

1 **H. B. 2044**

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3 (By Delegates Armstead, Anderson and Craig)
4 [Introduced January 12, 2011; referred to the
5 Committee on Government Organization then the Judiciary.]
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10 A BILL to amend and reenact §4-10-8 of the Code of West Virginia,
11 1931, as amended; and to amend said code by adding thereto a
12 new article, designated §61-13-1, §61-13-2, §61-13-3 and §61-
13 13-4, all relating to the Performance Review Act; crimes and
14 their punishment; the creation of a Sentencing Commission,
15 providing for the appointment, terms and qualifications of
16 members; establishing objectives for the commission; and
17 setting forth certain powers and duties of the commission.

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

19 That §4-10-8 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted; and that said code be amended by adding
21 thereto a new article, designated §61-13-1, §61-13-2, §61-13-3 and
22 §61-13-4, all to read as follows:

23 **CHAPTER 4. THE LEGISLATURE.**

24 **ARTICLE 10. PERFORMANCE REVIEW ACT.**

1 **§4-10-8. Schedule of departments for agency review.**

2 (a) Each department shall make a presentation pursuant to the
3 provisions of this article, to the joint standing committee and the
4 committee during the first interim meeting after the regular
5 session of the year in which the department is to be reviewed
6 pursuant to the schedule set forth in subsection (b) of this
7 section.

8 (b) An agency review shall be performed on one or more
9 agencies under the purview of each department at least once every
10 six years, commencing as follows:

11 (1) 2008, the Department of Administration;

12 (2) 2009, the Department of Education and the Arts, and the
13 Department of Education, including the Higher Education Policy
14 Commission and the West Virginia Council for Community and
15 Technical College Education;

16 (3) 2010, the Department of Revenue and the Department of
17 Commerce;

18 (4) 2011, the Department of Environmental Protection and the
19 Department of Military Affairs and Public Safety and 2013 the
20 Sentencing Commission;

21 (5) 2012, the Department of Health and Human Resources,
22 including the Bureau of Senior Services; and

23 (6) 2013, the Department of Transportation.

24 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

1 ARTICLE 13. WEST VIRGINIA SENTENCING COMMISSION.

2 §61-13-1. Creation of sentencing commission; how members are
3 appointed; no compensation for service of members;
4 terms of office for members; what constitutes
5 quorum; how chairperson elected; Executive
6 Director.

7 (a) There is hereby created a West Virginia Sentencing
8 Commission.

9 (b) The commission consists of the following members, who shall
10 serve without compensation:

11 (1) One member is the Chairperson of the Governor's Committee
12 on Crime and Delinquency, who shall serve as an ex officio member;

13 (2) Two members are from the West Virginia House of Delegates,
14 to be appointed by the Speaker of the House;

15 (3) Two members are members of the West Virginia Senate, to be
16 appointed by the President of the Senate;

17 (4) Seven members are current or retired circuit judges,
18 magistrates or municipal court judges, to be appointed to their
19 membership on this commission by the Governor;

20 (5) Two members are citizens of the State of West Virginia,
21 with no required prerequisite other than citizenship in this state,
22 to be appointed by the Governor;

23 (6) One member is the presiding Chief Justice of the West
24 Virginia Supreme Court of Appeals, who shall serve as an ex officio

1 member.

2 (c) Each member serves a two-year term, with the exception of
3 the ex officio members who shall serve as long as they shall hold
4 their respective offices.

5 (d) The chairperson of this commission shall be elected by the
6 other members of the commission.

7 (e) Eight members of the commission constitute a quorum.

8 (f) The Executive Director of the Governor's Committee on Crime
9 and Delinquency shall serve as the Executive Director of this
10 Sentencing Commission and will provide administrative services.

11 **§61-13-2. Purpose of Sentencing Commission.**

12 The Legislature hereby finds and declares that:

13 (a) There is a need for fair and uniform sentencing;

14 (b) There is a need for research on issues regarding sentencing
15 in order to promote a fuller understanding of the efficient, just
16 and fair operation of this state's criminal justice system;

17 (c) There is a need for establishing priorities with regard to
18 the severity of the criminal offenses and, in accordance with such
19 established priorities, to consider alternatives to incarceration
20 for nonviolent offenders;

21 (d) There is a need to utilize the limited correctional
22 resources in a manner best able to fulfill the goals of criminal
23 punishment and protect the public.

24 **§61-13-3. Objectives of the commission.**

1 The Sentencing Commission shall pursue the following
2 objectives:

3 (a) Promoting sentencing that more accurately reflects the time
4 that an offender will actually be incarcerated;

5 (b) Concentrating prison capacity on the incarceration of
6 violent and career offenders;

7 (c) Reducing unwarranted disparity in sentences for offenders
8 who have committed similar offenses and have similar criminal
9 histories;

10 (d) Preserving meaningful judicial discretion in the imposition
11 of sentences and sufficient flexibility to permit individualized
12 sentences;

13 (e) Ensuring that sentencing judges in every jurisdiction in
14 the state are able to impose the most appropriate criminal
15 penalties including correctional options programs for appropriate
16 nonviolent offenders; and

17 (f) Determining whether the state needs to set out all criminal
18 offenses in terms of priority in order of severity and harm to
19 society and to provide alternatives to incarceration for certain
20 offenses.

21 **§61-13-4. Powers and duties of the commission.**

22 The Sentencing Commission established pursuant to this article
23 has the following powers and duties:

24 (a) The commission shall establish general policies and propose

1 rules for legislative approval in accordance with article three,
2 chapter twenty-nine-a of this code as are necessary to carry out
3 the purposes of this section;

4 (b) The commission may request such information, data and
5 reports from any officer or agency of the state government as the
6 commission may from time to time require and as may be produced
7 consistent with other law;

8 (c) The commission may issue invitations requesting the
9 attendance and testimony of witnesses and the production of any
10 evidence that relates directly to a matter with respect to which
11 the commission or any member thereof is empowered to make a
12 determination under this article;

13 (d) The commission shall establish a research and development
14 program within the commission for the purpose of:

15 (1) Serving as a clearinghouse and information center for the
16 collection, preparation and dissemination of information on
17 sentencing practices;

18 (2) Assisting and serving in a consulting capacity to state
19 courts, departments and agencies in the development, maintenance
20 and coordination of sound sentencing practices;

21 (e) The commission shall collect systematically the data
22 obtained from studies, research and the empirical experience of
23 public and private agencies concerning the sentencing processes;

24 (f) The commission shall publish data concerning the sentencing

1 process;

2 (g) The commission shall collect systematically and disseminate
3 information concerning sentences actually imposed;

4 (h) The commission shall, collect systematically and
5 disseminate information regarding effectiveness of sentences
6 imposed;

7 (i) The commission shall make recommendations to the
8 Legislature concerning modification or enactment of sentencing and
9 correctional statutes which the commission finds to be necessary
10 and advisable to carry out an effective, humane and rational
11 sentencing policy;

12 (j) The commission shall establish a plan and timetable to
13 collect and disseminate information relating to incapacitation,
14 recidivism, deterrence and overall effectiveness of sentences
15 imposed;

16 (k) The commission shall evaluate the state's sentencing and
17 correctional laws and policies and make recommendations to the
18 Governor and the Legislature on or before January 1, 2013, and at
19 its discretion thereafter, regarding the following issues:

20 (1) Whether the state should adopt guided discretion sentencing
21 guidelines and, if so, what type of guided discretion sentencing
22 guidelines should be adopted;

23 (2) Whether the state should retain parole as a correctional
24 option for all inmates or any particular category of inmates;

1 (3) Whether the state should determine the minimum portion of
2 a sentence that must be served by all inmates or any particular
3 category of inmates before becoming eligible for parole;

4 (4) Whether the state should alter the manner in which an
5 inmate may obtain credit for good time served or release on
6 mandatory supervision;

7 (5) Whether the state needs to take action to ensure that there
8 is a coordinated system of correctional options to incarceration at
9 the state and county levels and, if so, what action should be
10 taken; and

11 (6) Any other matters relating to state and local laws and
12 policies governing sentencing, parole, mandatory supervision and
13 correctional options programs.

NOTE: The purpose of this bill is to create a Sentencing Commission, setting forth its membership, responsibilities, powers and duties. The bill also requires that the commission evaluate the state's sentencing and correctional laws and policies and make recommendations to the Governor and the Legislature.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.