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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991



ENROLLED

SENATE BILL NO. 322

(By Senator Holliday, et al)



PASSED March 9, 1991

In Effect from Passage

ENROLLED

Senate Bill No. 322

(BY SENATORS HOLLIDAY, FELTON, DITTMAR, HELMICK,
WIEDEBUSCH, ANDERSON, DALTON AND MINARD)

[Passed March 9, 1991; in effect from passage.]

AN ACT to amend article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a; and to amend and reenact section one, article eight and section seven-a, article twelve, chapter sixty-two of said code, all relating to the felony offense of escaping from the custody of the commissioner of corrections; defining the offense of escaping from the custody of the commissioner of corrections and establishing the penalty therefor; and prescribing the venue for violations.

Be it enacted by the Legislature of West Virginia:

That article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-a; and that section one, article eight and section seven-a, article twelve, chapter sixty-two of said code be amended and reenacted, all to read as follows:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-12a. Escape from custody of the commissioner of corrections.

1 Any person who escapes from the custody of the
2 commissioner of corrections, regardless of where such
3 person is confined or where such escape occurs, is
4 guilty of a felony, and, upon conviction thereof, shall

5 be imprisoned in the penitentiary for not less than one
6 year nor more than five years. A term of imprison-
7 ment imposed pursuant to the provisions of this
8 section shall be imposed as a consecutive sentence and
9 shall not be served concurrently with any imprison-
10 ment, confinement or detention imposed under any
11 prior sentence being served or otherwise being dis-
12 charged at the time such person commits an offense
13 under the provisions of this section. A person charged
14 with an offense under the provisions of this section
15 shall not be released from the custody of the commis-
16 sioner of corrections while the prosecution of the
17 alleged offense is pending: *Provided*, That time served
18 by such person after any other prior sentence has
19 been served or otherwise discharged shall be applied
20 to any sentence which may ultimately be imposed for
21 an offense under this section. Venue for the prosecu-
22 tion of a violation of this section shall be in the county
23 in which the escape occurs.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 8. CRIMES BY AND PROCEEDINGS AGAINST CONVICTS.

§62-8-1. Offenses by convicts; conspiracy.

1 A person imprisoned or otherwise in the custody of
2 the commissioner of corrections is guilty of a felony if
3 he shall kill, wound or inflict other bodily injury upon
4 an officer or guard of the penitentiary or medium
5 security prison; or shall break, cut or injure any
6 building, fixture or fastening of the penitentiary or
7 medium security prison, or any part thereof, for the
8 purpose of escaping or aiding any other convict to
9 escape therefrom, or rendering the penitentiary or
10 medium security prison less secure as a place of
11 confinement; or shall make, procure, secrete, or have
12 in his possession; any instrument, tool or other thing
13 for such purpose, or with intent to kill, wound or
14 inflict bodily injury as aforesaid; or shall resist the
15 lawful authority of an officer or guard of the peniten-
16 tiary or medium security prison for such purpose or
17 with such intent. Any three or more convicts so
18 confined, or in such custody, who shall conspire

19 together to commit any offense mentioned in this
20 section shall each be deemed guilty of a felony.

ARTICLE 12. PROBATION AND PAROLE.

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

1 Notwithstanding any other provision of law, when
2 any person has been found guilty of, or pleads guilty
3 to, a felony, the court may, prior to pronouncing of
4 sentence, direct that the person be delivered into the
5 custody of the commissioner of corrections, for the
6 purpose of diagnosis and classification for a period not
7 to exceed sixty days: *Provided*, That the court shall
8 require that a presentence report be completed by the
9 probation officer assigned to that person and be made
10 available to the commissioner of corrections prior to
11 delivery of the person to a statutorily approved
12 diagnosis and classification unit of the division of
13 corrections. While at the diagnosis and classification
14 unit the person shall undergo examination, diagnosis
15 and classification and shall then be remanded and
16 delivered to the custody of the sheriff of the county
17 wherein he or she was found guilty or entered such
18 plea. Within ten days following the termination of the
19 examination, diagnosis and classification, the commis-
20 sioner of corrections shall make or cause to be made
21 a report to the court wherein the person was found
22 guilty, or entered a plea of guilty, containing the
23 results, findings, conclusions and recommendations of
24 the commissioner with respect to such person.

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

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

Louise Heck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Barrett C. Adams
.....
Clerk of the Senate

Donald R. Kopp
.....
Clerk of the House of Delegates

Kath Burdette
.....
President of the Senate

B. P. C. C.
.....
Speaker House of Delegates

The within ~~is approved~~ this the 2nd day of April, 1991.

Gaston Caperton
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/28/91

Time 10:25 am