supervision by the pro-
11 bation and parole officer.

12 (4) That he shall enter into a bond in such sum as the
13 Director may require, with or without sureties, to perform
14 the conditions of his parole, which bond shall be payable to
15 the State of West Virginia and shall be for the protection of
16 all persons injured by any breach of the conditions of parole.

17 In addition, the Director may impose, subject to modifica-
18 tion at any time, any other conditions which he may deem
19 advisable.

Sec. 18. *Period of Parole.* The period of parole shall in all
2 cases be the maximum period for which, at the time of his re-
3 lease, the parolee was subject to imprisonment under his sen-
4 tence.

Sec. 19. *Violation of Parole; Revocation and Arrest.* If
2 at any time during the period of parole, there shall be reason-
3 able cause to believe that the parolee has violated any of the
4 conditions of his parole, the probation and parole officer may
5 arrest him with or without an order or warrant, or the Director
6 of Probation and Parole may issue a written order for his
7 arrest, which order shall be a sufficient warrant for his arrest
8 by any officer charged with the duty of executing an ordinary
9 criminal process, whereupon, unless the Director shall other-
10 wise order, he shall be returned to the prison from which he
11 was released. If upon a prompt and summary hearing, which
12 the parolee and his counsel shall be given an opportunity to
13 attend, it shall appear to the satisfaction of the Director that
14 the parolee has violated any condition of parole, the Director
15 may revoke the parole and may require him to serve in prison
16 the whole or any part of the maximum period for which, at the
17 time of his release, he was subject to imprisonment under his
18 sentence: *Provided, however,* That if he has violated his parole
19 by committing a felony, he shall be required to serve such
20 maximum period, and during this period he shall be ineligible
21 for further parole. If, despite a violation of the conditions of

22 parole, the Director shall be of the opinion that the interests of
 23 justice do not require that the parole be revoked, he may,
 24 except when the violation was the commission of a felony,
 25 again release him on parole.

Sec. 20. *To Whom Article Applies.* The provisions of this
 2 article shall be applied to all persons who shall be convicted
 3 of a crime committed after this article takes effect. All persons
 4 convicted of a crime committed before this article takes effect,
 5 whether convicted before or after that time, shall remain sub-
 6 ject to the law in effect when the crime was committed, but
 7 any such person who consents to be subject to this article may
 8 avail himself of its provisions.

Sec. 21. *Repeal of Inconsistent Laws.* Section twenty-two,
 2 article eleven, chapter sixty-one and section twenty-eight,
 3 article five, chapter twenty-eight of the code of West Virginia,
 4 one thousand nine hundred thirty-one, and all other laws
 5 or parts of laws inconsistent with this article are hereby re-
 6 pealed: *Provided, however,* That nothing in this article shall
 7 be construed to affect in any way the laws relating to juvenile
 8 probation and parole.

Sec. 22. *Provisions of Act Severable.* The provisions of

2 this act shall be construed as severable and if any part is
3 held unconstitutional, or for any other reason invalid, the
4 remaining parts shall not be affected thereby.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frank M. Miller
 Acting Chairman Senate Committee

Reed B. Baxter
 Chairman House Committee

Originated in the *Committee on the Judiciary*

Takes effect *from* passage.

Shoups
 Clerk of the Senate

W. S. Hall
 Clerk of the House of Delegates

Wm. S. O'Brien
 President of the Senate

James K. Thomas
 Speaker House of Delegates

The within *approved* this the *27th*

day of *February*, 1939.

James K. Thomas
 Governor.



Filed in the office of the Secretary of State
 of West Virginia. **FEB 27 1939**
 Wm. S. O'BRIEN,
 Secretary of State