

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1957



ENROLLED

HOUSE BILL No. 146

(By Mr. Chilton & Brotherton)



PASSED March 9 1957

In Effect 90 days from Passage



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(By MR. CHILTON and MR. BROTHERTON)

[Passed March 9, 1957; in effect ninety days from passage.]

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article six-a, relating to sentencing, commitment and control of sex offenders.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be designated article six-a, to read as follows:

Section 1. *Incest and Crimes Against Nature; Commit-*
2 *ment for Pre-Sentence Examinations.*—If a person is con-
3 victed under chapter sixty-one, article eight, section
4 twelve or thirteen of the code of West Virginia, one
5 thousand nine hundred thirty-one, as amended, the court

6 shall commit him to the West Virginia board of control
7 for pre-sentence social, physical and mental examina-
8 tions. The court and all public officials shall make avail-
9 able to the board of control, upon its request, all pertinent
10 data in their possession in respect to the case.

Sec. 2. *Rape and Other Sex Crimes.*—If a person is con-
2 victed under chapter sixty-one, article two, section fifteen,
3 *Provided*, the sentence of the court is not death, or chap-
4 ter sixty-one, article eight, section eleven, or section
5 twenty-eight or under chapter forty-nine, article seven,
6 section seven of the code of West Virginia, one thousand
7 nine hundred thirty-one, as amended, wherein the of-
8 fense under chapter forty-nine, article seven, section seven
9 relates to sex acts, the court may commit him to the
10 board of control for such a pre-sentence examination as
11 the court is of the opinion that such an examination is
12 necessary and proper in the case. The court and all public
13 officials shall make available to the board of control, upon
14 its request, all pertinent data in their possession with
15 respect to the case.

Sec. 3. *Transportation.*—When the court commits a per-

2 son to the board of control in accordance with section one
3 or two for pre-sentence examinations, the court shall
4 order him conveyed by the proper county authorities to
5 some place of detention approved or established by the
6 board of control.

Sec. 4. *Report of Examination.*—Upon completion of
2 the examination but not later than sixty days after the
3 commitment order, a report of the results of the exami-
4 nation and recommendation of the board of control shall
5 be sent to the court.

Sec. 5. *Sentence Imposed.*—If it appears from such
2 reports that the board does not recommend specialized
3 treatment for the person's mental and physical abbera-
4 tions, the court shall order the proper court authorities to
5 bring him before the court and shall sentence him in the
6 manner provided by law or place him on probation if the
7 case warrants.

Sec. 6. *Commitment to the Board.*—If it appears from
2 said report that the board of control recommends spe-
3 cialized treatment for the person's mental or physical
4 abberations, the court shall either order him brought

5 before the court by the proper county authorities and
6 place him on probation with the requirement as a con-
7 dition of such probation that he receives out-patient treat-
8 ment in such manner as the court shall prescribe or com-
9 mit him to the board of control under this article.

Sec. 7. *The Effect of Appeal from a Judgment of*
2 *Convictions.*—(a) The right of a convict to appeal from
3 the judgment of conviction is not affected by this article.

4 (b) If a person who has been convicted and committed
5 to the board of control appeals from a conviction the
6 execution of the commitment to the board of control shall
7 not be stayed by the appeal except as provided in para-
8 graph (c).

9 (c) If the committing court is of the opinion that the
10 appeal was taken in good faith and that the question
11 raised merits review by an appellate court, or when there
12 has been filed with the court a certificate that a judge of
13 an appellate court is of the opinion that questions have
14 been raised that merit review, the judge of the court in
15 which the person was convicted may direct that such per-
16 son be left at liberty under such conditions as in the

17 judge's opinion will insure his submission to the control
18 of the board of control at the proper time if it is deter-
19 mined on the appeal that the board is entitled to custody.

Sec. 8. Notice of Commitments; Treatment; Transfer;

2 *Use of Other Facilities.*—(a) If a court commits a person
3 to the board of control it shall at once notify the board of
4 control of such action in writing.

5 (b) The board of control shall then arrange for his
6 treatment in the institution in this state best suited in
7 its judgment to care for him. It may transfer him to or
8 from any institution to provide for him according to his
9 needs and to protect the public. The board of control
10 may, irrespective of his consent, require participation by
11 him in vocational, physical, educational and correctional
12 training and activities; may require such modes of life
13 and conduct as seem best adapted to fit him for the re-
14 turn to full liberty without danger to the public; and may
15 make use of other methods of treatment and any treat-
16 ment conducive to the correction of the person and to
17 the prevention of future violations of law by him.

18 (c) The board of control may make use of law enforce-

19 ment, detention, parole, medical psychiatry, educational,
20 correctional, segregative and other facilities, institutions
21 and agencies, public or private, within the state.

22 (d) No person placed in an institutional agency may be
23 released therefrom except to the board of control or after
24 approval of such release by the board of control.

Sec. 9. *Periodic Examinations.*—The board of control
2 shall make periodic examinations of all persons within
3 its control under this section for the purpose of determin-
4 ing whether the existing orders and dispositions in indi-
5 vidual cases should be modified or continued in force.
6 These examinations may be made as frequently as the
7 board of control considers desirable and shall be made
8 with respect to every person at intervals not exceeding
9 one year. The board of control shall keep written records
10 of all examinations and conclusions predicated thereon,
11 and of all orders concerning the disposition or treatment
12 of every person under its control. Failure of the board of
13 control to examine a person committed to it or to make
14 periodic examinations shall not entitle him to a discharge
15 from the control of the board of control, but shall entitle

16 him to petition the committing court for an order of dis-
17 charge and the court shall discharge him unless it appears
18 in accordance with section thirteen that there is necessity
19 for further control.

Sec. 10. *Parole*.—Any person committed as provided
2 in this article may be paroled if it appears to the satis-
3 faction of the board of control, after recommendation by a
4 special review board of five members, appointed by the
5 board of control, a majority of the members of which shall
6 not be connected with the board of control, and two of
7 whom shall be qualified psychiatrists, that he is capable
8 of making acceptable adjustment in society. The board of
9 control may recommend to the board of probation and
10 parole regulations for parole, revocation of parole and
11 supervision of parolees. The parolee, however, will be
12 amenable to the orders, directives and control of the board
13 of probation and parole while he is paroled and in the
14 event his parole is revoked, he will be recommitted to
15 the custody of the board of control.

Sec. 11. *Duration of Control*.—The board of control shall
2 keep every person committed to it under this section under

3 its control and shall retain him, subject to the limitations
4 of section twelve, under supervision and control, so long
5 as in its judgment such control is necessary for the pro-
6 tection of the public. The board of control shall discharge
7 any such person as soon as in its opinion there is reason-
8 able probability that he can be given full liberty without
9 danger to the public, but no person convicted of a felony
10 shall, without the written approval of the committing
11 court, be discharged.

Sec. 12. *Termination of Control.*—Every person com-
2 mitted to the board of control who has not been discharged
3 from its control as provided in section eleven, shall be
4 discharged at the expiration of the maximum term pre-
5 scribed by law for the offense for which he was convicted
6 or the expiration of one year, whichever is the greater,
7 unless the board of control has previously thereunto made
8 an order directing that he remain subject to its control
9 for a longer period and has applied to the committing
10 court for a review of said order as provided in section
11 thirteen.

Sec. 13. *Continuance of Control; Order and Application*

2 *for Review by the Committing Court.*—If the board of
3 control is of the opinion that discharge of a person from
4 its control at the time provided in section twelve would
5 be dangerous to the public for reasons set forth in section
6 fourteen, it shall make an order directing that he remain
7 subject to its control beyond that period; and shall make
8 application to the committing court for a review of that
9 order at least ninety days before the time of discharge
10 stated.

Sec. 14. *Action of Committing Court Upon Application*
2 *for Review; Reasons for Continuance of Control by the*
3 *Board.*—(a) If the board of control applies to the com-
4 mitting court for the review of an order as provided in
5 section thirteen, the court shall notify the person whose
6 liberty is involved, and, if he is not sui juris, his parent
7 or guardian as practicable, of the application, and shall
8 afford him opportunity to appear in court with counsel
9 and of process to compel the attendance of witnesses and
10 the production of evidence. He may have a doctor or
11 psychiatrist of his own choosing, examine him in the
12 institution to which he is confined or at some suitable

13 place designated by the board of control. If he is unable
14 to provide his own counsel, the court shall appoint counsel
15 to represent him. He shall not be entitled to a trial by
16 jury.

17 (b) If, after a hearing, the court finds that discharge
18 from the control of the board of control of the person to
19 whom the order applies would be dangerous to the public
20 because of the person's mental or physical deficiency, dis-
21 order or abnormality the court shall confirm the order. If
22 the court finds that discharge from the control of the board
23 of control would not be dangerous to the public for the
24 causes stated, the court shall order that he be discharged
25 from the control of the board of control at the time stated
26 in the original commitment.

Sec. 15. *Review by Court of Subsequent Orders of the*
2 *Board.*—(a) When an order of the board of control is
3 confirmed as provided in section fourteen, the control of
4 the board of control over the person shall continue, but
5 unless he is previously discharged, the board shall within
6 five years after the date of such confirmation make a new
7 order and a new application for review thereof in accord-

8 ance with this section. Such orders and applications may
9 be repeated as often as in the opinion of the board of
10 control it may be necessary for the protection of the public.

11 (b) Every person shall be discharged from the control
12 of the board of control at the termination of the periods
13 stated in paragraph a of this section unless the board of
14 control has previously acted therein as required, and shall
15 be discharged if the court fails to confirm the order as
16 provided in section fourteen.

Sec. 16. *Appeal from Judgment of Committing Courts.*—

2 (a) If under the provisions of this section the court
3 affirms an order of the board of control, the person whose
4 liberty is involved may appeal to the proper appellate
5 court for a reversal or modification of the order. The
6 appeal shall be taken in the manner provided by law for
7 appeals to said court from the judgment of an inferior
8 court.

Sec. 17. *Voluntary Admission to Diagnostic Institution;*

2 *Treatment.*—Any person believing himself to be afflicted
3 by a physical or mental condition which may result in
4 sexual action dangerous to the public may apply upon

5 forms prescribed by the board for voluntary admission
6 to some institution which provides diagnosis for such
7 persons. If the application is approved and he is admitted
8 by the board of control, he shall be given a complete
9 physical and mental examinations. If it appears upon the
10 examination that he is afflicted by a physical or mental
11 condition that may prove dangerous to the public, such
12 fact shall be certified to him and to the board of control.
13 If he desires treatment, he may apply for admission to
14 an institution designated by the board of control and upon
15 approval of his application, he may be received in the
16 designated institution and shall there receive the treat-
17 ment indicated by his condition. If he is able to defray
18 all or a part of the cost of his care and treatment, he shall
19 be required to do that. If he desires to leave the institu-
20 tion he must give five days' written notice to the superin-
21 tendent of the institution of his intention to leave. The
22 board may provide out-patient treatment for him at his
23 expense: *Provided, however,* That this section shall not
24 apply to any person making application hereunder who,
25 at the time of making such application, is charged with,

26 whether by indictment or otherwise, any crime mentioned
27 in sections one and two of this article.

Sec. 18. *Conflict of Provisions; Effect.*—All statutes con-
2 flicting with this section are superseded to the extent of
3 the conflict and the provisions of this section shall prevail
4 over conflicting provisions heretofore enacted.

Sec. 19. *Agency of Control.*—Wherever herein the board
2 of control is referred to, the said agency dealing with
3 mental health, in the event of the establishment of another
4 agency to deal with mental health and related condi-
5 tions, is intended; and such agency shall be endowed with
6 the responsibilities hereinabove vested in the board of
7 control.

Sec. 20. *Separability.*—The provisions of this act are
2 separable and if any provision shall be held unconstitu-
3 tional, such decision shall not affect the remainder of this
4 act.

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

E. N. McCourt
Chairman Senate Committee

Witcherton
Chairman House Committee

Originated in the House of Delegates

Takes effect 90 days after passage.

J. Roman Myers
Clerk of the Senate

U. Blankenship
Clerk of the House of Delegates

Ralph J. Beun
President of the Senate

W. Fleming
Speaker, House of Delegates

The within approved this the 15th

day of March, 1957.

Geoff. Henderson
Governor



Filed in the Office of the Secretary of State
of West Virginia **MAR 15 1957**
D. PITT O'BRIEN
SECRETARY OF STATE