

H. B. 2726

(By Mr. Speaker, (Mr. Thompson))

[By Request of the Executive]

[Introduced February 26, 2013; referred to the
Committee on the Judiciary then Finance.]

10 A BILL to amend and reenact §25-1-15 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §28-5-27 of said code;
12 to amend said code by adding thereto two new sections,
13 designated §31-20-5g and §31-20-5h; to amend and reenact
14 §61-7-6 of said code; to amend and reenact §62-11A-1a of said
15 code; to amend and reenact §62-11B-9 of said code; to amend
16 and reenact §62-11C-2, §62-11C-3 and §62-11C-6 of said code;
17 to amend said code by adding thereto a new section, designated
18 §62-11C-10; to amend and reenact §62-12-6, §62-12-7, §62-12-9,
19 §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and
20 §62-12-19 of said code; to amend said code by adding thereto
21 a new section, designated §62-12-29; to amend and reenact
22 §62-15-2 of said code; and to amend said code by adding
23 thereto a new section, designated §62-15-6a, all relating to
24 public safety; requiring the Division of Corrections to

1 perform graduated methods of mental health screens, appraisals
2 and evaluations on persons committed to its custody; mandating
3 a maximum of one year of supervised release for violent
4 inmates; mandating a maximum of one hundred eighty days of
5 supervised release for nonviolent inmates; requiring the
6 Commissioner of Corrections to adopt policies regarding
7 mandatory supervised release; requiring the Regional Jail
8 Authority to utilize a standardized pretrial risk screening
9 instrument adopted by the Supreme Court of Appeals of West
10 Virginia; requiring the authority to develop and implement
11 cognitive behavioral programming for inmates in regional jails
12 committed to the custody of the Commissioner of Corrections;
13 exempting parole officers from prohibitions against carrying
14 concealed weapons; moving definition of "day report center" to
15 section relating to conditions of release on probation;
16 providing standards and limitations under which judges and
17 magistrates may impose a period of supervision or
18 participation in community corrections; clarifying language
19 regarding confinement and revocation for violations of the
20 conditions of home incarceration; adding representative of the
21 Bureau for Behavioral Health and Health Facilities to the
22 community corrections subcommittee of the Governor's Committee
23 on Crime, Delinquency and Correction; providing that the
24 community corrections subcommittee review, assess and report

1 on the implementation of evidence-based practices in the
2 criminal justice system; adding member with a background in
3 substance abuse treatment and services to the community
4 criminal justice boards of each county or combination of
5 counties; providing oversight responsibility to Division of
6 Justice and Community Services to implement standardized risk
7 and needs assessment, evaluate effectiveness of other
8 modifications to community corrections programs, and provide
9 annual report; requiring probation officers to conduct a
10 standardized risk and needs assessment for individuals placed
11 on probation and to supervise probationer and enforce
12 probation according to the same; authorizing the Supreme Court
13 of Appeals of West Virginia to adopt a standardized risk and
14 needs assessment for use by probation officers; authorizing
15 the Supreme Court of Appeals of West Virginia to adopt a
16 standardized pretrial screening instrument for use by the
17 Regional Jail Authority; providing standards and limitations
18 under which judges may impose a term of reporting to a day
19 report center or other community corrections program as a
20 condition of probation; authorizing day reporting center
21 programs to provide services based on the results of a
22 person's standardized risk and needs assessment; providing for
23 graduated sanctions in response to violations of the
24 conditions of release on probation other than absconding or

1 committing a misdemeanor or felony; revising eligibility
2 requirements for accelerated parole program; requiring that
3 Division of Corrections' policies and procedures for
4 developing a rehabilitation treatment plan include the use of
5 substance abuse assessment tools and prioritize treatment
6 resources based on the risk and needs assessment and substance
7 abuse assessment results; providing for rebuttable presumption
8 that parole is appropriate for inmates completing the
9 accelerated parole program and a rehabilitation treatment
10 program; providing standards and limitations for Parole Board;
11 outlining duties of the Division of Corrections to supervise,
12 treat and provide support services for all people released on
13 mandatory supervised release; removing temporal standard for
14 requirement that the Parole Board have access to a copy of an
15 inmate's physical, mental or psychiatric examination;
16 authorizing employment of a director of housing for released
17 inmates with duties relating to the reduction of parole
18 release delays; requiring parole officers to update the
19 standardized risk and needs assessment for each person for
20 whom an assessment has not been conducted for parole and to
21 supervise each person according to the assessment and the
22 commissioner's supervision standards; authorizing the
23 Commissioner of Corrections to issue a certificate authorizing
24 a parole officer to carry firearms or concealed weapons;

1 providing standards and limitations under which the Division
2 of Corrections may order substance abuse treatment or impose
3 a term of reporting to a day report center or other community
4 corrections program as a condition or modification of parole;
5 authorizing the Commissioner of Corrections to enter into a
6 master agreement with the Division of Justice and Community
7 Services to reimburse counties for use of the community
8 corrections programs; providing for graduated sanctions in
9 response to violations of the conditions of release on parole
10 other than absconding or committing a misdemeanor or felony;
11 providing a parolee with the right to a hearing, upon request,
12 regarding whether he or she violated the conditions of his or
13 her release on parole; providing for a Community Supervision
14 Committee to be appointed by the administrative director of
15 the Supreme Court of Appeals of West Virginia to coordinate
16 the sharing of information for community supervision and
17 requiring submittal of an annual report; revising definitions;
18 providing standards and limitations under which judges may
19 order treatment supervision for drug offenders; requiring the
20 Division of Justice and Community Services to use appropriated
21 funds to implement substance abuse treatment to serve those
22 under treatment supervision in each judicial circuit;
23 providing that the Division of Justice and Community Services
24 is responsible for developing standards relating to quality

1 and delivery of substance abuse services, requiring certain
2 education and training, paying for drug abuse assessments and
3 certified drug treatment from appropriated funds, and
4 requiring submittal of an annual report; outlining duties of
5 treatment supervision service providers; and making technical
6 changes.

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

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

23 **CHAPTER 25. DIVISION OF CORRECTIONS.**

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

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

2 (a) The Commissioner of Corrections may establish diagnostic
3 and classification divisions.

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

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

21 **ARTICLE 5. THE PENITENTIARY.**

22 **§28-5-27. Deduction from sentence for good conduct; mandatory**
23 **supervision.**

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

7 (b) Such commutation of sentence, hereinafter called "good
8 time," shall be deducted from the maximum term of indeterminate
9 sentences or from the fixed term of determinate sentences.

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

21 (d) No inmate sentenced to serve a life sentence shall be
22 eligible to earn or receive any good time pursuant to this section.

23 (e) An inmate under two or more consecutive sentences shall be
24 allowed good time as if the several sentences, when the maximum

1 terms thereof are added together, were all one sentence.

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

16 (g) Each inmate, upon his or her commitment to and being
17 received into the custody of the commissioner of the Department of
18 Corrections, or upon his or her return to custody as the result of
19 violation of parole pursuant to section nineteen, article twelve,
20 chapter sixty-two of this code, shall be given a statement setting
21 forth the term or length of his or her sentence or sentences and
22 the time of his or her minimum discharge computed according to this
23 section.

24 (h) Each inmate shall be given a revision of the statement

1 described in subsection (g) if and when any part or all of the good
2 time has been forfeited and revoked or restored pursuant to
3 subsection (f) whereby the time of his or her earliest discharge is
4 changed.

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

8 (j) In order to ensure equitable good time for all inmates now
9 in the custody of the Commissioner of Corrections or hereafter
10 committed to the custody of such commissioner, except as to those
11 persons committed pursuant to article four, chapter twenty-five of
12 this code, all good times shall be computed according to this
13 section and all previous computations of good time under prior
14 statutes or regulations are hereby voided. All inmates who have
15 previously forfeited good time are hereby restored to good time
16 computed according to this section and all inmates will receive a
17 new discharge date computed according to this section. All inmates
18 that have been awarded overtime good time or extra good time
19 pursuant to sections twenty-seven-a and twenty-seven-b of this
20 article which are repealed simultaneously with the amendment to
21 this section during the regular session of the Legislature in the
22 year 1984, shall receive such good time in addition to the good
23 time computed according to this section.

24 (k) There shall be no grants or accumulations of good time or

1 credit to any inmate now or hereafter serving a sentence in the
2 custody of the ~~Department~~ Division of Corrections except in the
3 manner provided in this section.

4 (l) For purposes of this section, a violent inmate is a person
5 who is serving a sentence for a crime of violence against the
6 person, a felony offense involving the use of a firearm, or a
7 felony offense where the victim was a minor child, as those terms
8 are defined in section thirteen, article twelve, chapter sixty-two
9 of this code. Within one hundred eighty days prior to the
10 calculated discharge date of a violent inmate who has not been
11 paroled, from the accumulated good conduct time for the violent
12 inmate, a maximum of one year shall be deducted to provide for a
13 maximum of one year of mandatory supervision. This subsection
14 applies to offenses committed on or after July 1, 2013.

15 (m) For purposes of this section, a nonviolent inmate is a
16 person who is not serving a sentence for a crime of violence
17 against the person, a felony offense involving the use of a
18 firearm, or a felony offence where the victim was a minor child, as
19 those terms are defined in section thirteen, article twelve,
20 chapter sixty-two of this code. A nonviolent inmate who has not
21 been paroled shall be released to mandatory supervision one hundred
22 eighty days prior to the calculated discharge date. This
23 subsection applies to offenses committed before, on or after July
24 1, 2013.

1 (n) The Commissioner of Corrections shall adopt policies for
2 setting conditions and responding to violations by inmates on
3 mandatory supervision under subsections (l) and (m).

4 **CHAPTER 31. CORPORATIONS.**

5 **ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY**
6 **AUTHORITY.**

7 **§31-20-5g. Pretrial risk assessment.**

8 For each defendant arrested and placed in regional jail, the
9 authority shall utilize a standardized pretrial risk screening
10 instrument, as adopted by the Supreme Court of Appeals of West
11 Virginia, to provide information to magistrates and circuit courts
12 within three calendar days of the placement of the defendant in
13 jail.

14 **§31-20-5h. Programs for inmates committed to prison.**

15 The authority shall develop and implement cognitive behavioral
16 programming to address the needs of inmates in regional jail but
17 committed to the custody of the Commissioner of Corrections. The
18 program shall be developed in consultation with and approved by the
19 Division of Corrections, may be offered by video teleconference or
20 webinar technology, and may be offered to any inmate of the
21 authority, but not to the exclusion of an inmate committed to the
22 custody of the Commissioner of Corrections. The costs of such
23 programming shall be paid out of funds appropriated for the

1 Division of Corrections. The programming shall be covered by the
2 rehabilitation plan policies and procedures adopted by the Division
3 of Corrections under subsection (h) of section thirteen, article
4 twelve, chapter sixty-two of this code.

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

6 **ARTICLE 7. DANGEROUS WEAPONS.**

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

9 The licensure provisions set forth in this article do not
10 apply to:

11 (1) Any person carrying a deadly weapon upon his or her own
12 premises; nor shall anything herein prevent a person from carrying
13 any firearm, unloaded, from the place of purchase to his or her
14 home, residence or place of business or to a place of repair and
15 back to his or her home, residence or place of business, nor shall
16 anything herein prohibit a person from possessing a firearm while
17 hunting in a lawful manner or while traveling from his or her home,
18 residence or place of business to a hunting site and returning to
19 his or her home, residence or place of business;

20 (2) Any person who is a member of a properly organized
21 target-shooting club authorized by law to obtain firearms by
22 purchase or requisition from this state or from the United States
23 for the purpose of target practice from carrying any pistol, as

1 defined in this article, unloaded, from his or her home, residence
2 or place of business to a place of target practice and from any
3 place of target practice back to his or her home, residence or
4 place of business, for using any such weapon at a place of target
5 practice in training and improving his or her skill in the use of
6 the weapons;

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

10 (4) Any employee of the West Virginia Division of Corrections
11 duly appointed pursuant to the provisions of section ~~five~~ eleven-c,
12 article ~~five~~ one, chapter ~~twenty-eight~~ twenty-five of this code
13 while the employee is on duty and any parole officer appointed
14 pursuant to section fourteen, article twelve, chapter sixty-two of
15 this code;

16 (5) Any member of the Armed Forces of the United States or the
17 militia of this state while the member is on duty;

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

22 (7) Any resident of another state who holds a valid license to
23 carry a concealed weapon by a state or a political subdivision
24 which has entered into a reciprocity agreement with this state,

1 subject to the provisions and limitations set forth in section
2 six-a of this article;

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

6 (9) Any Hatfield-McCoy regional recreation authority ranger
7 while the ranger is on duty.

8 **CHAPTER 62. CRIMINAL PROCEDURE.**

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

10 **§62-11A-1a. Other sentencing alternatives.**

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

19 (1) The weekend jail program under which persons would be
20 required to spend weekends or other days normally off from work in
21 jail;

22 (2) The work program under which sentenced persons would be
23 required to spend the first two or more days of their sentence in
24 jail and then, in the discretion of the court, would be assigned to

1 a county agency to perform labor within the jail, or in and upon
2 the buildings, grounds, institutions, bridges, roads, including
3 orphaned roads used by the general public and public works within
4 the county. Eight hours of labor are to be credited as one day of
5 the sentence imposed. Persons sentenced under this program may be
6 required to provide their own transportation to and from the work
7 site, lunch and work clothes; or

8 (3) The community service program under which persons
9 sentenced would spend no time in jail but would be sentenced to a
10 number of hours or days of community service work with government
11 entities or charitable or nonprofit entities approved by the
12 circuit court. Regarding any portion of the sentence designated as
13 confinement, eight hours of community service work is to be
14 credited as one day of the sentence imposed. Regarding any portion
15 of the sentence designated as a fine, the fine is to be credited at
16 an hourly rate equal to the prevailing federal minimum wage at the
17 time the sentence was imposed. In the discretion of the court, the
18 sentence credits may run concurrently or consecutively. Persons
19 sentenced under this program may be required to provide their own
20 transportation to and from the work site, lunch and work clothes.

21 ~~(4) A day-reporting center program if the program has been~~
22 ~~implemented in the sentencing court's jurisdiction or in the area~~
23 ~~where the offender resides. For purposes of this subdivision~~
24 ~~"day-reporting center" means a court-operated or court-approved~~

1 ~~facility where persons ordered to serve a sentence in this type of~~
2 ~~facility are required to report under the terms and conditions set~~
3 ~~by the court for purposes which include, but are not limited to,~~
4 ~~counseling, employment training, alcohol or drug testing or other~~
5 ~~medical testing.~~

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

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

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

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

16 (3) In circuit court cases, that the offense underlying the
17 sentence is not a felony offense for which violence or the threat
18 of violence to the person is an element of the offense;

19 (4) In circuit court cases, that adequate facilities for the
20 administration and supervision of alternative sentencing programs
21 are available through the court's probation officers or the county
22 sheriff or, in magistrate court cases, that adequate facilities for
23 the administration and supervision of alternative sentencing
24 programs are available through the county sheriff; and

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

3 (d) Persons sentenced by the circuit court under the
4 provisions of this article remain under the administrative custody
5 and supervision of the court's probation officers or the county
6 sheriff. Persons sentenced by a magistrate remain under the
7 administrative custody and supervision of the county sheriff.

8 (e) Persons sentenced under the provisions of this section may
9 be required to pay the costs of their incarceration, including meal
10 costs: *Provided*, That the judge or magistrate considers the
11 person's ability to pay the costs.

12 (f) Persons sentenced under the provisions of this section
13 remain under the jurisdiction of the court. The court may withdraw
14 any alternative sentence at any time by order entered with or
15 without notice and require that the remainder of the sentence be
16 served in the county jail, regional jail or a state correctional
17 facility: *Provided*, That no alternative sentence directed by the
18 sentencing judge or magistrate or administered under the
19 supervision of the sheriff, his or her deputies, a jailer or a
20 guard, may require the convicted person to perform duties which
21 would be considered detrimental to the convicted person's health as
22 attested by a physician.

23 (g) No provision of this section may be construed to limit a
24 circuit ~~judge or magistrate's~~ judge's ability to impose a period of

1 supervision or participation in a community corrections program
2 created pursuant to article eleven-c, chapter sixty-two of this
3 code except that the person sentenced must be identified as
4 moderate to high risk of reoffending and moderate to high
5 criminogenic need, as defined by the standardized risk and needs
6 assessment adopted by the Supreme Court of Appeals of West Virginia
7 under subsection (d), section six, article twelve of this chapter,
8 and applied by a probation officer or day report staff: *Provided,*
9 That a judge may impose a period of supervision or participation in
10 a community corrections program, notwithstanding the results of the
11 standardized risk and needs assessment, upon making specific
12 written findings of fact as to the reason for departing from the
13 requirements of this section.

14 (h) Magistrates may only use a period of supervision or
15 participation in a community corrections program with the periodic
16 consent from the supervising judge or chief judge of the judicial
17 circuit in which he or she presides, defining the number of people
18 the magistrate may place, and any constraints on their
19 characteristics or the programs they may attend.

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

21 **§62-11B-9. Violation of order of home incarceration procedures;**
22 **penalties.**

23 (a) If at any time during the period of home incarceration

1 there is reasonable cause to believe that a participant in a home
2 incarceration program has violated the terms and conditions of the
3 circuit court's home incarceration order, he or she shall be
4 subject to the procedures and penalties set forth in section ten,
5 article twelve of this chapter.

6 (b) If at any time during the period of home incarceration
7 there is reasonable cause to believe that a participant sentenced
8 to home incarceration by the circuit court has violated the terms
9 and conditions of the court's order of home incarceration and said
10 participant's participation was imposed as an alternative sentence
11 to another form of incarceration, said participant shall be subject
12 to the same procedures involving confinement and revocation as
13 would a probationer charged with a violation of the order of home
14 incarceration. Any participant under an order of home
15 incarceration shall be subject to the same penalty or penalties,
16 upon the circuit court's finding of a violation of the order of
17 home incarceration, as he or she could have received at the initial
18 disposition hearing: *Provided*, That the participant shall receive
19 credit towards any sentence imposed after a finding of violation
20 for the time spent in home incarceration.

21 (c) If at any time during the period of home incarceration
22 there is reasonable cause to believe that a participant sentenced
23 to home incarceration by a magistrate has violated the terms and
24 conditions of the magistrate's order of home incarceration as an

1 alternative sentence to incarceration in jail, the supervising
2 authority may arrest the participant upon the obtaining of an order
3 or warrant and take the offender before a magistrate within the
4 county of the offense. The magistrate shall then conduct a prompt
5 and summary hearing on whether the participant's home incarceration
6 should be revoked. If it appears to the satisfaction of the
7 magistrate that any condition of home incarceration has been
8 violated, the magistrate may revoke the home incarceration and
9 order that the sentence of incarceration in jail be executed. Any
10 participant under an order of home incarceration shall be subject
11 to the same penalty or penalties, upon the magistrate's finding of
12 a violation of the order of home incarceration, as the participant
13 could have received at the initial disposition hearing: *Provided,*
14 That the participant shall receive credit towards any sentence
15 imposed after a finding of violation for the time spent in home
16 incarceration.

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

18 **§62-11C-2. Community Corrections Subcommittee.**

19 (a) A Community Corrections Subcommittee of the Governor's
20 Committee on Crime, Delinquency and Correction is hereby created
21 and assigned responsibility for screening community corrections
22 programs submitted by community criminal justice boards or from
23 other entities authorized by the provisions of this article to do
24 so for approval for funding by the Governor's Committee and for

1 making recommendations as to the disbursement of funds for approved
2 community corrections programs. The subcommittee is to be
3 comprised of fifteen members of the Governor's Committee including:
4 A representative of the Division of Corrections, a representative
5 of the Regional Jail and Correctional Facility Authority, a
6 representative of the Bureau for Behavioral Health and Health
7 Facilities, a person representing the interests of victims of
8 crime, an attorney employed by a public defender corporation, an
9 attorney who practices criminal law, a prosecutor and a
10 representative of the West Virginia Coalition Against Domestic
11 Violence. At the discretion of the West Virginia Supreme Court of
12 Appeals, the Administrator of the Supreme Court of Appeals, a
13 probation officer and a circuit judge may serve on the subcommittee
14 as ex officio, nonvoting members.

15 (b) The subcommittee shall elect a chairperson and a vice
16 chairperson. The subcommittee shall meet quarterly. Special
17 meetings may be held upon the call of the chairperson, vice
18 chairperson or a majority of the members of the subcommittee. A
19 majority of the members of the subcommittee constitute a quorum.

20 **§62-11C-3. Duties of the Governor's Committee and the Community**
21 **Corrections Subcommittee.**

22 (a) Upon recommendation of the Community Corrections
23 Subcommittee, the Governor's Committee shall propose for
24 legislative promulgation in accordance with the provisions of

1 article three, chapter twenty-nine-a of this code, emergency and
2 legislative rules to:

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

6 (2) Establish minimum standards for community corrections
7 programs to be funded, including requiring annual program
8 evaluations;

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

11 (4) Establish reporting requirements for community corrections
12 programs; and

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

14 (b) Upon recommendation of the Community Corrections
15 Subcommittee, the Governor's Committee shall:

16 (1) Maintain records of community corrections programs
17 including the corresponding community criminal justice board or
18 other entity contact information and annual program evaluations,
19 when available;

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

23 (3) Provide funding for approved community corrections
24 programs, as available.

1 (c) The Governor's Committee shall submit, on or before
2 September 30 of each year, to the Governor, the Speaker of the
3 House of Delegates, the President of the Senate and, upon request,
4 to any individual member of the Legislature a report on its
5 activities during the previous year and an accounting of funds paid
6 into and disbursed from the special revenue account established
7 pursuant to section four of this article.

8 (d) The subcommittee shall review the implementation of
9 evidence-based practices and conduct regular assessments for
10 quality assurance of all community-based criminal justice services,
11 including day report centers, probation, parole and home
12 confinement. In consultation with the affected operational
13 agencies, the subcommittee shall establish a process for reviewing
14 performance. The process shall include review of agency
15 performance measures and identification of new measures by the
16 subcommittee if necessary for measuring the implementation of
17 evidence-based practices or for quality assurance. After providing
18 an opportunity for the affected operational agencies to comment,
19 the subcommittee shall submit, on or before September 30 of each
20 year, to the Governor, the Speaker of the House of Delegates, the
21 President of the Senate and, upon request, to any individual member
22 of the Legislature a report on its activities and results from
23 assessment of performance during the previous year.

24 **§62-11C-6. Community criminal justice boards.**

1 (a) Each county or combination of counties or a county or
2 counties and a Class I or II municipality that seek to establish
3 community-based corrections services shall establish a community
4 criminal justice board: *Provided*, That if a county has not
5 established a community criminal justice board by July 1, 2002, the
6 Chief Probation Officer of such county, with the approval of the
7 chief judge of the circuit, may apply for and receive approval and
8 funding from the Governor's Committee for such programs as are
9 authorized by the provisions of section five of this article. Any
10 county which chooses to operate without a community criminal
11 justice board shall be subject to the regulations and requirements
12 established by the Community Corrections Subcommittee and the
13 Governor's Committee.

14 (b) The community criminal justice board is to consist of no
15 more than fifteen voting members.

16 (c) All members of the community criminal justice board are to
17 be residents of the county or counties represented.

18 (d) The community criminal justice board is to consist of the
19 following members:

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

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

1 (3) If a public defender corporation exists in the county or
2 counties represented, at least one attorney employed by any public
3 defender corporation existing in the counties represented or, if no
4 public defender office exists, one criminal defense attorney from
5 the counties represented;

6 (4) One member to be appointed by the local board of education
7 or, if the board represents more than one county, at least one
8 member appointed by a board of education of the counties
9 represented;

10 (5) One member with a background in mental health care and
11 services to be appointed by the commission or commissions of the
12 county or counties represented by the board;

13 (6) Two members who can represent organizations or programs
14 advocating for the rights of victims of crimes with preference
15 given to organizations or programs advocating for the rights of
16 victims of the crimes of domestic violence or driving under the
17 influence; ~~and~~

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

21 ~~(7)~~ (8) Three at-large members to be appointed by the
22 commission or commissions of the county or counties represented by
23 the board.

24 (e) At the discretion of the West Virginia Supreme Court of

1 Appeals, any or all of the following people may serve on a
2 community criminal justice board as ex officio, nonvoting members:

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

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

5 (3) A probation officer from the county or counties
6 represented.

7 (f) Community criminal justice boards may:

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

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

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

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

17 (g) If a community criminal justice board represents more than
18 one county, the appointed membership of the board, excluding any ex
19 officio members, shall include an equal number of members from each
20 county, unless the county commission of each county agrees in
21 writing otherwise.

22 (h) If a community criminal justice board represents more than
23 one county, the board shall, in consultation with the county
24 commission of each county represented, designate one county

1 commission as the fiscal agent of the board.

2 (i) Any political subdivision of this state operating a
3 community corrections program shall, regardless of whether or not
4 the program has been approved by the Governor's Committee on Crime,
5 Delinquency and Correction, provide to the Governor's Committee
6 required information regarding the program's operations as required
7 by legislative rule.

8 **§62-11C-10. Standardized risk and needs assessment; annual**
9 **reviews; and day report services.**

10 The Division of Justice and Community Services shall:

11 (a) Require that staff of day reporting centers and other
12 community corrections programs are trained in and use in each case
13 a standardized risk and needs assessment as adopted by the Supreme
14 Court of Appeals of West Virginia;

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

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

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

24 (e) Encourage community criminal justice boards to develop

1 programs in addition to or in lieu of day report centers, through
2 grants and more focused use of day report services; and

3 (f) Annually report to the Community Corrections Subcommittee
4 on the results of duties required by this section.

5 **ARTICLE 12. PROBATION AND PAROLE.**

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

7 (a) Each probation officer shall:

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

11 (2) Conduct a standardized risk and needs assessment using the
12 instrument adopted by the Supreme Court of Appeals of West Virginia
13 for any probationer for whom an assessment has not been conducted
14 either prior to placement on probation or by a specialized
15 assessment officer;

16 (3) Supervise the probationer and enforce probation according
17 to assessment and supervision standards adopted by the Supreme
18 Court of Appeals of West Virginia;

19 (4) Furnish to each person released on probation under the
20 officer's supervision a written statement of the probationer's
21 conditions of probation together with a copy of the rules
22 prescribed by the court for the supervision of probationers. The
23 probation officer shall stay Supreme Court of Appeals of West
24 Virginia;

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

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

8 (7) Maintain detailed work records and ~~shall~~ perform any other
9 duties the court requires.

10 (b) The probation officer has authority, with or without an
11 order or warrant, to arrest any probationer as provided in section
12 ten of this article, and to arrest any person on supervised release
13 when there is reasonable cause to believe that the person on
14 supervised release has violated a condition of release. A person
15 on supervised release so arrested shall be brought before the court
16 for a prompt and summary hearing.

17 ~~(b)~~ (c) Notwithstanding any provision of this code to the
18 contrary:

19 (1) Any probation officer appointed on or after July 1, 2002,
20 may carry handguns in the course of the officer's official duties
21 after meeting specialized qualifications established by the
22 Governor's Committee on Crime, Delinquency and Correction, which
23 qualifications shall include the successful completion of handgun
24 training, including a minimum of four hours' training in handgun

1 safety and comparable to the handgun training provided to
2 law-enforcement officers by the West Virginia State Police.

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

6 (3) Nothing in this subsection includes probation officers
7 within the meaning of law-enforcement officers as defined in
8 section one, article twenty-nine, chapter thirty of this code.

9 (d) The Supreme Court of Appeals of West Virginia is
10 authorized to adopt a standardized risk and needs assessment with
11 risk cut off scores for use by probation officers, taking into
12 consideration the assessment instrument adopted by the Division of
13 Corrections under subsection (h), section thirteen of this article.
14 The Supreme Court shall also take into consideration the
15 responsibility of the Division of Justice and Community Services to
16 evaluate the use of the standardized risk and needs assessment.

17 **§62-12-7. Pretrial and preliminary investigation; report on**
18 **prospective probationers.**

19 (a) The Supreme Court of Appeals of West Virginia is
20 authorized to adopt a pretrial screening instrument for use by the
21 Regional Jail Authority to assist magistrates and circuit courts in
22 making pretrial decisions under article one-c of this chapter based
23 on risk of nonappearance and reoffending.

24 (b) ~~When~~ Unless otherwise directed by the court, the probation

1 officer shall, in the form adopted by the Supreme Court of Appeals
2 of West Virginia, make a careful investigation of, and a written
3 report with recommendations concerning, any prospective
4 probationer. Insofar as practicable this report shall include
5 information concerning the offender's court and criminal record,
6 occupation, family background, education, habits and associations,
7 mental and physical condition, the names, relationship, ages and
8 condition of those dependent upon him or her for support and such
9 other facts as may aid the court in determining the propriety and
10 conditions of his or her release on probation. No person convicted
11 of a felony or of any offense described in article eight-b or
12 eight-d, chapter sixty-one of this code against a minor child may
13 be released on probation until this report shall have been
14 presented to and considered by the court. The court may in its
15 discretion request such a report concerning any person convicted of
16 a misdemeanor. The presentence report of any person convicted of
17 an offense, described in said articles or section twelve, article
18 eight of said chapter, may include a statement from a therapist,
19 psychologist or physician who is providing treatment to the child.
20 A copy of all reports shall be filed with the board of probation
21 and parole.

22 **§62-12-9. Conditions of release on probation.**

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

24 (1) That the probationer may not, during the term of his or

1 her probation, violate any criminal law of this or any other state
2 or of the United States;

3 (2) That he or she may not, during the term of his or her
4 probation, leave the state without the consent of the court which
5 placed him or her on probation;

6 (3) That he or she complies with the conditions prescribed by
7 the court for his or her supervision by the probation officer;

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

19 (5) That the probationer be required to pay a fee, not to
20 exceed \$20 per month to defray costs of supervision: *Provided*,
21 That the court conducts a hearing prior to imposition of probation
22 and makes a determination on the record that the offender is able
23 to pay the fee without undue hardship. All moneys collected as
24 fees from probationers pursuant to this subdivision are to be

1 deposited with the circuit clerk who shall, on a monthly basis,
2 remit the moneys collected to the State Treasurer for deposit in
3 the state General Revenue Fund; and

4 (6) That the probationer is required to pay the fee described
5 in section four, article eleven-c of this chapter: *Provided*, That
6 the court conducts a hearing prior to imposition of probation and
7 makes a determination on the record that the offender is able to
8 pay the fee without undue hardship.

9 (b) In addition the court may impose, subject to modification
10 at any time, any other conditions which it may deem advisable,
11 including, but not limited to, any of the following:

12 (1) That he or she make restitution or reparation, in whole or
13 in part, immediately or within the period of probation, to any
14 party injured by the crime for which he or she has been convicted:
15 *Provided*, That the court conducts a hearing prior to imposition of
16 probation and makes a determination on the record that the offender
17 is able to pay restitution without undue hardship;

18 (2) That he or she pay any fine assessed and the costs of the
19 proceeding in installments as the court may direct: *Provided*, That
20 the court conducts a hearing prior to imposition of probation and
21 makes a determination on the record that the offender is able to
22 pay the costs without undue hardship;

23 (3) That he or she make contribution from his or her earnings,
24 in sums as the court may direct, for the support of his or her

1 dependents; and

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

20 (c) Circuit courts may impose a term of reporting to a day
21 report center or other community corrections program as a condition
22 of probation under this section.

23 (1) To be eligible, the probationer must be identified as
24 moderate to high risk of reoffending and moderate to high

1 criminogenic need, as defined by the standardized risk and needs
2 assessment adopted by the Supreme Court of Appeals of West Virginia
3 under subsection (d), section six of this article, and applied by
4 a probation officer or day report staff. In eligible cases,
5 circuit courts may impose a term of up to one year: Provided, That
6 a judge may impose a term of reporting to a day report center or
7 other community corrections program under this section,
8 notwithstanding the results of the standardized risk and needs
9 assessment, upon making specific written findings of fact as to the
10 reason for departing from the requirements of this section.

11 (2) The day reporting center programs shall determine which
12 services a person receives based on the results of the standardized
13 risk and needs assessment and taking into consideration the other
14 conditions of probation set by the court. For the purposes of this
15 article, "day report center" means a court-operated or
16 court-approved facility where persons ordered to serve a sentence
17 in this type of facility are required to report under the terms and
18 conditions set by the court for purposes which include, but are not
19 limited to, counseling, employment training, alcohol or drug
20 testing or other medical testing.

21 **§62-12-10. Violation of probation.**

22 (a) If at any time during the period of probation there shall
23 be is reasonable cause to believe that the probationer has violated

24 any of the conditions of his or her probation, the probation

1 officer may arrest him or her with or without an order or warrant,
2 or the court which placed him or her on probation, or the judge
3 thereof in vacation, may issue an order for his or her arrest,
4 whereupon he or she shall be brought before the court, or the judge
5 thereof in vacation, for a prompt and summary hearing.

6 (1) If it ~~shall then~~ appears to the satisfaction of the court
7 or judge that ~~any condition of probation has been violated~~ ~~the~~
8 probationer absconded supervision or committed a misdemeanor or
9 felony, the court or judge may revoke the suspension of imposition
10 or execution of sentence, impose sentence if none has been imposed,
11 and order that sentence be executed. In computing the period for
12 which the offender is to be ~~imprisoned~~ confined, the time between
13 his or her release on probation and his or her arrest ~~shall~~ may not
14 be taken to be any part of the term of his or her sentence.

15 (2) If it ~~sha~~ instead appears to the satisfaction of the court
16 or judge that the probationer violated any condition of supervision
17 other than absconding or committing a misdemeanor or felony, then,
18 for the first violation, the court or judge may impose a period of
19 confinement up to sixty days, or, for the second violation, a
20 period of confinement up to one hundred twenty days. For the third
21 violation, the court or judge may revoke the suspension of
22 imposition or execution of sentence, impose sentence if none has
23 been imposed, and order that sentence be executed, with credit for
24 time spent in confinement under this section. If the time

1 remaining on the probationer's maximum imposed sentence is less
2 than the maximum period of confinement, then the term of
3 confinement is for the remaining period of the sentence. In
4 computing the period for which the offender is to be confined, the
5 time between his or her release on probation and his or her arrest
6 shall may not be taken to be any part of the term of his or her
7 sentence.

8 (b) A probationer confined in the first or second instance in
9 which it shall appears to the satisfaction of the court or judge
10 that the probationer violated any condition of supervision other
11 than absconding or committing a misdemeanor or felony, 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 requirements of subdivisions (1) and (2) of
22 subsection (a) of this section upon making specific written
23 findings of fact supporting the departure in this instance.

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

1 **procedure for granting parole.**

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

7 (b) Any inmate of a state correctional center is eligible for
8 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;

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

22 ~~(iv)~~ (iii) Is not serving a sentence for a crime of violence
23 against the person, or more than one felony for a controlled
24 substance offense for which the inmate is serving a consecutive

1 sentence, a felony offense involving the use of a firearm, or a
2 felony offence where the victim was a minor child; and

3 ~~(v)~~ (iv) Has successfully completed a rehabilitation treatment
4 program created with the assistance of a standardized risk and
5 needs assessment;

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

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

13 (C) Notwithstanding any provision of this code to the
14 contrary, any person who committed, or attempted to commit a felony
15 with the use, presentment or brandishing of a firearm, is not
16 eligible for parole prior to serving a minimum of three years of
17 his or her sentence or the maximum sentence imposed by the court,
18 whichever is less: *Provided*, That any person who committed, or
19 attempted to commit, any violation of section twelve, article two,
20 chapter sixty-one of this code, with the use, presentment or
21 brandishing of a firearm, is not eligible for parole prior to
22 serving a minimum of five years of his or her sentence or one third
23 of his or her definite term sentence, whichever is greater.
24 Nothing in this paragraph applies to an accessory before the fact

1 or a principal in the second degree who has been convicted as if he
2 or she were a principal in the first degree if, in the commission
3 of or in the attempted commission of the felony, only the principal
4 in the first degree used, presented or brandished a firearm. A
5 person is not ineligible for parole under the provisions of this
6 paragraph because of the commission or attempted commission of a
7 felony with the use, presentment or brandishing of a firearm unless
8 that fact is clearly stated and included in the indictment or
9 presentment by which the person was charged and was either: (i)
10 Found by the court at the time of trial upon a plea of guilty or
11 nolo contendere; (ii) found by the jury, upon submitting to the
12 jury a special interrogatory for such purpose if the matter was
13 tried before a jury; or (iii) found by the court, if the matter was
14 tried by the court without a jury.

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

19 (D) The amendments to this subsection adopted in the year
20 1981:

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

23 (ii) Apply with respect to the contents of any indictment or
24 presentment returned on or after August 1 of that year irrespective

1 of when the offense occurred;

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

13 (iv) Does not apply with respect to cases not affected by the
14 amendments and in such cases the prior provisions of this section
15 apply and are construed without reference to the amendments.

16 (1) Insofar as the amendments relate to mandatory sentences
17 restricting the eligibility for parole, all matters requiring a
18 mandatory sentence shall be proved beyond a reasonable doubt in all
19 cases tried by the jury or the court;

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

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

1 (4) Has prepared and submitted to the board a written parole
2 release plan setting forth proposed plans for his or her place of
3 residence, employment and, if appropriate, his or her plans
4 regarding education and post-release counseling and treatment. The
5 Commissioner of Corrections or his or her designee shall review the
6 plan to be reviewed and investigated and provide recommendations to
7 the board as to the suitability of the plan: *Provided*, That in
8 cases in which there is a mandatory thirty-day notification period
9 required prior to the release of the inmate, pursuant to section
10 twenty-three of this article, the board may conduct an initial
11 interview and deny parole without requiring the development of a
12 plan. In the event the board does not believe parole should be
13 denied, it may defer a final decision pending completion of an
14 investigation and receipt of recommendations. Upon receipt of the
15 plan together with the investigation and recommendation, the board,
16 through a panel, shall make a final decision regarding the granting
17 or denial of parole; and

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

20 (c) Except in the case of a person serving a life sentence, no
21 person who has been previously twice convicted of a felony may be
22 released on parole until he or she has served the minimum term
23 provided by law for the crime for which he or she was convicted.
24 A person sentenced for life may not be paroled until he or she has

1 served ten years, and a person sentenced for life who has been
2 previously twice convicted of a felony may not be paroled until he
3 or she has served fifteen years: *Provided*, That a person convicted
4 of first degree murder for an offense committed on or after June
5 10, 1994, is not eligible for parole until he or she has served
6 fifteen years.

7 (d) In the case of a person sentenced to any state
8 correctional center, it is the duty of the board, as soon as a
9 person becomes eligible, to consider the advisability of his or her
10 release on parole.

11 (e) If, upon consideration, parole is denied, the board shall
12 promptly notify the inmate of the denial. The board shall, at the
13 time of denial, notify the inmate of the month and year he or she
14 may apply for reconsideration and review. The board shall at least
15 once a year reconsider and review the case of every inmate who was
16 denied parole and is still eligible: *Provided*, That the board may
17 reconsider and review parole eligibility anytime within three years
18 following the denial of parole of an inmate serving a life sentence
19 with the possibility of parole.

20 (f) Any person serving a sentence on a felony conviction who
21 becomes eligible for parole consideration prior to being
22 transferred to a state correctional center may make written
23 application for parole. The terms and conditions for parole
24 consideration established by this article apply to such inmates.

1 (g) The board shall, with the approval of the Governor, adopt
2 rules governing the procedure in the granting of parole. No
3 provision of this article and none of the rules adopted hereunder
4 are intended or may be construed to contravene, limit or otherwise
5 interfere with or affect the authority of the Governor to grant
6 pardons and reprieves, commute sentences, remit fines or otherwise
7 exercise his or her constitutional powers of executive clemency.

8 (h) (1) The Division of Corrections shall promulgate policies
9 and procedures for developing a rehabilitation treatment plan
10 created with the assistance of a standardized risk and needs
11 assessment. The policies and procedures shall ~~include, but not be~~
12 ~~limited to, policy and procedures for~~ provide for, at a minimum,
13 screening and selecting inmates for rehabilitation treatment and
14 development, ~~and use of~~ using standardized risk and needs
15 assessment and substance abuse assessment tools, and prioritizing
16 the use of residential substance abuse treatment resources based on
17 the results of the risk and needs assessment and a substance abuse
18 assessment. The parole board may review and comment upon the
19 policies and procedures.

20 (2) An inmate shall not be paroled under paragraph (B),
21 subdivision (1), subsection (b) of this section solely due to
22 having successfully completed a rehabilitation treatment plan but
23 completion of all the requirements of a rehabilitation ~~parole~~
24 treatment plan along with compliance with the requirements of

1 subsection (b) of this section ~~shall~~ creates a rebuttable
2 presumption that parole is appropriate. The presumption created by
3 this subsection may be rebutted by a parole board finding that,
4 according to the risk assessment, at the time parole release is
5 sought the inmate still constitutes a reasonable risk to the safety
6 or property of other persons if released. Nothing in subsection
7 (b) of this section or in this subsection may be construed to
8 create a right to parole.

9 (i) Notwithstanding the provisions of subsection (b) of this
10 section, the parole board may, in its discretion, grant or deny
11 parole to an inmate against whom a detainer is lodged by a
12 jurisdiction other than West Virginia for service of a sentence of
13 incarceration, upon a written request for parole from the inmate.
14 A denial of parole under this subsection shall preclude
15 consideration for a period of one year or until the provisions of
16 subsection (b) of this section are applicable.

17 (j) Where an inmate is otherwise eligible for parole pursuant
18 to subsection (b) of this section and has completed the
19 rehabilitation treatment program required under subsection (h) of
20 this section, ~~but~~ the parole board ~~determines~~ may not require that
21 the inmate should participate in an additional program, ~~or~~ but may
22 determine that the inmate must complete an assigned task or tasks
23 prior to actual release on parole, such as the development of a
24 home plan, and, in this event, the board may grant parole

1 contingently, effective upon successful completion of the ~~program~~
2 ~~or~~ assigned task or tasks, without the need for a further hearing.
3 ~~The Commissioner of Corrections shall provide notice to the Parole~~
4 ~~Board of the imminent release of a contingently paroled inmate to~~
5 ~~effectuate appropriate supervision.~~

6 (k) (1) The Division of Corrections is charged with the duty
7 of supervising all probationers and parolees whose supervision may
8 have been undertaken by this state by reason of any interstate
9 compact entered into pursuant to the uniform act for out-of-state
10 parolee supervision.

11 (2) The Division of Corrections is charged with the duties of
12 supervision, treatment and support services for all people released
13 to mandatory supervision under section twenty-seven, article five,
14 chapter twenty-eight of this code.

15 (1)(1) When considering an inmate of a state correctional
16 center for release on parole, the parole board panel considering
17 the parole is to have before it an authentic copy of or report on
18 the inmate's current criminal record as provided through the West
19 Virginia State Police, the United States Department of Justice or
20 other reliable criminal information sources and written reports of
21 the warden or superintendent of the state correctional center to
22 which the inmate is sentenced:

23 (A) On the inmate's conduct record while in custody, including
24 a detailed statement showing any and all infractions of

1 disciplinary rules by the inmate and the nature and extent of
2 discipline administered therefor;

3 (B) On improvement or other changes noted in the inmate's
4 mental and moral condition while in custody, including a statement
5 expressive of the inmate's current attitude toward society in
6 general, toward the judge who sentenced him or her, toward the
7 prosecuting attorney who prosecuted him or her, toward the
8 policeman or other officer who arrested the inmate and toward the
9 crime for which he or she is under sentence and his or her previous
10 criminal record;

11 (C) On the inmate's industrial record while in custody which
12 shall include: The nature of his or her work, occupation or
13 education, the average number of hours per day he or she has been
14 employed or in class while in custody and a recommendation as to
15 the nature and kinds of employment which he or she is best fitted
16 to perform and in which the inmate is most likely to succeed when
17 he or she leaves prison;

18 (D) On any physical, mental, and psychological or psychiatric
19 examinations of the inmate. ~~conducted, insofar as practicable,~~
20 ~~within the two months next preceding parole consideration by the~~
21 ~~board.~~

22 (2) The board panel considering the parole may waive the
23 requirement of any report when not available or not applicable as
24 to any inmate considered for parole but, in every such case, shall

1 enter in the record thereof its reason for the waiver: *Provided,*
2 That in the case of an inmate who is incarcerated because the
3 inmate has been found guilty of, or has pleaded guilty to a felony
4 under the provisions of section twelve, article eight, chapter
5 sixty-one of this code or under the provisions of article eight-b
6 or eight-c of said chapter, the board panel may not waive the
7 report required by this subsection and the report is to include a
8 study and diagnosis including an on-going treatment plan requiring
9 active participation in sexual abuse counseling at an approved
10 mental health facility or through some other approved program:
11 *Provided, however,* That nothing disclosed by the person during the
12 study or diagnosis may be made available to any law-enforcement
13 agency, or other party without that person's consent, or admissible
14 in any court of this state, unless the information disclosed
15 indicates the intention or plans of the parolee to do harm to any
16 person, animal, institution or to property. Progress reports of
17 outpatient treatment are to be made at least every six months to
18 the parole officer supervising the person. In addition, in such
19 cases, the parole board shall inform the prosecuting attorney of
20 the county in which the person was convicted of the parole hearing
21 and shall request that the prosecuting attorney inform the parole
22 board of the circumstances surrounding a conviction or plea of
23 guilty, plea bargaining and other background information that might
24 be useful in its deliberations.

1 (m) Before releasing any inmate on parole, the board of parole
2 shall arrange for the inmate to appear in person before a parole
3 board panel and the panel may examine and interrogate him or her on
4 any matters pertaining to his or her parole, including reports
5 before the board made pursuant to the provisions hereof: *Provided,*
6 That an inmate may appear by video teleconference if the members of
7 the panel conducting the examination are able to contemporaneously
8 see the inmate and hear all of his or her remarks and if the inmate
9 is able to contemporaneously see each of the members of the panel
10 conducting the examination and hear all of the members' remarks.
11 The panel shall reach its own written conclusions as to the
12 desirability of releasing the inmate on parole and the majority of
13 the panel considering the release shall concur in the decision.
14 The warden or superintendent shall furnish all necessary assistance
15 and cooperate to the fullest extent with the parole board. All
16 information, records and reports received by the board are to be
17 kept on permanent file.

18 (n) The board and its designated agents are at all times to
19 have access to inmates imprisoned in any state correctional center
20 or in any jail in this state and may obtain any information or aid
21 necessary to the performance of its duties from other departments
22 and agencies of the state or from any political subdivision
23 thereof.

24 (o) The board shall, if so requested by the Governor,

1 investigate and consider all applications for pardon, reprieve or
2 commutation and shall make recommendation thereon to the Governor.

3 (p) Prior to making a recommendation for pardon, reprieve or
4 commutation and prior to releasing any inmate on parole, the board
5 shall notify the sentencing judge and prosecuting attorney at least
6 ten days before the recommendation or parole.

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

11 (r) Except for the amendments to this section contained in
12 subdivision (4), subsection (b) and subsection (i) of this section
13 the amendments to this section enacted during the 2010 regular
14 session of the Legislature shall become effective on January 1,
15 2011.

16 **§62-12-14a. Director of employment released inmates.**

17 The ~~board~~ director ~~shall have authority to~~ may employ or
18 contract for a director of employment and a director of housing for
19 ~~paroled or pardoned prisoners~~ released inmates. ~~It shall be the~~
20 ~~duty of~~ The director of employment ~~to~~ shall investigate job
21 opportunities and to give every possible assistance in helping
22 ~~prisoners, eligible to be paroled or who have been granted parole~~
23 ~~under this article~~ released inmates to find employment. The
24 director of housing shall work in conjunction with the parole

1 division and the parole board to reduce release delays due to lack
2 of a home plan, develop community housing resources, and provide
3 short-term loans to released inmates for costs related to reentry.

4 **§62-12-15. Powers and duties of state parole officers.**

5 (a) Each state parole officer shall:

6 (1) Investigate all cases referred to him or her for
7 investigation by the Commissioner of Corrections and ~~shall~~ report
8 in writing thereon; ~~He or she or she shall~~ 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 person for whom an assessment has
12 not been conducted for parole by a specialized assessment officer;

13 (3) Supervise each person according to the assessment and
14 supervision standards determined by the commissioner;

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

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

24 (6) Use all practicable and suitable methods to aid and

1 encourage persons on parole and to bring about improvement in their
2 conduct and condition; ~~He or she or she shall keep~~

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

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

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

13 (10) Perform any other duties the commissioner may require.

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

18 (c) The commissioner may issue a certificate authorizing any
19 parole officer who has successfully completed the division's
20 training program for firearms certification, which is the
21 equivalent of that required of deputy sheriffs, to carry firearms
22 or concealed weapons. Any parole officer authorized by the
23 commissioner has the right, without a state license, to carry
24 firearms and concealed weapons. Each parole officer, authorized by

1 the commissioner, shall carry with him or her a certificate
2 authorizing him or her to carry a firearm or concealed weapon
3 bearing the official signature of the commissioner.

4 **§62-12-17. Conditions of release on parole.**

5 (a) Release and supervision on parole of any person, including
6 the supervision by the Division of Corrections of any person paroled
7 by any other state or by the federal government, shall be upon the
8 following conditions:

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

12 (2) That he or she may not, during the period of his or her
13 parole, leave the state without the consent of the division;

14 (3) That he or she shall comply with the rules prescribed by
15 the division for his or her supervision by the parole officer;

16 (4) That in every case in which the parolee for a conviction
17 is seeking parole from an offense against a child, defined in
18 section twelve, article eight, chapter sixty-one of this code; or
19 article eight-b or eight-d of said chapter, or similar convictions
20 from other jurisdictions where the parolee is returning or
21 attempting to return to this state pursuant to the provisions of
22 article six, chapter twenty-eight of this code, the parolee may not
23 live in the same residence as any minor child nor exercise
24 visitation with any minor child nor may he or she have any contact

1 with the victim of the offense; and

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

6 (b) The commissioner shall keep a record of all actions taken
7 and account for moneys received. No provision of this section
8 prohibits the division from collecting the fees and conducting the
9 checks upon the effective date of this section. All moneys shall
10 be deposited in a special account in the State Treasury to be known
11 as the "Parolee's Supervision Fee Fund". Expenditures from the fund
12 shall be for the purposes of providing parole supervision required
13 by the provisions of this code and are not authorized from
14 collections but are to be made only in accordance with appropriation
15 by the Legislature and in accordance with the provisions of article
16 three, chapter twelve of this code and upon the fulfillment of the
17 provisions set forth in article two, chapter five-a of this code.
18 Amounts collected which are found, from time to time, to exceed the
19 funds needed for purposes set forth in this article may be
20 transferred to other accounts or funds and redesignated for other
21 purposes by appropriation of the Legislature.

22 (c) The division shall consider the following factors in
23 determining whether a parolee or probationer is financially able to
24 pay the fee:

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

3 (2) Liquid assets of the parolee or probationer, assets of the
4 parolee or probationer that may provide collateral to obtain funds
5 and assets of the parolee or probationer that may be liquidated to
6 provide funds to pay the fee;

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

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

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

13 (d) In addition, the division may impose, subject to
14 modification at any time, any other conditions which the division
15 considers advisable.

16 (e) The division may order substance abuse treatment as a
17 condition or as a modification of parole only if the standardized
18 risk and needs assessment indicates the offender has a high risk for
19 reoffending and a need for substance abuse treatment.

20 (f) The division may impose as a condition or as a modification
21 of parole a term of reporting to a day report center or other
22 community corrections program only if the standardized risk and
23 needs assessment indicates a moderate to high risk of reoffending
24 and moderate to high criminogenic need. The Commissioner of

1 Corrections shall enter into a master agreement with the Division
2 of Justice and Community Services to provide reimbursement to
3 counties for the use of community corrections programs by eligible
4 releasees.

5 **§62-12-19. Violation of parole.**

6 (a) If at any time during the period of parole there is
7 reasonable cause to believe that the parolee has violated any of the
8 conditions of his or her release on parole, the parole officer may
9 arrest him or her with or without an order or warrant, or the
10 Commissioner of Corrections may issue a written order or warrant for
11 his or her arrest, which written order or warrant is sufficient for
12 his or her arrest by any officer charged with the duty of executing
13 an ordinary criminal process. The commissioner's written order or
14 warrant delivered to the sheriff against the paroled prisoner shall
15 be a command to keep custody of the parolee for the jurisdiction of
16 the Division of Corrections and during the period of custody, the
17 parolee may be admitted to bail by the court before which the
18 parolee was sentenced. If the parolee is not released on a bond,
19 the costs of confining the paroled prisoner shall be paid out of the
20 funds appropriated for the Division of Corrections.

21 (1) In response to a violation of the conditions of release
22 other than a reasonable cause to believe the parolee committed a
23 misdemeanor, or a felony, or absconded supervision, the parole
24 officer may, after consultation with and written approval by the

1 director of parole services, for the first violation, require the
2 parolee to serve a period of confinement up to sixty days, or, for
3 the second violation, a period of confinement up to one hundred
4 twenty days: Provided, That the Division of Corrections shall
5 notify the parole board when a parolee is serving such a term of
6 confinement and the parole board may deny further confinement. A
7 parolee serving a term of confinement in the first or second
8 instance may be confined in jail, but shall be committed to the
9 custody of the Commissioner of Corrections, and the costs of
10 confining the parolee shall be paid out of funds appropriated for
11 the Division of Corrections: Provided, however, That upon request,
12 the parolee shall be afforded the right to a hearing within forty-
13 five days before the parole board regarding whether he or she
14 violated the conditions of his or her release on parole.

15 ~~(b)~~ (2) When a parolee is under arrest for committing a
16 misdemeanor, or a felony, or absconding supervision as a violation
17 of the conditions of his or her parole, or a violation of the
18 conditions of release other than a reasonable cause to believe the
19 parolee committed a misdemeanor, or a felony, or absconded
20 supervision in the second or subsequent instance, he or she shall
21 be given a prompt and summary hearing before a panel of the board,
22 at which the parolee and his or her counsel are given an opportunity
23 to attend.

24 (A) If at the hearing it appears to the satisfaction of the

1 panel that the parolee has ~~violated any condition of his or her~~
2 ~~release on parole, or any rules or conditions of his or her~~
3 ~~supervision~~ committed a misdemeanor, or a felony, or absconded
4 supervision, the panel may revoke his or her parole and may require
5 him or her to serve in prison the remainder or any portion of his
6 or her maximum sentence for which, at the time of his or her
7 release, he or she was subject to imprisonment.

8 (B) If at the hearing it instead appears to the satisfaction
9 of the panel that the parolee has violated any condition of release
10 or supervision other than committing a misdemeanor, or a felony, or
11 absconding supervision, the panel may require the parolee to serve,
12 for the first violation, a period of confinement up to sixty days,
13 or, for the second violation, a period of confinement up to one
14 hundred twenty days: *Provided,* That if the violation of the
15 conditions of parole or rules for his or her supervision is not a
16 felony as set out in section eighteen of this article, the panel
17 may, if in its judgment the best interests of justice do not require
18 ~~revocation~~ a period of confinement, reinstate him or her on parole.
19 The Division of Corrections shall effect release from custody upon
20 approval of a home plan.

21 (b) Notwithstanding any provision of this code to the contrary,
22 when reasonable cause has been found to believe that a parolee has
23 violated the conditions of his or her parole but the violation does
24 not constitute felonious conduct, the commissioner may, in his or

1 her discretion and with the written consent of the parolee, allow
2 the parolee to remain on parole with additional conditions or
3 restrictions. The additional conditions or restrictions may
4 include, but are not limited to, participation in any program
5 described in subsection (d), section five, article eleven-c of this
6 chapter. Compliance by the parolee with the conditions of parole
7 precludes revocation of parole for the conduct which constituted the
8 violation. Failure of the parolee to comply with the conditions or
9 restrictions and all other conditions of release is an additional
10 violation of parole and the parolee may be proceeded against under
11 the provisions of this section for the original violation as well
12 as any subsequent violations.

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

20 (d) Whenever the parole of a paroled prisoner has been revoked,
21 the commissioner shall, upon receipt of the panel's written order
22 of revocation, convey and transport the paroled prisoner to a state
23 correctional institution. A paroled prisoner whose parole has been
24 revoked shall remain in custody of the sheriff until delivery to a

1 corrections officer sent and duly authorized by the commissioner for
2 the removal of the paroled prisoner to a state penal institution;
3 the cost of confining the paroled prisoner shall be paid out of the
4 funds appropriated for the Division of Corrections.

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

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

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

1 returning him or her to West Virginia.

2 (h) Conviction of a felony for conduct occurring during the
3 period of parole is proof of violation of the conditions of parole
4 and the hearing procedures required by the provisions of this
5 section are inapplicable.

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

14 **§62-12-29. Shared information for community supervision.**

15 (a) The administrative director of the Supreme Court of Appeals
16 of West Virginia shall appoint a Community Supervision Committee,
17 to include representatives of the judiciary, probation, parole, day
18 report centers, magistrates, sheriffs, corrections, and other
19 members at the discretion of the director. The director shall
20 appoint a chair from among the members, and attend the meeting ex
21 officio.

22 (b) The committee shall:

23 (1) Design and deploy a method for probation officers, parole
24 officers, day report centers and others providing community

1 supervision to share electronic offender information and
2 assessments;

3 (2) Coordinate information reporting and access across agencies
4 carrying out community supervision;

5 (3) Collect and share information about assessed and collected
6 restitution among supervision agencies;

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

9 (5) Coordinate with the community corrections subcommittee of
10 the Governor's Committee on Crime, Delinquency and Correction in the
11 discharge of these duties.

12 (c) Any rules necessary to carry out the work of the committee
13 shall be prescribed by the West Virginia Supreme Court of Appeals.

14 (d) The committee shall submit, on or before September 30 of
15 each year, to the Governor, the Speaker of the House of Delegates,
16 the President of the Senate and, upon request, to any individual
17 member of the Legislature a report on its activities during the
18 previous year.

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

20 **§62-15-2. Definitions.**

21 For the purposes of this article:

22 (1) "Assessment" means a diagnostic evaluation to determine
23 whether and to what extent a person is a drug offender under this
24 article and would benefit from its provisions. The assessment shall

1 be conducted in accordance with the ~~standards, procedures, and~~
2 ~~diagnostic criteria designed to provide effective and~~
3 ~~cost-beneficial use of available resources~~ standardized risk and
4 needs assessment and risk cut-off scores adopted by the West
5 Virginia Supreme Court of Appeals.

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

10 (3) "Controlled substance" means a drug or other substance for
11 which a medical prescription or other legal authorization is
12 required for purchase or possession.

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

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

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

20 (A) The drug court judge, which may include a magistrate,
21 Mental Hygiene Commissioner, or other hearing officer;

22 (B) The prosecutor;

23 (C) The public defender or member of the criminal defense bar;

24 (D) A representative from the day report center or community

1 corrections program, if operating in the jurisdiction;

2 (E) A law-enforcement officer;

3 (F) The drug court coordinator;

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

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

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

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

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

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

16 (A) Drug court circuit judge, who shall serve as chair;

17 (B) Drug court magistrate(s);

18 (C) Prosecutor;

19 (D) Public defender;

20 (E) Drug court coordinator;

21 (F) Criminal defense bar;

22 (G) Circuit clerk;

23 (H) Day report center director;

24 (I) Circuit court probation officer, parole officer or both;

- 1 (J) Law enforcement;
- 2 (K) One or more substance abuse treatment providers;
- 3 (L) Corrections representative; and
- 4 (M) Such other person or persons the chair deems appropriate.
- 5 (10) "Illegal drug" means a drug whose manufacture, sale, use
6 or possession is forbidden by law;
- 7 (11) "Memorandum of Understanding" means a written document
8 setting forth an agreed upon procedure.
- 9 (12) "Offender" means an adult charged with a criminal offense
10 punishable by incarceration.
- 11 (13) "Other harmful substance" means a misused substance
12 otherwise legal to possess, including alcohol.
- 13 (14) "Preadjudication" means a court order requiring a drug
14 offender to participate in drug court before charges are filed or
15 before conviction.
- 16 (15) "Post-adjudication" means a court order requiring a drug
17 offender to participate in drug court after having entered a plea
18 of guilty or *nolo contendere* or having been found guilty.
- 19 (16) "Recidivism" means any subsequent arrest for a serious
20 offense (carrying a sentence of at least one year) resulting in the
21 filing of a charge.
- 22 (17) "Relapse" means a return to substance use after a period
23 of abstinence.
- 24 (18) "Split sentencing" means a sentence which includes a

1 period of incarceration followed by a period of supervision.

2 (19) "Staffing" means the meeting before a drug offender's
3 appearance in drug court in which the drug court team discusses a
4 coordinated response to the drug offender's behavior.

5 (20) "Substance" means drug or alcohol.

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

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

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

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

24 (B) Using a nonadversarial approach, prosecution and defense

1 counsel promote public safety while protecting participants' due
2 process rights;

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

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

7 (E) Abstinence is monitored by frequent alcohol and other drug
8 testing;

9 (F) A coordinated strategy governs drug court responses to
10 participants' compliance;

11 (G) Ongoing judicial interaction with each drug court
12 participant is essential;

13 (H) Monitoring and evaluation measure the achievement of
14 program goals and gauge effectiveness;

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

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

20 **§62-15-6a. Treatment supervision.**

21 (a) A drug offender is eligible for treatment supervision only
22 if the offender would otherwise be sentenced to prison, and the risk
23 assessment indicates the offender has a high risk for reoffending
24 and a need for substance abuse treatment. As a condition of a term

1 of probation or as a modification of probation, treatment
2 supervision may be imposed on an eligible drug offender convicted
3 of a felony, with or without participation in a drug court:
4 Provided, That a judge may impose treatment supervision on a drug
5 offender convicted of a felony, notwithstanding the results of the
6 risk assessment, upon making specific written findings of fact as
7 to the reason for departing from the requirements of this
8 subsection. This subsection takes effect January 1, 2014.

9 (b) The Division of Justice and Community Services shall use
10 appropriated funds to implement substance abuse treatment to serve
11 those under treatment supervision in each judicial circuit and on
12 parole supervision, in consultation with the Governor's Advisory
13 Committee on Substance Abuse, created by Executive Order No. 5-11.

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

17 (1) Qualifications for provider certification to deliver a
18 continuum of care to offenders;

19 (2) Fee reimbursement procedures; and

20 (3) Other matters related to the quality and delivery of
21 services.

22 (d) The Division of Justice and Community Services shall
23 require education and training which shall include, but not be
24 limited to, cognitive behavior training. The duties of providers

1 who provide services under this program may include notifying the
2 probation department and the court of any offender failing to meet
3 the conditions of probation or referrals to treatment, appearing at
4 revocation hearings as may be required, and providing assistance
5 data reporting and program evaluation.

6 (e) The cost for all drug abuse assessments and certified drug
7 treatment under this section and subsection (e), section seventeen,
8 article twelve of this chapter shall be paid by the Division of
9 Justice and Community Services from funds appropriated for such
10 purpose. The Division of Justice and Community Services shall
11 contract for payment for such services provided to eligible
12 offenders.

13 (f) The Division of Justice and Community Services, in
14 consultation with the Governor's Advisory Committee on Substance
15 Abuse, shall submit on or before September 30 of each year, to the
16 Governor, the Speaker of the House of Delegates, the President of
17 the Senate and, upon request, to any individual member of the
18 Legislature a report on:

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

21 (2) The number of people on treatment supervision who received
22 services and whether they were the result of a direct sentence or
23 in lieu of revocation;

24 (3) The number of people on treatment supervision who received

1 services despite the risk assessment indicating less than high risk
2 for reoffending and a need for substance abuse treatment, pursuant
3 to a judge's specific written findings of fact;

4 (4) The type of services provided;

5 (5) The rate of revocations and successful completions for
6 people who received services;

7 (6) The number of people under supervision receiving treatment
8 under this section who are rearrested within two years of being
9 placed under supervision;

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

13 (8) Other measures as appropriate to measure the availability
14 of treatment and the effectiveness of services.

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

NOTE: The purpose of this bill is to reform aspects of the criminal justice system to improve public safety and address the growing prison overcrowding and substance abuse problems in this state.

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

§31-20-5g, §31-20-5h, §62-11C-10, §62-12-29 and §62-15-6a are new; therefore, they have been completely underscored.