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LAPICE WEST VIRGINIA SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002

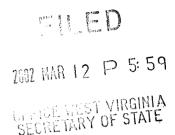
ENROLLED

House Bill No. 4530

(By Delegates Armstead, Manuel, Craig, Mahan, J. Smith, Wills and Smirl)

Passed March 4, 2002

In Effect from Passage



ENROLLED

H. B. 4530

(BY DELEGATES ARMSTEAD, MANUEL, CRAIG, MAHAN, J. SMITH, WILLS AND SMIRL)

[Passed March 4, 2002; in effect from passage.]

AN ACT to amend and reenact section nineteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to violation of parole; allowing for intermediate sanctions for technical and nonfelonious parole violations; and precluding need for parole revocation hearing where parolee is convicted of a new felony.

Be it enacted by the Legislature of West Virginia:

That section nineteen, 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.

§62-12-19. Violation of parole.

- 1 (a) If at any time during the period of parole there shall be
- 2 reasonable cause to believe that the parolee has violated any of
- 3 the conditions of his or her release on parole, the parole officer

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may arrest him or her with or without an order or warrant, or 5 the commissioner of corrections may issue its written order or warrant for his or her arrest, which written order or warrant 7 shall be sufficient for his or her arrest by any officer charged 8 with the duty of executing an ordinary criminal process. The 9 commissioner's written order or warrant delivered to the sheriff 10 against the paroled prisoner shall be a command to keep 11 custody of the parolee for the jurisdiction of the division of 12 corrections and during the period of custody, the parolee may 13 be admitted to bail by the court before which the parolee was 14 sentenced. If the parolee is not released on a bond, the costs of 15 confining the paroled prisoner shall be paid out of the funds 16 appropriated for the division of corrections.

(b) When a parolee is under arrest for violation of the conditions of his or her parole, he or she shall be given a prompt and summary hearing, at which the parolee and his or 20 her counsel shall be given an opportunity to attend. If at the hearing it shall appear to the satisfaction of the board that the 22 parolee has violated any condition of his or her release on parole, or any rules or conditions of his or her supervision, the 23 24 board may revoke his or her parole and may require him or her 25 to serve in prison the remainder or any portion of his or her 26 maximum sentence for which, at the time of his or her release, he or she was subject to imprisonment: Provided, That if the violation of the conditions of parole or rules for his or her 29 supervision is not a felony as set out in section eighteen of this 30 article, the board may, if in its judgment the best interests of justice do not require revocation, reinstate him or her on parole. The division of corrections will effect release from custody 33 upon approval of a home plan. Notwithstanding any provision of this code to the contrary, when reasonable cause has been 34 35 found to believe that a parolee has violated the conditions of his or her parole but said violation does not constitute felonious conduct, the commissioner may, in his or her discretion and with the written consent of the parolee, allow the parolee to

- 39 remain on parole with additional conditions or restrictions. 40 Such additional conditions or restrictions may include, but shall 41 not be limited to, participation in any program described in subsection (d), section five, article eleven-c of this chapter. 42 43 Compliance by the parolee with such conditions of parole shall 44 preclude revocation of parole for the conduct which constituted 45 the violation. Failure of the parolee to comply with such 46 conditions or restrictions and all other conditions of release 47 shall constitute an additional violation of parole and the parolee 48 may be proceeded against under the provisions of this section 49 for the original violation as well as any subsequent violations.
- 50 (c) When a parolee has violated the conditions of his or her 51 release on parole by confession to, or being convicted of, any 52 of the crimes set forth in section eighteen of this article, he or 53 she shall be returned to the custody of the division of correc-54 tions to serve the remainder of his or her maximum sentence, 55 during which remaining part of his or her sentence he or she 56 shall be ineligible for further parole.
- 57 (d) Whenever the parole of a paroled prisoner has been 58 revoked, the commissioner shall upon receipt of the board's 59 written order of revocation, convey and transport the paroled 60 prisoner to a state correctional institution. A paroled prisoner 61 whose parole has been revoked shall remain in custody of the 62 sheriff until delivery to a corrections officer sent and duly 63 authorized by the commissioner for the removal of the paroled 64 prisoner to a state penal institution; the cost of confining such 65 paroled prisoner shall be paid out of the funds appropriated for 66 the division of corrections.
- 67 (e) When a paroled prisoner is convicted of, or confesses to, 68 any one of the crimes enumerated in section eighteen of this 69 article, it shall be the duty of the board to cause him or her to be 70 returned to this state for a summary hearing as provided by this 71 article. Whenever a parolee has absconded supervision, the

- 72 commissioner shall issue a warrant for his or her apprehension 73 and return to this state for the hearing provided for in this
- 74 article: *Provided*, That the board may, if it be of opinion the
- 75 best interests of justice do not require revocation, cause the
- 76 paroled absconder to be reinstated to parole.
- 77 (f) A warrant filed by the commissioner shall stay the 78 running of his or her sentence until the parolee is returned to the 79 custody of the division of corrections and physically in the state 80 of West Virginia.
- 81 (g) Whenever a parolee who has absconded supervision or 82 has been transferred out of this state for supervision pursuant to section one, article six, chapter twenty-eight of this code is 83 84 returned to West Virginia due to a violation of parole and costs 85 are incurred by the division of corrections, the commissioner 86 may assess reasonable costs from the parolee's inmate funds or the parolee as reimbursement to the division of corrections for 87 88 the costs of returning him or her to the state of West Virginia.
- (h) Conviction of a felony for conduct occurring during the
 period of parole constitutes proof of violation of the conditions
 of parole and the hearing procedures required by the provisions
 of this section are inapplicable.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.
Cary///
Chairman Senate Committee
J. Chairman House Committee
Chairman Mouse Committee
Originating in the House.
In effect from passage.
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President of the Senate
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