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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 218

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,
BY REQUEST OF THE EXECUTIVE)

[Passed March 13, 2010; in effect ninety days from passage.]

SB 218

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AN ACT to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating to powers and duties of the board of parole; eligibility for parole; changing when an inmate's written parole release plan may be prepared and considered; procedures for granting parole; accelerated parole eligibility for certain inmates who complete a rehabilitation treatment plan created with the assistance of a standardized risk and needs assessment; authorizing the Division of Corrections to promulgate policies and procedures related to accelerated parole eligibility; creating a rebuttable presumption for parole in certain circumstances; authorizing board of parole to contingently grant parole allowing board of parole to consider inmates for parole who have certain detainers pending against them; reducing the period for parole reconsideration; making technical corrections; and creating an internal effective date for certain amendments to the section.

Be it enacted by the Legislature of West Virginia:

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That §62-12-13 of the Code of West Virginia, 1931, 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 be
3 served, and subject to the limitations hereinafter provided,
4 shall release any inmate on parole for terms and upon
5 conditions as are provided by this article.
- 6 (b) Any inmate of a state correctional center is eligible
7 for parole if he or she:
 - 8 (1) (A) Has served the minimum term of his or her
9 indeterminate sentence or has served one fourth of his or
10 her definite term sentence, as the case may be, or
11 (B) He or she:
 - 12 (I) has applied for and been accepted by the Commis-
13 sioner of Corrections into an accelerated parole program;
 - 14 (ii) does not have a prior criminal conviction for a felony
15 crime of violence against the person, a felony offense
16 involving the use of a firearm, or a felony offense where
17 the victim was a minor child;
 - 18 (iii) has no record of institutional disciplinary rule
19 violations for a period of 120 days prior to parole consid-
20 eration unless the requirement is waived by the commis-
21 sioner;
 - 22 (iv) is not serving a sentence for a crime of violence
23 against the person, or more than one felony for a con-
24 trolled substance offense for which the inmate is serving
25 a consecutive sentence, a felony offense involving the use

26 of a firearm, or a felony offence where the victim was a
27 minor child; and,

28 (v) has successfully completed a rehabilitation treatment
29 program created with the assistance of a standardized risk
30 and needs assessment;

31 (I) as used in this paragraph “felony crime of violence
32 against the person” means felony offenses set forth in
33 articles two, three-e, eight-b or eight-d of chapter sixty-
34 one of this code;

35 and

36 (II) as used in this paragraph “felony offense where the
37 victim was a minor child” means any felony crime of
38 violence against the person and any felony violation set
39 forth in article eight, eight-a, eight-c or eight-d of chapter
40 sixty-one of this code.

41 (C) Notwithstanding any provision of this code to the
42 contrary, any person who committed, or attempted to
43 commit a felony with the use, presentment or brandishing
44 of a firearm, is not eligible for parole prior to serving a
45 minimum of three years of his or her sentence or the
46 maximum sentence imposed by the court, whichever is
47 less: *Provided*, That any person who committed, or at-
48 tempted to commit, any violation of section twelve, article
49 two, chapter sixty-one of this code, with the use, present-
50 ment or brandishing of a firearm, is not eligible for parole
51 prior to serving a minimum of five years of his or her
52 sentence or one third of his or her definite term sentence,
53 whichever is greater. Nothing in this section applies to an
54 accessory before the fact or a principal in the second
55 degree who has been convicted as if he or she were a
56 principal in the first degree if, in the commission of or in
57 the attempted commission of the felony, only the principal
58 in the first degree used, presented or brandished a firearm.
59 A person is not ineligible for parole under the provisions

60 of this subdivision because of the commission or attempted
61 commission of a felony with the use, presentment or
62 brandishing of a firearm unless that fact is clearly stated
63 and included in the indictment or presentment by which
64 the person was charged and was either: (I) Found by the
65 court at the time of trial upon a plea of guilty or nolo
66 contendere; or (ii) found by the jury, upon submitting to
67 the jury a special interrogatory for such purpose if the
68 matter was tried before a jury; or (iii) found by the court,
69 if the matter was tried by the court without a jury.

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

74 (D) The amendments to this subsection adopted in the
75 year 1981:

76 (I) Apply to all applicable offenses occurring on or after
77 August 1 of that year;

78 (ii) Apply with respect to the contents of any indictment
79 or presentment returned on or after August 1 of that year
80 irrespective of when the offense occurred;

81 (iii) Apply with respect to the submission of a special
82 interrogatory to the jury and the finding to be made
83 thereon in any case submitted to the jury on or after
84 August 1 of that year or to the requisite findings of the
85 court upon a plea of guilty or in any case tried without a
86 jury: *Provided*, That the state gives notice in writing of its
87 intent to seek such finding by the jury or court, as the case
88 may be, which notice shall state with particularity the
89 grounds upon which the finding will be sought as fully as
90 such grounds are otherwise required to be stated in an
91 indictment, unless the grounds therefor are alleged in the
92 indictment or presentment upon which the matter is being
93 tried; and

94 (iv) Does not apply with respect to cases not affected by
95 the amendments and in such cases the prior provisions of
96 this section apply and are construed without reference to
97 the amendments.

98 Insofar as the amendments relate to mandatory sen-
99 tences restricting the eligibility for parole, all matters
100 requiring a mandatory sentence shall be proved beyond a
101 reasonable doubt in all cases tried by the jury or the court.

102 (2) Is not in punitive segregation or administrative
103 segregation as a result of disciplinary action;

104 (3) Has maintained a record of good conduct in prison
105 for a period of at least three months immediately preced-
106 ing the date of his or her release on parole;

107 (4) Has prepared and submitted to the board a written
108 parole release plan setting forth proposed plans for his or
109 her place of residence, employment and, if appropriate, his
110 or her plans regarding education and post-release counsel-
111 ing and treatment. The Commissioner of Corrections or
112 his or her designee shall review the plan to be reviewed
113 and investigated and provide recommendations to the
114 board as to the suitability of the plan: *Provided*, That in
115 cases in which there is a mandatory thirty day notification
116 period required prior to the release of the inmate, pursu-
117 ant to section twenty-three of this article, the board may
118 conduct an initial interview and deny parole without
119 requiring the development of a plan. In the event the
120 board does not believe parole should be denied, it may
121 defer a final decision pending completion of an investiga-
122 tion and receipt of recommendations. Upon receipt of the
123 plan together with the investigation and recommendation,
124 the board, through a panel, shall make a final decision
125 regarding the granting or denial of parole; and

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

128 (c) Except in the case of a person serving a life sentence,
129 no person who has been previously twice convicted of a
130 felony may be released on parole until he or she has served
131 the minimum term provided by law for the crime for
132 which he or she was convicted. A person sentenced for life
133 may not be paroled until he or she has served ten years,
134 and a person sentenced for life who has been previously
135 twice convicted of a felony may not be paroled until he or
136 she has served fifteen years: *Provided*, That a person
137 convicted of first degree murder for an offense committed
138 on or after June 10, 1994, is not eligible for parole until he
139 or she has served fifteen years.

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

144 (e) If, upon consideration, parole is denied, the board
145 shall promptly notify the inmate of the denial. The board
146 shall, at the time of denial, notify the person of the month
147 and year he or she may apply for reconsideration and
148 review. The board shall at least once a year reconsider
149 and review the case of every inmate who was denied
150 parole and is still eligible.

151 (f) Any person serving a sentence on a felony conviction
152 who becomes eligible for parole consideration prior to
153 being transferred to a state correctional center may make
154 written application for parole. The terms and conditions
155 for parole consideration established by this article apply
156 to such inmates.

157 (g) The board shall, with the approval of the Governor,
158 adopt rules governing the procedure in the granting of
159 parole. No provision of this article and none of the rules
160 adopted hereunder are intended or may be construed to
161 contravene, limit or otherwise interfere with or affect the
162 authority of the Governor to grant pardons and reprieves,

163 commute sentences, remit fines or otherwise exercise his
164 or her constitutional powers of executive clemency.

165 (h) The Division of Corrections shall promulgate policies
166 and procedures for developing a rehabilitation treatment
167 plan created with the assistance of a standardized risk and
168 needs assessment. The policies and procedures shall
169 include, but not be limited to, policy and procedures for
170 screening and selecting inmates for rehabilitation treat-
171 ment and development and use of standardized risk and
172 needs assessment tools. An inmate shall not be paroled
173 solely due to having successfully completed a rehabilita-
174 tion treatment plan but completion of all the requirements
175 of a rehabilitation parole plan along with compliance with
176 the requirements of subsection (b) of this section shall
177 create a rebuttable presumption that parole is appropriate.
178 The presumption created by this subsection may be
179 rebutted by a parole board finding that at the time parole
180 release is sought the inmate still constitutes a reasonable
181 risk to the safety or property of other persons if released.
182 Nothing in subsection (b) of this section or in this subsec-
183 tion may be construed to create a right to parole.

184 (I) Notwithstanding the provisions of subsection (b) of
185 this section, the parole board may, in its discretion, grant
186 or deny parole to an inmate against whom a detainer is
187 lodged by a jurisdiction other than West Virginia for
188 service of a sentence of incarceration, upon a written
189 request for parole from the inmate. A denial of parole
190 under this subsection shall preclude consideration for a
191 period of one year or until the provisions of subsection (b)
192 of this section are applicable.

193 (j) Where an inmate is otherwise eligible for parole
194 pursuant to subsection (b) of this section but the parole
195 board determines that the inmate should participate in an
196 additional program or complete an assigned task or tasks
197 prior to actual release on parole, the board may grant

198 parole contingently, effective upon successful completion
199 of the program or assigned task or tasks, without the need
200 for a further hearing. The Commissioner of Corrections
201 shall provide notice to the parole board of the imminent
202 release of a contingently paroled inmate to effectuate
203 appropriate supervision.

204 (k) The Division of Corrections is charged with the duty
205 of supervising all probationers and parolees whose super-
206 vision may have been undertaken by this state by reason
207 of any interstate compact entered into pursuant to the
208 uniform act for out-of-state parolee supervision.

209 (l)(1) When considering an inmate of a state correctional
210 center for release on parole, the parole board panel
211 considering the parole is to have before it an authentic
212 copy of or report on the inmate's current criminal record
213 as provided through the West Virginia State Police, the
214 United States Department of Justice or other reliable
215 criminal information sources and written reports of the
216 warden or superintendent of the state correctional center
217 to which the inmate is sentenced:

218 (A) On the inmate's conduct record while in custody,
219 including a detailed statement showing any and all
220 infractions of disciplinary rules by the inmate and the
221 nature and extent of discipline administered therefor;

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

231 (C) On the inmate's industrial record while in custody
232 which shall include: The nature of his or her work, occupa-

233 tion or education, the average number of hours per day he
234 or she has been employed or in class while in custody and
235 a recommendation as to the nature and kinds of employ-
236 ment which he or she is best fitted to perform and in
237 which the inmate is most likely to succeed when he or she
238 leaves prison;

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

243 (2) The board panel considering the parole may waive
244 the requirement of any report when not available or not
245 applicable as to any inmate considered for parole but, in
246 every such case, shall enter in the record thereof its reason
247 for the waiver: *Provided*, That in the case of an inmate
248 who is incarcerated because the inmate has been found
249 guilty of, or has pleaded guilty to a felony under the
250 provisions of section twelve, article eight, chapter sixty-
251 one of this code or under the provisions of article eight-b
252 or eight-c of said chapter, the board panel may not waive
253 the report required by this subsection and the report is to
254 include a study and diagnosis including an on-going
255 treatment plan requiring active participation in sexual
256 abuse counseling at an approved mental health facility or
257 through some other approved program: *Provided, how-*
258 *ever*, That nothing disclosed by the person during the
259 study or diagnosis may be made available to any
260 law-enforcement agency, or other party without that
261 person's consent, or admissible in any court of this state,
262 unless the information disclosed indicates the intention or
263 plans of the parolee to do harm to any person, animal,
264 institution or to property. Progress reports of outpatient
265 treatment are to be made at least every six months to the
266 parole officer supervising the person. In addition, in such
267 cases, the parole board shall inform the prosecuting
268 attorney of the county in which the person was convicted

269 of the parole hearing and shall request that the prosecut-
270 ing attorney inform the parole board of the circumstances
271 surrounding a conviction or plea of guilty, plea bargaining
272 and other background information that might be useful in
273 its deliberations.

274 (m) Before releasing any inmate on parole, the board of
275 parole shall arrange for the inmate to appear in person
276 before a parole board panel and the panel may examine
277 and interrogate him or her on any matters pertaining to
278 his or her parole, including reports before the board made
279 pursuant to the provisions hereof: *Provided*, That an
280 inmate may appear by video teleconference if the members
281 of the panel conducting the examination are able to
282 contemporaneously see the inmate and hear all of his or
283 her remarks and if the inmate is able to contemporane-
284 ously see each of the members of the panel conducting the
285 examination and hear all of the members' remarks. The
286 panel shall reach its own written conclusions as to the
287 desirability of releasing the inmate on parole and the
288 majority of the panel considering the release shall concur
289 in the decision. The warden or superintendent shall
290 furnish all necessary assistance and cooperate to the
291 fullest extent with the parole board. All information,
292 records and reports received by the board are to be kept on
293 permanent file.

294 (n) The board and its designated agents are at all times
295 to have access to inmates imprisoned in any state correc-
296 tional center or in any jail in this state and may obtain any
297 information or aid necessary to the performance of its
298 duties from other departments and agencies of the state or
299 from any political subdivision thereof.

300 (o) The board shall, if so requested by the Governor,
301 investigate and consider all applications for pardon,
302 reprieve or commutation and shall make recommendation
303 thereon to the Governor.

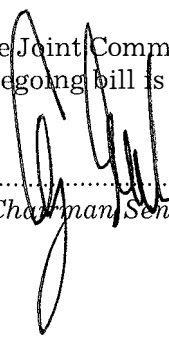
304 (p) Prior to making a recommendation for pardon,
305 reprieve or commutation and prior to releasing any inmate
306 on parole, the board shall notify the sentencing judge and
307 prosecuting attorney at least ten days before the recom-
308 mendation or parole.

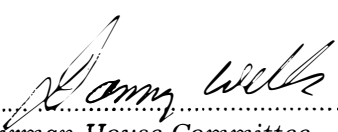
309 (q) Any person released on parole shall participate as a
310 condition of parole in the litter control program of the
311 county to the extent directed by the board, unless the
312 board specifically finds that this alternative service would
313 be inappropriate.

314 (r) Except for the amendments to this section contained
315 in subdivision (4), subsection (b) and subsection (i) of this
316 section the amendments to this section enacted during the
317 2010 regular session of the legislature shall become
318 effective on January 1, 2011.

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

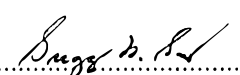

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Chairman Senate Committee


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Chairman House Committee

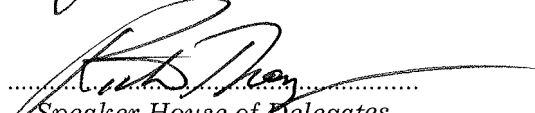
Originated in the Senate.

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 is approved..... this the 31st.....

Day of March....., 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 30 2010

Time 4:20 pm