

H. B. 3213

(By Delegate C. Miller)

[Introduced February 21, 2011; referred to the  
Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new section, designated §62-12-29, relating  
to the Community Corrections Performance Incentive; intent;  
providing definitions; calculation of state prison savings by  
the West Virginia Supreme Court of Appeals; providing for  
performance incentive funding; use of funds; and reports to be  
provided.

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

That the Code of West Virginia, 1931, as amended, be amended  
and reenacted by adding thereto a new section, designated §62-12-  
29, to read as follows:

**ARTICLE 12. PROBATION AND PAROLE.**

**§62-12-29. Community Corrections Performance Incentive.**

(a) Intent. -- The provisions of this act are intended to  
reduce crimes committed by probationers and the number of

1 probationers revoked to prison by giving probation departments a  
2 share of the savings to the state in reduced incarceration costs  
3 when they reduce both new offenses by probationers and revocations  
4 to prison. By linking funding to performance, this legislation  
5 creates a positive incentive for probation departments to improve  
6 their supervision practices to enhance public safety and reduce  
7 costs to taxpayers.

8 (b) Definitions. -- As used in this section, unless the  
9 context clearly requires a different meaning:

10 (1) "Evidence-based practices" means supervision policies,  
11 procedures, programs and practices that scientific research  
12 demonstrates reduce recidivism among people on probation, parole,  
13 or post-release supervision.

14 (2) "Supervised individual" means an individual placed on  
15 probation by a court or serving a period of parole or post-release  
16 supervision from prison or jail.

17 (3) "Conditions of supervision" means conditions of probation,  
18 parole or other form of post-prison supervision.

19 (c) Calculation of State Prison Savings.

20 (1) The West Virginia Supreme Court shall annually calculate:

21 (A) The percentage of supervised individuals who are revoked  
22 for violations of their conditions of supervision and ordered to  
23 serve a term of imprisonment in the State Division of Corrections.

24 This calculation shall be based on the fiscal year prior to the

1 fiscal year in which the report is required pursuant to subsection  
2 (f). The baseline revocation rate shall be the revocation rate in  
3 fiscal year 2008.

4 (B) The percentage of supervised individuals who are convicted  
5 of a new felony offense and sentenced to a term of imprisonment in  
6 the State Division of Corrections. This calculation shall be based  
7 on the fiscal year prior to the fiscal year in which the report is  
8 required pursuant to subsection (f). The baseline new offense  
9 conviction rate shall be the conviction rate in fiscal year 2009.

10 (C) Any state expenditures that have been avoided by  
11 reductions in the revocation rate as calculated in subdivision (A)  
12 of this subsection.

13 (D) Any state expenditures that have been avoided by  
14 reductions in the new felony offense conviction rate as calculated  
15 in subdivision (B) of this subsection.

16 (E) The calculations in subdivision (A) of this subsection  
17 shall be made separately for supervised individuals under the  
18 supervision of probation agencies and under the supervision of  
19 parole or other post-prison supervision agencies, and shall be made  
20 separately by individual state and local agencies.

21 (d) Performance Incentive Funding.

22 (1) Beginning in fiscal year 2012, the Legislature shall  
23 annually appropriate up to forty-five percent of any state  
24 expenditures that are avoided as calculated in subsection (c).

1 Such averted expenditures shall be appropriated to the Division of  
2 Probation Services responsible for those savings.

3 (2) The appropriations in subdivision(1) of this subsection  
4 are subject to the following provisions:

5 (A) None of the calculated savings shall be appropriated  
6 annually to the Division of Probation Services if there is an  
7 increase in the percentage of individuals supervised by Division of  
8 Probation Services who are convicted of a new felony offense as  
9 calculated in paragraph (B), subdivision (1), subsection (c) of  
10 this section.

11 (B) Of the state expenditures that have been avoided by a  
12 reduction in the revocation rate, as calculated in paragraph (A),  
13 subdivision (1), subsection (c) of this section: (i) Thirty  
14 percent of the total savings shall be appropriated to the Division  
15 of Probation Services; (ii) an additional five percent of the total  
16 savings shall be appropriated to the Division of Probation Services  
17 if there is an increase in the percentage of people who are  
18 supervised by the Division of Probation Services and who are  
19 employed in a full-time job or employed part-time for at least  
20 twenty-five hours per week, provided that the Division of Probation  
21 Services has submitted data to the Supreme Court showing such  
22 increases, and the Supreme Court includes this information in the  
23 report required pursuant to subsection (f); (iii) an additional  
24 five percent of the total savings shall be appropriated to the

1 Division of Probation Services if there is an increase in the  
2 percentage of people who are supervised by the Division of  
3 Probation Services who are current in their payments of victim  
4 restitution, provided that the Division of Probation Services has  
5 submitted data to the Supreme Court showing such increases and the  
6 Supreme Court includes this information in the report required  
7 pursuant to subsection (f); and (iv) an additional five percent of  
8 the total savings shall be appropriated to the Division of  
9 Probation Services if there is a decrease in the percentage of  
10 people who are supervised by that Division of Probation Services  
11 and who test positive for controlled substances, provided that the  
12 Division of Probation Services has submitted data to the Supreme  
13 Court showing such decreases and the Supreme Court includes this  
14 information in the report required pursuant to subsection (f).

15 (C) Of the state expenditures that have been avoided by a  
16 reduction in the new felony offense conviction rate as calculated  
17 in paragraph (B), subdivision (1), subsection (c) of this section:

18 (i) Thirty percent of the total savings shall be appropriated to  
19 the state or local agency or agencies; (ii) an additional five  
20 percent of the total savings shall be appropriated to the Division  
21 of Probation Services if there is an increase in the percentage of  
22 people who are supervised by Division of Probation Services and who  
23 are employed in a full-time job or employed part-time for at least  
24 twenty five hours per week, provided that the agency has submitted

1 data to the Supreme Court showing such increases, and the Supreme  
2 Court includes this information in the report required pursuant to  
3 subsection (f); (iii) an additional five per cent of the total  
4 savings shall be appropriated to the Division of Probation Services  
5 if there is an increase in the percentage of people who are  
6 supervised by that Division of Probation Services who are current  
7 in their payments of victim restitution, provided that the Division  
8 of Probation Services has submitted data to the Supreme Court  
9 showing such increases and the Supreme Court includes this  
10 information in the report required pursuant to subsection (f); and  
11 (iv) an additional five percent of the total savings shall be  
12 appropriated to the Division of Probation Services if there is a  
13 decrease in the percentage of people who are supervised by Division  
14 of Probation Services and who test positive for controlled  
15 substances.

16 (D) The moneys appropriated pursuant to this section shall be  
17 used to supplement, not supplant, any other state or county  
18 appropriations for probation, parole or other post-prison  
19 supervision services.

20 (e) Use of Funds.

21 Moneys received through appropriations pursuant to this title  
22 shall be used for the following purposes:

23 (A) Implementation of evidence-based practices;

24 (B) Increasing the availability of risk reduction programs and

1 interventions, including substance abuse treatment programs, for  
2 supervised individuals;

3 (C) Grants to nonprofit victim services organizations to  
4 partner with the community corrections agencies and courts to  
5 assist victims and increase the amount of restitution collected  
6 from probationers.

7 (f) Reports.

8 (1) On or before October 1 of each year, beginning in 2011,  
9 the counties and the Division of Corrections shall jointly report  
10 to the Supreme Court the data necessary for the Division of  
11 Probation Services to perform the calculations required by  
12 subsection (c). The report shall provide separate figures for  
13 probation and parole or other form of post-prison supervision and  
14 include for the prior fiscal year:

15 (A) The number of supervised individuals, by agency;

16 (B) The number and percentage of supervised individuals, by  
17 agency, who were revoked for violations of their conditions of  
18 supervision and ordered to serve a term of imprisonment in the  
19 Division of Corrections; and

20 (C) The number and percentage of supervised individuals, by  
21 agency, who were convicted of a new felony offense and sentenced to  
22 a term of imprisonment in the Division of Corrections.

23 (2) On or before December 1 of each year, beginning in 2011,  
24 the Supreme Court shall report each year on the implementation of

1 this section to the President of the Senate, the Speaker of the  
2 House of Delegates, the Chief Justice of the West Virginia Supreme  
3 Court, and the Governor. The report shall include the calculations  
4 made pursuant to this subsection (c) and the resulting performance  
5 incentive funding, if any, to be appropriated.

6 (3) The Supreme Court shall make its full report and an  
7 executive summary available to the general public on its website.

NOTE: The purpose of this bill is to provide incentives for good performance in community corrections policy.

This section is new; therefore, it has been completely underscored.