

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 371**

6 (By Senators Kessler (Mr. President) and M. Hall,

7 By Request of the Executive)

8 \_\_\_\_\_  
9 [Originating in the Committee on Finance;

10 reported March 19, 2013.]

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13  
14 A BILL to amend and reenact §25-1-15 of the Code of West Virginia,  
15 1931, as amended; to amend and reenact §28-5-27 of said code;  
16 to amend said code by adding thereto two new sections,  
17 designated §31-20-5g and §31-20-5h; to amend and reenact  
18 §61-7-6 of said code; to amend and reenact §62-11A-1a of said  
19 code; to amend and reenact §62-11B-9 of said code; to amend  
20 and reenact §62-11C-2, §62-11C-3 and §62-11C-6 of said code;  
21 to amend said code by adding thereto a new section, designated  
22 §62-11C-10; to amend and reenact §62-12-6, §62-12-7, §62-12-9,  
23 §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and  
24 §62-12-19 of said code; to amend said code by adding thereto

1 a new section, designated §62-12-29; to amend and reenact  
2 §62-15-2 of said code; and to amend said code by adding  
3 thereto two new sections, designated §62-15-6a and §62-15-6b,  
4 all relating to public safety; requiring the Division of  
5 Corrections to perform graduated methods of mental health  
6 screens, appraisals and evaluations on persons committed to  
7 its custody; eliminating requirement for separate disciplinary  
8 rules at each institution mandating one year of supervised  
9 release for violent inmates and deducting one year of their  
10 good time; mandating one hundred eighty days of supervised  
11 release for nonviolent inmates; setting an effective date for  
12 supervised release provisions; requiring the Commissioner of  
13 Corrections to adopt policies regarding mandatory supervised  
14 release; requiring the West Virginia Regional Jail Authority  
15 and Correctional Facility to use a standardized pretrial risk-  
16 screening instrument adopted by the Supreme Court of Appeals  
17 of West Virginia to screen persons arrested and placed in a  
18 regional jail; requiring the Division of Corrections to  
19 develop and implement a cognitive behavioral program for  
20 inmates in regional jails committed to the custody of the  
21 Commissioner of Corrections and requiring the Division of  
22 Corrections to pay its cost; exempting parole officers from  
23 prohibitions against carrying concealed weapons; moving  
24 definition of "day report center" to section relating to

1 conditions of release on probation; providing standards and  
2 limitations under which judges and magistrates may impose a  
3 period of supervision or participation in day report program;  
4 clarifying language regarding confinement and revocation for  
5 violations of the conditions of home incarceration; adding  
6 representative of the Bureau for Behavioral Health and Health  
7 Facilities to the community corrections subcommittee of the  
8 Governor's Committee on Crime, Delinquency and Correction;  
9 requiring that the community corrections subcommittee review,  
10 assess and report on the implementation of evidence-based  
11 practices in the criminal justice system; adding member with  
12 a background in substance abuse treatment and services to the  
13 community criminal justice boards to be appointed by the  
14 Commission or Commissions of the county or counties  
15 represented by the board; providing oversight responsibility  
16 to Division of Justice and Community Services to implement  
17 standardized risk and needs assessment, evaluate effectiveness  
18 of other modifications to community corrections programs and  
19 provide annual report; requiring probation officers to conduct  
20 a standardized risk and needs assessment for individuals  
21 placed on probation and to supervise probationer and enforce  
22 probation according to assessment and supervision standards  
23 adopted by the West Virginia Supreme Court of Appeals;  
24 requiring probation officers to perform random drug and

1 alcohol tests of persons under their supervision; authorizing  
2 the Supreme Court of Appeals of West Virginia to adopt a  
3 standardized risk and needs assessment for use by probation  
4 officers; authorizing the Supreme Court of Appeals of West  
5 Virginia to adopt a standardized pretrial screening instrument  
6 for use by the Regional Jail Authority; providing standards  
7 and limitations under which judges may impose a term of  
8 reporting to a day report center as a condition of probation;  
9 authorizing day report center programs to provide services  
10 based on the results of a person's standardized risk and needs  
11 assessment; providing for graduated sanctions in response to  
12 violations of the conditions of release on probation other  
13 than absconding or committing certain new criminal conduct;  
14 creating exceptions to new criminal conduct provisions;  
15 requiring copies of graduated sanctions confinement orders be  
16 supplied to the Commissioner of Corrections; providing that  
17 graduated sanctions confinement be paid by the Division of  
18 Corrections; revising eligibility requirements for accelerated  
19 parole program; requiring that Division of Corrections'  
20 policies and procedures for developing a rehabilitation  
21 treatment plan include the use of substance abuse assessment  
22 tools and prioritize treatment resources based on the risk and  
23 needs assessment and substance abuse assessment results;  
24 providing for rebuttable presumption that parole is

1 appropriate for inmates completing the accelerated parole  
2 program and a rehabilitation treatment program; providing  
3 standards and limitations for Parole Board; outlining duties  
4 of the Division of Corrections to supervise, treat and provide  
5 support services for persons released on mandatory supervised  
6 release; removing temporal standard for requirement that the  
7 Parole Board have access to a copy of an inmate's physical,  
8 mental or psychiatric examination; authorizing Division of  
9 Corrections to employ directors of housing and employment for  
10 released inmates with duties relating to the reduction of  
11 parole release delays and finding employment; requiring parole  
12 officers to update the standardized risk and needs assessment  
13 for each person for whom an assessment has not been conducted  
14 for parole and to supervise each person according to the  
15 assessment and the commissioner's supervision standards;  
16 authorizing the Commissioner of Corrections to issue a  
17 certificate authorizing an eligible parole officer to carry  
18 firearms or concealed weapons; providing standards and  
19 limitations under which the Division of Corrections may order  
20 substance abuse treatment or impose a term of reporting to a  
21 day report center or other community corrections program as a  
22 condition or modification of parole; authorizing the  
23 Commissioner of Corrections to enter into a master agreement  
24 with the Division of Justice and Community Services to

1 reimburse counties for use of the community corrections  
2 programs; clarifying that parolee participation in community  
3 corrections is at program director's discretion; providing for  
4 graduated sanctions in response to violations of the  
5 conditions of release on parole other than absconding or  
6 certain new criminal conduct; providing a parolee with the  
7 right to a hearing, upon request, regarding whether he or she  
8 violated the conditions of his or her release on parole;  
9 providing that graduated sanctions incarceration for parolees  
10 be paid for by Division of Corrections; providing for a  
11 Community Supervision Committee to be appointed by the  
12 Administrative Director of the Supreme Court of Appeals of  
13 West Virginia to coordinate the sharing of information for  
14 community supervision and requiring submittal of an annual  
15 report; revising definitions for Drug Offender Accountability  
16 and Treatment Act; providing standards and limitations under  
17 which judges may order treatment supervision for drug  
18 offenders; requiring the Division of Justice and Community  
19 Services to use appropriated funds to implement substance  
20 abuse treatment to serve those under treatment supervision in  
21 each judicial circuit; providing an effective date regarding  
22 standards and limitations; providing that the Division of  
23 Justice and Community Services in consultation with the  
24 Governor's Advisory Committee on Substance Abuse is

1 responsible for developing standards relating to quality and  
2 delivery of substance abuse services, requiring certain  
3 education and training, paying for drug abuse assessments and  
4 certified drug treatment from appropriated funds, requiring  
5 submittal of an annual report and specifying an effective  
6 date; outlining duties of treatment supervision service  
7 providers; providing for state payment of drug court  
8 participants' incarceration under certain circumstances;  
9 defining terms; and making technical changes.

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

11 That §25-1-15 of the Code of West Virginia, 1931, as amended,  
12 be amended and reenacted; that §28-5-27 of said code be amended and  
13 reenacted; that said code be amended by adding thereto two new  
14 sections, designated §31-20-5g and §31-20-5h; that §61-7-6 of said  
15 code be amended and reenacted; that §62-11A-1a of said code be  
16 amended and reenacted; that §62-11B-9 of said code be amended and  
17 reenacted; that §62-11C-2, §62-11C-3 and §62-11C-6 of said code be  
18 amended and reenacted; that said code be amended by adding thereto  
19 a new section, designated §62-11C-10; that §62-12-6, §62-12-7,  
20 §62-12-9, §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17  
21 and §62-12-19 of said code be amended and reenacted; that said code  
22 be amended by adding thereto a new section, designated §62-12-29;  
23 that §62-15-2 of said code be amended and reenacted; and that said  
24 code be amended by adding thereto two new sections, designated

1 §62-15-6a and §62-15-6b, all to read as follows:

2 **CHAPTER 25. DIVISION OF CORRECTIONS.**

3 **ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.**

4 **§25-1-15. Diagnostic and classification divisions.**

5 (a) The Commissioner of Corrections may establish diagnostic  
6 and classification divisions.

7 (b) Notwithstanding any provision of the this code to the  
8 contrary, all persons committed to the custody of the Commissioner  
9 of the Division of Corrections for presentence diagnosis and  
10 classification and all persons sentenced to the custody of the  
11 Division of Corrections shall, upon transfer to the Division of  
12 Corrections, undergo diagnosis and classification, which may shall  
13 include: (1) Assessments of a person's criminogenic risk and need  
14 factors that are reliable, validated and normed for a specific  
15 population and responsive to cultural and gender-specific needs as  
16 well as individual learning styles and temperament; (2) application  
17 of a mental health preliminary screen; and (3) if the mental health  
18 preliminary screen suggests the need for further assessment, a full  
19 psychological evaluation. The Division of Corrections shall  
20 perform mental health preliminary screens, appraisals and  
21 evaluations according to standards provided by the American  
22 Correctional Association.

23 **CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.**

24 **ARTICLE 5. THE PENITENTIARY.**



1 **§28-5-27. Deduction from sentence for good conduct; mandatory**  
2 **supervision.**

3 (a) All current and future adult inmates now in the custody of  
4 the Commissioner of Corrections, or hereafter committed to the  
5 custody of the Commissioner of Corrections, except those committed  
6 pursuant to article four, chapter twenty-five of this code, shall  
7 be granted commutation from their sentences for good conduct in  
8 accordance with this section.

9 (b) Such The commutation of sentence, hereinafter called known  
10 as "good time", shall be deducted from the maximum term of  
11 indeterminate sentences or from the fixed term of determinate  
12 sentences.

13 (c) Each inmate committed to the custody of the Commissioner  
14 of Corrections and incarcerated in a correctional facility pursuant  
15 to such that commitment shall be granted one day good time for each  
16 day he or she is incarcerated, including any and all days in jail  
17 awaiting sentence and which is are credited by the sentencing court  
18 to his or her sentence pursuant to section twenty-four, article  
19 eleven, chapter sixty-one of this code or for any other reason  
20 relating to such the commitment. No An inmate may not be granted  
21 any good time for time served either on parole or bond or in any  
22 other status when he or she is not physically incarcerated.

23 (d) No An inmate sentenced to serve a life sentence shall be  
24 is not eligible to earn or receive any good time pursuant to this

1 section.

2 (e) An inmate under two or more consecutive sentences shall be  
3 allowed good time as if the several sentences, when the maximum  
4 terms thereof of the consecutive sentences are added together, were  
5 all one sentence.

6 (f) The Commissioner of Corrections shall promulgate separate  
7 disciplinary rules for each institution under his control in which  
8 adult felons are incarcerated, which rules. The rules shall  
9 describe acts which that inmates are prohibited from committing,  
10 procedures for charging individual inmates for violation of such  
11 the rules and for determining the guilt or innocence of inmates  
12 charged with such the violations and the sanctions which may be  
13 imposed for such the violations. A copy of such the rules shall be  
14 given to each inmate. For each ~~such violations~~ violation, by ~~an a~~  
15 sanctioned inmate ~~so sanctioned~~, any part or all of the good time  
16 which has been granted to such the inmate pursuant to this section  
17 may be forfeited and revoked by the warden or superintendent of the  
18 institution in which the violation occurred. The warden or  
19 superintendent, when appropriate and with approval of the  
20 commissioner, may restore any forfeited good time ~~so forfeited~~.

21 (g) Each inmate, upon his or her commitment to and being  
22 ~~received~~ placed into the custody of the Commissioner of ~~the~~  
23 ~~Department of~~ Corrections, or upon his or her return to custody as  
24 the result of violation of parole pursuant to section nineteen,

1 article twelve, chapter sixty-two of this code, shall be given a  
2 statement setting forth the term or length of his or her sentence  
3 or sentences and the time of his or her minimum discharge computed  
4 according to this section.

5 (h) Each inmate shall be given a revision of the statement  
6 described in subsection (g) of this section if and when any part or  
7 all of the good time has been forfeited and revoked or restored  
8 pursuant to subsection (f) ~~whereby~~ of this section, by which the  
9 time of his or her earliest discharge is changed.

10 (i) The Commissioner of Corrections may, with the approval of  
11 the Governor, allow extra good time for inmates who perform  
12 exceptional work or service.

13 (j) In order to ensure equitable good time for all current and  
14 future inmates ~~now~~ in the custody of the Commissioner of  
15 Corrections ~~or hereafter committed to the custody of such~~  
16 ~~commissioner~~, except as to those persons committed pursuant to  
17 article four, chapter twenty-five of this code, all good times  
18 shall be computed according to this section and all previous  
19 computations of good time under prior statutes or ~~regulations~~ rules  
20 are ~~hereby voided~~ void. All inmates who have previously forfeited  
21 good time are hereby restored to good time computed according to  
22 this section and all inmates will receive a new discharge date  
23 computed according to this section. All inmates that have been  
24 awarded overtime good time or extra good time pursuant to sections

1 twenty-seven-a and twenty-seven-b of this article which ~~are~~ were  
2 repealed simultaneously with the amendment to this section during  
3 the regular session of the Legislature in the year 1984 shall  
4 receive ~~such~~ that good time in addition to the good time computed  
5 according to this section.

6 (k) There shall be no grants or accumulations of good time or  
7 credit to any current or future inmate ~~now or hereafter~~ serving a  
8 sentence in the custody of the ~~Department~~ Division of Corrections  
9 except in the manner provided in this section.

10 (l) Prior to the calculated discharge date of an inmate serving  
11 a sentence for a felony crime of violence against the person, a  
12 felony offense where the victim was a minor child or a felony  
13 offense involving the use of a firearm, one year shall be deducted  
14 from the inmate's accumulated good time to provide for one year of  
15 mandatory post-release supervision following the first instance in  
16 which the inmate reaches his or her calculated discharge date. As  
17 used in this subsection, a "felony crime of violence against the  
18 person" and a "felony crime where the victim was a minor child"  
19 have the same meaning set forth in section thirteen, article  
20 twelve, chapter sixty-two of this code. The provisions of this  
21 subsection are applicable to offenses committed on or after July 1,  
22 2013.

23 (m) Any inmate who is serving a sentence for an offense not  
24 referenced in subsection (l) of this section shall be released to

1 and subject to a period of mandatory supervision of one hundred and  
2 eighty days when he or she is one hundred and eighty days from his  
3 or her calculated discharge date. The provisions of this  
4 subsection are applicable to offenses committed before, on or after  
5 July 1, 2013.

6 (n) The Commissioner of Corrections shall adopt policies and  
7 procedures to implement the mandatory supervision provided for in  
8 subsections (l) and (m) of this section, which may include terms,  
9 conditions and procedures for supervision, modification and  
10 violation applicable to persons on parole.

11 **CHAPTER 31. CORPORATIONS.**

12 **ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY**

13 **AUTHORITY.**

14 **§31-20-5g. Pretrial risk assessment.**

15 Within three calender days of the arrest and placement of any  
16 person in a regional jail, the authority shall conduct a pretrial  
17 risk assessment using a standardized risk assessment instrument  
18 approved and adopted by the Supreme Court of Appeals of West  
19 Virginia. Upon completion of the assessment, the authority shall  
20 provide it to the magistrate and circuit clerks for delivery to the  
21 appropriate circuit judge or magistrate.

22 **§31-20-5h. Programs for inmates committed to prison.**

23 The Division of Corrections may develop and implement a  
24 cognitive behavioral program to address the needs of inmates

1 detained in a regional jail, but committed to the custody of the  
2 Commissioner of Corrections. The program shall be developed in  
3 consultation with the Regional Jail Authority, and may be offered  
4 by video teleconference or webinar technology. The costs of the  
5 program shall be paid out of funds appropriated to the Division of  
6 Corrections. The program shall be covered by the rehabilitation  
7 plan policies and procedures adopted by the Division of Corrections  
8 under subsection (h), section thirteen, article twelve, chapter  
9 sixty-two of this code.

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

11 **ARTICLE 7. DANGEROUS WEAPONS.**

12 **§61-7-6. Exceptions as to prohibitions against carrying concealed**  
13 **deadly weapons.**

14 The licensure provisions set forth in this article do not  
15 apply to:

16 (1) Any person carrying a deadly weapon upon his or her own  
17 premises; nor shall anything ~~herein~~ in this article prevent a  
18 person from carrying any firearm, unloaded, from the place of  
19 purchase to his or her home, residence or place of business or to  
20 a place of repair and back to his or her home, residence or place  
21 of business; nor shall anything ~~herein~~ in this article prohibit a  
22 person from possessing a firearm while hunting in a lawful manner  
23 or while traveling from his or her home, residence or place of  
24 business to a hunting site and returning to his or her home,

1 residence or place of business;

2       (2) Any person who is a member of a properly organized  
3 target-shooting club authorized by law to obtain firearms by  
4 purchase or requisition from this state or from the United States  
5 for the purpose of target practice from carrying any pistol, as  
6 defined in this article, unloaded, from his or her home, residence  
7 or place of business to a place of target practice and from any  
8 place of target practice back to his or her home, residence or  
9 place of business, for using ~~any such~~ the weapon at a place of  
10 target practice in training and improving his or her skill in the  
11 use of the weapons;

12       (3) Any law-enforcement officer or law-enforcement official as  
13 defined in section one, article twenty-nine, chapter thirty of this  
14 code;

15       (4) Any employee of the West Virginia Division of Corrections  
16 duly appointed pursuant to the provisions of section ~~five~~ eleven-c,  
17 article ~~five~~ one, chapter ~~twenty-eight~~ twenty-five of this code  
18 while the employee is on duty;

19       (5) Any member of the armed forces of the United States or the  
20 militia of this state while the member is on duty;

21       (6) Any circuit judge, including any retired circuit judge  
22 designated senior status by the Supreme Court of Appeals of West  
23 Virginia, prosecuting attorney, assistant prosecuting attorney or  
24 a duly appointed investigator employed by a prosecuting attorney;

1 (7) Any resident of another state who holds a valid license to  
2 carry a concealed weapon by a state or a political subdivision  
3 which has entered into a reciprocity agreement with this state,  
4 subject to the provisions and limitations set forth in section  
5 six-a of this article;

6 (8) Any federal law-enforcement officer or federal police  
7 officer authorized to carry a weapon in the performance of the  
8 officer's duty; ~~and~~

9 (9) Any Hatfield-McCoy Regional Recreation Authority ranger  
10 while the ranger is on duty; and

11 (10) Any parole officer appointed pursuant to section  
12 fourteen, article twelve, chapter sixty-two of this code.

13 **CHAPTER 62. CRIMINAL PROCEDURE.**

14 **ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.**

15 **§62-11A-1a. Other sentencing alternatives.**

16 (a) Any person who has been convicted in a circuit court or in  
17 a magistrate court under any criminal provision of this code of a  
18 misdemeanor or felony, which is punishable by imposition of a fine  
19 or confinement in ~~the~~ a regional jail or a state correctional  
20 ~~facility~~ institution, or both fine and confinement, may, in the  
21 discretion of the sentencing judge or magistrate, as an alternative  
22 to the sentence imposed by statute for the crime, be sentenced  
23 under one of the following programs:

24 (1) The weekend jail program under which ~~persons~~ a person



1 would be required to spend weekends or other days normally off from  
2 work in jail;

3 (2) The work program under which a sentenced person  
4 would be required to spend the first two or more days of ~~their~~ his  
5 or her sentence in jail and then, in the discretion of the court,  
6 would be assigned to a county agency to perform labor within the  
7 jail, or in and upon the buildings, grounds, institutions, bridges  
8 and roads, including orphaned roads used by the general public and  
9 public works within the county. Eight hours of labor are to be  
10 credited as one day of the sentence imposed. ~~Persons~~ A person  
11 sentenced under this program may be required to provide ~~their~~ his  
12 or her own transportation to and from the work site, lunch and work  
13 clothes; or

14 (3) The community service program under which ~~persons~~  
15 ~~sentenced~~ a sentenced person would spend no time in jail, but would  
16 be sentenced to a number of hours or days of community service work  
17 with government entities or charitable or nonprofit entities  
18 approved by the circuit court. Regarding any portion of the  
19 sentence designated as confinement, eight hours of community  
20 service work is to be credited as one day of the sentence imposed.  
21 Regarding any portion of the sentence designated as a fine, the  
22 fine is to be credited at an hourly rate equal to the prevailing  
23 federal minimum wage at the time the sentence was imposed. In the  
24 discretion of the court, the sentence credits may run concurrently

1 or consecutively. ~~Persons~~ A person sentenced under this program  
2 may be required to provide ~~their~~ his or her own transportation to  
3 and from the work site, lunch and work clothes.

4 ~~(4) A day-reporting center program if the program has been~~  
5 ~~implemented in the sentencing court's jurisdiction or in the area~~  
6 ~~where the offender resides. For purposes of this subdivision~~  
7 ~~"day reporting center" means a court operated or court approved~~  
8 ~~facility where persons ordered to serve a sentence in this type of~~  
9 ~~facility are required to report under the terms and conditions set~~  
10 ~~by the court for purposes which include, but are not limited to,~~  
11 ~~counseling, employment training, alcohol or drug testing or other~~  
12 ~~medical testing.~~

13 (b) In no event may the duration of the alternate sentence  
14 exceed the maximum period of incarceration otherwise allowed.

15 (c) In imposing a sentence under the provisions of this  
16 section, the court shall first make the following findings of fact  
17 and incorporate them into the court's sentencing order:

18 (1) The person sentenced was not convicted of an offense for  
19 which a mandatory period of confinement is imposed by statute;

20 (2) In circuit court cases, that the person sentenced is not  
21 a habitual criminal within the meaning of sections eighteen and  
22 nineteen, article eleven, chapter sixty-one of this code;

23 (3) In circuit court cases, that the offense underlying the  
24 sentence is not a felony offense for which violence or the threat

1 of violence to the person is an element of the offense;

2 (4) In circuit court cases, that adequate facilities for the  
3 administration and supervision of alternative sentencing programs  
4 are available through the court's probation officers or the county  
5 sheriff or, in magistrate court cases, that adequate facilities for  
6 the administration and supervision of alternative sentencing  
7 programs are available through the county sheriff; and

8 (5) That an alternative sentence under provisions of this  
9 article will best serve the interests of justice.

10 (d) ~~Persons~~ A person sentenced by the circuit court under the  
11 provisions of this article ~~remain~~ remains under the administrative  
12 custody and supervision of the court's probation officers or the  
13 county sheriff. ~~Persons~~ A person sentenced by a magistrate ~~remain~~  
14 remains under the administrative custody and supervision of the  
15 county sheriff.

16 (e) ~~Persons~~ A person sentenced under the provisions of this  
17 section may be required to pay the costs of ~~their~~ his or her  
18 incarceration, including meal costs: *Provided*, That the judge or  
19 magistrate considers the person's ability to pay the costs.

20 (f) ~~Persons~~ A person sentenced under the provisions of this  
21 section ~~remain~~ remains under the jurisdiction of the court. The  
22 court may withdraw any alternative sentence at any time by order  
23 entered with or without notice and require that the remainder of  
24 the sentence be served in the county jail, a regional jail or a

1 state correctional facility: *Provided*, That no alternative  
2 sentence directed by the sentencing judge or magistrate or  
3 administered under the supervision of the sheriff, his or her  
4 deputies, a jailer or a guard may require the convicted person to  
5 perform duties which would be considered detrimental to the  
6 convicted person's health as attested to by a physician.

7 (g) No provision of this section may be construed to limit a  
8 circuit ~~judge or magistrate's~~ judge's ability to impose a period of  
9 supervision or participation in a community corrections program  
10 created pursuant to article eleven-c, chapter sixty-two of this  
11 code, except that a person sentenced to a day report center must be  
12 identified as moderate to high risk of reoffending and moderate to  
13 high criminogenic need, as defined by the standardized risk and  
14 needs assessment adopted by the Supreme Court of Appeals of West  
15 Virginia under subsection (d), section six, article twelve of this  
16 chapter, and applied by a probation officer or day report staff:  
17 *Provided*, That a judge may impose a period of supervision or  
18 participation in a day report center, notwithstanding the results  
19 of the standardized risk and needs assessment, upon making specific  
20 written findings of fact as to the reason for departing from the  
21 requirements of this section.

22 (h) A magistrate may only impose a period of participation in  
23 a day report center if the person to be sentenced has been  
24 identified as moderate to high risk of reoffending and moderate to

1 high criminogenic need, as determined by the standardized risk and  
2 needs assessment adopted by the Supreme Court of Appeals of West  
3 Virginia under subsection (d), section six, article twelve of this  
4 chapter, and applied by day report center staff. The day report  
5 center staff shall determine which services a person receives based  
6 on the results of the standardized risk and needs assessment and  
7 taking into consideration the other conditions of supervision set  
8 by the court.

9 **ARTICLE 11B. HOME INCARCERATION ACT.**

10 **§62-11B-9. Violation of order of home incarceration procedures;**  
11 **penalties.**

12 (a) If, at any time during the period of home incarceration,  
13 there is reasonable cause to believe that a participant in a home  
14 incarceration program has violated the terms and conditions of the  
15 circuit court's home incarceration order, he or she ~~shall be~~ is  
16 subject to the procedures and penalties set forth in section ten,  
17 article twelve of this chapter.

18 (b) If, at any time during the period of home incarceration,  
19 there is reasonable cause to believe that a participant sentenced  
20 to home incarceration by the circuit court has violated the terms  
21 and conditions of the court's order of home incarceration and ~~said~~  
22 the participant's participation was imposed as an alternative  
23 sentence to another form of incarceration, ~~said the~~ the participant  
24 ~~shall be~~ is subject to the same procedures involving confinement

1 and revocation as would a probationer charged with a violation of  
2 the order of home incarceration. Any participant under an order of  
3 home incarceration ~~shall be~~ is subject to the same penalty or  
4 penalties, upon the circuit court's finding of a violation of the  
5 order of home incarceration, as he or she could have received at  
6 the initial disposition hearing: *Provided*, That the participant  
7 shall receive credit towards any sentence imposed after a finding  
8 of violation for the time spent in home incarceration.

9 (c) If, at any time during the period of home incarceration,  
10 there is reasonable cause to believe that a participant sentenced  
11 to home incarceration by a magistrate has violated the terms and  
12 conditions of the magistrate's order of home incarceration as an  
13 alternative sentence to incarceration in jail, the supervising  
14 authority may arrest the participant upon the obtaining of an order  
15 or warrant and take the offender before a magistrate within the  
16 county of the offense. The magistrate shall then conduct a prompt  
17 and summary hearing on whether the participant's home incarceration  
18 should be revoked. If it appears to the satisfaction of the  
19 magistrate that any condition of home incarceration has been  
20 violated, the magistrate may revoke the home incarceration and  
21 order that the sentence of incarceration in jail be executed. Any  
22 participant under an order of home incarceration ~~shall be~~ is  
23 subject to the same penalty or penalties, upon the magistrate's  
24 finding of a violation of the order of home incarceration, as the

1 participant could have received at the initial disposition hearing:  
2 *Provided*, That the participant shall receive credit towards any  
3 sentence imposed after a finding of violation for the time spent in  
4 home incarceration.

5 **ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.**

6 **§62-11C-2. Community Corrections Subcommittee.**

7 (a) A Community Corrections Subcommittee of the Governor's  
8 Committee on Crime, Delinquency and Correction is ~~hereby created~~  
9 continued and continues to be assigned responsibility for screening  
10 community corrections programs submitted by community criminal  
11 justice boards or from other entities authorized by the provisions  
12 of this article to do so for approval for funding by the Governor's  
13 committee and for making recommendations as to the disbursement of  
14 funds for approved community corrections programs. The  
15 subcommittee ~~is to~~ shall be comprised of fifteen members of the  
16 Governor's committee including: A representative of the Division of  
17 Corrections, a representative of the Regional Jail and Correctional  
18 Facility Authority, a representative of the Bureau for Behavioral  
19 Health and Health Facilities, a person representing the interests  
20 of victims of crime, an attorney employed by a public defender  
21 corporation, an attorney who practices criminal law, a prosecutor  
22 and a representative of the West Virginia Coalition Against  
23 Domestic Violence. At the discretion of the West Virginia Supreme  
24 Court of Appeals, the Administrator of the Supreme Court of

1 Appeals, a probation officer and a circuit judge may serve on the  
2 subcommittee as ex officio, nonvoting members.

3 (b) The subcommittee shall elect a chairperson and a vice  
4 chairperson. The subcommittee shall meet quarterly. Special  
5 meetings may be held upon the call of the chairperson, vice  
6 chairperson or a majority of the members of the subcommittee. A  
7 majority of the members of the subcommittee ~~constitute~~ constitutes  
8 a quorum.

9 **§62-11C-3. Duties of the Governor's committee and the community**  
10 **corrections subcommittee.**

11 (a) Upon recommendation of the community corrections  
12 subcommittee, the Governor's committee shall propose for  
13 legislative promulgation in accordance with the provisions of  
14 article three, chapter twenty-nine-a of this code, emergency and  
15 legislative rules to:

16 (1) Establish standards for approval of community corrections  
17 programs submitted by community criminal justice boards or other  
18 entities authorized by the provisions of this article to do so;

19 (2) Establish minimum standards for community corrections  
20 programs to be funded, including requiring annual program  
21 evaluations;

22 (3) Make any necessary adjustments to the fees established in  
23 section four of this article;

24 (4) Establish reporting requirements for community corrections



1 programs; and

2 (5) Carry out the purpose and intent of this article.

3 (b) Upon recommendation of the community corrections  
4 subcommittee, the Governor's committee shall:

5 (1) Maintain records of community corrections programs  
6 including the corresponding community criminal justice board or  
7 other entity contact information and annual program evaluations,  
8 when available;

9 (2) Seek funding for approved community corrections programs  
10 from sources other than the fees collected pursuant to section four  
11 of this article; and

12 (3) Provide funding for approved community corrections  
13 programs, as available.

14 (c) The Governor's committee shall submit, on or before  
15 September 30 of each year, to the Governor, the Speaker of the  
16 House of Delegates, the President of the Senate and, upon request,  
17 to any individual member of the Legislature, a report on its  
18 activities during the previous year and an accounting of funds paid  
19 into and disbursed from the special revenue account established  
20 pursuant to section four of this article.

21 (d) The subcommittee shall review the implementation of  
22 evidence-based practices and conduct regular assessments for  
23 quality assurance of all community-based criminal justice services,  
24 including day report centers, probation, parole and home

1 confinement. In consultation with the affected agencies, the  
2 subcommittee shall establish a process for reviewing performance.  
3 The process shall include review of agency performance measures and  
4 identification of new measures by the subcommittee, if necessary,  
5 for measuring the implementation of evidence-based practices or for  
6 quality assurance. After providing an opportunity for the affected  
7 agencies to comment, the subcommittee shall submit, on or before  
8 September 30 of each year, to the Governor, the Speaker of the  
9 House of Delegates, the President of the Senate and, upon request,  
10 to any individual member of the Legislature, a report on its  
11 activities and results from assessments of performance during the  
12 previous year.

13 **§62-11C-6. Community criminal justice boards.**

14 (a) Each county or combination of counties or a county or  
15 counties and a Class I or II municipality that seek to establish  
16 community-based corrections services shall establish a community  
17 criminal justice board: *Provided,* That if a county has not  
18 established a community criminal justice board by July 1, 2002, the  
19 chief probation officer of ~~such~~ that county, with the approval of  
20 the chief judge of the circuit, may apply for and receive approval  
21 and funding from the Governor's committee for ~~such~~ any programs as  
22 authorized by the provisions of section five of this article. Any  
23 county which chooses to operate without a community criminal  
24 justice board ~~shall be~~ is subject to the regulations and

1 requirements established by the community corrections subcommittee  
2 and the Governor's committee.

3 (b) ~~The~~ A community criminal justice board ~~is to~~ shall consist  
4 of no more than fifteen voting members.

5 (c) All members of ~~the~~ a community criminal justice board ~~are~~  
6 to shall be residents of the county or counties represented.

7 (d) ~~The~~ A community criminal justice board ~~is to~~ shall consist  
8 of the following members:

9 (1) The sheriff or chief of police or, if the board represents  
10 more than one county or municipality, at least one sheriff or chief  
11 of police from the counties represented;

12 (2) The prosecutor or, if the board represents more than one  
13 county, at least one prosecutor from the counties represented;

14 (3) If a public defender corporation exists in the county or  
15 counties represented, at least one attorney employed by any public  
16 defender corporation existing in the counties represented or, if no  
17 public defender office exists, one criminal defense attorney from  
18 the counties represented;

19 (4) One member to be appointed by the local board of education  
20 or, if the board represents more than one county, at least one  
21 member appointed by a board of education of the counties  
22 represented;

23 (5) One member with a background in mental health care and  
24 services to be appointed by the commission or commissions of the

1 county or counties represented by the board;

2 (6) Two members who can represent organizations or programs  
3 advocating for the rights of victims of crimes with preference  
4 given to organizations or programs advocating for the rights of  
5 victims of the crimes of domestic violence or driving under the  
6 influence; ~~and~~

7 (7) One member with a background in substance abuse treatment  
8 and services to be appointed by the commission or commissions of  
9 the county or counties represented by the board; and

10 ~~(7)~~ (8) Three at-large members to be appointed by the  
11 commission or commissions of the county or counties represented by  
12 the board.

13 (e) At the discretion of the West Virginia Supreme Court of  
14 Appeals, any or all of the following people may serve on a  
15 community criminal justice board as ex officio, nonvoting members:

16 (1) A circuit judge from the county or counties represented;

17 (2) A magistrate from the county or counties represented; or

18 (3) A probation officer from the county or counties  
19 represented.

20 (f) Community criminal justice boards may:

21 (1) Provide for the purchase, development and operation of  
22 community corrections services;

23 (2) Coordinate with local probation departments in  
24 establishing and modifying programs and services for offenders;

1 (3) Evaluate and monitor community corrections programs,  
2 services and facilities to determine their impact on offenders; and

3 (4) Develop and apply for approval of community corrections  
4 programs by the Governor's Committee on Crime, Delinquency and  
5 Correction.

6 (g) If a community criminal justice board represents more than  
7 one county, the appointed membership of the board, excluding any ex  
8 officio members, shall include an equal number of members from each  
9 county, unless the county commission of each county agrees in  
10 writing otherwise.

11 (h) If a community criminal justice board represents more than  
12 one county, the board shall, in consultation with the county  
13 commission of each county represented, designate one county  
14 commission as the fiscal agent of the board.

15 (i) Any political subdivision of this state operating a  
16 community corrections program shall, regardless of whether or not  
17 the program has been approved by the Governor's Committee on Crime,  
18 Delinquency and Correction, provide to the Governor's committee  
19 required information regarding the program's operations as required  
20 by legislative rule.

21 **§62-11C-10. Standardized risk and needs assessment; annual**  
22 **reviews; day report services.**

23 The Division of Justice and Community Services shall:

24 (a) Require that staff of day reporting centers and other

1 community corrections programs be trained in and use in each case  
2 a standardized risk and needs assessment as adopted by the Supreme  
3 Court of Appeals of West Virginia;

4 (b) Annually conduct a validation study of inter-rater  
5 reliability and risk cut-off scores by population to ensure that  
6 the standardized risk and needs assessment is sufficiently  
7 predictive of the risk of reoffending;

8 (c) Annually review the membership of all community criminal  
9 justice boards to ensure appropriate membership;

10 (d) Evaluate the services, sanctions and programs provided by  
11 each community corrections program to ensure that they address  
12 criminogenic needs and are evidence-based;

13 (e) Encourage community criminal justice boards to develop  
14 programs in addition to or in lieu of day report centers, through  
15 grants and more focused use of day report services; and

16 (f) Annually report to the community corrections subcommittee  
17 on the results of duties required by this section.

18 **ARTICLE 12. PROBATION AND PAROLE.**

19 **§62-12-6. Powers and duties of probation officers.**

20 (a) Each probation officer shall:

21 (1) Investigate all cases which the court refers to the  
22 officer for investigation and shall report in writing on each case;  
23 ~~The probation officer shall furnish~~

24 (2) Conduct a standardized risk and needs assessment, using

1 the instrument adopted by the Supreme Court of Appeals of West  
2 Virginia, for any probationer for whom an assessment has not been  
3 conducted either prior to placement on probation or by a  
4 specialized assessment officer;

5 (3) Supervise the probationer and enforce probation according  
6 to assessment and supervision standards adopted by the Supreme  
7 Court of Appeals of West Virginia;

8 (4) Furnish to each person released on probation under the  
9 officer's supervision a written statement of the probationer's  
10 conditions of probation together with a copy of the rules  
11 prescribed by the ~~court for the supervision of probationers.~~ The  
12 ~~probation officer shall stay~~ Supreme Court of Appeals of West  
13 Virginia;

14 (5) Stay informed concerning the conduct and condition of each  
15 probationer under the officer's supervision and ~~shall~~ report on the  
16 conduct and condition of each probationer in writing as often as  
17 the court requires; ~~The probation officer shall use~~

18 (6) Use all practicable and suitable methods to aid and  
19 encourage the probationer to improve his or her conduct and  
20 condition; ~~The probation officer shall maintain~~

21 (7) Perform random drug and alcohol testing on probationers  
22 under his or her supervision as directed by the circuit court;

23 (8) Maintain detailed work records; and ~~shall Perform any~~  
24 ~~other duties the court requires.~~

1        (9) Perform any other duties the court requires.

2        (b) The probation officer ~~has authority~~ may, with or without  
3 an order or warrant, ~~to~~ arrest any probationer as provided in  
4 section ten of this article, and ~~to~~ arrest any person on supervised  
5 release when there is reasonable cause to believe that the person  
6 on supervised release has violated a condition of release. A  
7 person on supervised release ~~so~~ who is arrested shall be brought  
8 before the court for a prompt and summary hearing.

9        ~~(b)~~ (c) Notwithstanding any provision of this code to the  
10 contrary:

11        (1) Any probation officer appointed on or after July 1, 2002,  
12 may carry handguns in the course of the officer's official duties  
13 after meeting specialized qualifications established by the  
14 Governor's Committee on Crime, Delinquency and Correction. ~~which~~  
15 The qualifications shall include the successful completion of  
16 handgun training, ~~including~~ which is comparable to the handgun  
17 training provided to law-enforcement officers by the West Virginia  
18 State Police and includes a minimum of four hours' training in  
19 handgun safety ~~and comparable to the handgun training provided to~~  
20 ~~law-enforcement officers by the West Virginia State Police.~~

21        (2) Probation officers may only carry handguns in the course  
22 of their official duties after meeting the specialized  
23 qualifications set forth in subdivision (1) of this subsection.

24        (3) Nothing in this subsection includes probation officers



1 within the meaning of law-enforcement officers as defined in  
2 section one, article twenty-nine, chapter thirty of this code.

3 (d) The Supreme Court of Appeals of West Virginia may adopt a  
4 standardized risk and needs assessment with risk cut-off scores for  
5 use by probation officers, taking into consideration the assessment  
6 instrument adopted by the Division of Corrections under subsection  
7 (h), section thirteen of this article and the responsibility of the  
8 Division of Justice and Community Services to evaluate the use of  
9 the standardized risk and needs assessment.

10 **§62-12-7. Pretrial and preliminary investigation; report on**  
11 **prospective probationers.**

12 (a) The Supreme Court of Appeals of West Virginia may adopt a  
13 standardized pretrial risk assessment for use by the Regional Jail  
14 Authority to assist magistrates and circuit courts in making  
15 pretrial decisions under article one-c of this chapter.

16 (b) ~~When~~ Unless otherwise directed by the court, the probation  
17 officer shall, in the form adopted by the Supreme Court of Appeals  
18 of West Virginia, make a careful investigation of, and a written  
19 report with recommendations concerning, any prospective  
20 probationer. Insofar as practicable, this report shall include  
21 information concerning the offender's court and criminal record,  
22 occupation, family background, education, habits and associations,  
23 mental and physical condition, the names, relationship, ages and  
24 condition of those dependent upon him or her for support and ~~such~~

1 any other facts ~~as~~ that may aid the court in determining the  
2 propriety and conditions of his or her release on probation. ~~No~~ A  
3 person convicted of a felony or of any offense described in article  
4 eight-b or eight-d, chapter sixty-one of this code against a minor  
5 child may not be released on probation until this report ~~shall have~~  
6 has been presented to and considered by the court. The court may  
7 ~~in its discretion~~ request ~~such~~ a report concerning any person  
8 convicted of a misdemeanor. The presentence report of any person  
9 convicted of an offense, described in said articles or section  
10 twelve, article eight of said chapter, may include a statement from  
11 a therapist, psychologist or physician who is providing treatment  
12 to the child. A copy of all reports shall be filed with the Parole  
13 Board ~~of probation and parole~~.

14 **§62-12-9. Conditions of release on probation.**

15 (a) Release on probation is conditioned upon the following:

16 (1) That the probationer may not, during the term of his or  
17 her probation, violate any criminal law of this or any other state  
18 or of the United States;

19 (2) That ~~he or she~~ the probationer may not, during the term of  
20 his or her probation, leave the state without the consent of the  
21 court which placed him or her on probation;

22 (3) That ~~he or she~~ the probationer complies with the  
23 conditions prescribed by the court for his or her supervision by  
24 the probation officer;

1           (4) That in every case ~~wherein~~ in which the probationer has  
2 been convicted of an offense defined in section twelve, article  
3 eight, chapter sixty-one of this code or article eight-b or eight-d  
4 of said chapter, against a child, the probationer may not live in  
5 the same residence as any minor child, nor exercise visitation with  
6 any minor child and ~~has~~ may have no contact with the victim of the  
7 offense: *Provided*, That the probationer may petition the court of  
8 the circuit ~~wherein~~ in which he or she was convicted for a  
9 modification of this term and condition of his or her probation and  
10 the burden rests upon the probationer to demonstrate that a  
11 modification is in the best interest of the child;

12           (5) That the probationer ~~be required to~~ pay a fee, not to  
13 exceed \$20 per month, to defray costs of supervision: *Provided*,  
14 That the court conducts a hearing prior to imposition of probation  
15 and makes a determination on the record that the offender is able  
16 to pay the fee without undue hardship. All moneys collected as  
17 fees from probationers pursuant to this subdivision ~~are to~~ shall be  
18 deposited with the circuit clerk who shall, on a monthly basis,  
19 remit the moneys collected to the State Treasurer for deposit in  
20 the State General Revenue Fund; and

21           (6) That the probationer is required to pay the fee described  
22 in section four, article eleven-c of this chapter: *Provided*, That  
23 the court conducts a hearing prior to imposition of probation and  
24 makes a determination on the record that the offender is able to

1 pay the fee without undue hardship.

2 (b) In addition, the court may impose, subject to modification  
3 at any time, any other conditions which it may ~~deem~~ determine  
4 advisable, including, but not limited to, any of the following:

5 (1) That ~~he or she~~ the probationer make restitution or  
6 reparation, in whole or in part, immediately or within the period  
7 of probation, to any party injured by the crime for which he or she  
8 has been convicted: *Provided*, That the court conducts a hearing  
9 prior to imposition of probation and makes a determination on the  
10 record that the offender is able to pay restitution without undue  
11 hardship;

12 (2) That ~~he or she pay~~ the probationer pays any fine assessed  
13 and the costs of the proceeding in installments ~~as~~ directed by the  
14 court ~~may direct~~: *Provided*, That the court conducts a hearing  
15 prior to imposition of probation and makes a determination on the  
16 record that the offender is able to pay the costs without undue  
17 hardship;

18 (3) That ~~he or she make contribution~~ the probationer makes  
19 contributions from his or her earnings, in sums ~~as~~ directed by the  
20 court ~~may direct~~, for the support of his or her dependents; and

21 (4) That ~~he or she~~ the probationer, in the discretion of the  
22 court, ~~be~~ is required to serve a period of confinement in jail of  
23 the county in which he or she was convicted for a period not to  
24 exceed one third of the minimum sentence established by law or one

1 third of the least possible period of confinement in an  
2 indeterminate sentence, but in no case may the period of  
3 confinement exceed six consecutive months. The court ~~has the~~  
4 ~~authority to~~ may sentence the defendant within the six-month period  
5 to intermittent periods of confinement including, but not limited  
6 to, weekends or holidays and may grant to the defendant  
7 intermittent periods of release in order that he or she may work at  
8 his or her employment or for other reasons or purposes as the court  
9 may ~~deem~~ determine appropriate: *Provided*, That the provisions of  
10 article eleven-a of this chapter do not apply to intermittent  
11 periods of confinement and release except to the extent ~~that~~  
12 directed by the court ~~may direct~~. If a period of confinement is  
13 required as a condition of probation, the court shall make special  
14 findings that other conditions of probation are inadequate and that  
15 a period of confinement is necessary.

16 (c) Circuit courts may impose, as a condition of probation,  
17 participation in a day report center.

18 (1) To be eligible, the probationer must be identified as  
19 moderate to high risk of reoffending and moderate to high  
20 criminogenic need, as determined by the standardized risk and needs  
21 assessment adopted by the Supreme Court of Appeals of West Virginia  
22 under subsection (d), section six of this article, and applied by  
23 a probation officer or day report staff. In eligible cases,  
24 circuit courts may impose a term of up to one year: *Provided*, That

1 notwithstanding the results of the standardized risk and needs  
2 assessment, a judge may impose, as a term of probation,  
3 participation in a day report center program upon making specific  
4 written findings of fact as to the reason for departing from the  
5 requirements of this subdivision.

6 (2) The day report center staff shall determine which services  
7 a person receives based on the results of the standardized risk and  
8 needs assessment and taking into consideration the other conditions  
9 of probation set by the court.

10 (d) For the purposes of this article, "day report center"  
11 means a court-operated or court-approved facility where persons  
12 ordered to serve a sentence in this type of facility are required  
13 to report under the terms and conditions set by the court for  
14 purposes which include, but are not limited to, counseling,  
15 employment training, alcohol or drug testing or other medical  
16 testing.

17 **§62-12-10. Violation of probation.**

18 (a) If at any time during the period of probation there shall  
19 be reasonable cause to believe that the probationer has violated  
20 any of the conditions of his or her probation, the probation  
21 officer may arrest him or her with or without an order or warrant,  
22 or the court which placed him or her on probation, or the judge  
23 thereof in vacation, may issue an order for his or her arrest,  
24 whereupon he or she shall be brought before the court, or the judge

1 thereof in vacation, for a prompt and summary hearing.

2       (1) ~~If it shall then appears to the satisfaction of the court~~  
3 or judge finds reasonable cause exists to believe that ~~any~~  
4 ~~condition of probation has been violated~~ the probationer absconded  
5 supervision or engaged in new criminal conduct other than a minor  
6 traffic violation or simple possession of a controlled substance,  
7 the court or judge may revoke the suspension of imposition or  
8 execution of sentence, impose sentence if none has been imposed and  
9 order that sentence be executed. In computing the period for which  
10 the offender is to be ~~imprisoned~~ confined, the time between his or  
11 her release on probation and his or her arrest ~~shall~~ may not be  
12 taken to be any part of the term of his or her sentence.

13       (2) If the judge finds that reasonable cause exists to believe  
14 that the probationer violated any condition of supervision other  
15 than absconding supervision or new criminal conduct other than a  
16 minor traffic violation or simple possession of a controlled  
17 substance, then, for the first violation, the judge shall impose a  
18 period of confinement up to sixty days, or, for the second  
19 violation, a period of confinement up to one hundred twenty days.  
20 For the third violation, the judge may revoke the suspension of  
21 imposition or execution of sentence, impose sentence if none has  
22 been imposed and order that sentence be executed, with credit for  
23 time spent in confinement under this section. If the time  
24 remaining on the probationer's maximum imposed sentence is less

1 than the maximum period of confinement, then the term of  
2 confinement is for the remaining period of the sentence. In  
3 computing the period for which the offender is to be confined, the  
4 time between his or her release on probation and his or her arrest  
5 may not be taken to be any part of the term of his or her sentence.  
6 Whenever the court incarcerates a probationer pursuant to the  
7 provisions of this subdivision, a circuit clerk shall provide a  
8 copy of the order of confinement within five days to the  
9 Commissioner of Corrections.

10 (b) A probationer confined for a first or second violation  
11 pursuant to subdivision (2), subsection (a) of this section may be  
12 confined in jail, and the costs of confining felony probationers  
13 shall be paid out of funds appropriated for the Division of  
14 Corrections.

15 (c) If, despite a violation of the conditions of probation,  
16 the court or judge ~~shall be~~ is of the opinion that the interests of  
17 justice do not require that the probationer serve his or her  
18 sentence or a period of confinement, the ~~court or~~ judge may, except  
19 when the violation was the commission of a felony, again release  
20 him or her on probation: Provided, That a judge may otherwise  
21 depart from the sentence limitations set forth in subdivision (2),  
22 subsection (a) of this section upon making specific written  
23 findings of fact supporting the basis for the departure.

24 **§62-12-13. Powers and duties of board; eligibility for parole;**



1                                   **procedure for granting parole.**

2           (a) The ~~board of parole~~ Parole Board, whenever it is of the  
3 opinion that the best interests of the state and of the inmate will  
4 be served, and subject to the limitations ~~hereinafter~~ provided in  
5 this section, shall release any inmate on parole for terms and upon  
6 conditions ~~as are~~ provided by this article.

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

9           (1) (A) Has served the minimum term of his or her indeterminate  
10 sentence or has served one fourth of his or her definite term  
11 sentence, as the case may be; or

12           (B) He or she:

13           (i) Has applied for and been accepted by the Commissioner of  
14 Corrections into an accelerated parole program;

15           (ii) Does not have a prior criminal conviction for a felony  
16 crime of violence against the person, a felony offense involving  
17 the use of a firearm or a felony offense where the victim was a  
18 minor child. As used in this subsection, a "felony crime of  
19 violence against the person" and a "felony crime where the victim  
20 was a minor child" have the same meaning set forth in section  
21 thirteen, article twelve, chapter sixty-two of this section;

22           ~~(iii) Has no record of institutional disciplinary rule~~  
23 ~~violations for a period of one hundred twenty days prior to parole~~  
24 ~~consideration unless the requirement is waived by the commissioner;~~

1       ~~(iv)~~ (iii) Is not serving a sentence for a crime of violence  
2 against the person, or more than one felony for a controlled  
3 substance offense for which the inmate is serving a consecutive  
4 sentence, a felony offense involving the use of a firearm or a  
5 felony ~~offence~~ offense where the victim was a minor child; and

6       ~~(v)~~ (iv) Has successfully completed a rehabilitation treatment  
7 program created with the assistance of a standardized risk and  
8 needs assessment.

9       ~~(I) As used in this section "felony crime of violence against~~  
10 ~~the person" means felony offenses set forth in articles two,~~  
11 ~~three e, eight b or eight d of chapter sixty one of this code; and~~

12 ~~—— (II) As used in this section "felony offense where the victim~~  
13 ~~was a minor child" means any felony crime of violence against the~~  
14 ~~person and any felony violation set forth in article eight,~~  
15 ~~eight a, eight c or eight d of chapter sixty one of this code.~~

16       (C) Notwithstanding any provision of this code to the  
17 contrary, any ~~person~~ inmate who committed, or attempted to commit,  
18 a felony with the use, presentment or brandishing of a firearm, is  
19 not eligible for parole prior to serving a minimum of three years  
20 of his or her sentence or the maximum sentence imposed by the  
21 court, whichever is less: *Provided*, That any ~~person~~ inmate who  
22 committed, or attempted to commit, any violation of section twelve,  
23 article two, chapter sixty-one of this code, with the use,  
24 presentment or brandishing of a firearm, is not eligible for parole

1 prior to serving a minimum of five years of his or her sentence or  
2 one third of his or her definite term sentence, whichever is  
3 greater. Nothing in this paragraph applies to an accessory before  
4 the fact or a principal in the second degree who has been convicted  
5 as if he or she were a principal in the first degree if, in the  
6 commission of or in the attempted commission of the felony, only  
7 the principal in the first degree used, presented or brandished a  
8 firearm. ~~A person~~ An inmate is not ineligible for parole under the  
9 provisions of this paragraph because of the commission or attempted  
10 commission of a felony with the use, presentment or brandishing of  
11 a firearm unless that fact is clearly stated and included in the  
12 indictment or presentment by which the person was charged and was  
13 either: (i) Found guilty by the court at the time of trial upon a  
14 plea of guilty or nolo contendere; (ii) found guilty by the jury,  
15 upon submitting to the jury a special interrogatory for such  
16 purpose if the matter was tried before a jury; or (iii) found  
17 guilty by the court, if the matter was tried by the court without  
18 a jury.

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

23 (D) The amendments to this subsection adopted in the year  
24 1981:

1 (i) Apply to all applicable offenses occurring on or after  
2 August 1 of that year;

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

6 (iii) Apply with respect to the submission of a special  
7 interrogatory to the jury and the finding to be made thereon in any  
8 case submitted to the jury on or after August 1 of that year or to  
9 the requisite findings of the court upon a plea of guilty or in any  
10 case tried without a jury: *Provided*, That the state gives notice  
11 in writing of its intent to seek such finding by the jury or court,  
12 as the case may be. ~~which~~ The notice shall state with particularity  
13 the grounds upon which the finding will be sought as fully as ~~such~~  
14 the grounds are otherwise required to be stated in an indictment,  
15 unless the grounds ~~therefor~~ upon which the finding will be sought  
16 are alleged in the indictment or presentment upon which the matter  
17 is being tried; and

18 (iv) Does not apply with respect to cases not affected by the  
19 amendments and in ~~such~~ those cases the prior provisions of this  
20 section apply and are construed without reference to the  
21 amendments.

22 ~~(1)~~ (v) Insofar as the amendments relate to mandatory  
23 sentences restricting the eligibility for parole, all matters  
24 requiring a mandatory sentence shall be proved beyond a reasonable

1 doubt in all cases tried by the jury or the court;

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

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

7 (4) Has prepared and submitted to the ~~board~~ Parole Board a  
8 written parole release plan setting forth proposed plans for his or  
9 her place of residence, employment and, if appropriate, his or her  
10 plans regarding education and post-release counseling and treatment  
11 Provided, That an inmate's application for parole may be considered  
12 by the board without the prior submission of a home plan, but the  
13 inmate shall have a home plan approved by the board prior to his or  
14 her release on parole. The Commissioner of Corrections or his or  
15 her designee shall review and investigate the plan ~~to be reviewed~~  
16 ~~and investigated~~ and provide recommendations to the board as to the  
17 suitability of the plan: *Provided, That in cases in which there is*  
18 *a mandatory thirty-day notification period required prior to the*  
19 *release of the inmate, pursuant to section twenty-three of this*  
20 *article, the board may conduct an initial interview and deny parole*  
21 *without requiring the development of a plan. In the event the*  
22 *board ~~does not believe parole should be denied~~ believes parole*  
23 *should be granted, it may defer a final decision pending completion*  
24 *of an investigation and receipt of recommendations. Upon receipt*

1 of the plan together with the investigation and recommendation, the  
2 board, through a panel, shall make a final decision regarding the  
3 granting or denial of parole; and

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

6 (c) Except in the case of ~~a person~~ an inmate serving a life  
7 sentence, ~~no~~ a person who has been previously twice convicted of a  
8 felony may not be released on parole until he or she has served the  
9 minimum term provided by law for the crime for which he or she was  
10 convicted. ~~A person~~ An inmate sentenced for life may not be  
11 paroled until he or she has served ten years, and ~~a person~~ an  
12 inmate sentenced for life who has been previously twice convicted  
13 of a felony may not be paroled until he or she has served fifteen  
14 years: *Provided*, That ~~a person~~ an inmate convicted of first degree  
15 murder for an offense committed on or after June 10, 1994, is not  
16 eligible for parole until he or she has served fifteen years.

17 (d) In the case of ~~a person~~ an inmate sentenced to any state  
18 correctional ~~center, it is the duty of the board~~ institution, the  
19 Parole Board, as soon as ~~a person~~ that inmate becomes eligible, ~~to~~  
20 shall consider the advisability of his or her release on parole.

21 (e) If, upon consideration, parole is denied, the board shall  
22 promptly notify the inmate of the denial. The board shall, at the  
23 time of denial, notify the inmate of the month and year he or she  
24 may apply for reconsideration and review. The board shall at least

1 once a year reconsider and review the case of every inmate who was  
2 denied parole and who is still eligible: *Provided*, That the board  
3 may reconsider and review parole eligibility anytime within three  
4 years following the denial of parole of an inmate serving a life  
5 sentence with the possibility of parole.

6 (f) Any ~~person~~ inmate serving a sentence on a felony  
7 conviction who becomes eligible for parole consideration prior to  
8 being transferred to a state correctional ~~center~~ institution may  
9 make written application for parole. The terms and conditions for  
10 parole consideration established by this article apply to ~~such~~  
11 ~~inmates~~ that inmate.

12 (g) The board shall, with the approval of the Governor, adopt  
13 rules governing the procedure in the granting of parole. No  
14 provision of this article and none of the rules adopted ~~hereunder~~  
15 under this article are intended or may be construed to contravene,  
16 limit or otherwise interfere with or affect the authority of the  
17 Governor to grant pardons and reprieves, commute sentences, remit  
18 fines or otherwise exercise his or her constitutional powers of  
19 executive clemency.

20 (h) (1) The Division of Corrections shall promulgate policies  
21 and procedures for developing a rehabilitation treatment plan  
22 created with the assistance of a standardized risk and needs  
23 assessment. The policies and procedures shall ~~include, but not be~~  
24 ~~limited to, policy and procedures for~~ provide for, at a minimum,

1 screening and selecting inmates for rehabilitation treatment and  
2 development, ~~and use of~~ using standardized risk and needs  
3 assessment and substance abuse assessment tools, and prioritizing  
4 the use of residential substance abuse treatment resources based on  
5 the results of the standardized risk and needs assessment and a  
6 substance abuse assessment.

7       (2) An inmate shall not be paroled under paragraph (B),  
8 subdivision (1), subsection (b) of this section solely due to  
9 having successfully completed a rehabilitation treatment plan, but  
10 completion of all the requirements of a rehabilitation ~~parole~~  
11 treatment plan along with compliance with the requirements of  
12 subsection (b) of this section ~~shall~~ creates a rebuttable  
13 presumption that parole is appropriate. The presumption created by  
14 this ~~subsection~~ subdivision may be rebutted by a Parole Board  
15 finding that, according to the standardized risk and needs  
16 assessment, at the time parole release is sought the inmate still  
17 constitutes a reasonable risk to the safety or property of other  
18 persons if released. Nothing in subsection (b) of this section or  
19 in this subsection may be construed to create a right to parole.

20       (i) Notwithstanding the provisions of subsection (b) of this  
21 section, the Parole Board may, ~~in its discretion,~~ grant or deny  
22 parole to an inmate against whom a detainer is lodged by a  
23 jurisdiction other than West Virginia for service of a sentence of  
24 incarceration, upon a written request for parole from the inmate.



1 A denial of parole under this subsection ~~shall preclude~~ precludes  
2 consideration for parole for a period of one year or until the  
3 provisions of subsection (b) of this section are applicable.

4 (j) ~~Where~~ If an inmate is otherwise eligible for parole  
5 pursuant to subsection (b) of this section and has completed the  
6 rehabilitation treatment program required under subsection (h) of  
7 this section, ~~but~~ the Parole Board ~~determines that~~ may not require  
8 the inmate ~~should~~ to participate in an additional program, ~~or~~ but  
9 may determine that the inmate must complete an assigned task or  
10 tasks prior to actual release on parole. The board may grant  
11 parole contingently, effective upon successful completion of the  
12 ~~program or~~ assigned task or tasks, without the need for a further  
13 hearing. ~~The Commissioner of Corrections shall provide notice to~~  
14 ~~the Parole Board of the imminent release of a contingently paroled~~  
15 ~~inmate to effectuate appropriate supervision.~~

16 (k) (1) The Division of Corrections ~~is charged with the duty~~  
17 ~~of supervising~~ shall supervise all probationers and parolees whose  
18 supervision may have been undertaken by this state by reason of any  
19 interstate compact entered into pursuant to the Uniform Act For  
20 Out-of-State Parolee Supervision.

21 (2) The Division of Corrections shall provide supervision,  
22 treatment and support services for all persons released to  
23 mandatory supervision under section twenty-seven, article five,  
24 chapter twenty-eight of this code.

1 (1) (1) When considering an inmate of a state correctional  
2 center for release on parole, the Parole Board panel considering  
3 the parole ~~is to~~ shall have before it an authentic copy of or  
4 report on the inmate's current criminal record as provided through  
5 the West Virginia State Police, the United States Department of  
6 Justice or any other reliable criminal information sources and  
7 written reports of the warden or superintendent of the state  
8 correctional ~~center~~ institution to which the inmate is sentenced:

9 (A) On the inmate's conduct record while in custody, including  
10 a detailed statement showing any and all infractions of  
11 disciplinary rules by the inmate and the nature and extent of  
12 discipline administered ~~therefor~~ for the infractions;

13 (B) On improvement or other changes noted in the inmate's  
14 mental and moral condition while in custody, including a statement  
15 expressive of the inmate's current attitude toward society in  
16 general, toward the judge who sentenced him or her, toward the  
17 prosecuting attorney who prosecuted him or her, toward the  
18 policeman or other officer who arrested the inmate and toward the  
19 crime for which he or she is under sentence and his or her previous  
20 criminal record;

21 (C) On the inmate's industrial record while in custody which  
22 shall include: The nature of his or her work, occupation or  
23 education, the average number of hours per day he or she has been  
24 employed or in class while in custody and a recommendation as to

1 the nature and kinds of employment which he or she is best fitted  
2 to perform and in which the inmate is most likely to succeed when  
3 he or she leaves ~~prison~~ the state correctional institution; and

4 (D) On any physical, mental, ~~and~~ psychological or psychiatric  
5 examinations of the inmate. ~~conducted, insofar as practicable,~~  
6 ~~within the two months next preceding parole consideration by the~~  
7 ~~board.~~

8 (2) The Parole Board panel considering the parole may waive  
9 the requirement of any report when not available or not applicable  
10 as to any inmate considered for parole but, in every ~~such~~ case,  
11 shall enter in ~~the~~ its record ~~thereof~~ its reason for the waiver:  
12 *Provided*, That in the case of an inmate who is incarcerated because  
13 the inmate has been found guilty of, or has pleaded guilty to, a  
14 felony under the provisions of section twelve, article eight,  
15 chapter sixty-one of this code or under the provisions of article  
16 eight-b or eight-c of said chapter, the Parole Board panel may not  
17 waive the report required by this subsection. ~~and~~ The report ~~is to~~  
18 shall include a study and diagnosis of the inmate, including an  
19 on-going treatment plan requiring active participation in sexual  
20 abuse counseling at an approved mental health facility or through  
21 some other approved program: *Provided, however*, That nothing  
22 disclosed by the ~~person~~ inmate during the study or diagnosis may be  
23 made available to any law-enforcement agency, or other party  
24 without that ~~person's~~ inmate's consent, or admissible in any court

1 of this state, unless the information disclosed indicates the  
2 intention or plans of the parolee to do harm to any person, animal,  
3 institution or to property. Progress reports of outpatient  
4 treatment are to be made at least every six months to the parole  
5 officer supervising the ~~person~~ parolee. In addition, in such  
6 cases, the Parole Board shall inform the prosecuting attorney of  
7 the county in which the person was convicted of the parole hearing  
8 and shall request that the prosecuting attorney inform the Parole  
9 Board of the circumstances surrounding a conviction or plea of  
10 guilty, plea bargaining and other background information that might  
11 be useful in its deliberations.

12 (m) Before releasing any inmate on parole, the ~~board of parole~~  
13 Parole Board shall arrange for the inmate to appear in person  
14 before a Parole Board panel and the panel may examine and  
15 interrogate him or her on any matters pertaining to his or her  
16 parole, including reports before the Parole Board made pursuant to  
17 the provisions ~~hereof~~ of this section: *Provided*, That an inmate  
18 may appear by video teleconference if the members of the Parole  
19 Board panel conducting the examination are able to  
20 contemporaneously see the inmate and hear all of his or her remarks  
21 and if the inmate is able to contemporaneously see each of the  
22 members of the panel conducting the examination and hear all of the  
23 members' remarks. The panel shall reach its own written  
24 conclusions as to the desirability of releasing the inmate on

1 parole and the majority of the panel considering the release ~~shall~~  
2 must concur in the decision. The warden or superintendent shall  
3 furnish all necessary assistance and cooperate to the fullest  
4 extent with the Parole Board. All information, records and reports  
5 received by the Parole Board ~~are to~~ shall be kept on permanent  
6 file.

7 (n) The Parole Board and its designated agents are at all  
8 times to have access to inmates imprisoned in any state  
9 correctional ~~center~~ institution or in any jail in this state and  
10 may obtain any information or aid necessary to the performance of  
11 its duties from other departments and agencies of the state or from  
12 any political subdivision ~~thereof~~ of the state.

13 (o) The Parole board shall, if ~~so~~ requested by the Governor,  
14 investigate and consider all applications for pardon, reprieve or  
15 commutation and shall make recommendation ~~thereon~~ on the  
16 applications to the Governor.

17 (p) Prior to making a recommendation for pardon, reprieve or  
18 commutation and prior to releasing any inmate on parole, the Parole  
19 Board shall notify the sentencing judge and prosecuting attorney at  
20 least ten days before the recommendation or parole.

21 (q) ~~Any person released on parole~~ A parolee shall participate  
22 as a condition of parole in the litter control program of the  
23 county to which he or she is released to the extent directed by the  
24 Parole Board, unless the board specifically finds that this

1 alternative service would be inappropriate.

2 ~~(r) Except for the amendments to this section contained in~~  
3 ~~subdivision (4), subsection (b) and subsection (i) of this section~~  
4 ~~the amendments to this section enacted during the 2010 regular~~  
5 ~~session of the Legislature shall become effective on January 1,~~  
6 ~~2011.~~

7 **§62-12-14a. Director of employment; director of housing; released**  
8 **inmates; duties.**

9 The ~~board~~ Commissioner of Corrections shall have authority to  
10 may employ or contract for a director of employment and a director  
11 of housing for paroled or pardoned prisoners released inmates. The  
12 director of employment shall work with federal, state, county and  
13 local government and private entities to negotiate agreements which  
14 facilitate employment opportunities for released inmates. The  
15 director of housing shall work with federal, state, county and local  
16 government and private entities to negotiate agreements which  
17 facilitate housing opportunities for released inmates. ~~It shall be~~  
18 ~~the duty of~~ The director of employment ~~to~~ shall investigate job  
19 opportunities and ~~to~~ give every possible assistance in helping  
20 ~~prisoners, eligible to be paroled or who have been granted parole~~  
21 ~~under this article to~~ released inmates find employment. The  
22 director of housing shall work in conjunction with the parole  
23 division and the Parole Board to reduce release delays due to lack  
24 of a home plan, develop community housing resources and provide

1 short-term loans to released inmates for costs related to reentry  
2 into the community.

3 **§62-12-15. Powers and duties of state parole officers.**

4 (a) Each state parole officer shall:

5 (1) Investigate all cases referred to him or her for  
6 investigation by the Commissioner of Corrections and ~~shall~~ report  
7 in writing ~~thereon~~ on the investigation; ~~He or she or she shall~~  
8 ~~furnish~~

9 (2) Update the standardized risk and needs assessment adopted  
10 by the Division of Corrections under subsection (h), section  
11 thirteen of this article for each parolee for whom an assessment has  
12 not been conducted for parole by a specialized assessment officer;

13 (3) Supervise each parolee according to the assessment and  
14 supervision standards determined by the Commissioner of Corrections;

15 (4) Furnish to each ~~person released on parole~~ parolee under his  
16 or her supervision a written statement of the conditions of his or  
17 her parole together with a copy of the rules prescribed by the  
18 board, as the case may be Commissioner of Corrections for the  
19 supervision of parolees; ~~He or she or she shall keep~~

20 (5) Keep informed concerning the conduct and condition of each  
21 ~~person~~ parolee under his or her supervision and ~~shall~~ report ~~thereon~~  
22 on the conduct and condition of each parolee in writing as often as  
23 required by the Commissioner of Corrections ~~may require~~; ~~He or she~~  
24 ~~or she shall use~~;

1        (6) Use all practicable and suitable methods to aid and  
2 encourage ~~persons on parole~~ a parolee and to bring about improvement  
3 in ~~their~~ his or her conduct and condition; ~~He or she or she shall~~  
4 ~~keep~~

5        (7) Keep detailed records of his or her work; ~~shall keep~~

6        (8) Keep accurate and complete accounts of and give receipts  
7 for all money collected from ~~persons~~ parolees under his or her  
8 supervision and ~~shall~~ pay over the money to ~~those~~ persons designated  
9 by a circuit court or the Commissioner of Corrections ~~may designate;~~  
10 ~~He or she or she shall give;~~

11        (9) Give bond with good security, to be approved by the  
12 Commissioner of Corrections, in a penalty of not less than \$1,000  
13 nor more than \$3,000, as determined by the Commissioner of  
14 Corrections ~~may determine;~~ and ~~also perform~~

15        (10) Perform any other duties required by the Commissioner ~~may~~  
16 ~~require~~ of Corrections.

17        (b) ~~He or she~~ Each state parole officer ~~has authority~~ may, with  
18 or without an order or warrant, ~~to~~ arrest or order confinement of  
19 any parolee. He or she has all the powers of a notary public, with  
20 authority to act anywhere within the state.

21        (c) The Commissioner of Corrections may issue a certificate  
22 authorizing any state parole officer who has successfully completed  
23 the Division of Corrections' training program for firearms  
24 certification, which is the equivalent of that required of deputy



1 sheriffs, to carry firearms or concealed weapons. Any parole  
2 officer authorized by the Commissioner of Corrections may, without  
3 a state license, carry firearms and concealed weapons. Each state  
4 parole officer, authorized by the Commissioner of Corrections, shall  
5 carry with him or her a certificate authorizing him or her to carry  
6 a firearm or concealed weapon bearing the official signature of the  
7 Commissioner of Corrections.

8 **§62-12-17. Conditions of release on probation and parole.**

9 (a) Release and supervision on parole of any person, including  
10 the supervision by the Division of Corrections of any person paroled  
11 by any other state or by the federal government, shall be upon the  
12 following conditions:

13 (1) That the parolee may not, during the period of his or her  
14 parole, violate any criminal law of this or any other state or of  
15 the United States;

16 (2) That ~~he or she~~ the parolee may not, during the period of  
17 his or her parole, leave the state without the consent of the  
18 Division of Corrections;

19 (3) That ~~he or she shall comply~~ the parolee complies with the  
20 rules prescribed by the Division of Corrections for his or her  
21 supervision by the parole officer;

22 (4) That in every case in which the parolee for a conviction  
23 is seeking parole from an offense against a child, defined in  
24 section twelve, article eight, chapter sixty-one of this code, or

1 article eight-b or eight-d of said chapter, or similar convictions  
2 from other jurisdictions where the parolee is returning or  
3 attempting to return to this state pursuant to the provisions of  
4 article six, chapter twenty-eight of this code, the parolee may not  
5 live in the same residence as any minor child nor exercise  
6 visitation with any minor child nor may he or she have any contact  
7 with the victim of the offense; and

8 (5) That the parolee, and all federal or foreign state  
9 probationers and parolees whose supervision may have been undertaken  
10 by this state, ~~is required to~~ pay a fee, based on his or her ability  
11 to pay, not to exceed \$40 per month to defray the costs of  
12 supervision.

13 (b) The Commissioner of Corrections shall keep a record of all  
14 actions taken and account for moneys received. ~~No provision of this~~  
15 ~~section prohibits the division from collecting the fees and~~  
16 ~~conducting the checks upon the effective date of this section.~~ All  
17 moneys shall be deposited in a special account in the State Treasury  
18 to be known as the Parolee's Supervision Fee Fund. Expenditures  
19 from the fund shall be for the purposes of providing the parole  
20 supervision required by the provisions of this code and are not  
21 authorized from collections, but are to be made only in accordance  
22 with appropriation by the Legislature and in accordance with the  
23 provisions of article three, chapter twelve of this code and upon  
24 the fulfillment of the provisions set forth in article two, chapter

1 five-a of this code. Amounts collected which are found, from time  
2 to time, to exceed the funds needed for purposes set forth in this  
3 article may be transferred to other accounts or funds and  
4 redesignated for other purposes by appropriation of the Legislature.

5 (c) The Division of Corrections shall consider the following  
6 factors in determining whether a parolee or probationer is  
7 financially able to pay the fee:

8 (1) Current income prospects for the parolee or probationer,  
9 taking into account seasonal variations in income;

10 (2) Liquid assets of the parolee or probationer, assets of the  
11 parolee or probationer that may provide collateral to obtain funds  
12 and assets of the parolee or probationer that may be liquidated to  
13 provide funds to pay the fee;

14 (3) Fixed debts and obligations of the parolee or probationer,  
15 including federal, state and local taxes and medical expenses;

16 (4) Child care, transportation and other reasonably necessary  
17 expenses of the parolee or probationer related to employment; and

18 (5) The reasonably foreseeable consequences for the parolee or  
19 probationer if a waiver of, or reduction in, the fee is denied.

20 (d) In addition, the Division of Corrections may impose,  
21 subject to modification at any time, any other conditions which the  
22 Division considers advisable.

23 (e) The Division of Corrections may order substance abuse  
24 treatment as a condition or as a modification of parole, only if the

1 standardized risk and needs assessment indicates the offender has  
2 a high risk for reoffending and a need for substance abuse  
3 treatment.

4 (f) The Division of Corrections may impose, as an initial  
5 condition of parole, a term of reporting to a day report center or  
6 other community corrections program only if the standardized risk  
7 and needs assessment indicates a moderate to high risk of  
8 reoffending and moderate to high criminogenic need. Any parolee  
9 required to report to a day report center or other community  
10 corrections program is subject to all the rules and regulations of  
11 the center or program and may be removed at the discretion of the  
12 center's or program's director. The Commissioner of Corrections  
13 shall enter into a master agreement with the Division of Justice and  
14 Community Services to provide reimbursement to counties for the use  
15 of community corrections programs by eligible parolees. Any  
16 placement by the Division of Corrections of a parolee in a day  
17 report center or other community corrections program may only be  
18 done with the center's or program's director's consent and the  
19 parolee is subject to all of the rules and regulations of the center  
20 or program and may be removed by the director.

21 **§62-12-19. Violation of parole.**

22 (a) If at any time during the period of parole there is  
23 reasonable cause to believe that the parolee has violated any of the  
24 conditions of his or her release on parole, the parole officer may

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

14 (1) If reasonable cause is found to exist that a parolee has  
15 violated a term or terms of his or her release on parole that does  
16 not constitute absconding supervision or new criminal conduct other  
17 than a minor traffic violation or simple possession of a controlled  
18 substance, the parole officer may, after consultation with and  
19 written approval by the director of parole services, for the first  
20 violation, require the parolee to serve a period of confinement up  
21 to sixty days, or, for the second violation, a period of confinement  
22 up to one hundred twenty days: Provided, That the Division of  
23 Corrections shall notify the Parole Board when a parolee is serving  
24 such a term of confinement and the Parole Board may deny further

1 confinement. A parolee serving a term of confinement in the first  
2 or second instance may be confined in jail or any other facility  
3 designated by the commissioner, but shall be committed to the  
4 custody of the Commissioner of Corrections, and the costs of  
5 confining the parolee shall be paid out of funds appropriated for  
6 the Division of Corrections: Provided, however, That upon written  
7 request, the parolee shall be afforded the right to a hearing within  
8 forty-five days before the Parole Board regarding whether he or she  
9 violated the conditions of his or her release on parole.

10 ~~(b)~~ (2) When a parolee is ~~under arrest~~ in custody for a  
11 violation of the conditions of his or her parole, he or she shall  
12 be given a prompt and summary hearing before a Parole Board panel  
13 ~~of the Board~~ upon his or her written request, at which the parolee  
14 and his or her counsel ~~are~~ shall be given an opportunity to attend.

15 (A) If at the hearing it ~~appears to the satisfaction of the~~  
16 ~~panel~~ is determined that reasonable cause exists to believe that the  
17 parolee has ~~violated any condition of his or her release on parole,~~  
18 ~~or any rules or conditions of his or her supervision~~ absconded  
19 supervision or committed new criminal conduct other than a minor  
20 traffic violation or simple possession of a controlled substance,  
21 the panel may revoke his or her parole and may require him or her  
22 to serve in ~~prison~~ a state correctional institution the remainder  
23 or any portion of his or her maximum sentence for which, at the time  
24 of his or her release, he or she was subject to imprisonment.

1        (B) If the Parole Board panel finds that reasonable cause  
2 exists to believe that the parolee has violated a condition of  
3 release or supervision or committed new criminal conduct consisting  
4 of a minor traffic violation or simple possession of a controlled  
5 substance, the panel shall require the parolee to serve, for the  
6 first violation, a period of confinement up to sixty days, or, for  
7 the second violation, a period of confinement up to one hundred  
8 twenty days: *Provided,* That if the violation of the conditions of  
9 parole or rules for his or her supervision is not a felony as set  
10 out in section eighteen of this article, the panel may, if in its  
11 judgment the best interests of justice ~~do~~ not require ~~revocation a~~  
12 period of confinement, reinstate him or her on parole. The Division  
13 of Corrections shall effect release from custody upon approval of  
14 a home plan.

15        (b) Notwithstanding any provision of this code to the contrary,  
16 when reasonable cause has been found to believe that a parolee has  
17 violated the conditions of his or her parole but the violation does  
18 not constitute felonious conduct, the commissioner may, ~~in his or~~  
19 ~~her discretion and~~ with the written consent of the parolee, allow  
20 the parolee to remain on parole with additional conditions or  
21 restrictions. The additional conditions or restrictions may  
22 include, but are not limited to, participation in any program  
23 described in subsection (d), section five, article eleven-c of this  
24 chapter. ~~Compliance by~~ If the parolee complies with the conditions

1 of parole ~~precludes revocation of~~ the commissioner may not revoke  
2 his or her parole for the conduct which constituted the violation.  
3 ~~Failure of~~ If the parolee fails to comply with the conditions or  
4 restrictions and all other conditions of release, that failure is  
5 an additional violation of parole and the commissioner may proceed  
6 against the parolee ~~may be proceeded against~~ under the provisions  
7 of this section for the original violation as well as any subsequent  
8 violations.

9 (c) When a parolee has violated the conditions of his or her  
10 release on parole by confession to, or being convicted of, any of  
11 the crimes set forth in section eighteen of this article, he or she  
12 shall be returned to the custody of the Division of Corrections to  
13 serve the remainder of his or her maximum sentence, during which  
14 remaining part of his or her sentence he or she is ineligible for  
15 further parole.

16 (d) Whenever ~~the~~ a person's parole ~~of a paroled prisoner~~ has  
17 been revoked, the commissioner shall, upon receipt of the panel's  
18 written order of revocation, convey and transport the paroled  
19 prisoner to a state correctional institution. A ~~paroled prisoner~~  
20 parolee whose parole has been revoked shall remain in custody ~~of the~~  
21 ~~sheriff~~ until delivery to a corrections officer sent and duly  
22 authorized by the commissioner for the removal of the ~~paroled~~  
23 ~~prisoner~~ parolee to a state ~~penal~~ correctional institution. The  
24 cost of confining the ~~paroled prisoner~~ parolee shall be paid out of



1 the funds appropriated for the Division of Corrections.

2 (e) When a ~~paroled prisoner~~ parolee is convicted of, or  
3 confesses to, any one of the crimes enumerated in section eighteen  
4 of this article, it is the duty of the Parole Board to cause him or  
5 her to be returned to this state for a summary hearing as provided  
6 by this article. Whenever a parolee has absconded supervision, the  
7 commissioner shall issue a warrant for his or her apprehension and  
8 return to this state for the hearing provided ~~for~~ in this article:  
9 *Provided*, That the panel considering revocation may, if it  
10 determines the best interests of justice do not require revocation,  
11 cause the ~~paroled absconder~~ parolee to be reinstated to parole.

12 (f) A warrant filed by the commissioner shall stay the running  
13 of his or her sentence until the parolee is returned to the custody  
14 of the Division of Corrections and is physically in West Virginia.

15 (g) Whenever a parolee who has absconded supervision or has  
16 been transferred out of this state for supervision pursuant to  
17 section one, article six, chapter twenty-eight of this code is  
18 returned to West Virginia due to a violation of parole and costs are  
19 incurred by the Division of Corrections, the commissioner may assess  
20 reasonable costs from the parolee's inmate funds or the parolee as  
21 reimbursement to the Division of Corrections for the costs of  
22 returning him or her to West Virginia.

23 (h) Conviction of a felony for conduct occurring during the  
24 period of parole is proof of violation of the conditions of parole

1 and the hearing procedures required by the provisions of this  
2 section are inapplicable.

3 (i) The Commissioner ~~of the Division~~ of Corrections may issue  
4 subpoenas for persons and records necessary to prove a violation of  
5 the terms and conditions of a parolee's parole either at a  
6 preliminary hearing or at a final hearing before a ~~panel of the~~  
7 Parole Board panel. The subpoenas shall be served in the same  
8 manner provided in the Supreme Court of Appeals of West Virginia  
9 Rules of Criminal Procedure. The subpoenas may be enforced by the  
10 commissioner through application or petition of the commissioner to  
11 the circuit court for contempt or other relief.

12 **§62-12-29. Shared information for community supervision.**

13 (a) The Administrative Director of the Supreme Court of Appeals  
14 of West Virginia is requested to assemble a community supervision  
15 committee, to include representatives of the judiciary, probation,  
16 parole, day report centers, magistrates, sheriffs, corrections and  
17 other members at the discretion of the director. The administrative  
18 director shall appoint a chair from among the members, and attend  
19 the meeting ex officio.

20 (b) The committee shall:

21 (1) Design and deploy a method for probation officers, parole  
22 officers, day report centers and others providing community  
23 supervision to electronically share offender information and  
24 assessments;

1 (2) Coordinate information reporting and access across agencies  
2 continuing supervision;

3 (3) Collect and share information about assessed and collected  
4 restitution among agencies continuing supervision;

5 (4) Collect sentencing-level data to enable the study of  
6 sentencing practices across the state; and

7 (5) Coordinate with the Community Corrections Subcommittee of  
8 the Governor's Committee on Crime, Delinquency and Correction in the  
9 discharge of these duties.

10 (c) The committee shall annually submit a report on its  
11 activities during the previous year, on or before September 30, to  
12 the Governor, the Speaker of the House of Delegates, the President  
13 of the Senate and, upon request, to any individual member of the  
14 Legislature.

15 **ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.**

16 **§62-15-2. Definitions.**

17 For the purposes of this article:

18 (1) "Assessment" means a diagnostic evaluation to determine  
19 whether and to what extent a person is a drug offender under this  
20 article and would benefit from its provisions. The assessment shall  
21 be conducted in accordance with the ~~standards, procedures, and~~  
22 ~~diagnostic criteria designed to provide effective and~~  
23 ~~cost-beneficial use of available resources~~ standardized risk and  
24 needs assessment and risk cut-off scores adopted by the West

1 Virginia Supreme Court of Appeals.

2 (2) "Continuum of care" means a seamless and coordinated course  
3 of substance abuse education and treatment designed to meet the  
4 needs of drug offenders as they move through the criminal justice  
5 system and beyond, maximizing self-sufficiency.

6 (3) "Controlled substance" means a drug or other substance for  
7 which a medical prescription or other legal authorization is  
8 required for purchase or possession.

9 (4) "Drug" means a controlled substance, an illegal drug or  
10 other harmful substance.

11 (5) "Drug court" means a judicial intervention process that  
12 incorporates the Ten Key Components and may include preadjudication  
13 or post-adjudication participation.

14 (6) "Drug court team" ~~may~~ shall consist of the following  
15 members who are assigned to the drug court:

16 (A) The drug court judge, which may include a magistrate,  
17 mental hygiene commissioner or other hearing officer;

18 (B) The prosecutor;

19 (C) The public defender or a member of the criminal defense  
20 bar;

21 (D) A representative from the day report center or community  
22 corrections program, if operating in the jurisdiction;

23 (E) A law-enforcement officer;

24 (F) The drug court coordinator;

1 (G) A representative from a circuit court probation office or  
2 the division of parole supervision or both;

3 (H) One or more substance abuse treatment providers; and

4 (I) Any other persons selected by the drug court team.

5 (7) "Drug offender" means an adult person charged with a  
6 drug-related offense or an offense in which substance abuse is  
7 determined from the evidence to have been a factor in the commission  
8 of the offense.

9 (8) "Dual Diagnosis" means a substance abuse and cooccurring  
10 mental health disorder.

11 (9) "Local advisory committee" may consist of the following  
12 members or their designees:

13 (A) A drug court circuit judge, who shall serve as chair;

14 (B) Drug court ~~magistrate(s)~~ magistrates;

15 (C) The prosecutor;

16 (D) A public defender;

17 (E) The drug court coordinator;

18 (F) A member of the criminal defense bar;

19 (G) The circuit clerk;

20 (H) A day report center director;

21 (I) A circuit court probation officer, parole officer or both;

22 (J) Law enforcement;

23 (K) One or more substance abuse treatment providers;

24 (L) A corrections representative; and

1 (M) Any such other person or persons the chair ~~deems~~ considers  
2 appropriate.

3 (10) "Illegal drug" means a drug whose manufacture, sale, use  
4 or possession is forbidden by law;

5 (11) "Memorandum of Understanding" means a written document  
6 setting forth an agreed upon procedure.

7 (12) "Offender" means an adult charged with a criminal offense  
8 punishable by incarceration.

9 (13) "Other harmful substance" means a misused substance  
10 otherwise legal to possess, including alcohol.

11 (14) "Preadjudication order" means a court order requiring a  
12 drug offender to participate in drug court before charges are filed  
13 or before conviction.

14 (15) "Post adjudication" means a court order requiring a drug  
15 offender to participate in drug court after having entered a plea  
16 of guilty or *nolo contendere* or having been found guilty.

17 (16) "Recidivism" means any subsequent arrest for a serious  
18 offense (carrying a sentence of at least one year) resulting in the  
19 filing of a charge.

20 (17) "Relapse" means a return to substance use after a period  
21 of abstinence.

22 (18) "Split sentencing" means a sentence which includes a  
23 period of incarceration followed by a period of supervision.

24 (19) "Staffing" means the meeting before a drug offender's

1 appearance in drug court in which the drug court team discusses a  
2 coordinated response to the drug offender's behavior.

3 (20) "Substance" means ~~drug~~ drugs or alcohol.

4 (21) "Substance abuse" means the illegal or improper  
5 consumption of a ~~drug~~ substance.

6 (22) "Substance abuse treatment" means a program designed to  
7 provide prevention, education, and therapy directed toward ending  
8 substance abuse and preventing a return to substance usage, through  
9 a continuum of care, including: treatment of cooccurring substance  
10 abuse and mental health issues; outpatient care; intensive  
11 outpatient care; residential care; peer support; relapse prevention;  
12 and cognitive behavioral programming, based on research about  
13 effective treatment models for the offender population.

14 (23) "Ten Key Components" means the following benchmarks  
15 intended to describe the very best practices, designs, and  
16 operations of drug courts. These benchmarks are meant to serve as  
17 a practical, yet flexible framework for developing effective drug  
18 courts in vastly different jurisdictions and to provide a structure  
19 for conducting research and evaluation for program accountability:

20 (A) Drug courts integrate alcohol and other drug treatment  
21 services with justice system case processing;

22 (B) Using a nonadversarial approach, prosecution and defense  
23 counsel promote public safety while protecting participants' due  
24 process rights;

1 (C) Eligible participants are identified early and promptly  
2 placed in the drug court program;

3 (D) Drug courts provide access to a continuum of alcohol, drug,  
4 and other related treatment and rehabilitation services;

5 (E) Abstinence is monitored by frequent alcohol and other drug  
6 testing;

7 (F) A coordinated strategy governs drug court responses to  
8 participants' compliance;

9 (G) Ongoing judicial interaction with each drug court  
10 participant is essential;

11 (H) Monitoring and evaluation measure the achievement of  
12 program goals and gauge effectiveness;

13 (I) Continuing interdisciplinary education promotes effective  
14 drug court planning, implementation and operations; and

15 (J) Forging partnerships among drug courts, public agencies and  
16 community-based organizations generates local support and enhances  
17 drug court effectiveness.

18 (24) "Treatment supervision" means a program to which a  
19 participant is ordered in lieu of a sentence of incarceration, which  
20 includes treatment for substance abuse.

21 **§62-15-6a. Treatment supervision.**

22 (a) A felony drug offender is eligible for treatment  
23 supervision only if the offender would otherwise be sentenced to  
24 prison, and the standardized risk and needs assessment indicates the



1 offender has a high risk for reoffending and a need for substance  
2 abuse treatment. As a condition of drug court or as a term of  
3 probation or as a modification of probation, a circuit court judge  
4 may impose treatment supervision ~~may be imposed~~ on an eligible drug  
5 offender convicted of a felony. Whenever a circuit judge determines  
6 that a participant has committed a violation of his or her  
7 conditions of treatment involving the participant's use of alcohol  
8 or a controlled substance which would, in the judge's opinion,  
9 warrant a period of incarceration to encourage compliance with  
10 program requirements, the cost of ~~said~~ the incarceration, not to  
11 exceed a period of thirty days in any one instance, shall be paid  
12 by the Division of Corrections. Upon written finding by the judge  
13 that the participant would otherwise be sentenced to the custody of  
14 the Commissioner of Corrections for service of the underlying  
15 sentence. Whenever a circuit judge incarcerates a participant  
16 pursuant to this section a copy of the order of confinement shall  
17 be provided by the clerk of the circuit court within five days to  
18 the Commissioner of Corrections: *Provided*, That a judge may impose  
19 treatment supervision on a drug offender convicted of a felony,  
20 notwithstanding the results of the risk assessment, upon making  
21 specific written findings of fact as to the reason for departing  
22 from the requirements of this subsection. This subsection takes  
23 effect January 1, 2014.

24 (b) The Division of Justice and Community Services shall in

1 consultation with the Governor's Advisory Council on Substance  
2 Abuse, created by Executive Order No. 5-11, use appropriated funds  
3 to develop proposed substance abuse treatment plans to serve those  
4 offenders under treatment supervision in each judicial circuit and  
5 on parole supervision, ~~in consultation with the Governor's Advisory~~  
6 ~~Council on Substance Abuse, created by Executive Order No. 5-11.~~

7 (c) The Division of Justice and Community Services, in  
8 consultation with the Governor's Advisory Committee on Substance  
9 Abuse, shall develop:

10 (1) Qualifications for provider certification to deliver a  
11 continuum of care to offenders;

12 (2) Fee reimbursement procedures; and

13 (3) Other matters related to the quality and delivery of  
14 services.

15 (d) The Division of Justice and Community Services shall  
16 require education and training for providers which shall include,  
17 but not be limited to, cognitive behavior training. The duties of  
18 providers who provide services under this ~~program~~ section may  
19 include: notifying the probation department and the court of any  
20 offender failing to meet the conditions of probation or referrals  
21 to treatment; appearing at revocation hearings ~~as may be~~ when  
22 required; and providing assistance with data reporting and treatment  
23 program quality evaluation.

24 (e) The cost for all drug abuse assessments and certified drug

1 treatment under this section and subsection (e), section seventeen,  
2 article twelve of this chapter shall be paid by the Division of  
3 Justice and Community Services from funds appropriated for ~~such that~~  
4 purpose. The Division of Justice and Community Services shall  
5 contract for payment for ~~such the~~ services provided to eligible  
6 offenders.

7 (f) The Division of Justice and Community Services, in  
8 consultation with the Governor's Advisory Council on Substance  
9 Abuse, shall submit an annual report on or before September 30 ~~of~~  
10 ~~each year~~, to the Governor, the Speaker of the House of Delegates,  
11 the President of the Senate and, upon request, to any individual  
12 member of the Legislature ~~a report on~~ containing:

13 (1) The dollar amount and purpose of funds provided for the  
14 fiscal year;

15 (2) The number of people on treatment supervision who received  
16 services and whether ~~they were~~ their participation was the result  
17 of a direct sentence or in lieu of revocation;

18 (3) The number of people on treatment supervision who, pursuant  
19 to a judge's specific written findings of fact, received services  
20 despite the risk assessment indicating less than high risk for  
21 reoffending and a need for substance abuse treatment, ~~pursuant to~~  
22 ~~a judge's specific written findings of fact~~;

23 (4) The type of services provided;

24 (5) The rate of revocations and successful completions for

1 people who received services;

2 (6) The number of people under supervision receiving treatment  
3 under this section who ~~are~~ were rearrested and confined within two  
4 years of being placed under supervision;

5 (7) The dollar amount needed to provide services in the  
6 upcoming year to meet demand and the projected impact of reductions  
7 in program funding on cost and public safety measures; and

8 (8) Other appropriate measures ~~as appropriate~~ used to measure  
9 the availability of treatment and the effectiveness of services.

10 (g) With the exception of subsection (a) of this section, the  
11 provisions of this section shall take effect on July 1, 2013.

12 **§62-15-6b. Intermediate incarceration sanctions for drug court**

13 **participants; responsibility for costs of**  
14 **incarceration.**

15 (a) Whenever a judge of a drug court determines that a  
16 participant who has pled to a felony offense has committed a  
17 violation of his or her conditions of participation which would, in  
18 the judge's opinion, warrant a period of incarceration to encourage  
19 compliance with program requirements, the cost of the incarceration,  
20 not to exceed a period of thirty days in any one instance, shall be  
21 paid by the Division of Corrections. The judge must make a written  
22 finding that the participant would otherwise be sentenced to the  
23 custody of the Commissioner of Corrections for service of the  
24 underlying sentence.

1       (b) Whenever a drug court judge incarcerates a participant  
2 pursuant to subsection (a) of this section, the clerk of the circuit  
3 court shall provide a copy of the order of confinement within five  
4 days to the Commissioner of Corrections.