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STATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998

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## ENROLLED

SENATE BILL NO. 778

(By Senator WOOTEN, ET AL)

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PASSED MARCH 13, 1998

In Effect NINETY DAYS FROM Passage

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SPEAKER

## ENROLLED

### Senate Bill No. 778

(BY SENATORS WOOTON, BALL, BOWMAN, DITTMAR,  
KESSLER, ROSS, SCHOONOVER, SNYDER, WHITE,  
BUCKALEW, DEEM AND KIMBLE)

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[Passed March 13, 1998; in effect ninety days from passage.]

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AN ACT to amend and reenact section thirteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of parole; parole eligibility; and procedures.

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

That section 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.**

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

1 (a) The board of parole, whenever it is of the opinion  
2 that the best interests of the state and of the inmate will  
3 be subserved thereby, and subject to the limitations  
4 hereinafter provided, shall release any such inmate on  
5 parole for such terms and upon such conditions as are  
6 provided by this article. Any inmate of a state correc-  
7 tional center, to be eligible for parole:

8 (1) (A) Shall have served the minimum term of his or her  
9 indeterminate sentence, or shall have served one fourth of  
10 his or her definite term sentence, as the case may be,  
11 except that in no case shall any person who committed, or  
12 attempted to commit a felony with the use, presentment or  
13 brandishing of a firearm, be eligible for parole prior to  
14 serving a minimum of three years of his or her sentence or  
15 the maximum sentence imposed by the court, whichever is  
16 less: *Provided*, That any person who committed, or  
17 attempted to commit, any violation of section twelve,  
18 article two, chapter sixty-one of this code, with the use,  
19 presentment or brandishing of a firearm, shall not be  
20 eligible for parole prior to serving a minimum of five years  
21 of his or her sentence or one third of his or her definite  
22 term sentence, whichever shall be the greater. Nothing in  
23 this section shall apply to an accessory before the fact or  
24 a principal in the second degree who has been convicted as  
25 if he or she were a principal in the first degree if, in the  
26 commission of or in the attempted commission of the  
27 felony, only the principal in the first degree used, pre-  
28 sented or brandished a firearm. No person is ineligible for  
29 parole under the provisions of this subdivision because of  
30 the commission or attempted commission of a felony with  
31 the use, presentment or brandishing of a firearm unless  
32 such fact is clearly stated and included in the indictment  
33 or presentment by which such person was charged and  
34 was either: (i) Found by the court at the time of trial upon  
35 a plea of guilty or nolo contendere; or (ii) found by the  
36 jury, upon submitting to such jury a special interrogatory  
37 for such purpose if the matter was tried before a jury; or

38 (iii) found by the court, if the matter was tried by the  
39 court without a jury.

40 For the purpose of this section, the term "firearm" shall  
41 mean any instrument which will, or is designed to, or may  
42 readily be converted to, expel a projectile by the action of  
43 an explosive, gunpowder or any other similar means.

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

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

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

52 (iii) Shall apply with respect to the submission of a  
53 special interrogatory to the jury and the finding to be  
54 made thereon in any case submitted to such jury on or  
55 after the first day of August of that year or to the requisite  
56 findings of the court upon a plea of guilty or in any case  
57 tried without a jury: *Provided*, That the state shall give  
58 notice in writing of its intent to seek such finding by the  
59 jury or court, as the case may be, which notice shall state  
60 with particularity the grounds upon which such finding  
61 shall be sought as fully as such grounds are otherwise  
62 required to be stated in an indictment, unless the grounds  
63 therefor are alleged in the indictment or presentment upon  
64 which the matter is being tried; and

65 (iv) Shall not apply with respect to cases not affected by  
66 such amendment and in such cases the prior provisions of  
67 this section shall apply and be construed without refer-  
68 ence to such amendment.

69 Insofar as such amendments relate to mandatory  
70 sentences restricting the eligibility for parole, all such  
71 matters requiring such sentence shall be proved beyond a

72 reasonable doubt in all cases tried by the jury or the court.

73 (2) Shall not be in punitive segregation or administrative  
74 segregation as a result of disciplinary action;

75 (3) Shall have maintained a record of good conduct in  
76 prison for a period of at least three months immediately  
77 preceding the date of his or her release on parole;

78 (4) Shall have submitted to the board a written parole  
79 release plan setting forth proposed plans for his or her  
80 place of residence, employment and, if appropriate, his or  
81 her plans regarding education and postrelease counseling  
82 and treatment, said parole release plan having been  
83 approved by the commissioner of corrections or his or her  
84 authorized representative; and

85 (5) Shall have satisfied the board that if released on  
86 parole he or she will not constitute a danger to the com-  
87 munity.

88 Except in the case of one serving a life sentence, no  
89 person who has been previously twice convicted of a  
90 felony may be released on parole until he or she has served  
91 the minimum term provided by law for the crime for  
92 which he or she was convicted. No person sentenced for  
93 life may be paroled until he or she has served ten years,  
94 and no person sentenced for life who has been previously  
95 twice convicted of a felony may be paroled until he or she  
96 has served fifteen years: *Provided*, That no person con-  
97 victed of first degree murder for an offense committed on  
98 or after the tenth day of June, one thousand nine hundred  
99 ninety-four, shall be eligible for parole until he or she has  
100 served fifteen years. In the case of a person sentenced to  
101 any state correctional center, it shall be the duty of the  
102 board, as soon as such person becomes eligible, to consider  
103 the advisability of his or her release on parole. If, upon  
104 such consideration, parole be denied, the board shall at  
105 least once a year reconsider and review the case of every  
106 inmate so eligible, which reconsideration and review shall

107 be by at least three members of the board: *Provided,*  
108 *however,* That the board may reconsider and review  
109 parole eligibility any time within three years following the  
110 denial of parole of a person serving a life sentence. The  
111 board shall, at the time of denial, notify the person of the  
112 month and year they may apply for reconsideration and  
113 review. If parole be denied, the inmate shall be promptly  
114 notified.

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

121 (c) The board shall, with the approval of the governor,  
122 adopt rules governing the procedure in the granting of  
123 parole. No provision of this article and none of the rules  
124 adopted hereunder are intended or shall be construed to  
125 contravene, limit or otherwise interfere with or affect the  
126 authority of the governor to grant pardons and reprieves,  
127 commute sentences, remit fines or otherwise exercise his  
128 or her constitutional powers of executive clemency.

129 The department of corrections shall be charged with the  
130 duty of supervising all probationers and parolees whose  
131 supervision may have been undertaken by this state by  
132 reason of any interstate compact entered into pursuant to  
133 the uniform act for out-of-state parolee supervision.

134 (d) When considering an inmate of a state correctional  
135 center for release on parole, the parole board shall have  
136 before it an authentic copy of or report on the inmate's  
137 current criminal record as provided through the West  
138 Virginia state police, the United States department of  
139 justice or other reliable criminal information sources and  
140 written reports of the warden or superintendent of the  
141 state correctional center to which such inmate is sen-  
142 tenced:

143 (1) On the inmate's conduct record while in custody,  
144 including a detailed statement showing any and all  
145 infractions of disciplinary rules by the inmate and the  
146 nature and extent of discipline administered therefor;

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

156 (3) On the inmate's industrial record while in custody  
157 which shall include: The nature of his or her work,  
158 occupation or education, the average number of hours per  
159 day he or she has been employed or in class while in  
160 custody and a recommendation as to the nature and kinds  
161 of employment which he or she is best fitted to perform  
162 and in which the inmate is most likely to succeed when he  
163 or she leaves prison;

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

168 The board may waive the requirement of any such report  
169 when not available or not applicable as to any inmate  
170 considered for parole but, in every such case, shall enter in  
171 the record thereof its reason for such waiver: *Provided,*  
172 That in the case of an inmate who is incarcerated because  
173 such inmate has been found guilty of, or has pleaded  
174 guilty to a felony under the provisions of section twelve,  
175 article eight, chapter sixty-one of this code or under the  
176 provisions of article eight-b or eight-c, chapter sixty-one  
177 of this code, the board may not waive the report required  
178 by this subsection and the report shall include a study and

179 diagnosis which shall include an on-going treatment plan  
180 requiring active participation in sexual abuse counseling  
181 at an approved mental health facility or through some  
182 other approved program: *Provided, however,* That  
183 nothing disclosed by the person during such study or  
184 diagnosis shall be made available to any law-enforcement  
185 agency, or other party without that person's consent, or  
186 admissible in any court of this state, unless such informa-  
187 tion disclosed shall indicate the intention or plans of the  
188 parolee to do harm to any person, animal, institution, or  
189 to property. Progress reports of outpatient treatment shall  
190 be made at least every six months to the parole officer  
191 supervising such person. In addition, in such cases, the  
192 parole board shall inform the prosecuting attorney of the  
193 county in which the person was convicted of the parole  
194 hearing and shall request that the prosecuting attorney  
195 inform the parole board of the circumstances surrounding  
196 a conviction or plea of guilty, plea bargaining and other  
197 background information that might be useful in its  
198 deliberations.

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

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



216 state, and shall have the power to obtain any information  
217 or aid necessary to the performance of its duties from  
218 other departments and agencies of the state or from any  
219 political subdivision thereof.

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

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

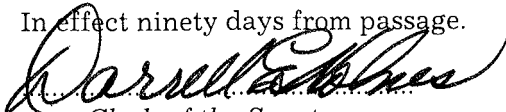
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

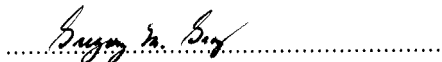
  
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Chairman Senate Committee.


  
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Chairman House Committee

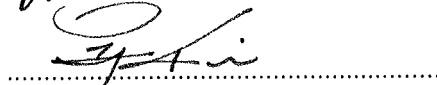
Originated in the Senate.

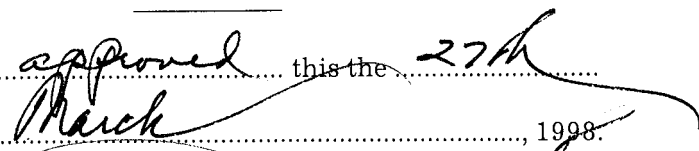
In effect ninety days from passage.

  
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Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within .....  ..... this the 27th  
day of ..... March ..... 1998.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/24/98

Time

3:20 pm