WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

ENROLLED

SENATE BILL NO. 292

(By Senator WOOTON, ET AL.)

PASSED APRIL 12, 1997

In Effect SIXTY DAYS FROM Passage
ENROLLED

Senate Bill No. 292

(By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, Schoonover, Snyder, White, Buckalew, Deem, Kimble and Scott)

[Passed April 11, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact sections twelve, thirteen and eighteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the parole board; providing that no more than two board members may be from the same congressional district; providing that no person convicted of first degree murder shall be eligible for parole until he or she has served fifteen years; providing that review of an inmate who was initially refused parole must be by at least three members of the board; providing that the parole board may designate, within a three-year period, when inmates serving life sentences may be reconsidered for parole; providing that parole provisions of this article apply only to felons; providing
that at least three board members shall interview an inmate for parole and that an inmate shall be released upon a concurrence of a majority of the interviewing board members; adding certain offenses to those which disqualify a parole violator from being discharged from parole; and cleaning up archaic language.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.


There shall be a state board of parole, known as the “West Virginia parole board”. The board shall consist of five 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 three of the board members may at any one time belong to the same political party. The board shall be appointed by the governor, by and with the advice and consent of the Senate. Appointments following the effective date of this section shall be made in such a manner that each congressional district is represented and so that no more than two members of the board reside in any one congressional district. Each member of the board shall have a degree in criminal justice or like experience and academic training and shall be otherwise competent to perform the duties of his or her office. The members shall be appointed for overlapping terms of six years. Any member qualified under this section is eligible for reappointment. The members of the board shall devote their full time and attention to their board duties. Any single member of the board is empowered to hold any hearing provided for in this article, where a transcript of the hearing, including exhibits and documentary evidence, and the recommendation of the member holding the hearing is submitted to the board for decision.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.
(a) The board of parole, whenever it is of the opinion that the best interests of the state and of the inmate will be subserved thereby, and subject to the limitations hereinafter provided, shall release any such inmate on parole for such terms and upon such conditions as are provided by this article. Any inmate of a state correctional center, to be eligible for parole:

1. (1) (A) Shall have served the minimum term of his or her indeterminate sentence, or shall have served one fourth of his or her definite term sentence, as the case may be, except that in no case shall any person who committed, or attempted to commit a felony with the use, presentment or brandishing of a firearm, be 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 person who committed, or attempted to commit, any violation of section twelve, article two, chapter sixty-one of this code, with the use, presentment or brandishing of a firearm, shall not be 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 shall be the greater. Nothing in this section shall 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. No person is ineligible for parole under the provisions of this subdivision because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm unless such fact is clearly stated and included in the indictment or presentment by which such person was charged and was either: (i) Found by the court at the time of trial upon a plea of guilty or nolo contendere; or (ii) found by the jury, upon submitting to such jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found by the court, if the matter was tried by the court without a jury.

For the purpose of this section, the term "firearm" shall
mean 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.

(B) The amendments to this subsection adopted in the year one thousand nine hundred eighty-one:

(i) Shall apply to all applicable offenses occurring on or after the first day of August of that year;

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

(iii) Shall 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 such jury on or after the first day of August 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 such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which such finding shall be 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;

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

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

(2) Shall not be under punishment or in solitary confinement for any infraction of prison rules;

(3) Shall have maintained a record of good conduct in prison for a period of at least three months immediately preceding the date of his or her release on parole;
(4) Shall have submitted to the 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, said parole release plan having been approved by the commissioner of corrections or his or her authorized representative;

(5) Shall have satisfied the board that if released on parole he or she will not constitute a danger to the community.

Except in the case of one serving a life sentence, no person who has been previously twice convicted of a felony may 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. No person sentenced for life may be paroled until he or she has served ten years, and no person sentenced for life who has been previously twice convicted of a felony may be paroled until he or she has served fifteen years: Provided, That no person convicted of first degree murder for an offense committed on or after the tenth day of June, one thousand nine hundred ninety-four, shall be eligible for parole until he or she has served fifteen years. In the case of a person sentenced to any state correctional center, it shall be the duty of the board, as soon as such person becomes eligible, to consider the advisability of his or her release on parole. If, upon such consideration, parole be denied, the board shall at least once a year reconsider and review the case of every inmate so eligible, which reconsideration and review shall be by at least three members of the board: Provided, however, That the board may reconsider and review parole eligibility any time within three years following the denial of parole of a person serving a life sentence. The board shall, at the time of denial, notify the person of the month and year they may apply for reconsideration and review. If parole be denied, the inmate shall be promptly notified.

(b) Any person serving a sentence on a felony conviction who becomes eligible for parole consideration prior to being transferred to a state correctional center may make
written application for parole. The terms and conditions
for parole consideration established by this article shall be
applied to such inmates.

(c) The board shall, with the approval of the governor,
adopt rules and regulations governing the procedure in the
granting of parole. No provision of this article and none
of the rules and regulations adopted hereunder are
intended or shall 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.

The department of corrections shall be charged with the
duty of supervising 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.

(d) When considering an inmate of a state correctional
center for release on parole, the parole board 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 other reliable criminal information sources and
written reports of the warden or superintendent of the
state correctional center to which such inmate is sen-
tenced:

(1) 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 therefor;

(2) On improvement or other changes noted in the
inmate's mental and moral condition while in custody,
including a statement expressive of the inmate's current
attitude toward society in general, toward the judge who
sentenced him or her, toward the prosecuting attorney
who prosecuted him or her, toward the policeman or other
officer who arrested the inmate and toward the crime for
which he or she is under sentence and his or her previous
criminal record;
(3) 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 prison;

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

The board may waive the requirement of any such report when not available or not applicable as to any inmate considered for parole but, in every such case, shall enter in the record thereof its reason for such waiver: Provided, That in the case of an inmate who is incarcerated because such inmate has been found guilty of, or has pleaded guilty to a felony under the provisions of section twelve, article eight, chapter sixty-one of this code or under the provisions of article eight-b or eight-c, chapter sixty-one of this code, the board may not waive the report required by this subsection and the report shall include a study and diagnosis which shall include 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 person during such study or diagnosis shall 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 such information disclosed shall indicate the intention or plans of the parolee to do harm to any person, animal, institution, or to property. Progress reports of outpatient treatment shall be made at least every six months to the parole officer supervising such person. 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.

Before releasing any inmate on parole, the board of
parole shall arrange for the inmate to appear in person
before at least three members of the board and the board
may examine and interrogate him or her on any matters
pertaining to his or her parole, including reports before
the board made pursuant to the provisions hereof. The
board shall reach its own written conclusions as to the
desirability of releasing such inmate on parole and the
majority of the board members considering the release
shall concur in the decision. The warden or superinten-
dent shall furnish all necessary assistance and cooperate
to the fullest extent with the parole board. All informa-
tion, records and reports received by the board shall be
kept on permanent file.

The board and its designated agents shall at all times
have access to inmates imprisoned in any state correc-
tional center or in any city, county or regional jail in this
state, and shall have the power to 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 thereof.

The board shall, if so requested by the governor, investi-
gate and consider all applications for pardon, reprieve or
commutation and shall make recommendation thereon to
the governor.

Prior to making such recommendation and prior to
releasing any inmate on parole, the board shall notify the
sentencing judge and prosecuting attorney at least ten
days before such recommendation or parole. Any person
released on parole shall participate as a condition of
parole in the litter control program of the county to the
extent directed by the board, unless the board specifically
finds that this alternative service would be inappropriate.


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 any time after a parolee has been on parole
for a period of one year from the date of his or her release,
the board may, when in its judgment the ends of parole
have been attained and the best interests of the state and
the parolee will be served thereby, release the parolee
from further supervision and discharge him or her from
parole: Provided, however, That no inmate sentenced to
serve a life term of imprisonment and released on parole
shall be discharged from supervision and parole in a
period less than five years from the date of his or her
release on parole.

No 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 shall 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 dis-
charged from parole while so serving his or her sentence
in said correctional facility, or be continued on parole or
returned to West Virginia as a parole violator, in the
discretion of the parole board.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

Speaker House of Delegates

The within ................................... this the 1st

day of ....................................... 1997.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
4/31/07
Date
11:17am
Time