

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
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ENROLLED

COMMITTEE SUBSTITUTE
FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 371

(SENATORS KESSLER (MR. PRESIDENT) AND M. HALL,
BY REQUEST OF THE EXECUTIVE)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 371

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[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §25-1-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §28-5-27 of said code; to amend said code by adding thereto two new sections, designated §31-20-5g and §31-20-5h; to amend and reenact §61-7-6 of said code; to amend and reenact §62-11A-1a of said code; to amend and reenact §62-11B-9 of said code; to amend and reenact §62-11C-2, §62-11C-3 and §62-11C-6 of said code; to amend said code by adding thereto a new section, designated §62-11C-10; to amend and reenact §62-12-6, §62-12-7, §62-12-9, §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and §62-12-19 of said code; to amend said code by adding thereto a new section, designated §62-12-29; to amend and reenact §62-15-2 and §62-15-4 of said code; and to amend said code by adding thereto two new sections, designated §62-15-6a and §62-15-6b, all relating to public safety; requiring the Division of Corrections to perform graduated methods of mental health screens, appraisals and evaluations on persons committed to its custody; eliminating requirement for separate disciplinary rules at each institution;

mandating one year of supervised release for violent inmates and deducting one year of their good time; authorizing judges to require up to one hundred eighty days of a nonviolent offender's sentence to be served as post-release mandatory supervision; setting an effective date for supervised release provisions; requiring the Commissioner of Corrections to adopt policies regarding mandatory supervised release; requiring the West Virginia Regional Jail and Correctional Facility Authority to use a standardized pretrial risk-screening instrument adopted by the Supreme Court of Appeals of West Virginia to screen persons arrested and placed in a regional jail; providing for the confidentiality of risk assessments and their inadmissibility at criminal and civil trials; requiring the Division of Corrections to develop and implement a cognitive behavioral program for inmates in regional jails committed to the custody of the Commissioner of Corrections and requiring the Division of Corrections to pay its cost; exempting parole officers from prohibitions against carrying concealed weapons; moving definition of "day report center" to section relating to conditions of release on probation; providing standards and limitations under which judges and magistrates may impose a period of supervision or participation in day report program; clarifying language regarding confinement and revocation for violations of the conditions of home incarceration; adding representative of the Bureau for Behavioral Health and Health Facilities to the Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction; requiring that the Community Corrections Subcommittee review, assess and report on the implementation of evidence-based practices in the criminal justice system; adding member with a background in substance abuse treatment and services to the community criminal justice boards to be appointed by the commission or commissions of the county or counties represented by the board; providing oversight responsibility to Division of Justice and Community Services to implement standardized risk and needs assessment, evaluate effectiveness of other modifications to community corrections

programs and provide annual report; requiring probation officers to conduct a standardized risk and needs assessment for individuals placed on probation and to supervise probationer and enforce probation according to assessment and supervision standards adopted by the West Virginia Supreme Court of Appeals; requiring probation officers to perform random drug and alcohol tests of persons under their supervision; authorizing the Supreme Court of Appeals of West Virginia to adopt a standardized risk and needs assessment for use by probation officers; authorizing the Supreme Court of Appeals of West Virginia to adopt a standardized pretrial screening instrument for use by the Regional Jail Authority; providing standards and limitations under which judges may impose a term of reporting to a day report center as a condition of probation; authorizing day report center programs to provide services based on the results of a person's standardized risk and needs assessment; providing for graduated sanctions in response to violations of the conditions of release on probation other than absconding, committing certain new criminal conduct or violating special condition of probation; creating exceptions to new criminal conduct provisions; making standardized risk and needs assessments confidential court documents; requiring copies of graduated sanctions confinement orders be supplied to the Commissioner of Corrections; providing that graduated sanctions confinement be paid by the Division of Corrections; providing that judges may depart from graduated sanctions limitations upon specific written findings; revising eligibility requirements for accelerated parole program; providing that parole applications may be considered by the parole board without prior submission of a home plan; requiring that Division of Corrections' policies and procedures for developing a rehabilitation treatment plan include the use of substance abuse assessment tools and prioritize treatment resources based on the risk and needs assessment and substance abuse assessment results; providing for rebuttable presumption that parole is appropriate for inmates completing the accelerated parole program and a rehabilitation treatment program;

providing standards and limitations for Parole Board; outlining duties of the Division of Corrections to supervise, treat and provide support services for persons released on mandatory supervised release; removing temporal standard for requirement that the Parole Board have access to a copy of an inmate's physical, mental or psychiatric examination; clarifying the Parole Board's duty to notify prosecuting attorneys of an offender's release on parole; authorizing Division of Corrections to employ directors of housing and employment for released inmates with duties relating to the reduction of parole release delays and finding employment; requiring parole officers to update the standardized risk and needs assessment for each person for whom an assessment has not been conducted for parole and to supervise each person according to the assessment and the commissioner's supervision standards; authorizing the Commissioner of Corrections to issue a certificate authorizing an eligible parole officer to carry firearms or concealed weapons; providing standards and limitations under which the Division of Corrections may order substance abuse treatment or impose a term of reporting to a day report center or other community corrections program as a condition or modification of parole; authorizing the Commissioner of Corrections to enter into a master agreement with the Division of Justice and Community Services to reimburse counties for use of the community corrections programs; clarifying that parolee participation in community corrections is at program director's discretion; providing for graduated sanctions in response to violations of the conditions of release on parole other than absconding, certain new criminal conduct or violating a special condition of parole; providing a parolee with the right to a hearing, upon request, regarding whether he or she violated the conditions of his or her release on parole; providing the authority for the Board of Parole to depart from graduated sanction; providing that graduated sanctions incarceration for parolees be paid for by Division of Corrections; providing for a Community Supervision Committee to be appointed by the Administrative

Director of the Supreme Court of Appeals of West Virginia to coordinate the sharing of information for community supervision and requiring an annual report; revising definitions for Drug Offender Accountability and Treatment Act; requiring all judicial circuits to participate in a drug court or regional drug court program by July 1, 2016; providing standards and limitations under which judges may order treatment supervision for drug offenders; providing that a judge may order a period of confinement to encourage compliance with treatment supervision to be paid by the Division of Correction for up to thirty days for each instance; requiring the Division of Justice and Community Services to use appropriated funds to implement substance abuse treatment to serve those under treatment supervision in each judicial circuit; providing that the Division of Justice and Community Services in consultation with the Governor's Advisory Committee on Substance Abuse is responsible for developing standards relating to quality and delivery of substance abuse services; requiring certain education and training; paying for drug abuse assessments and certified drug treatment from appropriated funds; requiring submittal of an annual report and specifying an effective date; outlining duties of treatment supervision service providers; providing effective dates for provisions related to treatment supervision; providing for state payment of drug court participants' incarceration under certain circumstances; defining terms; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §25-1-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §28-5-27 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §31-20-5g and §31-20-5h; that §61-7-6 of said code be amended and reenacted; that §62-11A-1a of said code be amended and reenacted; that §62-11B-9 of said code be amended and reenacted; that §62-11C-2, §62-11C-3 and §62-11C-6 of said code be amended and reenacted; that said code be amended

by adding thereto a new section, designated §62-11C-10; that §62-12-6, §62-12-7, §62-12-9, §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and §62-12-19 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §62-12-29; that §62-15-2 and §62-15-4 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §62-15-6a and §62-15-6b, all to read as follows:

CHAPTER 25. DIVISION OF CORRECTIONS.

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

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

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

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

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

ARTICLE 5. THE PENITENTIARY.

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

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

6 (b) The commutation of sentence, known as "good time",
7 shall be deducted from the maximum term of indeterminate
8 sentences or from the fixed term of determinate sentences.

9 (c) Each inmate committed to the custody of the
10 Commissioner of Corrections and incarcerated in a
11 correctional facility pursuant to that commitment shall be
12 granted one day good time for each day he or she is
13 incarcerated, including any and all days in jail awaiting
14 sentence which are credited by the sentencing court to his or
15 her sentence pursuant to section twenty-four, article eleven,
16 chapter sixty-one of this code or for any other reason relating
17 to the commitment. An inmate may not be granted any good
18 time for time served either on parole or bond or in any other
19 status when he or she is not physically incarcerated.

20 (d) An inmate sentenced to serve a life sentence is not
21 eligible to earn or receive any good time pursuant to this
22 section.

23 (e) An inmate under two or more consecutive sentences
24 shall be allowed good time as if the several sentences, when
25 the maximum terms of the consecutive sentences are added
26 together, were all one sentence.

27 (f) The Commissioner of Corrections shall promulgate
28 disciplinary rules. The rules shall describe acts that inmates
29 are prohibited from committing, procedures for charging
30 individual inmates for violation of the rules and for
31 determining the guilt or innocence of inmates charged with
32 the violations and the sanctions which may be imposed for
33 the violations. A copy of the rules shall be given to each
34 inmate. For each violation, by a sanctioned inmate, any part
35 or all of the good time which has been granted to the inmate
36 pursuant to this section may be forfeited and revoked by the
37 warden or superintendent of the institution in which the
38 violation occurred. The warden or superintendent, when
39 appropriate and with approval of the commissioner, may
40 restore any forfeited good time.

41 (g) Each inmate, upon his or her commitment to and
42 being placed into the custody of the Commissioner of
43 Corrections, or upon his or her return to custody as the result
44 of violation of parole pursuant to section nineteen, article
45 twelve, chapter sixty-two of this code, shall be given a
46 statement setting forth the term or length of his or her
47 sentence or sentences and the time of his or her minimum
48 discharge computed according to this section.

49 (h) Each inmate shall be given a revision of the statement
50 described in subsection (g) of this section if and when any
51 part or all of the good time has been forfeited and revoked or
52 restored pursuant to subsection (f) of this section, by which
53 the time of his or her earliest discharge is changed.

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

57 (j) In order to ensure equitable good time for all current
58 and future inmates in the custody of the Commissioner of
59 Corrections, except as to those persons committed pursuant

60 to article four, chapter twenty-five of this code, all good time
61 shall be computed according to this section and all previous
62 computations of good time under prior statutes or rules are
63 void. All inmates who have previously forfeited good time
64 are hereby restored to good time computed according to this
65 section and all inmates will receive a new discharge date
66 computed according to this section. All inmates that have
67 been awarded overtime good time or extra good time
68 pursuant to sections twenty-seven-a and twenty-seven-b of
69 this article which were repealed simultaneously with the
70 amendment to this section during the regular session of the
71 Legislature in the year 1984 shall receive that good time in
72 addition to the good time computed according to this section.

73 (k) There shall be no grants or accumulations of good
74 time or credit to any current or future inmate serving a
75 sentence in the custody of the Division of Corrections except
76 in the manner provided in this section.

77 (l) Prior to the calculated discharge date of an inmate
78 serving a sentence for a felony crime of violence against the
79 person, a felony offense where the victim was a minor child
80 or a felony offense involving the use of a firearm, one year
81 shall be deducted from the inmate's accumulated good time
82 to provide for one year of mandatory post-release supervision
83 following the first instance in which the inmate reaches his or
84 her calculated discharge date. All inmates released pursuant
85 to this subsection shall be subject to electronic or GPS
86 monitoring for the entire period of supervision. The
87 provisions of this subsection are applicable to offenses
88 committed on or after July 1, 2013.

89 (m) Upon sentencing of an inmate for an offense not
90 referenced in subsection (l) of this section, the court may
91 order that one hundred and eighty days of the sentence, or
92 some lesser period, be served through post-release mandatory
93 supervision if the court determines supervision is appropriate

94 and in the best interest of justice, rehabilitation and public
95 safety. All inmates released pursuant to this subsection shall
96 be subject to electronic or GPS monitoring for the entire
97 period of supervision. The provisions of this subsection are
98 applicable to offenses committed on or after July 1, 2013.

99 (n) The Commissioner of Corrections shall adopt policies
100 and procedures to implement the mandatory supervision
101 provided for in subsections (l) and (m) of this section, which
102 may include terms, conditions and procedures for
103 supervision, modification and violation applicable to persons
104 on parole.

105 (o) As used in this section, "felony crime of violence
106 against the person" means felony offenses set forth in articles
107 two, three-e, eight-b or eight-d of chapter sixty-one of this
108 code, and the felony offenses of arson and burglary of a
109 residence where an individual is physically located at the
110 time of the offense as set forth in article three of chapter
111 sixty-one of this code.

112 (p) As used in this section, "felony offense where the
113 victim was a minor child" means any felony crime of
114 violence against the person and any felony offense set forth
115 in article eight, eight-a, eight-c or eight-d of chapter sixty-one
116 of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-5g. Pretrial risk assessment.

1 (a) Within three calendar days of the arrest and placement
2 of any person in a regional jail, the authority shall conduct a

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3 pretrial risk assessment using a standardized risk assessment
4 instrument approved and adopted by the Supreme Court of
5 Appeals of West Virginia. The results of all standardized risk
6 and needs assessments are confidential and shall only be
7 provided to the court, court personnel, the prosecuting
8 attorney, defense counsel and the person who is the subject
9 of the pretrial risk assessment. Upon completion of the
10 assessment, the authority shall provide it to the magistrate
11 and circuit clerks for delivery to the appropriate circuit judge
12 or magistrate.

13 (b) The pretrial risk assessment and all oral or written
14 statements made by an individual during risk assessment shall
15 be inadmissible evidence at any criminal or civil trial.

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

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

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

**§61-7-6. Exceptions as to prohibitions against carrying
concealed handguns; exemptions from licensing
fees.**

1 (a) The licensure provisions set forth in this article do not
2 apply to:

3 (1) Any person:

4 (A) Carrying a deadly weapon upon his or her own
5 premises;

6 (B) Carrying a firearm, unloaded, from the place of
7 purchase to his or her home, residence or place of business or
8 to a place of repair and back to his or her home, residence or
9 place of business; or

10 (C) Possessing a firearm while hunting in a lawful
11 manner or while traveling from his or her home, residence or
12 place of business to a hunting site and returning to his or her
13 home, residence or place of business;

14 (2) Any person who is a member of a properly organized
15 target-shooting club authorized by law to obtain firearms by
16 purchase or requisition from this state or from the United
17 States for the purpose of target practice from carrying any
18 pistol, as defined in this article, unloaded, from his or her
19 home, residence or place of business to a place of target
20 practice and from any place of target practice back to his or
21 her home, residence or place of business, for using any such
22 weapon at a place of target practice in training and improving
23 his or her skill in the use of the weapons;

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

27 (4) Any employee of the West Virginia Division of
28 Corrections duly appointed pursuant to the provisions of
29 section eleven-c, article one, chapter twenty-five while the
30 employee is on duty;

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

33 (6) Any resident of another state who holds a valid permit
34 or license to possess or carry a handgun issued by a state or
35 a political subdivision subject to the provisions and
36 limitations set forth in section six-a of this article;

37 (7) Any federal law-enforcement officer or federal police
38 officer authorized to carry a weapon in the performance of
39 the officer's duty;

40 (8) Any Hatfield-McCoy Regional Recreation Authority
41 Ranger while the ranger is on duty; and

42 (9) Any parole officer appointed pursuant to section
43 fourteen, article twelve, chapter sixty-two of this code in the
44 performance of their duties.

45 (b) On and after July 1, 2013, the following judicial
46 officers and prosecutors and staff shall be exempted from
47 paying any application fees or licensure fees required under
48 this article. However, on and after that same date, they shall
49 be required to make application and satisfy all licensure and
50 handgun safety and training requirements set forth in section
51 four of this article before carrying a concealed handgun in
52 this state:

53 (1) Any justice of the Supreme Court of Appeals of West
54 Virginia;

55 (2) Any circuit judge;

56 (3) Any retired justice or retired circuit judge designated
57 senior status by the Supreme Court of Appeals of West
58 Virginia;

- 59 (4) Any family court judge;
- 60 (5) Any magistrate;
- 61 (6) Any prosecuting attorney;
- 62 (7) Any assistant prosecuting attorney; or
- 63 (8) Any duly appointed investigator employed by a
64 prosecuting attorney.
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CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

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

1 (a) Any person who has been convicted in a circuit court
2 or in a magistrate court under any criminal provision of this
3 code of a misdemeanor or felony, which is punishable by
4 imposition of a fine or confinement in a regional jail or a state
5 correctional institution, or both fine and confinement, may,
6 in the discretion of the sentencing judge or magistrate, as an
7 alternative to the sentence imposed by statute for the crime,
8 be sentenced under one of the following programs:

9 (1) The weekend jail program under which a person
10 would be required to spend weekends or other days normally
11 off from work in jail;

12 (2) The work program under which a sentenced person
13 would be required to spend the first two or more days of his
14 or her sentence in jail and then, in the discretion of the court,
15 would be assigned to a county agency to perform labor within
16 the jail, or in and upon the buildings, grounds, institutions,

17 bridges and roads, including orphaned roads used by the
18 general public and public works within the county. Eight
19 hours of labor are to be credited as one day of the sentence
20 imposed. A person sentenced under this program may be
21 required to provide his or her own transportation to and from
22 the work site, lunch and work clothes; or

23 (3) The community service program under which a
24 sentenced person would spend no time in jail, but would be
25 sentenced to a number of hours or days of community service
26 work with government entities or charitable or nonprofit
27 entities approved by the circuit court. Regarding any portion
28 of the sentence designated as confinement, eight hours of
29 community service work is to be credited as one day of the
30 sentence imposed. Regarding any portion of the sentence
31 designated as a fine, the fine is to be credited at an hourly rate
32 equal to the prevailing federal minimum wage at the time the
33 sentence was imposed. In the discretion of the court, the
34 sentence credits may run concurrently or consecutively. A
35 person sentenced under this program may be required to
36 provide his or her own transportation to and from the work
37 site, lunch and work clothes.

38 (b) In no event may the duration of the alternate sentence
39 exceed the maximum period of incarceration otherwise
40 allowed.

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

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

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

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

53 (4) In circuit court cases, that adequate facilities for the
54 administration and supervision of alternative sentencing
55 programs are available through the court's probation officers
56 or the county sheriff or, in magistrate court cases, that
57 adequate facilities for the administration and supervision of
58 alternative sentencing programs are available through the
59 county sheriff; and

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

62 (d) A person sentenced by the circuit court under the
63 provisions of this article remains under the administrative
64 custody and supervision of the court's probation officers or
65 the county sheriff. A person sentenced by a magistrate
66 remains under the administrative custody and supervision of
67 the county sheriff.

68 (e) A person sentenced under the provisions of this
69 section may be required to pay the costs of his or her
70 incarceration, including meal costs: *Provided*, That the judge
71 or magistrate considers the person's ability to pay the costs.

72 (f) A person sentenced under the provisions of this
73 section remains under the jurisdiction of the court. The court
74 may withdraw any alternative sentence at any time by order
75 entered with or without notice and require that the remainder
76 of the sentence be served in the county jail, a regional jail or
77 a state correctional facility: *Provided*, That no alternative
78 sentence directed by the sentencing judge or magistrate or
79 administered under the supervision of the sheriff, his or her
80 deputies, a jailer or a guard may require the convicted person
81 to perform duties which would be considered detrimental to
82 the convicted person's health as attested to by a physician.

83 (g) No provision of this section may be construed to limit
84 a circuit judge's ability to impose a period of supervision or
85 participation in a community corrections program created
86 pursuant to article eleven-c, chapter sixty-two of this code,
87 except that a person sentenced to a day report center must be
88 identified as moderate to high risk of reoffending and
89 moderate to high criminogenic need, as defined by the
90 standardized risk and needs assessment adopted by the
91 Supreme Court of Appeals of West Virginia under subsection
92 (d), section six, article twelve of this chapter, and applied by
93 a probation officer or day report staff: *Provided*, That a judge
94 may impose a period of supervision or participation in a day
95 report center, notwithstanding the results of the standardized
96 risk and needs assessment, upon making specific written
97 findings of fact as to the reason for departing from the
98 requirements of this section.

99 (h) Magistrates may only impose a period of participation
100 in a day report center with the consent by general
101 administrative order of the supervising judge or chief judge
102 of the judicial circuit in which he or she presides. The day
103 report center staff shall determine which services a person
104 receives based on the results of the standardized risk and
105 needs assessment adopted by the Supreme Court of Appeals
106 of West Virginia under subsection (d), section six, article
107 twelve of this chapter, along with any other conditions of
108 supervision set by the court.

ARTICLE 11B. HOME INCARCERATION ACT.

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

1 (a) If, at any time during the period of home
2 incarceration, there is reasonable cause to believe that a
3 participant in a home incarceration program has violated the
4 terms and conditions of the circuit court's home incarceration

5 order, he or she is subject to the procedures and penalties set
6 forth in section ten, article twelve of this chapter.

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

23 (c) If, at any time during the period of home
24 incarceration, there is reasonable cause to believe that a
25 participant sentenced to home incarceration by a magistrate
26 has violated the terms and conditions of the magistrate's
27 order of home incarceration as an alternative sentence to
28 incarceration in jail, the supervising authority may arrest the
29 participant upon the obtaining of an order or warrant and take
30 the offender before a magistrate within the county of the
31 offense. The magistrate shall then conduct a prompt and
32 summary hearing on whether the participant's home
33 incarceration should be revoked. If it appears to the
34 satisfaction of the magistrate that any condition of home
35 incarceration has been violated, the magistrate may revoke
36 the home incarceration and order that the sentence of
37 incarceration in jail be executed. Any participant under an
38 order of home incarceration is subject to the same penalty or
39 penalties, upon the magistrate's finding of a violation of the

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40 order of home incarceration, as the participant could have
41 received at the initial disposition hearing: *Provided*, That the
42 participant shall receive credit towards any sentence imposed
43 after a finding of violation for the time spent in home
44 incarceration.

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

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

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

23 (b) The subcommittee shall elect a chairperson and a vice
24 chairperson. The subcommittee shall meet quarterly. Special
25 meetings may be held upon the call of the chairperson, vice

26 chairperson or a majority of the members of the
27 subcommittee. A majority of the members of the
28 subcommittee constitutes a quorum.

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

1 (a) Upon recommendation of the Community Corrections
2 Subcommittee, the Governor's committee shall propose for
3 legislative promulgation in accordance with the provisions of
4 article three, chapter twenty-nine-a of this code, emergency
5 and legislative rules to:

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

10 (2) Establish minimum standards for community
11 corrections programs to be funded, including requiring
12 annual program evaluations;

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

15 (4) Establish reporting requirements for community
16 corrections programs; and

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

18 (b) Upon recommendation of the Community Corrections
19 Subcommittee, the Governor's committee shall:

20 (1) Maintain records of community corrections programs
21 including the corresponding community criminal justice
22 board or other entity contact information and annual program
23 evaluations, when available;

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

27 (3) Provide funding for approved community corrections
28 programs, as available.

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

36 (d) The subcommittee shall review the implementation of
37 evidence-based practices and conduct regular assessments for
38 quality assurance of all community-based criminal justice
39 services, including day report centers, probation, parole and
40 home confinement. In consultation with the affected
41 agencies, the subcommittee shall establish a process for
42 reviewing performance. The process shall include review of
43 agency performance measures and identification of new
44 measures by the subcommittee, if necessary, for measuring
45 the implementation of evidence-based practices or for quality
46 assurance. After providing an opportunity for the affected
47 agencies to comment, the subcommittee shall submit, on or
48 before September 30 of each year, to the Governor, the
49 Speaker of the House of Delegates, the President of the
50 Senate and, upon request, to any individual member of the
51 Legislature a report on its activities and results from
52 assessments of performance during the previous year.

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

1 (a) Each county or combination of counties or a county
2 or counties and a Class I or II municipality that seek to

3 establish community-based corrections services shall
4 establish a community criminal justice board: *Provided*, That
5 if a county has not established a community criminal justice
6 board by July 1, 2002, the chief probation officer of that
7 county, with the approval of the chief judge of the circuit,
8 may apply for and receive approval and funding from the
9 Governor's committee for any programs as authorized by the
10 provisions of section five of this article. Any county which
11 chooses to operate without a community criminal justice
12 board is subject to the regulations and requirements
13 established by the community corrections subcommittee and
14 the Governor's committee.

15 (b) A community criminal justice board shall consist of
16 no more than fifteen voting members.

17 (c) All members of a community criminal justice board
18 shall be residents of the county or counties represented.

19 (d) A community criminal justice board shall consist of
20 the following members:

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

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

27 (3) If a public defender corporation exists in the county
28 or counties represented, at least one attorney employed by
29 any public defender corporation existing in the counties
30 represented or, if no public defender office exists, one
31 criminal defense attorney from the counties represented;

32 (4) One member to be appointed by the local board of
33 education or, if the board represents more than one county, at

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34 least one member appointed by a board of education of the
35 counties represented;

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

40 (6) Two members who can represent organizations or
41 programs advocating for the rights of victims of crimes with
42 preference given to organizations or programs advocating for
43 the rights of victims of the crimes of domestic violence or
44 driving under the influence;

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

49 (8) Three at-large members to be appointed by the
50 commission or commissions of the county or counties
51 represented by the board.

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

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

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

60 (3) A probation officer from the county or counties
61 represented.

62 (f) Community criminal justice boards may:

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

65 (2) Coordinate with local probation departments in
66 establishing and modifying programs and services for
67 offenders;

68 (3) Evaluate and monitor community corrections
69 programs, services and facilities to determine their impact on
70 offenders; and

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

74 (g) If a community criminal justice board represents more
75 than one county, the appointed membership of the board,
76 excluding any ex officio members, shall include an equal
77 number of members from each county, unless the county
78 commission of each county agrees in writing otherwise.

79 (h) If a community criminal justice board represents more
80 than one county, the board shall, in consultation with the
81 county commission of each county represented, designate one
82 county commission as the fiscal agent of the board.

83 (i) Any political subdivision of this state operating a
84 community corrections program shall, regardless of whether
85 or not the program has been approved by the Governor's
86 Committee on Crime, Delinquency and Correction, provide
87 to the Governor's committee required information regarding
88 the program's operations as required by legislative rule.

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

1 **The Division of Justice and Community Services shall:**

2 **(1) Require that staff of day reporting centers and other**
3 **community corrections programs be trained in and use in**
4 **each case a standardized risk and needs assessment as**
5 **adopted by the Supreme Court of Appeals of West Virginia.**
6 **The results of all standardized risk and needs assessments are**
7 **confidential;**

8 **(2) Annually conduct a validation study of inter-rater**
9 **reliability and risk cut-off scores by population to ensure that**
10 **the standardized risk and needs assessment is sufficiently**
11 **predictive of the risk of reoffending;**

12 **(3) Annually review the membership of all community**
13 **criminal justice boards to ensure appropriate membership;**

14 **(4) Evaluate the services, sanctions and programs**
15 **provided by each community corrections program to ensure**
16 **that they address criminogenic needs and are evidence based;**

17 **(5) Encourage community criminal justice boards to**
18 **develop programs in addition to or in lieu of day report**
19 **centers through grants and more focused use of day report**
20 **services; and**

21 **(6) Annually report to the Community Corrections**
22 **Subcommittee on the results of duties required by this**
23 **section.**

ARTICLE 12. PROBATION AND PAROLE.

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

1 **(a) Each probation officer shall:**

2 (1) Investigate all cases which the court refers to the
3 officer for investigation and shall report in writing on each
4 case;

5 (2) Conduct a standardized risk and needs assessment,
6 using the instrument adopted by the Supreme Court of
7 Appeals of West Virginia, for any probationer for whom an
8 assessment has not been conducted either prior to placement
9 on probation or by a specialized assessment officer. The
10 results of all standardized risk and needs assessments are
11 confidential;

12 (3) Supervise the probationer and enforce probation
13 according to assessment and supervision standards adopted
14 by the Supreme Court of Appeals of West Virginia;

15 (4) Furnish to each person released on probation under
16 the officer's supervision a written statement of the
17 probationer's conditions of probation together with a copy of
18 the rules prescribed by the Supreme Court of Appeals of
19 West Virginia;

20 (5) Stay informed concerning the conduct and condition
21 of each probationer under the officer's supervision and report
22 on the conduct and condition of each probationer in writing
23 as often as the court requires;

24 (6) Use all practicable and suitable methods to aid and
25 encourage the probationer to improve his or her conduct and
26 condition;

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

30 (8) Maintain detailed work records; and

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

32 (b) The probation officer may, with or without an order
33 or warrant, arrest any probationer as provided in section ten
34 of this article, and arrest any person on supervised release
35 when there is reasonable cause to believe that the person on
36 supervised release has violated a condition of release. A
37 person on supervised release who is arrested shall be brought
38 before the court for a prompt and summary hearing.

39 (c) Notwithstanding any provision of this code to the
40 contrary:

41 (1) Any probation officer appointed on or after July 1,
42 2002, may carry handguns in the course of the officer's
43 official duties after meeting specialized qualifications
44 established by the Governor's Committee on Crime,
45 Delinquency and Correction. The qualifications shall include
46 the successful completion of handgun training, which is
47 comparable to the handgun training provided to
48 law-enforcement officers by the West Virginia State Police
49 and includes a minimum of four hours' training in handgun
50 safety.

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

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

57 (d) The Supreme Court of Appeals of West Virginia may
58 adopt a standardized risk and needs assessment with risk cut-
59 off scores for use by probation officers, taking into
60 consideration the assessment instrument adopted by the
61 Division of Corrections under subsection (h), section thirteen

62 of this article and the responsibility of the Division of Justice
63 and Community Services to evaluate the use of the
64 standardized risk and needs assessment. The results of any
65 standardized risk and needs assessment are confidential.

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

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

6 (b) Unless otherwise directed by the court, the probation
7 officer shall, in the form adopted by the Supreme Court of
8 Appeals of West Virginia, make a careful investigation of,
9 and a written report with recommendations concerning, any
10 prospective probationer. Insofar as practicable, this report
11 shall include information concerning the offender's court and
12 criminal record, occupation, family background, education,
13 habits and associations, mental and physical condition, the
14 names, relationship, ages and condition of those dependent
15 upon him or her for support and any other facts that may aid
16 the court in determining the propriety and conditions of his or
17 her release on probation. A person convicted of a felony or
18 of any offense described in article eight-b or eight-d, chapter
19 sixty-one of this code against a minor child may not be
20 released on probation until this report has been presented to
21 and considered by the court. The court may request a report
22 concerning any person convicted of a misdemeanor. The
23 presentence report of any person convicted of an offense,
24 described in said articles or section twelve, article eight of
25 said chapter, may include a statement from a therapist,
26 psychologist or physician who is providing treatment to the
27 child. A copy of all reports shall be filed with the Parole
28 Board.

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

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

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

6 (2) That the probationer may not, during the term of his
7 or her probation, leave the state without the consent of the
8 court which placed him or her on probation;

9 (3) That the probationer complies with the conditions
10 prescribed by the court for his or her supervision by the
11 probation officer;

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

24 (5) That the probationer pay a fee, not to exceed \$20 per
25 month, to defray costs of supervision: *Provided*, That the
26 court conducts a hearing prior to imposition of probation and
27 makes a determination on the record that the offender is able
28 to pay the fee without undue hardship. All moneys collected
29 as fees from probationers pursuant to this subdivision shall be
30 deposited with the circuit clerk who shall, on a monthly basis,

31 remit the moneys collected to the State Treasurer for deposit
32 in the State General Revenue Fund; and

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

39 (b) In addition, the court may impose, subject to
40 modification at any time, any other conditions which it may
41 determine advisable, including, but not limited to, any of the
42 following:

43 (1) That the probationer make restitution or reparation, in
44 whole or in part, immediately or within the period of
45 probation, to any party injured by the crime for which he or
46 she has been convicted: *Provided*, That the court conducts a
47 hearing prior to imposition of probation and makes a
48 determination on the record that the offender is able to pay
49 restitution without undue hardship;

50 (2) That the probationer pays any fine assessed and the
51 costs of the proceeding in installments directed by the court:
52 *Provided*, That the court conducts a hearing prior to
53 imposition of probation and makes a determination on the
54 record that the offender is able to pay the costs without undue
55 hardship;

56 (3) That the probationer makes contributions from his or
57 her earnings, in sums directed by the court, for the support of
58 his or her dependents; and

59 (4) That the probationer, in the discretion of the court, is
60 required to serve a period of confinement in jail of the county
61 in which he or she was convicted for a period not to exceed

62 one third of the minimum sentence established by law or one
63 third of the least possible period of confinement in an
64 indeterminate sentence, but in no case may the period of
65 confinement exceed six consecutive months. The court may
66 sentence the defendant within the six-month period to
67 intermittent periods of confinement including, but not limited
68 to, weekends or holidays and may grant to the defendant
69 intermittent periods of release in order that he or she may
70 work at his or her employment or for other reasons or
71 purposes as the court may determine appropriate: *Provided*,
72 That the provisions of article eleven-a of this chapter do not
73 apply to intermittent periods of confinement and release
74 except to the extent directed by the court. If a period of
75 confinement is required as a condition of probation, the court
76 shall make special findings that other conditions of probation
77 are inadequate and that a period of confinement is necessary.

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

80 (1) To be eligible, the probationer must be identified as
81 moderate to high risk of reoffending and moderate to high
82 criminogenic need, as determined by the standardized risk
83 and needs assessment adopted by the Supreme Court of
84 Appeals of West Virginia under subsection (d), section six of
85 this article, and applied by a probation officer or day report
86 staff. In eligible cases, circuit courts may impose a term of
87 up to one year: *Provided*, That notwithstanding the results of
88 the standardized risk and needs assessment, a judge may
89 impose, as a term of probation, participation in a day report
90 center program upon making specific written findings of fact
91 as to the reason for departing from the requirements of this
92 subdivision.

93 (2) The day report center staff shall determine which
94 services a person receives based on the results of the
95 standardized risk and needs assessment and taking into

96 consideration the other conditions of probation set by the
97 court.

98 (d) For the purposes of this article, "day report center"
99 means a court-operated or court-approved facility where
100 persons ordered to serve a sentence in this type of facility are
101 required to report under the terms and conditions set by the
102 court for purposes which include, but are not limited to,
103 counseling, employment training, alcohol or drug testing or
104 other medical testing.

§62-12-10. Violation of probation.

1 (a) If at any time during the period of probation there
2 shall be reasonable cause to believe that the probationer has
3 violated any of the conditions of his or her probation, the
4 probation officer may arrest him or her with or without an
5 order or warrant, or the court which placed him or her on
6 probation, or the judge thereof in vacation, may issue an
7 order for his or her arrest, whereupon he or she shall be
8 brought before the court, or the judge thereof in vacation, for
9 a prompt and summary hearing.

10 (1) If the court or judge finds reasonable cause exists to
11 believe that the probationer:

12 (A) Absconded supervision;

13 (B) Engaged in new criminal conduct other than a minor
14 traffic violation or simple possession of a controlled
15 substance; or

16 (C) Violated a special condition of probation designed
17 either to protect the public or a victim; the court or judge may
18 revoke the suspension of imposition or execution of sentence,
19 impose sentence if none has been imposed and order that
20 sentence be executed.

21 (2) If the judge finds that reasonable cause exists to
22 believe that the probationer violated any condition of
23 supervision other than the conditions of probation set forth in
24 subdivision (1) of this subsection then, for the first violation,
25 the judge shall impose a period of confinement up to sixty
26 days or, for the second violation, a period of confinement up
27 to one hundred twenty days. For the third violation, the
28 judge may revoke the suspension of imposition or execution
29 of sentence, impose sentence if none has been imposed and
30 order that sentence be executed, with credit for time spent in
31 confinement under this section.

32 (3) In computing the period for which the offender is to
33 be confined, the time between his or her release on probation
34 and his or her arrest may not be taken to be any part of the
35 term of his or her sentence.

36 (b) A probationer confined for a first or second violation
37 pursuant to subdivision (2), subsection (a) of this section may
38 be confined in jail, and the costs of confining felony
39 probationers shall be paid out of funds appropriated for the
40 Division of Corrections. Whenever the court orders the
41 incarceration of a probationer pursuant to the provisions of
42 subdivision (2), subsection (a) of this section, a circuit clerk
43 shall provide a copy of the order of confinement within five
44 days to the Commissioner of Corrections.

45 (c) If, despite a violation of the conditions of probation,
46 the court or judge is of the opinion that the interests of justice
47 do not require that the probationer serve his or her sentence
48 or a period of confinement, the judge may, except when the
49 violation was the commission of a felony, again release him
50 or her on probation: *Provided*, That a judge may otherwise
51 depart from the sentence limitations set forth in subdivision
52 (2), subsection (a) of this section upon making specific
53 written findings of fact supporting the basis for the departure.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

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

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

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

11 (B) He or she:

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

15 (ii) Does not have a prior criminal conviction for a felony
16 crime of violence against the person, a felony offense
17 involving the use of a firearm or a felony offense where the
18 victim was a minor child;

19 (iii) Is not serving a sentence for a crime of violence
20 against the person, or more than one felony for a controlled
21 substance offense for which the inmate is serving a
22 consecutive sentence, a felony offense involving the use of a
23 firearm or a felony offense where the victim was a minor
24 child; and

25 (iv) Has successfully completed a rehabilitation treatment
26 program created with the assistance of a standardized risk and
27 needs assessment.

28 (C) Notwithstanding any provision of this code to the
29 contrary, any inmate who committed, or attempted to commit,
30 a felony with the use, presentment or brandishing of a
31 firearm, is not eligible for parole prior to serving a minimum
32 of three years of his or her sentence or the maximum sentence
33 imposed by the court, whichever is less: *Provided*, That any
34 inmate who committed, or attempted to commit, any violation
35 of section twelve, article two, chapter sixty-one of this code,
36 with the use, presentment or brandishing of a firearm, is not
37 eligible for parole prior to serving a minimum of five years of
38 his or her sentence or one third of his or her definite term
39 sentence, whichever is greater. Nothing in this paragraph
40 applies to an accessory before the fact or a principal in the
41 second degree who has been convicted as if he or she were a
42 principal in the first degree if, in the commission of or in the
43 attempted commission of the felony, only the principal in the
44 first degree used, presented or brandished a firearm. An
45 inmate is not ineligible for parole under the provisions of this
46 paragraph because of the commission or attempted
47 commission of a felony with the use, presentment or
48 brandishing of a firearm unless that fact is clearly stated and
49 included in the indictment or presentment by which the
50 person was charged and was either: (i) Found guilty by the
51 court at the time of trial upon a plea of guilty or nolo
52 contendere; (ii) found guilty by the jury, upon submitting to
53 the jury a special interrogatory for such purpose if the matter
54 was tried before a jury; or (iii) found guilty by the court, if
55 the matter was tried by the court without a jury.

56 (D) The amendments to this subsection adopted in the
57 year 1981:

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

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

63 (iii) Apply with respect to the submission of a special
64 interrogatory to the jury and the finding to be made thereon
65 in any case submitted to the jury on or after August 1 of that
66 year or to the requisite findings of the court upon a plea of
67 guilty or in any case tried without a jury: *Provided*, That the
68 state gives notice in writing of its intent to seek such finding
69 by the jury or court, as the case may be. The notice shall
70 state with particularity the grounds upon which the finding
71 will be sought as fully as the grounds are otherwise required
72 to be stated in an indictment, unless the grounds upon which
73 the finding will be sought are alleged in the indictment or
74 presentment upon which the matter is being tried; and

75 (iv) Does not apply with respect to cases not affected by
76 the amendments and in those cases the prior provisions of this
77 section apply and are construed without reference to the
78 amendments.

79 (v) Insofar as the amendments relate to mandatory
80 sentences restricting the eligibility for parole, all matters
81 requiring a mandatory sentence shall be proved beyond a
82 reasonable doubt in all cases tried by the jury or the court.

83 (E) As used in this section, "felony crime of violence
84 against the person" means felony offenses set forth in articles
85 two, three-c, eight-b or eight-d of chapter sixty-one of this
86 code; and

87 (F) As used in this section, "felony offense where the
88 victim was a minor child" means any felony crime of
89 violence against the person and any felony violation set forth
90 in article eight, eight-a, eight-c or eight-d of chapter sixty-one
91 of this code.

92 (G) For the purpose of this section, the term "firearm"
93 means any instrument which will, is designed to or may
94 readily be converted to expel a projectile by the action of an
95 explosive, gunpowder or any other similar means.

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

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

101 (4) Has prepared and submitted to the Parole Board a
102 written parole release plan setting forth proposed plans for his
103 or her place of residence, employment and, if appropriate, his
104 or her plans regarding education and post-release counseling
105 and treatment: *Provided*, That an inmate's application for
106 parole may be considered by the board without the prior
107 submission of a home plan, but the inmate shall have a home
108 plan approved by the board prior to his or her release on
109 parole. The Commissioner of Corrections or his or her
110 designee shall review and investigate the plan and provide
111 recommendations to the board as to the suitability of the plan:
112 *Provided*, That in cases in which there is a mandatory
113 thirty-day notification period required prior to the release of
114 the inmate, pursuant to section twenty-three of this article, the
115 board may conduct an initial interview and deny parole
116 without requiring the development of a plan. In the event the
117 board believes parole should be granted, it may defer a final
118 decision pending completion of an investigation and receipt
119 of recommendations. Upon receipt of the plan together with
120 the investigation and recommendation, the board, through a
121 panel, shall make a final decision regarding the granting or
122 denial of parole; and

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

125 (c) Except in the case of an inmate serving a life sentence,
126 a person who has been previously twice convicted of a felony
127 may not be released on parole until he or she has served the
128 minimum term provided by law for the crime for which he or

129 she was convicted. An inmate sentenced for life may not be
130 paroled until he or she has served ten years, and an inmate
131 sentenced for life who has been previously twice convicted
132 of a felony may not be paroled until he or she has served
133 fifteen years: *Provided*, That an inmate convicted of first
134 degree murder for an offense committed on or after June 10,
135 1994, is not eligible for parole until he or she has served
136 fifteen years.

137 (d) In the case of an inmate sentenced to any state
138 correctional institution, the Parole Board, as soon as that
139 inmate becomes eligible, shall consider the advisability of his
140 or her release on parole.

141 (c) If, upon consideration, parole is denied, the board
142 shall promptly notify the inmate of the denial. The board
143 shall, at the time of denial, notify the inmate of the month and
144 year he or she may apply for reconsideration and review.
145 The board shall at least once a year reconsider and review the
146 case of every inmate who was denied parole and who is still
147 eligible: *Provided*, That the board may reconsider and review
148 parole eligibility anytime within three years following the
149 denial of parole of an inmate serving a life sentence with the
150 possibility of parole.

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

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

162 authority of the Governor to grant pardons and reprieves,
163 commute sentences, remit fines or otherwise exercise his or
164 her constitutional powers of executive clemency.

165 (h) (1) The Division of Corrections shall promulgate
166 policies and procedures for developing a rehabilitation
167 treatment plan created with the assistance of a standardized
168 risk and needs assessment. The policies and procedures shall
169 provide for, at a minimum, screening and selecting inmates
170 for rehabilitation treatment and development, using
171 standardized risk and needs assessment and substance abuse
172 assessment tools, and prioritizing the use of residential
173 substance abuse treatment resources based on the results of
174 the standardized risk and needs assessment and a substance
175 abuse assessment. The results of all standardized risk and
176 needs assessments and substance abuse assessments are
177 confidential.

178 (2) An inmate shall not be paroled under paragraph (B),
179 subdivision (1), subsection (b) of this section solely due to
180 having successfully completed a rehabilitation treatment plan,
181 but completion of all the requirements of a rehabilitation
182 treatment plan along with compliance with the requirements
183 of subsection (b) of this section creates a rebuttable
184 presumption that parole is appropriate. The presumption
185 created by this subdivision may be rebutted by a Parole
186 Board finding that, according to the standardized risk and
187 needs assessment, at the time parole release is sought the
188 inmate still constitutes a reasonable risk to the safety or
189 property of other persons if released. Nothing in subsection
190 (b) of this section or in this subsection may be construed to
191 create a right to parole.

192 (i) Notwithstanding the provisions of subsection (b) of
193 this section, the Parole Board may, grant or deny parole to an
194 inmate against whom a detainer is lodged by a jurisdiction
195 other than West Virginia for service of a sentence of

196 incarceration, upon a written request for parole from the
197 inmate. A denial of parole under this subsection precludes
198 consideration for parole for a period of one year or until the
199 provisions of subsection (b) of this section are applicable.

200 (j) If an inmate is otherwise eligible for parole pursuant
201 to subsection (b) of this section and has completed the
202 rehabilitation treatment program required under subsection
203 (h) of this section, the Parole Board may not require the
204 inmate to participate in an additional program, but may
205 determine that the inmate must complete an assigned task or
206 tasks prior to actual release on parole. The board may grant
207 parole contingently, effective upon successful completion of
208 the assigned task or tasks, without the need for a further
209 hearing.

210 (k) (1) The Division of Corrections shall supervise all
211 probationers and parolees whose supervision may have been
212 undertaken by this state by reason of any interstate compact
213 entered into pursuant to the Uniform Act For Out-of-State
214 Parolee Supervision.

215 (2) The Division of Corrections shall provide supervision,
216 treatment/recovery and support services for all persons
217 released to mandatory supervision under section
218 twenty-seven, article five, chapter twenty-eight of this code.

219 (l)(1) When considering an inmate of a state correctional
220 center for release on parole, the Parole Board panel
221 considering the parole shall have before it an authentic copy
222 of or report on the inmate's current criminal record as
223 provided through the West Virginia State Police, the United
224 States Department of Justice or any other reliable criminal
225 information sources and written reports of the warden or
226 superintendent of the state correctional institution to which
227 the inmate is sentenced:

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228 (A) On the inmate's conduct record while in custody,
229 including a detailed statement showing any and all infractions
230 of disciplinary rules by the inmate and the nature and extent
231 of discipline administered for the infractions;

232 (B) On improvement or other changes noted in the
233 inmate's mental and moral condition while in custody,
234 including a statement expressive of the inmate's current
235 attitude toward society in general, toward the judge who
236 sentenced him or her, toward the prosecuting attorney who
237 prosecuted him or her, toward the policeman or other officer
238 who arrested the inmate and toward the crime for which he or
239 she is under sentence and his or her previous criminal record;

240 (C) On the inmate's industrial record while in custody
241 which shall include: The nature of his or her work,
242 occupation or education, the average number of hours per day
243 he or she has been employed or in class while in custody and
244 a recommendation as to the nature and kinds of employment
245 which he or she is best fitted to perform and in which the
246 inmate is most likely to succeed when he or she leaves the
247 state correctional institution; and

248 (D) On any physical, mental, psychological or psychiatric
249 examinations of the inmate.

250 (2) The Parole Board panel considering the parole may
251 waive the requirement of any report when not available or not
252 applicable as to any inmate considered for parole but, in
253 every case, shall enter in its record its reason for the waiver:
254 *Provided*, That in the case of an inmate who is incarcerated
255 because the inmate has been found guilty of, or has pleaded
256 guilty to, a felony under the provisions of section twelve,
257 article eight, chapter sixty-one of this code or under the
258 provisions of article eight-b or eight-c of said chapter, the
259 Parole Board panel may not waive the report required by this
260 subsection. The report shall include a study and diagnosis of

261 the inmate, including an on-going treatment plan requiring
262 active participation in sexual abuse counseling at an approved
263 mental health facility or through some other approved
264 program: *Provided, however,* That nothing disclosed by the
265 inmate during the study or diagnosis may be made available
266 to any law-enforcement agency, or other party without that
267 inmate's consent, or admissible in any court of this state,
268 unless the information disclosed indicates the intention or
269 plans of the parolee to do harm to any person, animal,
270 institution or to property. Progress reports of outpatient
271 treatment are to be made at least every six months to the
272 parole officer supervising the parolee. In addition, in such
273 cases, the Parole Board shall inform the prosecuting attorney
274 of the county in which the person was convicted of the parole
275 hearing and shall request that the prosecuting attorney inform
276 the Parole Board of the circumstances surrounding a
277 conviction or plea of guilty, plea bargaining and other
278 background information that might be useful in its
279 deliberations.

280 (m) Before releasing any inmate on parole, the Parole
281 Board shall arrange for the inmate to appear in person before
282 a Parole Board panel and the panel may examine and
283 interrogate him or her on any matters pertaining to his or her
284 parole, including reports before the Parole Board made
285 pursuant to the provisions of this section: *Provided,* That an
286 inmate may appear by video teleconference if the members of
287 the Parole Board panel conducting the examination are able
288 to contemporaneously see the inmate and hear all of his or
289 her remarks and if the inmate is able to contemporaneously
290 see each of the members of the panel conducting the
291 examination and hear all of the members' remarks. The panel
292 shall reach its own written conclusions as to the desirability
293 of releasing the inmate on parole and the majority of the
294 panel considering the release must concur in the decision.
295 The warden or superintendent shall furnish all necessary
296 assistance and cooperate to the fullest extent with the Parole

297 Board. All information, records and reports received by the
298 Parole Board shall be kept on permanent file.

299 (n) The Parole Board and its designated agents are at all
300 times to have access to inmates imprisoned in any state
301 correctional institution or in any jail in this state and may
302 obtain any information or aid necessary to the performance
303 of its duties from other departments and agencies of the state
304 or from any political subdivision of the state.

305 (o) The Parole Board shall, if requested by the Governor,
306 investigate and consider all applications for pardon, relieve
307 or commutation and shall make recommendation on the
308 applications to the Governor.

309 (p) (1) Prior to making a recommendation for pardon,
310 relieve or commutation, the board shall notify the
311 sentencing judge and prosecuting attorney at least ten days
312 before the recommendation.

313 (2) Notwithstanding any other provision of law to the
314 contrary, if the board grants a person parole, the board shall
315 provide written notice to the prosecuting attorney and circuit
316 judge of the county in which the inmate was prosecuted, that
317 parole has been granted. The notice shall be sent by certified
318 mail, return receipt requested, and include the anticipated
319 date of release and the person's anticipated future residence.
320 A written statement of reasons for releasing the person,
321 prepared pursuant to subsection (b), of this section, shall be
322 provided upon request.

323 (q) A parolee shall participate as a condition of parole in
324 the litter control program of the county to which he or she is
325 released to the extent directed by the Parole Board, unless the
326 board specifically finds that this alternative service would be
327 inappropriate.

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

1 The Commissioner of Corrections may employ or
2 contract for a director of employment and a director of
3 housing for released inmates. The director of employment
4 shall work with federal, state, county and local government
5 and private entities to negotiate agreements which facilitate
6 employment opportunities for released inmates. The director
7 of housing shall work with federal, state, county and local
8 government and private entities to negotiate agreements
9 which facilitate housing opportunities for released inmates.
10 The director of employment shall investigate job
11 opportunities and give every possible assistance in helping
12 released inmates find employment. The director of housing
13 shall work in conjunction with the parole division and the
14 Parole Board to reduce release delays due to lack of a home
15 plan, develop community housing resources and provide
16 short-term loans to released inmates for costs related to
17 reentry into the community.

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

1 (a) Each state parole officer shall:

2 (1) Investigate all cases referred to him or her for
3 investigation by the Commissioner of Corrections and report
4 in writing on the investigation;

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

10 (3) Supervise each parolee according to the assessment
11 and supervision standards determined by the Commissioner
12 of Corrections;

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13 (4) Furnish to each parolee under his or her supervision
14 a written statement of the conditions of his or her parole
15 together with a copy of the rules prescribed by the
16 Commissioner of Corrections for the supervision of parolees;

17 (5) Keep informed concerning the conduct and condition
18 of each parolee under his or her supervision and report on the
19 conduct and condition of each parolee in writing as often as
20 required by the Commissioner of Corrections;

21 (6) Use all practicable and suitable methods to aid and
22 encourage a parolee and to bring about improvement in his or
23 her conduct and condition;

24 (7) Keep detailed records of his or her work;

25 (8) Keep accurate and complete accounts of and give
26 receipts for all money collected from parolees under his or
27 her supervision and pay over the money to persons
28 designated by a circuit court or the Commissioner of
29 Corrections;

30 (9) Give bond with good security, to be approved by the
31 Commissioner of Corrections, in a penalty of not less than
32 \$1,000 nor more than \$3,000, as determined by the
33 Commissioner of Corrections; and

34 (10) Perform any other duties required by the
35 Commissioner of Corrections.

36 (b) Each state parole officer may, with or without an
37 order or warrant, arrest or order confinement of any parolee.
38 He or she has all the powers of a notary public, with authority
39 to act anywhere within the state.

40 (c) The Commissioner of Corrections may issue a
41 certificate authorizing any state parole officer who has

42 successfully completed the Division of Corrections' training
43 program for firearms certification, which is the equivalent of
44 that required of deputy sheriffs, to carry firearms or
45 concealed weapons. Any parole officer authorized by the
46 Commissioner of Corrections may, without a state license,
47 carry firearms and concealed weapons. Each state parole
48 officer, authorized by the Commissioner of Corrections, shall
49 carry with him or her a certificate authorizing him or her to
50 carry a firearm or concealed weapon bearing the official
51 signature of the Commissioner of Corrections.

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

1 (a) Release and supervision on parole of any person,
2 including the supervision by the Division of Corrections of
3 any person paroled by any other state or by the federal
4 government, shall be upon the following conditions:

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

8 (2) That the parolee may not, during the period of his or
9 her parole, leave the state without the consent of the Division
10 of Corrections;

11 (3) That the parolee complies with the rules prescribed by
12 the Division of Corrections for his or her supervision by the
13 parole officer;

14 (4) That in every case in which the parolee for a
15 conviction is seeking parole from an offense against a child,
16 defined in section twelve, article eight, chapter sixty-one of
17 this code, or article eight-b or eight-d of said chapter, or
18 similar convictions from other jurisdictions where the parolee
19 is returning or attempting to return to this state pursuant to
20 the provisions of article six, chapter twenty-eight of this code,

21 the parolee may not live in the same residence as any minor
22 child nor exercise visitation with any minor child nor may he
23 or she have any contact with the victim of the offense; and

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

29 (b) The Commissioner of Corrections shall keep a record
30 of all actions taken and account for moneys received. All
31 moneys shall be deposited in a special account in the State
32 Treasury to be known as the Parolee's Supervision Fee Fund.
33 Expenditures from the fund shall be for the purposes of
34 providing the parole supervision required by the provisions
35 of this code and are not authorized from collections, but are
36 to be made only in accordance with appropriation by the
37 Legislature and in accordance with the provisions of article
38 three, chapter twelve of this code and upon the fulfillment of
39 the provisions set forth in article two, chapter five-a of this
40 code. Amounts collected which are found, from time to time,
41 to exceed the funds needed for purposes set forth in this
42 article may be transferred to other accounts or funds and
43 redesignated for other purposes by appropriation of the
44 Legislature.

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

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

51 (2) Liquid assets of the parolee or probationer, assets of
52 the parolee or probationer that may provide collateral to

53 obtain funds and assets of the parolee or probationer that may
54 be liquidated to provide funds to pay the fee;

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

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

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

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

67 (e) The Division of Corrections may order substance
68 abuse treatment as a condition or as a modification of parole,
69 only if the standardized risk and needs assessment indicates
70 the offender has a high risk for reoffending and a need for
71 substance abuse treatment.

72 (f) The Division of Corrections may impose, as an initial
73 condition of parole, a term of reporting to a day report center
74 or other community corrections program only if the
75 standardized risk and needs assessment indicates a moderate
76 to high risk of reoffending and moderate to high criminogenic
77 need. Any parolee required to report to a day report center or
78 other community corrections program is subject to all the
79 rules and regulations of the center or program and may be
80 removed at the discretion of the center's or program's
81 director. The Commissioner of Corrections shall enter into
82 a master agreement with the Division of Justice and
83 Community Services to provide reimbursement to counties

84 for the use of community corrections programs by eligible
85 parolees. Any placement by the Division of Corrections of
86 a parolee in a day report center or other community
87 corrections program may only be done with the center or
88 program director's consent and the parolee is subject to all of
89 the rules and regulations of the center or program and may be
90 removed by the director.

§62-12-19. Violation of parole.

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

18 (1) If reasonable cause is found to exist that a parolee has
19 violated a term or terms of his or her release on parole that
20 does not constitute:

21 (A) Absconding supervision;

22 (B) New criminal conduct other than a minor traffic
23 violation or simple possession of a controlled substance; or

24 (C) Violation of a special condition of parole designed
25 either to protect the public or a victim; the parole officer may,
26 after consultation with and written approval by the director of
27 parole services, for the first violation, require the parolee to
28 serve a period of confinement up to sixty days or, for the
29 second violation, a period of confinement up to one hundred
30 twenty days: *Provided*, That the Division of Corrections shall
31 notify the Parole Board when a parolee is serving such a term
32 of confinement and the Parole Board may deny further
33 confinement. A parolee serving a term of confinement in the
34 first or second instance may be confined in jail or any other
35 facility designated by the commissioner, but shall be
36 committed to the custody of the Commissioner of
37 Corrections, and the costs of confining the parolee shall be
38 paid out of funds appropriated for the Division of
39 Corrections: *Provided, however*, That upon written request,
40 the parolee shall be afforded the right to a hearing within
41 forty-five days before the Parole Board regarding whether he
42 or she violated the conditions of his or her release on parole.

43 (2) When a parolee is in custody for a violation of the
44 conditions of his or her parole, he or she shall be given a
45 prompt and summary hearing before a Parole Board panel
46 upon his or her written request, at which the parolee and his
47 or her counsel shall be given an opportunity to attend.

48 (A) If at the hearing it is determined that reasonable cause
49 exists to believe that the parolee has:

50 (i) Absconded supervision;

51 (ii) Committed new criminal conduct other than a minor
52 traffic violation or simple possession of a controlled
53 substance; or

54 (iii) Violated a special condition of parole design to
55 protect either the public or a victim; the panel may revoke his

56 or her parole and may require him or her to serve in a state
57 correctional institution the remainder or any portion of his or
58 her maximum sentence for which, at the time of his or her
59 release, he or she was subject to imprisonment.

60 (B) If the Parole Board panel finds that reasonable cause
61 exists to believe that the parolee has violated a condition of
62 release or supervision other than the conditions of parole set
63 forth in subparagraph (A), subdivision (2) of this subsection,
64 the panel shall require the parolee to serve, for the first
65 violation, a period of confinement up to sixty days or, for the
66 second violation, a period of confinement up to one hundred
67 twenty days unless the Parole Board makes specific written
68 findings of fact that a departure from the specific limitations
69 of this paragraph is warranted: *Provided*, That if the violation
70 of the conditions of parole or rules for his or her supervision
71 is not a felony as set out in section eighteen of this article, the
72 panel may, if in its judgment the best interests of justice do
73 not require a period of confinement, reinstate him or her on
74 parole. The Division of Corrections shall effect release from
75 custody upon approval of a home plan.

76 (b) Notwithstanding any provision of this code to the
77 contrary, when reasonable cause has been found to believe
78 that a parolee has violated the conditions of his or her parole
79 but the violation does not constitute felonious conduct, the
80 commissioner may, with the written consent of the parolee,
81 allow the parolee to remain on parole with additional
82 conditions or restrictions. The additional conditions or
83 restrictions may include, but are not limited to, participation
84 in any program described in subsection (d), section five,
85 article eleven-c of this chapter. If the parolee complies with
86 the conditions of parole the commissioner may not revoke his
87 or her parole for the conduct which constituted the violation.
88 If the parolee fails to comply with the conditions or
89 restrictions and all other conditions of release, that failure is
90 an additional violation of parole and the commissioner may

91 proceed against the parolee under the provisions of this
92 section for the original violation as well as any subsequent
93 violations.

94 (c) When a parolee has violated the conditions of his or
95 her release on parole by confession to, or being convicted of,
96 any of the crimes set forth in section eighteen of this article,
97 he or she shall be returned to the custody of the Division of
98 Corrections to serve the remainder of his or her maximum
99 sentence, during which remaining part of his or her sentence
100 he or she is ineligible for further parole.

101 (d) Whenever a person's parole has been revoked, the
102 commissioner shall, upon receipt of the panel's written order
103 of revocation, convey and transport the paroled prisoner to a
104 state correctional institution. A parolee whose parole has
105 been revoked shall remain in custody until delivery to a
106 corrections officer sent and duly authorized by the
107 commissioner for the removal of the parolee to a state
108 correctional institution. The cost of confining the parolee
109 shall be paid out of the funds appropriated for the Division of
110 Corrections.

111 (e) When a parolee is convicted of, or confesses to, any
112 one of the crimes enumerated in section eighteen of this
113 article, it is the duty of the Parole Board to cause him or her
114 to be returned to this state for a summary hearing as provided
115 by this article. Whenever a parolee has absconded
116 supervision, the commissioner shall issue a warrant for his or
117 her apprehension and return to this state for the hearing
118 provided in this article: *Provided*, That the panel considering
119 revocation may, if it determines the best interests of justice do
120 not require revocation, cause the parolee to be reinstated to
121 parole.

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

126 (g) Whenever a parolee who has absconded supervision
127 or has been transferred out of this state for supervision
128 pursuant to section one, article six, chapter twenty-eight of
129 this code is returned to West Virginia due to a violation of
130 parole and costs are incurred by the Division of Corrections,
131 the commissioner may assess reasonable costs from the
132 parolee's inmate funds or the parolee as reimbursement to the
133 Division of Corrections for the costs of returning him or her
134 to West Virginia.

135 (h) Conviction of a felony for conduct occurring during
136 the period of parole is proof of violation of the conditions of
137 parole and the hearing procedures required by the provisions
138 of this section are inapplicable.

139 (i) The Commissioner of Corrections may issue
140 subpoenas for persons and records necessary to prove a
141 violation of the terms and conditions of a parolee's parole
142 either at a preliminary hearing or at a final hearing before a
143 Parole Board panel. The subpoenas shall be served in the
144 same manner provided in the Supreme Court of Appeals of
145 West Virginia Rules of Criminal Procedure. The subpoenas
146 may be enforced by the commissioner through application or
147 petition of the commissioner to the circuit court for contempt
148 or other relief.

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

1 (a) The Administrative Director of the Supreme Court of
2 Appeals of West Virginia is requested to assemble a
3 community supervision committee, to include representatives

4 of the judiciary, probation, parole, day report centers,
5 magistrates, sheriffs, corrections and other members at the
6 discretion of the director. The administrative director shall
7 appoint a chair from among the members and attend the
8 meeting ex officio.

9 (b) The committee shall:

10 (1) Design and deploy a method for probation officers,
11 parole officers, day report centers and others providing
12 community supervision to electronically share offender
13 information and assessments;

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

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

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

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

23 (c) The committee shall annually submit a report on its
24 activities during the previous year, on or before September
25 30, to the Governor, the Speaker of the House of Delegates,
26 the President of the Senate and, upon request, to any
27 individual member of the Legislature.

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

§62-15-2. Definitions.

1 For the purposes of this article:

2 (1) "Assessment" means a diagnostic evaluation to
3 determine whether and to what extent a person is a drug
4 offender under this article and would benefit from its
5 provisions. The assessment shall be conducted in accordance
6 with the standardized risk and needs assessment and risk
7 cut-off scores adopted by the West Virginia Supreme Court
8 of Appeals. The results of all standardized risk and needs
9 assessments and risk cut-off scores are confidential.

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

15 (3) "Controlled substance" means a drug or other
16 substance for which a medical prescription or other legal
17 authorization is required for purchase or possession.

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

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

23 (6) "Drug court team" shall consist of the following
24 members who are assigned to the drug court:

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

28 (B) The prosecutor;

29 (C) The public defender or a member of the criminal
30 defense bar;

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

34 (E) A law-enforcement officer;

35 (F) The drug court coordinator;

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

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

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

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

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

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

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

50 (B) Drug court magistrates;

51 (C) The prosecutor;

52 (D) A public defender;

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53 (E) The drug court coordinator;

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

55 (G) The circuit clerk;

56 (H) A day report center director;

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

59 (J) Law enforcement;

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

61 (L) A corrections representative; and

62 (M) Any such other person or persons the chair considers
63 appropriate.

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

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

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

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

72 (14) "Preadjudication order" means a court order
73 requiring a drug offender to participate in drug court before
74 charges are filed or before conviction.

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

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

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

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

86 (19) "Staffing" means the meeting before a drug
87 offender's appearance in drug court in which the drug court
88 team discusses a coordinated response to the drug offender's
89 behavior.

90 (20) "Substance" means drugs or alcohol.

91 (21) "Substance abuse" means the illegal or improper
92 consumption of a substance.

93 (22) "Substance abuse treatment" means a program
94 designed to provide prevention, education, and therapy
95 directed toward ending substance abuse and preventing a
96 return to substance usage, through a continuum of care,
97 including: treatment of cooccurring substance abuse and
98 mental health issues; outpatient care; intensive outpatient
99 care; residential care; peer support; relapse prevention; and
100 cognitive behavioral programming, based on research about
101 effective treatment/recovery models for the offender
102 population.

103 (23) "Ten key components" means the following
104 benchmarks intended to describe the very best practices,
105 designs, and operations of drug courts. These benchmarks
106 are meant to serve as a practical, yet flexible framework for
107 developing effective drug courts in vastly different
108 jurisdictions and to provide a structure for conducting
109 research and evaluation for program accountability:

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

112 (B) Using a nonadversarial approach, prosecution and
113 defense counsel promote public safety while protecting
114 participants' due process rights;

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

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

120 (E) Abstinence is monitored by frequent alcohol and
121 other drug testing;

122 (F) A coordinated strategy governs drug court responses
123 to participants' compliance;

124 (G) Ongoing judicial interaction with each drug court
125 participant is essential;

126 (H) Monitoring and evaluation measure the achievement
127 of program goals and gauge effectiveness;

128 (I) Continuing interdisciplinary education promotes
129 effective drug court planning, implementation and operations;
130 and

131 (J) Forging partnerships among drug courts, public
132 agencies and community-based organizations generates local
133 support and enhances drug court effectiveness.

134 (24) "Treatment supervision" means a program under
135 which an eligible felony drug offender, pursuant to section
136 six-a of this article, is ordered to undergo treatment for
137 substance abuse by a circuit court judge as a condition of
138 drug court, a condition of probation or as a modification of
139 probation.

§62-15-4. Court authorization and structure.

1 (a) Each judicial circuit or two or more adjoining judicial
2 circuits may establish a drug court or regional drug court
3 program under which drug offenders will be processed to
4 address appropriately, the identified substance abuse problem
5 as a condition of pretrial release, probation, incarceration,
6 parole or other release from a correctional facility: *Provided*,
7 that all judicial circuits must be participating in a drug court
8 or regional drug court program in accordance with the
9 provisions of this article by July 1, 2016.

10 (b) The structure, method, and operation of each drug
11 court program may differ and should be based upon the
12 specific needs of and resources available to the judicial
13 circuit or circuits where the drug court program is located.

14 (c) A drug court program may be preadjudication or post-
15 adjudication for an adult offender.

16 (d) Participation in drug court, with the consent of the
17 prosecution and the court, shall be pursuant to a written
18 agreement.

19 (e) A drug court may grant reasonable incentives under
20 the written agreement if it finds that the drug offender:

21 (1) Is performing satisfactorily in drug court;

22 (2) Is benefitting from education, treatment and
23 rehabilitation;

24 (3) Has not engaged in criminal conduct; or

25 (4) Has not violated the terms and conditions of the
26 agreement.

27 (f) A drug court may impose reasonable sanctions on the
28 drug offender, including incarceration for the underlying
29 offense or expulsion from the program, pursuant to the
30 written agreement, if it finds that the drug offender:

31 (1) Is not performing satisfactorily in drug court;

32 (2) Is not benefitting from education, treatment or
33 rehabilitation;

34 (3) Has engaged in conduct rendering him or her
35 unsuitable for the program;

36 (4) Has otherwise violated the terms and conditions of the
37 agreement; or

38 (5) Is for any reason unable to participate.

39 (g) Upon successful completion of drug court, a drug
40 offender's case shall be disposed of by the judge in the
41 manner prescribed by the agreement and by the applicable
42 policies and procedures adopted by the drug court. This may
43 include, but is not limited to, withholding criminal charges,
44 dismissal of charges, probation, deferred sentencing,
45 suspended sentencing, split sentencing, or a reduced period
46 of incarceration.

47 (h) Drug court shall include the Ten Key Components
48 and the drug court team shall act to ensure compliance with
49 them.

50 (i) Nothing contained in this article confers a right or an
51 expectation of a right to participate in a drug court nor does
52 it obligate a drug court to accept every drug offender.

53 (j) Neither the establishment of a drug court nor anything
54 herein may be construed as limiting the discretion of the
55 jurisdiction's prosecutor to act on any criminal case which he
56 or she deems advisable to prosecute.

57 (k) Each drug court judge may establish rules and may
58 make special orders as necessary that do not conflict with
59 rules and orders promulgated by the Supreme Court of
60 Appeals which has administrative authority over the courts.
61 The Supreme Court of Appeals shall provide uniform
62 referral, procedure and order forms that shall be used in all
63 drug courts in this state.

§62-15-6a. Treatment supervision.

1 (a) A felony drug offender is eligible for treatment
2 supervision only if the offender would otherwise be
3 sentenced to prison, and the standardized risk and needs
4 assessment indicates the offender has a high risk for
5 reoffending and a need for substance abuse treatment:
6 *Provided*, That an inmate who is, or has been, convicted for
7 a felony crime of violence against the person, a felony
8 offense where the victim was a minor child or a felony
9 offense involving the use of a firearm, as defined in
10 subsections (o) and (p), section twenty-seven, article five,
11 chapter twenty-eight of this code, shall not be eligible for
12 treatment supervision.

13 (b) As a condition of drug court, a condition of probation
14 or as a modification of probation, a circuit court judge may
15 impose treatment supervision on an eligible drug offender
16 convicted of a felony: *Provided*, That a judge may impose
17 treatment supervision on an eligible drug offender convicted
18 of a felony, notwithstanding the results of the risk
19 assessment, upon making specific written findings of fact as
20 to the reason for the departure.

21 (c) Whenever a circuit court judge determines that a
22 treatment supervision participant has violated the conditions
23 of his or her treatment supervision involving the participant's
24 use of alcohol or a controlled substance, the judge may order
25 a period of incarceration to encourage compliance with
26 program requirements.

27 (1) Upon written finding by the circuit court judge that
28 the participant would otherwise be sentenced to the custody
29 of the Commissioner of Corrections for service of the
30 underlying sentence, the cost of the incarceration order under
31 this subsection, not to exceed a period of thirty days in any
32 one instance, shall be paid by the Division of Corrections.

33 (2) Whenever a circuit court judge orders the
34 incarceration of a treatment supervision participant pursuant
35 to this subsection, a copy of the order of confinement shall be
36 provided by the clerk of the circuit court within five days to
37 the Commissioner of Corrections.

38 (d) The Division of Justice and Community Services shall
39 in consultation with the Governor's Advisory Council on
40 Substance Abuse, created by Executive Order No. 5-11, use
41 appropriated funds to develop proposed substance abuse
42 treatment plans to serve those offenders under treatment
43 supervision in each judicial circuit and on parole supervision.

44 (e) The Division of Justice and Community Services, in
45 consultation with the Governor's Advisory Committee on
46 Substance Abuse, shall develop:

47 (1) Qualifications for provider certification to deliver a
48 continuum of care to offenders;

49 (2) Fee reimbursement procedures; and

50 (3) Other matters related to the quality and delivery of
51 services.

52 (f) The Division of Justice and Community Services shall
53 require education and training for providers which shall
54 include, but not be limited to, cognitive behavioral training.
55 The duties of providers who provide services under this
56 section may include: notifying the probation department and
57 the court of any offender failing to meet the conditions of
58 probation or referrals to treatment; appearing at revocation
59 hearings when required; and providing assistance with data
60 reporting and treatment program quality evaluation.

61 (g) The cost for all drug abuse assessments and certified
62 drug treatment under this section and subsection (c), section
63 seventeen, article twelve of this chapter shall be paid by the
64 Division of Justice and Community Services from funds
65 appropriated for that purpose. The Division of Justice and
66 Community Services shall contract for payment for the
67 services provided to eligible offenders.

68 (h) The Division of Justice and Community Services, in
69 consultation with the Governor's Advisory Council on
70 Substance Abuse, shall submit an annual report on or before
71 September 30 to the Governor, the Speaker of the House of
72 Delegates, the President of the Senate and, upon request, to
73 any individual member of the Legislature containing:

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

76 (2) The number of people on treatment supervision who
77 received services and whether their participation was the
78 result of a direct sentence or in lieu of revocation;

79 (3) The number of people on treatment supervision who,
80 pursuant to a judge's specific written findings of fact,
81 received services despite the risk assessment indicating less
82 than high risk for reoffending and a need for substance abuse
83 treatment;

84 (4) The type of services provided;

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

87 (6) The number of people under supervision receiving
88 treatment under this section who were rearrested and
89 confined within two years of being placed under supervision;

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

94 (8) Other appropriate measures used to measure the
95 availability of treatment and the effectiveness of services.

96 (i) Subsections (a), (b), and (c) of this section shall take
97 effect on January 1, 2014. The remaining provisions of this
98 section shall take effect on July 1, 2013.

§62-15-6b. Intermediate incarceration sanctions for drug court participants; responsibility for costs of incarceration.

1 (a) Whenever a judge of a drug court determines that a
2 participant who has pled to a felony offense has committed a
3 violation of his or her conditions of participation which
4 would, in the judge's opinion, warrant a period of
5 incarceration to encourage compliance with program
6 requirements, the cost of the incarceration, not to exceed a
7 period of thirty days in any one instance, shall be paid by the
8 Division of Corrections. The judge must make a written
9 finding that the participant would otherwise be sentenced to
10 the custody of the Commissioner of Corrections for service
11 of the underlying sentence.

12 (b) Whenever a drug court judge incarcerates a
13 participant pursuant to subsection (a) of this section, the clerk
14 of the circuit court shall provide a copy of the order of
15 confinement within five days to the Commissioner of
16 Corrections.

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

~~Member~~ *Rocky Ferguson*
.....
~~Chairman~~ *Senate Committee*

Danny Wells
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Minard
.....
Clerk of the Senate

Gregory M. Sawyer
.....
Clerk of the House of Delegates

Jeffrey
.....
President of the Senate
Speaker of the House of Delegates

The within *is approved* this the *2nd*
May
Day of, 2013.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:55 pm