

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-26-79

Time 2:10 p.m.

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979



# ENROLLED

*Committee Substitute for*

HOUSE BILL No. 807

No. 807

(By Mrs. Neal + Mr. Brenda)



Passed March 9, 1979

In Effect Ninety Days From Passage



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR

**H. B. 807**

(By MRS. NEAL and MR. BRENDA)

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[Passed March 9, 1979; in effect ninety days from passage.]

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AN ACT to amend and reenact sections two and thirteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to probation and parole generally; eligibility for parole and probation; powers and duties of parole board; allegations to be contained in an information or indictment; ineligibility for probation for certain offenses involving firearms; ineligibility for parole prior to the service of certain minimum terms for certain offenses involving firearms; and the definition of the term "firearm".

*Be it enacted by the Legislature of West Virginia:*

That sections two and thirteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 12. PROBATION AND PAROLE.**

**§62-12-2. Probation; when eligible and ineligible therefor; definitions.**

- 1 (a) All persons who have not been previously convicted of a
- 2 felony within five years from the date of the felony for which

3 they are charged, and who are found guilty of or plead guilty  
4 to any felony, the maximum penalty for which is less than life  
5 imprisonment, and all persons whether previously convicted or  
6 not, who are found guilty of or plead guilty to any misde-  
7 meanor, shall be eligible for probation, notwithstanding the  
8 provisions of sections eighteen and nineteen, article eleven,  
9 chapter sixty-one of this code.

10 (b) The provisions of subsection (a) of this section to the  
11 contrary notwithstanding, any person who commits or attempts  
12 to commit a felony with the use, presentment or brandishing of  
13 a firearm shall be ineligible for probation. Nothing in this  
14 section shall apply to an accessory before the fact or a  
15 principal in the second degree who has been convicted as if  
16 he were a principal in the first degree if, in the commission of  
17 or in the attempted commission of the felony, only the principal  
18 in the first degree used, presented or brandished a firearm.

19 (c) The existence of any fact which would make any per-  
20 son ineligible for probation under subsection (b) of this section  
21 because of the commission or attempted commission of a felony  
22 with the use, presentment or brandishing of a firearm shall  
23 not be applicable unless such fact is (i) found by the court  
24 upon a plea of guilty or nolo contendere, or (ii) found by  
25 the jury, if the matter be tried before a jury, or (iii) found  
26 by the court, if the matter be tried by the court, without a  
27 jury.

28 (d) For the purpose of this section, the term "firearm"  
29 shall mean any instrument which will, or is designed to, or may  
30 readily be converted to, expel a projectile by the action of an  
31 explosive, gunpowder, compressed air or gas, or any other  
32 similar means.

**§62-12-13. Powers and duties of board; eligibility for parole; pro-  
cedure for granting paroles.**

1 (a) The board of parole, whenever it is of the opinion  
2 that the best interests of the state and of the prisoner will be  
3 subserved thereby, and subject to the limitations hereinafter  
4 provided, shall have the authority to release any such  
5 prisoner on parole for such terms and upon such conditions

6 as are provided by this article. Any prisoner of a penitentiary  
7 of this state, to be eligible for parole:

8 (1) Shall have served the minimum term of his indeter-  
9 minate sentence, or shall have served one third of his definite  
10 term sentence, as the case may be, except that in no case shall  
11 any person who committed, or attempted to commit a felony  
12 with the use, presentment or brandishing of a firearm, be elig-  
13 ible for parole prior to serving a minimum of three years of his  
14 sentence or the maximum sentence imposed by the court,  
15 whichever is less. Nothing in this section shall apply to an ac-  
16 cessory before the fact or a principal in second degree who has  
17 been convicted as if he were a principal in the first degree if, in  
18 the commission of or in the attempted commission of the felony,  
19 only the principal in the first degree used, presented or brand-  
20 ished a firearm;

21 (2) Shall not be under punishment or in solitary confine-  
22 ment for any infraction of prison rules;

23 (3) Shall have maintained a record of good conduct in  
24 prison for a period of at least three months immediately pre-  
25 ceding the date of his release on parole;

26 (4) Shall have satisfied the board that, if released on  
27 parole, he will conduct himself in a lawful manner and that his  
28 release is not incompatible with the best interests and welfare  
29 of society generally.

30 Except in the case of one serving a life sentence, no person  
31 who has been previously twice convicted of a felony may be re-  
32 leased on parole until he has served the minimum term provided  
33 by law for the crime for which he was convicted. No person  
34 sentenced for life may be paroled until he has served ten years,  
35 and no person sentenced for life who has been previously twice  
36 convicted of a felony may be paroled until he has served fifteen  
37 years. In the case of a person sentenced to any penal institution  
38 ~~in~~ this state, it shall be the duty of the board, as soon as such  
39 person becomes eligible, to consider the advisability of his or  
40 her release on parole. If, upon such consideration, parole be  
41 denied, the board shall at least once a year reconsider and re-  
42 view the case of every prisoner so eligible, which reconsidera-

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43 tion and review shall be by the entire board. If parole be  
44 denied, the prisoner shall be promptly notified.

45 (b) In the case of any person sentenced to or confined under  
46 sentence in any city or county jail in this state, the board shall  
47 act only upon written application for parole. If such jail prison-  
48 er is under sentence on a felony conviction, the provisions here-  
49 of relating to penitentiary prisoners shall apply to and control  
50 his release on parole. If such person is serving time on a mis-  
51 demeanor conviction, he is eligible for parole consideration,  
52 upon receipt of his written parole application and after time for  
53 probation release by the sentencing court or judge has expired.

54 (c) The board shall, with the approval of the governor,  
55 adopt rules and regulations governing the procedure in the  
56 granting of parole. No provision of this article and none of the  
57 rules and regulations adopted hereunder are intended or shall  
58 be construed to contravene, limit or otherwise interfere with or  
59 affect the authority of the governor to grant pardons and re-  
60 prieve, commute sentences, remit fines or otherwise exercise  
61 his constitutional powers of executive clemency.

62 The board shall be charged with the duty of supervising all  
63 probationers and parolees whose supervision may have been  
64 undertaken by this state by reason of any interstate compact  
65 entered into pursuant to the Uniform Act for Out-of-State  
66 Parolee Supervision.

67 (d) When considering a penitentiary prisoner for release  
68 on parole, the board of parole shall have before it an authentic  
69 copy of or report on the prisoner's current criminal record as  
70 provided through the department of public safety of West  
71 Virginia, the United States department of justice or other  
72 reliable criminal information sources and written reports of  
73 the warden or superintendent of the penitentiary, as the case  
74 may be, to which such prisoner is sentenced:

75 (1) On the prisoner's conduct record while in prison, in-  
76 cluding a detailed statement showing any and all infractions  
77 of prison rules by the prisoner and the nature and extent of  
78 discipline and punishment administered therefor;

79 (2) On improvement or other changes noted in the prisoner's

80 mental and moral condition while in prison, including a state-  
81 ment expressive of the prisoner's current attitude toward society  
82 in general, toward the judge who sentenced him, toward the  
83 prosecuting attorney who prosecuted him, toward the policeman  
84 or other officer who arrested him and toward the crime for  
85 which he is under sentence and his previous criminal record;

86 (3) On the prisoner's industrial record while in prison,  
87 showing the nature of his prison work or occupation and the  
88 average number of hours per day he has been employed in  
89 prison industry and recommending the nature and kinds of  
90 employment which he is best fitted to perform and in which  
91 he is most likely to succeed when he leaves prison;

92 (4) On physical, mental and psychiatric examinations of  
93 the prisoner conducted, insofar as practicable, within the two  
94 months next preceding parole consideration by the board.

95 The board may waive the requirement of any such report  
96 when not available or not applicable as to any prisoner con-  
97 sidered for parole but, in every such case, shall enter in the  
98 record thereof its reason for such waiver.

99 Before releasing any penitentiary prisoner on parole, the  
100 board of parole shall arrange for him to appear in person be-  
101 fore the board and the board may examine and interrogate him  
102 on any matters pertaining to his parole, including reports before  
103 the board made pursuant to the provisions hereof. The board  
104 shall reach its own written conclusions as to the desirability of  
105 releasing such prisoner on parole. The warden or superintend-  
106 ent shall furnish all necessary assistance and cooperate to the  
107 fullest extent with the board of parole. All information, records  
108 and reports received by the board shall be kept on permanent  
109 file.

110 The board and its designated agents shall at all times have  
111 access to inmates imprisoned in any penal or correctional insti-  
112 tutions of this state or in any city or county jail in this state, and  
113 shall have power to obtain any information or aid necessary to  
114 the performance of their duties from other departments and  
115 agencies of the state or from any political subdivision thereof.

116 The board shall, if so requested by the governor, investigate

117 and consider all applications for pardon, reprieve or commu-  
118 tation and shall make recommendation thereon to the governor.

119 Prior to making such recommendation and prior to releas-  
120 ing any penitentiary person on parole the board shall notify  
121 the sentencing judge and prosecuting attorney at least ten  
122 days before such recommendation or parole.

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

*James L. Davis*  
Chairman Senate Committee

*Lawrence C. Chestnut Jr.*  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

*J. S. Sillone*  
Clerk of the Senate

*V. Blankenship*  
Clerk of the House of Delegates

*W. O. Battle*  
President of the Senate

*Clayton M. Lee, Jr.*  
Speaker House of Delegates

The within is approved this the 26  
day of March, 1979.

*John R. Roper IV*  
Governor

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