

H. B. 2263

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WEST VIRGINIA STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 1999



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 2263**

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]



Passed March 13, 1999

In Effect Ninety Days from Passage

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SENATE OF WEST VIRGINIA

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[BY REQUEST OF THE EXECUTIVE]

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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 parole; and authorizing the video conferencing of parole hearings before a majority of the board or videotaping of a hearing before a single board member for subsequent review by two other board members.

*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 that
- 2 the best interests of the state and of the inmate will be served,

3 and subject to the limitations hereinafter provided, shall release  
4 any inmate on parole for terms and upon conditions as are  
5 provided by this article.

6 (b) Any inmate of a state correctional center, is eligible for  
7 parole if he or she:

8 (1) (A) Has served the minimum term of his or her indeter-  
9 minate sentence, or has served one fourth of his or her definite  
10 term sentence, as the case may be, except that in no case is any  
11 person who committed, or attempted to commit a felony with  
12 the use, presentment or brandishing of a firearm, eligible for  
13 parole prior to serving a minimum of three years of his or her  
14 sentence or the maximum sentence imposed by the court,  
15 whichever is less: *Provided*, That any person who committed,  
16 or attempted to commit, any violation of section twelve, article  
17 two, chapter sixty-one of this code, with the use, presentment  
18 or brandishing of a firearm, is not eligible for parole prior to  
19 serving a minimum of five years of his or her sentence or one  
20 third of his or her definite term sentence, whichever is greater.  
21 Nothing in this section applies to an accessory before the fact  
22 or a principal in the second degree who has been convicted as  
23 if he or she were a principal in the first degree if, in the com-  
24 mission of or in the attempted commission of the felony, only  
25 the principal in the first degree used, presented or brandished a  
26 firearm. No person is ineligible for parole under the provisions  
27 of this subdivision because of the commission or attempted  
28 commission of a felony with the use, presentment or brandish-  
29 ing of a firearm unless such fact is clearly stated and included  
30 in the indictment or presentment by which the person was  
31 charged and was either: (i) Found by the court at the time of  
32 trial upon a plea of guilty or nolo contendere; or (ii) found by  
33 the jury, upon submitting to the jury a special interrogatory for  
34 such purpose if the matter was tried before a jury; or (iii) found  
35 by the court, if the matter was tried by the court without a jury.

36 For the purpose of this section, the term "firearm" means  
37 any instrument which will, or is designed to, or may readily be  
38 converted to, expel a projectile by the action of an explosive,  
39 gunpowder or any other similar means.

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

42 (i) Apply to all applicable offenses occurring on or after the  
43 first day of August of that year;

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

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

59 (iv) Does not apply with respect to cases not affected by the  
60 amendments and in such cases the prior provisions of this  
61 section apply and are construed without reference to the  
62 amendments.

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

67 (2) Is not in punitive segregation or administrative segrega-  
68 tion as a result of disciplinary action;

69 (3) Has maintained a record of good conduct in prison for  
70 a period of at least three months immediately preceding the date  
71 of his or her release on parole;

72 (4) Has submitted to the board a written parole release plan  
73 setting forth proposed plans for his or her place of residence,  
74 employment and, if appropriate, his or her plans regarding

75 education and postrelease counseling and treatment, the parole  
76 release plan having been approved by the commissioner of  
77 corrections or his or her authorized representative; and

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

80 (c) Except in the case of a person serving a life sentence, no  
81 person who has been previously twice convicted of a felony  
82 may be released on parole until he or she has served the  
83 minimum term provided by law for the crime for which he or  
84 she was convicted. No person sentenced for life may be paroled  
85 until he or she has served ten years, and no person sentenced for  
86 life who has been previously twice convicted of a felony may  
87 be paroled until he or she has served fifteen years: *Provided,*  
88 That no person convicted of first degree murder for an offense  
89 committed on or after the tenth day of June, one thousand nine  
90 hundred ninety-four, is eligible for parole until he or she has  
91 served fifteen years.

92 (d) In the case of a person sentenced to any state correc-  
93 tional center, it is the duty of the board, as soon as a person  
94 becomes eligible, to consider the advisability of his or her  
95 release on parole.

96 (e) If, upon consideration, parole is denied, the board shall  
97 promptly notify the inmate of the denial. The board shall, at the  
98 time of denial, notify the person of the month and year he or she  
99 may apply for reconsideration and review. The board shall at  
100 least once a year reconsider and review the case of every inmate  
101 who was denied parole and is still eligible: *Provided,* That the  
102 board may reconsider and review parole eligibility any time  
103 within three years following the denial of parole of a person  
104 serving a life sentence.

105 (f) Any person serving a sentence on a felony conviction  
106 who becomes eligible for parole consideration prior to being  
107 transferred to a state correctional center may make written  
108 application for parole. The terms and conditions for parole  
109 consideration established by this article apply to such inmates.

110 (g) The board shall, with the approval of the governor,  
111 adopt rules governing the procedure in the granting of parole.

112 No provision of this article and none of the rules adopted  
113 hereunder are intended or may be construed to contravene, limit  
114 or otherwise interfere with or affect the authority of the  
115 governor to grant pardons and reprieves, commute sentences,  
116 remit fines or otherwise exercise his or her constitutional  
117 powers of executive clemency.

118 (h) The department of corrections is charged with the duty  
119 of supervising all probationers and parolees whose supervision  
120 may have been undertaken by this state by reason of any  
121 interstate compact entered into pursuant to the uniform act for  
122 out-of-state parolee supervision.

123 (i)(1) When considering an inmate of a state correctional  
124 center for release on parole, the parole board is to have before  
125 it an authentic copy of or report on the inmate's current  
126 criminal record as provided through the West Virginia state  
127 police, the United States department of justice or other reliable  
128 criminal information sources and written reports of the warden  
129 or superintendent of the state correctional center to which such  
130 inmate is sentenced:

131 (i) On the inmate's conduct record while in custody,  
132 including a detailed statement showing any and all infractions  
133 of disciplinary rules by the inmate and the nature and extent of  
134 discipline administered therefor;

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

143 (iii) On the inmate's industrial record while in custody  
144 which shall include: The nature of his or her work, occupation  
145 or education, the average number of hours per day he or she has  
146 been employed or in class while in custody and a recommenda-  
147 tion as to the nature and kinds of employment which he or she

148 is best fitted to perform and in which the inmate is most likely  
149 to succeed when he or she leaves prison;

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

153 (2) The board may waive the requirement of any report  
154 when not available or not applicable as to any inmate consid-  
155 ered for parole but, in every such case, shall enter in the record  
156 thereof its reason for the waiver: *Provided*, That in the case of  
157 an inmate who is incarcerated because the inmate has been  
158 found guilty of, or has pleaded guilty to a felony under the  
159 provisions of section twelve, article eight, chapter sixty-one of  
160 this code or under the provisions of article eight-b or eight-c,  
161 chapter sixty-one of this code, the board may not waive the  
162 report required by this subsection and the report is to include a  
163 study and diagnosis including an on-going treatment plan  
164 requiring active participation in sexual abuse counseling at an  
165 approved mental health facility or through some other approved  
166 program: *Provided, however*, That nothing disclosed by the  
167 person during the study or diagnosis may be made available to  
168 any law-enforcement agency, or other party without that  
169 person's consent, or admissible in any court of this state, unless  
170 the information disclosed indicates the intention or plans of the  
171 parolee to do harm to any person, animal, institution or to  
172 property. Progress reports of outpatient treatment are to be  
173 made at least every six months to the parole officer supervising  
174 the person. In addition, in such cases, the parole board shall  
175 inform the prosecuting attorney of the county in which the  
176 person was convicted of the parole hearing and shall request  
177 that the prosecuting attorney inform the parole board of the  
178 circumstances surrounding a conviction or plea of guilty, plea  
179 bargaining and other background information that might be  
180 useful in its deliberations.

181 (j) Before releasing any inmate on parole, the board of  
182 parole shall arrange for the inmate to appear in person, before  
183 at least three members of the board and the board may examine  
184 and interrogate him or her on any matters pertaining to his or

185 her parole, including reports before the board made pursuant to  
186 the provisions hereof: *Provided*, That an inmate may appear by  
187 video teleconference if the members of the parole board  
188 conducting the examination are able to contemporaneously see  
189 the inmate and hear all of his or her remarks and if the inmate  
190 is able to contemporaneously see each of the members of the  
191 parole board conducting the examination and hear all of the  
192 members' remarks. The board shall reach its own written  
193 conclusions as to the desirability of releasing the inmate on  
194 parole and the majority of the board members considering the  
195 release shall concur in the decision. The warden or superinten-  
196 dent shall furnish all necessary assistance and cooperate to the  
197 fullest extent with the parole board. All information, records  
198 and reports received by the board are to be kept on permanent  
199 file.

200 (k) The board and its designated agents are at all times to  
201 have access to inmates imprisoned in any state correctional  
202 center or in any city, county or regional jail in this state, and  
203 shall have the power to obtain any information or aid necessary  
204 to the performance of its duties from other departments and  
205 agencies of the state or from any political subdivision thereof.

206 (l) The board shall, if so requested by the governor,  
207 investigate and consider all applications for pardon, reprieve or  
208 commutation and shall make recommendation thereon to the  
209 governor.

210 (m) Prior to making a recommendation for pardon, reprieve  
211 or commutation and prior to releasing any inmate on parole, the  
212 board shall notify the sentencing judge and prosecuting attorney  
213 at least ten days before the recommendation or parole.

214 (n) Any person released on parole shall participate as a  
215 condition of parole in the litter control program of the county to  
216 the extent directed by the board, unless the board specifically  
217 finds that this alternative service would be inappropriate.



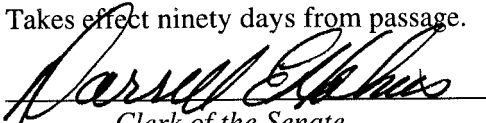
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

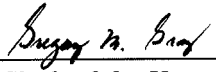
  
Chairman Senate Committee

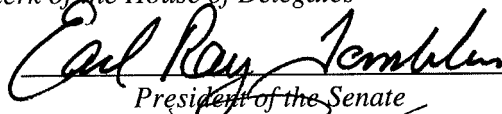
  
Chairman House Committee

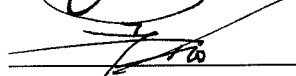
Originating in the House.

Takes effect ninety days from passage.

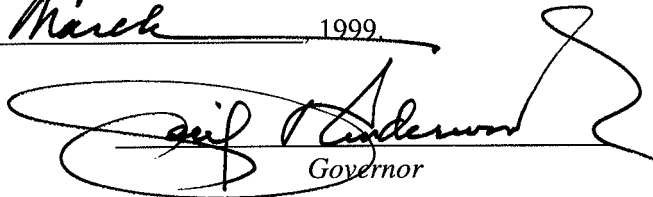
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 3/5  
day of March 1999.

  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/26/99

Time

2:35 pm