

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 371**

(By Senators Kessler (Mr. President) and M. Hall,  
By Request of the Executive)

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[Originating in the Committee on Finance;  
reported March 19, 2013.]

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A BILL 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 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; mandating one hundred eighty days of supervised release for nonviolent inmates; 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 Authority and Correctional Facility 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; 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 or committing certain new criminal conduct; creating exceptions to new criminal conduct provisions; 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; revising eligibility requirements for accelerated parole program; 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; 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 or certain new criminal conduct; 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 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 submittal of an annual report; revising definitions for Drug Offender Accountability and Treatment Act; providing standards and limitations under which judges may order treatment supervision for drug

offenders; 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 an effective date regarding standards and limitations; 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 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 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 ~~the~~ 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 ~~may~~ shall include: (1) Assessments of  
10 a person's criminogenic risk and need factors that are  
11 reliable, 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  
19 by 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 ~~now~~ in the  
2 custody of the Commissioner of Corrections, ~~or hereafter~~  
3 ~~committed to the custody of the Commissioner of~~  
4 ~~Corrections~~, except those committed pursuant to article four,  
5 chapter twenty-five of this code, shall be granted  
6 commutation from their sentences for good conduct in  
7 accordance with this section.

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

12 (c) Each inmate committed to the custody of the  
13 Commissioner of Corrections and incarcerated in a  
14 correctional facility pursuant to ~~such~~ that commitment shall  
15 be granted one day good time for each day he or she is  
16 incarcerated, including any and all days in jail awaiting

17 sentence ~~and~~ which is are credited by the sentencing court to  
18 his or her sentence pursuant to section twenty-four, article  
19 eleven, chapter sixty-one of this code or for any other reason  
20 relating to ~~such~~ the commitment. ~~No~~ An inmate may not be  
21 granted any good time for time served either on parole or  
22 bond or in any other status when he or she is not physically  
23 incarcerated.

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

27 (e) An inmate under two or more consecutive sentences  
28 shall be allowed good time as if the several sentences, when  
29 the maximum terms ~~thereof~~ of the consecutive sentences are  
30 added together, were all one sentence.

31 (f) The Commissioner of Corrections shall promulgate  
32 ~~separate disciplinary rules for each institution under his~~  
33 ~~control in which adult felons are incarcerated, which rules.~~  
34 The rules shall describe acts ~~which~~ that inmates are  
35 prohibited from committing, procedures for charging

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36 individual inmates for violation of ~~such~~ the rules and for  
37 determining the guilt or innocence of inmates charged with  
38 ~~such~~ the violations and the sanctions which may be imposed  
39 for ~~such~~ the violations. A copy of ~~such~~ the rules shall be  
40 given to each inmate. For each ~~such~~ violations violation, by  
41 ~~an~~ a sanctioned inmate ~~so sanctioned~~, any part or all of the  
42 good time which has been granted to ~~such~~ the inmate  
43 pursuant to this section may be forfeited and revoked by the  
44 warden or superintendent of the institution in which the  
45 violation occurred. The warden or superintendent, when  
46 appropriate and with approval of the commissioner, may  
47 restore any forfeited good time ~~so forfeited~~.

48 (g) Each inmate, upon his or her commitment to and  
49 being ~~received~~ placed into the custody of the Commissioner  
50 of the ~~Department~~ of Corrections, or upon his or her return to  
51 custody as the result of violation of parole pursuant to section  
52 nineteen, article twelve, chapter sixty-two of this code, shall  
53 be given a statement setting forth the term or length of his or

54 her sentence or sentences and the time of his or her minimum  
55 discharge computed according to this section.

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

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

64 (j) In order to ensure equitable good time for all current  
65 and future inmates ~~now~~ in the custody of the Commissioner  
66 of Corrections ~~or hereafter committed to the custody of such~~  
67 ~~commissioner~~, except as to those persons committed pursuant  
68 to article four, chapter twenty-five of this code, all good  
69 times shall be computed according to this section and all  
70 previous computations of good time under prior statutes or  
71 ~~regulations~~ rules are ~~hereby voided~~ void. All inmates who  
72 have previously forfeited good time are hereby restored to

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73 good time computed according to this section and all inmates  
74 will receive a new discharge date computed according to this  
75 section. All inmates that have been awarded overtime good  
76 time or extra good time pursuant to sections twenty-seven-a  
77 and twenty-seven-b of this article which ~~are~~ were repealed  
78 simultaneously with the amendment to this section during the  
79 regular session of the Legislature in the year 1984 shall  
80 receive ~~such~~ that good time in addition to the good time  
81 computed according to this section.

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

86 (l) Prior to the calculated discharge date of an inmate  
87 serving a sentence for a felony crime of violence against the  
88 person, a felony offense where the victim was a minor child  
89 or a felony offense involving the use of a firearm, one year  
90 shall be deducted from the inmate's accumulated good time  
91 to provide for one year of mandatory post-release supervision

92 following the first instance in which the inmate reaches his or  
93 her calculated discharge date. As used in this subsection, a  
94 “felony crime of violence against the person” and a “felony  
95 crime where the victim was a minor child” have the same  
96 meaning set forth in section thirteen, article twelve, chapter  
97 sixty-two of this code. The provisions of this subsection are  
98 applicable to offenses committed on or after July 1, 2013.

99 (m) Any inmate who is serving a sentence for an offense  
100 not referenced in subsection (l) of this section shall be  
101 released to and subject to a period of mandatory supervision  
102 of one hundred and eighty days when he or she is one  
103 hundred and eighty days from his or her calculated discharge  
104 date. The provisions of this subsection are applicable to  
105 offenses committed before, on or after July 1, 2013.

106 (n) The Commissioner of Corrections shall adopt policies  
107 and procedures to implement the mandatory supervision  
108 provided for in subsections (l) and (m) of this section, which  
109 may include terms, conditions and procedures for



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110 supervision, modification and violation applicable to persons  
111 on parole.

## CHAPTER 31. CORPORATIONS.

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

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

1 Within three calender days of the arrest and placement of  
2 any person in a regional jail, the authority shall conduct a  
3 pretrial risk assessment using a standardized risk assessment  
4 instrument approved and adopted by the Supreme Court of  
5 Appeals of West Virginia. Upon completion of the  
6 assessment, the authority shall provide it to the magistrate  
7 and circuit clerks for delivery to the appropriate circuit judge  
8 or magistrate.

#### **§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 deadly weapons.**

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

3 (1) Any person carrying a deadly weapon upon his or her  
4 own premises; nor shall anything ~~herein~~ in this article prevent  
5 a person from carrying any firearm, unloaded, from the place  
6 of purchase to his or her home, residence or place of business  
7 or to a place of repair and back to his or her home, residence

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8 or place of business; nor shall anything ~~herein~~ in this article  
9 prohibit a person from possessing a firearm while hunting in  
10 a lawful manner or while traveling from his or her home,  
11 residence or place of business to a hunting site and returning  
12 to his or her home, residence or place of business;

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

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

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

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

32 (6) Any circuit judge, including any retired circuit judge  
33 designated senior status by the Supreme Court of Appeals of  
34 West Virginia, prosecuting attorney, assistant prosecuting  
35 attorney or a duly appointed investigator employed by a  
36 prosecuting attorney;

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

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

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45 (9) Any Hatfield-McCoy Regional Recreation Authority

46 ranger while the ranger is on duty; and

47 (10) Any parole officer appointed pursuant to section

48 fourteen, article twelve, chapter sixty-two of this code.

## **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 ~~the~~ a regional jail or a  
5 state correctional ~~facility~~ institution, or both fine and  
6 confinement, may, in the discretion of the sentencing judge  
7 or magistrate, as an alternative to the sentence imposed by  
8 statute for the crime, be sentenced under one of the following  
9 programs:

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

13           (2) The work program under which ~~a sentenced persons~~  
14 person would be required to spend the first two or more days  
15 of ~~their~~ his or her sentence in jail and then, in the discretion  
16 of the court, would be assigned to a county agency to  
17 perform labor within the jail, or in and upon the buildings,  
18 grounds, institutions, bridges and roads, including orphaned  
19 roads used by the general public and public works within the  
20 county. Eight hours of labor are to be credited as one day of  
21 the sentence imposed. ~~Persons~~ A person sentenced under this  
22 program may be required to provide ~~their~~ his or her own  
23 transportation to and from the work site, lunch and work  
24 clothes; or

25           (3) The community service program under which ~~persons~~  
26 ~~sentenced~~ a sentenced person would spend no time in jail, but  
27 would be sentenced to a number of hours or days of  
28 community service work with government entities or  
29 charitable or nonprofit entities approved by the circuit court.  
30 Regarding any portion of the sentence designated as  
31 confinement, eight hours of community service work is to be

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32 credited as one day of the sentence imposed. Regarding any  
33 portion of the sentence designated as a fine, the fine is to be  
34 credited at an hourly rate equal to the prevailing federal  
35 minimum wage at the time the sentence was imposed. In the  
36 discretion of the court, the sentence credits may run  
37 concurrently or consecutively. ~~Persons~~ A person sentenced  
38 under this program may be required to provide ~~their~~ his or  
39 her own transportation to and from the work site, lunch and  
40 work clothes.

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

50           (b) In no event may the duration of the alternate sentence  
51 exceed the maximum period of incarceration otherwise  
52 allowed.

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

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

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

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

65           (4) In circuit court cases, that adequate facilities for the  
66 administration and supervision of alternative sentencing  
67 programs are available through the court's probation officers  
68 or the county sheriff or, in magistrate court cases, that



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69 adequate facilities for the administration and supervision of  
70 alternative sentencing programs are available through the  
71 county sheriff; and

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

74 (d) ~~Persons~~ A person sentenced by the circuit court under  
75 the provisions of this article ~~remain~~ remains under the  
76 administrative custody and supervision of the court's  
77 probation officers or the county sheriff. ~~Persons~~ A person  
78 sentenced by a magistrate ~~remain~~ remains under the  
79 administrative custody and supervision of the county sheriff.

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

85 (f) ~~Persons~~ A person sentenced under the provisions of  
86 this section ~~remain~~ remains under the jurisdiction of the  
87 court. The court may withdraw any alternative sentence at

88 any time by order entered with or without notice and require  
89 that the remainder of the sentence be served in the county  
90 jail, a regional jail or a state correctional facility: *Provided*,  
91 That no alternative sentence directed by the sentencing judge  
92 or magistrate or administered under the supervision of the  
93 sheriff, his or her deputies, a jailer or a guard may require the  
94 convicted person to perform duties which would be  
95 considered detrimental to the convicted person's health as  
96 attested to by a physician.

97 (g) No provision of this section may be construed to limit  
98 a circuit ~~judge or magistrate's~~ judge's ability to impose a  
99 period of supervision or participation in a community  
100 corrections program created pursuant to article eleven-c,  
101 chapter sixty-two of this code, except that a person sentenced  
102 to a day report center must be identified as moderate to high  
103 risk of reoffending and moderate to high criminogenic need,  
104 as defined by the standardized risk and needs assessment  
105 adopted by the Supreme Court of Appeals of West Virginia  
106 under subsection (d), section six, article twelve of this

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107 chapter, and applied by a probation officer or day report  
108 staff: *Provided*, That a judge may impose a period of  
109 supervision or participation in a day report center,  
110 notwithstanding the results of the standardized risk and needs  
111 assessment, upon making specific written findings of fact as  
112 to the reason for departing from the requirements of this  
113 section.

114 (h) A magistrate may only impose a period of  
115 participation in a day report center if the person to be  
116 sentenced has been identified as moderate to high risk of  
117 reoffending and moderate to high criminogenic need, as  
118 determined by the standardized risk and needs assessment  
119 adopted by the Supreme Court of Appeals of West Virginia  
120 under subsection (d), section six, article twelve of this  
121 chapter, and applied by day report center staff. The day  
122 report center staff shall determine which services a person  
123 receives based on the results of the standardized risk and  
124 needs assessment and taking into consideration the other  
125 conditions of 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 ~~shall be~~ is subject to the procedures and  
6 penalties set forth in section ten, article twelve of this  
7 chapter.

8 (b) If, at any time during the period of home  
9 incarceration, there is reasonable cause to believe that a  
10 participant sentenced to home incarceration by the circuit  
11 court has violated the terms and conditions of the court's  
12 order of home incarceration and ~~said~~ the participant's  
13 participation was imposed as an alternative sentence to  
14 another form of incarceration, ~~said~~ the participant ~~shall be~~ is  
15 subject to the same procedures involving confinement and  
16 revocation as would a probationer charged with a violation of

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17 the order of home incarceration. Any participant under an  
18 order of home incarceration ~~shall be~~ is subject to the same  
19 penalty or penalties, upon the circuit court's finding of a  
20 violation of the order of home incarceration, as he or she  
21 could have received at the initial disposition hearing:  
22 *Provided*, That the participant shall receive credit towards  
23 any sentence imposed after a finding of violation for the time  
24 spent in home incarceration.

25 (c) If, at any time during the period of home  
26 incarceration, there is reasonable cause to believe that a  
27 participant sentenced to home incarceration by a magistrate  
28 has violated the terms and conditions of the magistrate's  
29 order of home incarceration as an alternative sentence to  
30 incarceration in jail, the supervising authority may arrest the  
31 participant upon the obtaining of an order or warrant and take  
32 the offender before a magistrate within the county of the  
33 offense. The magistrate shall then conduct a prompt and  
34 summary hearing on whether the participant's home

35 incarceration should be revoked. If it appears to the  
36 satisfaction of the magistrate that any condition of home  
37 incarceration has been violated, the magistrate may revoke  
38 the home incarceration and order that the sentence of  
39 incarceration in jail be executed. Any participant under an  
40 order of home incarceration ~~shall be~~ is subject to the same  
41 penalty or penalties, upon the magistrate's finding of a  
42 violation of the order of home incarceration, as the  
43 participant could have received at the initial disposition  
44 hearing: *Provided*, That the participant shall receive credit  
45 towards any sentence imposed after a finding of violation for  
46 the time spent in home 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 ~~hereby created~~ continued and continues to be

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

22 officer and a circuit judge may serve on the subcommittee as  
23 ex officio, nonvoting members.

24 (b) The subcommittee shall elect a chairperson and a vice  
25 chairperson. The subcommittee shall meet quarterly. Special  
26 meetings may be held upon the call of the chairperson, vice  
27 chairperson or a majority of the members of the  
28 subcommittee. A majority of the members of the  
29 subcommittee ~~constitute~~ 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;



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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;

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  
34   of 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

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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 ~~such 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 ~~such~~ any programs as authorized  
10 by the provisions of section five of this article. Any county  
11 which chooses to operate without a community criminal  
12 justice board ~~shall be~~ is subject to the regulations and

13 requirements established by the community corrections  
14 subcommittee and the Governor's committee.

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

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

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

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

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

28 (3) If a public defender corporation exists in the county  
29 or counties represented, at least one attorney employed by  
30 any public defender corporation existing in the counties

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31 represented or, if no public defender office exists, one  
32 criminal defense attorney from the counties represented;

33 (4) One member to be appointed by the local board of  
34 education or, if the board represents more than one county,  
35 at least one member appointed by a board of education of the  
36 counties represented;

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

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

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

50       ~~(7)~~ (8) Three at-large members to be appointed by the  
51 commission or commissions of the county or counties  
52 represented by the board.

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

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

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

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

63       (f) Community criminal justice boards may:

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

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

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

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

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

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

84       (i) Any political subdivision of this state operating a  
85 community corrections program shall, regardless of whether  
86 or not the program has been approved by the Governor's  
87 Committee on Crime, Delinquency and Correction, provide

88 to the Governor's committee required information regarding

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

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

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



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

19 (f) Annually report to the community corrections  
20 subcommittee on the results of duties required by this 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; ~~The probation officer shall furnish~~

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;

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

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

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

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

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 ~~shall Perform~~  
31 ~~any other duties the court requires.~~

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

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

41 ~~(b)~~ (c) Notwithstanding any provision of this code to the  
42 contrary:

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

51 State Police and includes a minimum of four hours' training  
52 in handgun safety ~~and comparable to the handgun training~~  
53 ~~provided to law-enforcement officers by the West Virginia~~  
54 ~~State Police.~~

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

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

61 (d) The Supreme Court of Appeals of West Virginia may  
62 adopt a standardized risk and needs assessment with risk cut-  
63 off scores for use by probation officers, taking into  
64 consideration the assessment instrument adopted by the  
65 Division of Corrections under subsection (h), section thirteen  
66 of this article and the responsibility of the Division of Justice  
67 and Community Services to evaluate the use of the  
68 standardized risk and needs assessment.

**§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  
4        courts in making pretrial decisions under article one-c of this  
5        chapter.

6        (b) When Unless otherwise directed by the court, the  
7        probation officer shall, in the form adopted by the Supreme  
8        Court of Appeals of West Virginia, make a careful  
9        investigation of, and a written report with recommendations  
10       concerning, any prospective probationer. Insofar as  
11       practicable, this report shall include information concerning  
12       the offender's court and criminal record, occupation, family  
13       background, education, habits and associations, mental and  
14       physical condition, the names, relationship, ages and  
15       condition of those dependent upon him or her for support and  
16       ~~such~~ any other facts as that may aid the court in determining

17 the propriety and conditions of his or her release on  
18 probation. ~~No~~ A person convicted of a felony or of any  
19 offense described in article eight-b or eight-d, chapter  
20 sixty-one of this code against a minor child may not be  
21 released on probation until this report ~~shall have~~ has been  
22 presented to and considered by the court. The court may ~~in~~  
23 ~~its discretion~~ request ~~such~~ a report concerning any person  
24 convicted of a misdemeanor. The presentence report of any  
25 person convicted of an offense, described in said articles or  
26 section twelve, article eight of said chapter, may include a  
27 statement from a therapist, psychologist or physician who is  
28 providing treatment to the child. A copy of all reports shall  
29 be filed with the Parole Board ~~of probation and parole~~.

**§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;

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

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

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

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

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

40           (b) In addition, the court may impose, subject to  
41 modification at any time, any other conditions which it may



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42 ~~deem~~ determine advisable, including, but not limited to, any

43 of the following:

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

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

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

61           (4) That ~~he or she~~ the probationer, in the discretion of the  
62    court, ~~be~~ is required to serve a period of confinement in jail  
63    of the county in which he or she was convicted for a period  
64    not to exceed one third of the minimum sentence established  
65    by law or one third of the least possible period of  
66    confinement in an indeterminate sentence, but in no case may  
67    the period of confinement exceed six consecutive months.  
68    The court ~~has the authority to~~ may sentence the defendant  
69    within the six-month period to intermittent periods of  
70    confinement including, but not limited to, weekends or  
71    holidays and may grant to the defendant intermittent periods  
72    of release in order that he or she may work at his or her  
73    employment or for other reasons or purposes as the court may  
74    ~~deem~~ determine appropriate: *Provided*, That the provisions  
75    of article eleven-a of this chapter do not apply to intermittent  
76    periods of confinement and release except to the extent ~~that~~  
77    directed by the court ~~may direct~~. If a period of confinement  
78    is required as a condition of probation, the court shall make

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79 special findings that other conditions of probation are  
80 inadequate and that a period of confinement is necessary.

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

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

96 (2) The day report center staff shall determine which  
97 services a person receives based on the results of the

98 standardized risk and needs assessment and taking into  
99 consideration the other conditions of probation set by the  
100 court.

101 (d) For the purposes of this article, “day report center”  
102 means a court-operated or court-approved facility where  
103 persons ordered to serve a sentence in this type of facility are  
104 required to report under the terms and conditions set by the  
105 court for purposes which include, but are not limited to,  
106 counseling, employment training, alcohol or drug testing or  
107 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

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8 brought before the court, or the judge thereof in vacation, for  
9 a prompt and summary hearing.

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

22 (2) If the judge finds that reasonable cause exists to  
23 believe that the probationer violated any condition of  
24 supervision other than absconding supervision or new  
25 criminal conduct other than a minor traffic violation or  
26 simple possession of a controlled substance, then, for the first

27 violation, the judge shall impose a period of confinement up  
28 to sixty days, or, for the second violation, a period of  
29 confinement up to one hundred twenty days. For the third  
30 violation, the judge may revoke the suspension of imposition  
31 or execution of sentence, impose sentence if none has been  
32 imposed and order that sentence be executed, with credit for  
33 time spent in confinement under this section. If the time  
34 remaining on the probationer's maximum imposed sentence  
35 is less than the maximum period of confinement, then the  
36 term of confinement is for the remaining period of the  
37 sentence. In computing the period for which the offender is  
38 to be confined, the time between his or her release on  
39 probation and his or her arrest may not be taken to be any  
40 part of the term of his or her sentence. Whenever the court  
41 incarcerates a probationer pursuant to the provisions of this  
42 subdivision, a circuit clerk shall provide a copy of the order  
43 of confinement within five days to the Commissioner of  
44 Corrections.

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45 (b) A probationer confined for a first or second violation  
46 pursuant to subdivision (2), subsection (a) of this section may  
47 be confined in jail, and the costs of confining felony  
48 probationers shall be paid out of funds appropriated for the  
49 Division of Corrections.

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

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

1 (a) The ~~board of parole~~ Parole Board, whenever it is of  
2 the opinion that the best interests of the state and of the

3 inmate will be served, and subject to the limitations  
4 ~~hereinafter~~ provided in this section, shall release any inmate  
5 on parole for terms and upon conditions ~~as are~~ provided by  
6 this article.

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

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

12 (B) He or she:

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

16 (ii) Does not have a prior criminal conviction for a felony  
17 crime of violence against the person, a felony offense  
18 involving the use of a firearm or a felony offense where the  
19 victim was a minor child. As used in this subsection, a  
20 “felony crime of violence against the person” and a “felony  
21 crime where the victim was a minor child” have the same



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22 meaning set forth in section thirteen, article twelve, chapter  
23 sixty-two of this section;

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

28 ~~(iv)~~ (iii) Is not serving a sentence for a crime of violence  
29 against the person, or more than one felony for a controlled  
30 substance offense for which the inmate is serving a  
31 consecutive sentence, a felony offense involving the use of  
32 a firearm or a felony ~~offence~~ offense where the victim was a  
33 minor child; and

34 ~~(v)~~ (iv) Has successfully completed a rehabilitation  
35 treatment program created with the assistance of a  
36 standardized risk and needs assessment.

37 ~~(f) As used in this section “felony crime of violence~~  
38 ~~against the person” means felony offenses set forth in articles~~  
39 ~~two, three-e, eight-b or eight-d of chapter sixty-one of this~~  
40 ~~code; and~~

41       ~~(H) As used in this section “felony offense where the~~  
42 ~~victim was a minor child” means any felony crime of~~  
43 ~~violence against the person and any felony violation set forth~~  
44 ~~in article eight, eight-a, eight-c or eight-d of chapter~~  
45 ~~sixty-one of this code.~~

46       (C) Notwithstanding any provision of this code to the  
47 contrary, any person inmate who committed, or attempted to  
48 commit, a felony with the use, presentment or brandishing of  
49 a firearm, is not eligible for parole prior to serving a  
50 minimum of three years of his or her sentence or the  
51 maximum sentence imposed by the court, whichever is less:  
52 *Provided*, That any person inmate who committed, or  
53 attempted to commit, any violation of section twelve, article  
54 two, chapter sixty-one of this code, with the use, presentment  
55 or brandishing of a firearm, is not eligible for parole prior to  
56 serving a minimum of five years of his or her sentence or one  
57 third of his or her definite term sentence, whichever is  
58 greater. Nothing in this paragraph applies to an accessory  
59 before the fact or a principal in the second degree who has

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60 been convicted as if he or she were a principal in the first  
61 degree if, in the commission of or in the attempted  
62 commission of the felony, only the principal in the first  
63 degree used, presented or brandished a firearm. ~~A person~~ An  
64 inmate is not ineligible for parole under the provisions of this  
65 paragraph because of the commission or attempted  
66 commission of a felony with the use, presentment or  
67 brandishing of a firearm unless that fact is clearly stated and  
68 included in the indictment or presentment by which the  
69 person was charged and was either: (i) Found guilty by the  
70 court at the time of trial upon a plea of guilty or nolo  
71 contendere; (ii) found guilty by the jury, upon submitting to  
72 the jury a special interrogatory for such purpose if the matter  
73 was tried before a jury; or (iii) found guilty by the court, if  
74 the matter was tried by the court without a jury.

75 For the purpose of this section, the term “firearm” means  
76 any instrument which will, or is designed to, or may readily  
77 be converted to, expel a projectile by the action of an  
78 explosive, gunpowder or any other similar means.

79 (D) The amendments to this subsection adopted in the  
80 year 1981:

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

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

86 (iii) Apply with respect to the submission of a special  
87 interrogatory to the jury and the finding to be made thereon  
88 in any case submitted to the jury on or after August 1 of that  
89 year or to the requisite findings of the court upon a plea of  
90 guilty or in any case tried without a jury: *Provided*, That the  
91 state gives notice in writing of its intent to seek such finding  
92 by the jury or court, as the case may be. ~~which~~ The notice  
93 shall state with particularity the grounds upon which the  
94 finding will be sought as fully as ~~such~~ the grounds are  
95 otherwise required to be stated in an indictment, unless the  
96 grounds ~~therefor~~ upon which the finding will be sought are

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97 alleged in the indictment or presentment upon which the

98 matter is being tried; and

99 (iv) Does not apply with respect to cases not affected by

100 the amendments and in ~~such~~ those cases the prior provisions

101 of this section apply and are construed without reference to

102 the amendments.

103 (†) (v) Insofar as the amendments relate to mandatory

104 sentences restricting the eligibility for parole, all matters

105 requiring a mandatory sentence shall be proved beyond a

106 reasonable doubt in all cases tried by the jury or the court;

107 (2) Is not in punitive segregation or administrative

108 segregation as a result of disciplinary action;

109 (3) Has maintained a record of good conduct in prison for

110 a period of at least three months immediately preceding the

111 date of his or her release on parole;

112 (4) Has prepared and submitted to the ~~board~~ Parole Board

113 a written parole release plan setting forth proposed plans for

114 his or her place of residence, employment and, if appropriate,

115 his or her plans regarding education and post-release  
116 counseling and treatment: Provided, That an inmate's  
117 application for parole may be considered by the board  
118 without the prior submission of a home plan, but the inmate  
119 shall have a home plan approved by the board prior to his or  
120 her release on parole. The Commissioner of Corrections or  
121 his or her designee shall review and investigate the plan ~~to be~~  
122 ~~reviewed and investigated~~ and provide recommendations to  
123 the board as to the suitability of the plan: *Provided, That in*  
124 cases in which there is a mandatory thirty-day notification  
125 period required prior to the release of the inmate, pursuant to  
126 section twenty-three of this article, the board may conduct an  
127 initial interview and deny parole without requiring the  
128 development of a plan. In the event the board ~~does not~~  
129 ~~believe parole should be denied~~ believes parole should be  
130 granted, it may defer a final decision pending completion of  
131 an investigation and receipt of recommendations. Upon  
132 receipt of the plan together with the investigation and

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133 recommendation, the board, through a panel, shall make a

134 final decision regarding the granting or denial of parole; and

135 (5) Has satisfied the board that if released on parole he or

136 she will not constitute a danger to the community.

137 (c) Except in the case of ~~a person~~ an inmate serving a life

138 sentence, ~~no~~ a person who has been previously twice

139 convicted of a felony may not be released on parole until he

140 or she has served the minimum term provided by law for the

141 crime for which he or she was convicted. ~~A person~~ An

142 inmate sentenced for life may not be paroled until he or she

143 has served ten years, and ~~a person~~ an inmate sentenced for

144 life who has been previously twice convicted of a felony may

145 not be paroled until he or she has served fifteen years:

146 *Provided, That* ~~a person~~ an inmate convicted of first degree

147 murder for an offense committed on or after June 10, 1994,

148 is not eligible for parole until he or she has served fifteen

149 years.

150 (d) In the case of ~~a person~~ an inmate sentenced to any

151 state correctional center, ~~it is the duty of the board~~ institution,

152 the Parole Board, as soon as ~~a person~~ that inmate becomes  
153 eligible, ~~to~~ shall consider the advisability of his or her release  
154 on parole.

155 (e) If, upon consideration, parole is denied, the board  
156 shall promptly notify the inmate of the denial. The board  
157 shall, at the time of denial, notify the inmate of the month and  
158 year he or she may apply for reconsideration and review.  
159 The board shall at least once a year reconsider and review the  
160 case of every inmate who was denied parole and who is still  
161 eligible: *Provided*, That the board may reconsider and  
162 review parole eligibility anytime within three years following  
163 the denial of parole of an inmate serving a life sentence with  
164 the possibility of parole.

165 (f) Any ~~person~~ inmate serving a sentence on a felony  
166 conviction who becomes eligible for parole consideration  
167 prior to being transferred to a state correctional ~~center~~  
168 institution may make written application for parole. The  
169 terms and conditions for parole consideration established by  
170 this article apply to ~~such inmates~~ that inmate.



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171 (g) The board shall, with the approval of the Governor,  
172 adopt rules governing the procedure in the granting of parole.  
173 No provision of this article and none of the rules adopted  
174 ~~hereunder~~ under this article are intended or may be construed  
175 to contravene, limit or otherwise interfere with or affect the  
176 authority of the Governor to grant pardons and reprieves,  
177 commute sentences, remit fines or otherwise exercise his or  
178 her constitutional powers of executive clemency.

179 (h) (1) The Division of Corrections shall promulgate  
180 policies and procedures for developing a rehabilitation  
181 treatment plan created with the assistance of a standardized  
182 risk and needs assessment. The policies and procedures shall  
183 ~~include, but not be limited to, policy and procedures for~~  
184 provide for, at a minimum, screening and selecting inmates  
185 for rehabilitation treatment and development, ~~and use of~~  
186 using standardized risk and needs assessment and substance  
187 abuse assessment tools, and prioritizing the use of residential  
188 substance abuse treatment resources based on the results of

189 the standardized risk and needs assessment and a substance  
190 abuse assessment.

191 (2) An inmate shall not be paroled under paragraph (B),  
192 subdivision (1), subsection (b) of this section solely due to  
193 having successfully completed a rehabilitation treatment  
194 plan, but completion of all the requirements of a  
195 rehabilitation ~~parole~~ treatment plan along with compliance  
196 with the requirements of subsection (b) of this section ~~shall~~  
197 creates a rebuttable presumption that parole is appropriate.  
198 The presumption created by this ~~subsection~~ subdivision may  
199 be rebutted by a Parole Board finding that, according to the  
200 standardized risk and needs assessment, at the time parole  
201 release is sought the inmate still constitutes a reasonable risk  
202 to the safety or property of other persons if released. Nothing  
203 in subsection (b) of this section or in this subsection may be  
204 construed to create a right to parole.

205 (i) Notwithstanding the provisions of subsection (b) of  
206 this section, the Parole Board may, ~~in its discretion~~, grant or  
207 deny parole to an inmate against whom a detainer is lodged

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208 by a jurisdiction other than West Virginia for service of a  
209 sentence of incarceration, upon a written request for parole  
210 from the inmate. A denial of parole under this subsection  
211 ~~shall preclude~~ precludes consideration for parole for a period  
212 of one year or until the provisions of subsection (b) of this  
213 section are applicable.

214 (j) ~~Where~~ If an inmate is otherwise eligible for parole  
215 pursuant to subsection (b) of this section and has completed  
216 the rehabilitation treatment program required under  
217 subsection (h) of this section, ~~but~~ the Parole Board  
218 ~~determines that~~ may not require the inmate ~~should to~~  
219 participate in an additional program, ~~or~~ but may determine  
220 that the inmate must complete an assigned task or tasks prior  
221 to actual release on parole. The board may grant parole  
222 contingently, effective upon successful completion of the  
223 ~~program or~~ assigned task or tasks, without the need for a  
224 further hearing. ~~The Commissioner of Corrections shall~~  
225 ~~provide notice to the Parole Board of the imminent release of~~

226 ~~a contingently paroled inmate to effectuate appropriate~~  
227 ~~supervision.~~

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

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

238 (l)(1) When considering an inmate of a state correctional  
239 center for release on parole, the Parole Board panel  
240 considering the parole ~~is to~~ shall have before it an authentic  
241 copy of or report on the inmate's current criminal record as  
242 provided through the West Virginia State Police, the United  
243 States Department of Justice or any other reliable criminal  
244 information sources and written reports of the warden or

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245 superintendent of the state correctional ~~center~~ institution to  
246 which the inmate is sentenced:

247 (A) On the inmate's conduct record while in custody,  
248 including a detailed statement showing any and all  
249 infractions of disciplinary rules by the inmate and the nature  
250 and extent of discipline administered ~~therefor~~ for the  
251 infractions;

252 (B) On improvement or other changes noted in the  
253 inmate's mental and moral condition while in custody,  
254 including a statement expressive of the inmate's current  
255 attitude toward society in general, toward the judge who  
256 sentenced him or her, toward the prosecuting attorney who  
257 prosecuted him or her, toward the policeman or other officer  
258 who arrested the inmate and toward the crime for which he  
259 or she is under sentence and his or her previous criminal  
260 record;

261 (C) On the inmate's industrial record while in custody  
262 which shall include: The nature of his or her work,  
263 occupation or education, the average number of hours per

264 day he or she has been employed or in class while in custody  
265 and a recommendation as to the nature and kinds of  
266 employment which he or she is best fitted to perform and in  
267 which the inmate is most likely to succeed when he or she  
268 leaves ~~prison~~ the state correctional institution; and

269 (D) On any physical, mental, ~~and~~ psychological or  
270 psychiatric examinations of the inmate. ~~conducted, insofar as~~  
271 ~~practicable, within the two months next preceding parole~~  
272 ~~consideration by the board.~~

273 (2) The Parole Board panel considering the parole may  
274 waive the requirement of any report when not available or  
275 not applicable as to any inmate considered for parole but, in  
276 every ~~such~~ case, shall enter in ~~the~~ its record ~~thereof~~ its reason  
277 for the waiver: *Provided*, That in the case of an inmate who  
278 is incarcerated because the inmate has been found guilty of,  
279 or has pleaded guilty to, a felony under the provisions of  
280 section twelve, article eight, chapter sixty-one of this code or  
281 under the provisions of article eight-b or eight-c of said  
282 chapter, the Parole Board panel may not waive the report

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283 required by this subsection. ~~and~~ The report ~~is to~~ shall include  
284 a study and diagnosis of the inmate, including an on-going  
285 treatment plan requiring active participation in sexual abuse  
286 counseling at an approved mental health facility or through  
287 some other approved program: *Provided, however,* That  
288 nothing disclosed by the ~~person~~ inmate during the study or  
289 diagnosis may be made available to any law-enforcement  
290 agency, or other party without that ~~person's~~ inmate's consent,  
291 or admissible in any court of this state, unless the information  
292 disclosed indicates the intention or plans of the parolee to do  
293 harm to any person, animal, institution or to property.  
294 Progress reports of outpatient treatment are to be made at  
295 least every six months to the parole officer supervising the  
296 ~~person~~ parolee. In addition, in such cases, the Parole Board  
297 shall inform the prosecuting attorney of the county in which  
298 the person was convicted of the parole hearing and shall  
299 request that the prosecuting attorney inform the Parole Board  
300 of the circumstances surrounding a conviction or plea of

301 guilty, plea bargaining and other background information that  
302 might be useful in its deliberations.

303 (m) Before releasing any inmate on parole, the ~~board of~~  
304 ~~parole~~ Parole Board shall arrange for the inmate to appear in  
305 person before a Parole Board panel and the panel may  
306 examine and interrogate him or her on any matters pertaining  
307 to his or her parole, including reports before the Parole Board  
308 made pursuant to the provisions ~~hereof~~ of this section:

309 *Provided*, That an inmate may appear by video  
310 teleconference if the members of the Parole Board panel  
311 conducting the examination are able to contemporaneously  
312 see the inmate and hear all of his or her remarks and if the  
313 inmate is able to contemporaneously see each of the members  
314 of the panel conducting the examination and hear all of the  
315 members' remarks. The panel shall reach its own written  
316 conclusions as to the desirability of releasing the inmate on  
317 parole and the majority of the panel considering the release  
318 ~~shall~~ must concur in the decision. The warden or  
319 superintendent shall furnish all necessary assistance and



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320 cooperate to the fullest extent with the Parole Board. All  
321 information, records and reports received by the Parole Board  
322 ~~are to~~ shall be kept on permanent file.

323 (n) The Parole Board and its designated agents are at all  
324 times to have access to inmates imprisoned in any state  
325 correctional ~~center~~ institution or in any jail in this state and  
326 may obtain any information or aid necessary to the  
327 performance of its duties from other departments and  
328 agencies of the state or from any political subdivision ~~thereof~~  
329 of the state.

330 (o) The Parole board shall, if ~~so~~ requested by the  
331 Governor, investigate and consider all applications for  
332 pardon, reprieve or commutation and shall make  
333 recommendation ~~thereon~~ on the applications to the Governor.

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

339           (q) ~~Any person released on parole~~ A parolee shall  
340 participate as a condition of parole in the litter control  
341 program of the county to which he or she is released to the  
342 extent directed by the Parole Board, unless the board  
343 specifically finds that this alternative service would be  
344 inappropriate.

345           ~~(r) Except for the amendments to this section contained~~  
346 ~~in subdivision (4), subsection (b) and subsection (i) of this~~  
347 ~~section the amendments to this section enacted during the~~  
348 ~~2010 regular session of the Legislature shall become effective~~  
349 ~~on January 1, 2011.~~

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

1           The ~~board~~ Commissioner of Corrections ~~shall have~~  
2 ~~authority to~~ may employ or contract for a director of  
3 employment and a director of housing for ~~paroled or~~  
4 ~~pardoned prisoners~~ released inmates. The director of  
5 employment shall work with federal, state, county and local  
6 government and private entities to negotiate agreements

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7 which facilitate employment opportunities for released  
8 inmates. The director of housing shall work with federal,  
9 state, county and local government and private entities to  
10 negotiate agreements which facilitate housing opportunities  
11 for released inmates. It shall be the duty of The director of  
12 employment to shall investigate job opportunities and to  
13 give every possible assistance in helping prisoners, eligible  
14 to be paroled or who have been granted parole under this  
15 article to released inmates find employment. The director of  
16 housing shall work in conjunction with the parole division  
17 and the Parole Board to reduce release delays due to lack of  
18 a home plan, develop community housing resources and  
19 provide short-term loans to released inmates for costs related  
20 to 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 shall

4 report in writing ~~thereon~~ on the investigation; ~~He or she or~~  
5 ~~she shall furnish~~

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

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

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

20 (5) Keep informed concerning the conduct and condition  
21 of each ~~person~~ parolee under his or her supervision and ~~shall~~  
22 report ~~thereon~~ on the conduct and condition of each parolee

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23 in writing as often as required by the Commissioner of

24 Corrections ~~may require; He or she or she shall use;~~

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

26 encourage ~~persons on parole~~ a parolee and to bring about

27 improvement in ~~their~~ his or her conduct and condition; ~~He~~

28 ~~or she or she shall keep~~

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

30 (8) Keep accurate and complete accounts of and give

31 receipts for all money collected from ~~persons~~ parolees under

32 his or her supervision and ~~shall~~ pay over the money to ~~those~~

33 persons designated by a circuit court or the Commissioner

34 of Corrections ~~may designate; He or she or she shall give;~~

35 (9) Give bond with good security, to be approved by the

36 Commissioner of Corrections, in a penalty of not less than

37 \$1,000 nor more than \$3,000, as determined by the

38 Commissioner of Corrections ~~may determine; and also~~

39 ~~perform~~

40 (10) Perform any other duties required by the

41 Commissioner ~~may require~~ of Corrections.

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

47       (c) The Commissioner of Corrections may issue a  
48       certificate authorizing any state parole officer who has  
49       successfully completed the Division of Corrections' training  
50       program for firearms certification, which is the equivalent of  
51       that required of deputy sheriffs, to carry firearms or  
52       concealed weapons. Any parole officer authorized by the  
53       Commissioner of Corrections may, without a state license,  
54       carry firearms and concealed weapons. Each state parole  
55       officer, authorized by the Commissioner of Corrections,  
56       shall carry with him or her a certificate authorizing him or  
57       her to carry a firearm or concealed weapon bearing the  
58       official signature of the Commissioner of Corrections.

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

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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 ~~he or she~~ the parolee may not, during the period  
9 of his or her parole, leave the state without the consent of  
10 the Division of Corrections;

11 (3) That ~~he or she shall comply~~ the parolee complies with  
12 the rules prescribed by the Division of Corrections for his or  
13 her supervision by the 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

19 parolee is returning or attempting to return to this state  
20 pursuant to the provisions of article six, chapter twenty-eight  
21 of this code, the parolee may not live in the same residence  
22 as any minor child nor exercise visitation with any minor  
23 child nor may he or she have any contact with the victim of  
24 the offense; and

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

30 (b) The Commissioner of Corrections shall keep a record  
31 of all actions taken and account for moneys received. ~~No~~  
32 ~~provision of this section prohibits the division from~~  
33 ~~collecting the fees and conducting the checks upon the~~  
34 ~~effective date of this section.~~ All moneys shall be deposited  
35 in a special account in the State Treasury to be known as the  
36 Parolee's Supervision Fee Fund. Expenditures from the



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37 fund shall be for the purposes of providing the parole  
38 supervision required by the provisions of this code and are  
39 not authorized from collections, but are to be made only in  
40 accordance with appropriation by the Legislature and in  
41 accordance with the provisions of article three, chapter  
42 twelve of this code and upon the fulfillment of the  
43 provisions set forth in article two, chapter five-a of this  
44 code. Amounts collected which are found, from time to  
45 time, to exceed the funds needed for purposes set forth in  
46 this article may be transferred to other accounts or funds and  
47 redesignated for other purposes by appropriation of the  
48 Legislature.

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

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

55       (2) Liquid assets of the parolee or probationer, assets of  
56       the parolee or probationer that may provide collateral to  
57       obtain funds and assets of the parolee or probationer that  
58       may be liquidated to provide funds to pay the fee;

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

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

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

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

71       (e) The Division of Corrections may order substance  
72       abuse treatment as a condition or as a modification of  
73       parole, only if the standardized risk and needs assessment

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74 indicates the offender has a high risk for reoffending and a  
75 need for substance abuse treatment.

76 (f) The Division of Corrections may impose, as an initial  
77 condition of parole, a term of reporting to a day report  
78 center or other community corrections program only if the  
79 standardized risk and needs assessment indicates a moderate  
80 to high risk of reoffending and moderate to high  
81 criminogenic need. Any parolee required to report to a day  
82 report center or other community corrections program is  
83 subject to all the rules and regulations of the center or  
84 program and may be removed at the discretion of the  
85 center's or program's director. The Commissioner of  
86 Corrections shall enter into a master agreement with the  
87 Division of Justice and Community Services to provide  
88 reimbursement to counties for the use of community  
89 corrections programs by eligible parolees. Any placement by  
90 the Division of Corrections of a parolee in a day report  
91 center or other community corrections program may only be  
92 done with the center's or program's director's consent and

93 the parolee is subject to all of the rules and regulations of  
94 the center or program and may be 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. ~~which~~ The  
7 written order or warrant is sufficient for his or her arrest by  
8 any 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 ~~paroled prisoner~~  
11 parolee shall be a command to keep custody of the parolee  
12 for the jurisdiction of the Division of Corrections. ~~and~~  
13 During the period of custody, the parolee may be admitted  
14 to bail by the court before which the parolee was sentenced.  
15 If the parolee is not released on a bond, the costs of

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16 confining the paroled prisoner shall be paid out of the funds

17 appropriated for the Division of 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 absconding supervision or new criminal  
21 conduct other than a minor traffic violation or simple  
22 possession of a controlled substance, the parole officer may,  
23 after consultation with and written approval by the director  
24 of parole services, for the first violation, require the parolee  
25 to serve a period of confinement up to sixty days, or, for the  
26 second violation, a period of confinement up to one hundred  
27 twenty days: *Provided*, That the Division of Corrections  
28 shall notify the Parole Board when a parolee is serving such  
29 a term of confinement and the Parole Board may deny  
30 further confinement. A parolee serving a term of  
31 confinement in the first or second instance may be confined  
32 in jail or any other facility designated by the commissioner,  
33 but shall be committed to the custody of the Commissioner  
34 of Corrections, and the costs of confining the parolee shall

35 be paid out of funds appropriated for the Division of  
36 Corrections: *Provided, however,* That upon written request,  
37 the parolee shall be afforded the right to a hearing within  
38 forty-five days before the Parole Board regarding whether  
39 he or she violated the conditions of his or her release on  
40 parole.

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

47 (A) If at the hearing it ~~appears to the satisfaction of the~~  
48 panel is determined that reasonable cause exists to believe  
49 that the parolee has violated any condition of his or her  
50 release on parole, or any rules or conditions of his or her  
51 supervision absconded supervision or committed new  
52 criminal conduct other than a minor traffic violation or  
53 simple possession of a controlled substance, the panel may

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

59 (B) If the Parole Board panel finds that reasonable cause  
60 exists to believe that the parolee has violated a condition of  
61 release or supervision or committed new criminal conduct  
62 consisting of a minor traffic violation or simple possession  
63 of a controlled substance, the panel shall require the parolee  
64 to serve, for the first violation, a period of confinement up  
65 to sixty days, or, for the second violation, a period of  
66 confinement up to one hundred twenty days: *Provided*, That  
67 if the violation of the conditions of parole or rules for his or  
68 her supervision is not a felony as set out in section eighteen  
69 of this article, the panel may, if in its judgment the best  
70 interests of justice ~~do~~ not require ~~revocation~~ a period of  
71 confinement, reinstate him or her on parole. The Division

72 of Corrections shall effect release from custody upon  
73 approval of a home plan.

74 (b) Notwithstanding any provision of this code to the  
75 contrary, when reasonable cause has been found to believe  
76 that a parolee has violated the conditions of his or her parole  
77 but the violation does not constitute felonious conduct, the  
78 commissioner may, ~~in his or her discretion and~~ with the  
79 written consent of the parolee, allow the parolee to remain  
80 on parole with additional conditions or restrictions. The  
81 additional conditions or restrictions may include, but are not  
82 limited to, participation in any program described in  
83 subsection (d), section five, article eleven-c of this chapter.

84 ~~Compliance by~~ If the parolee complies with the conditions  
85 of parole ~~precludes revocation of~~ the commissioner may not  
86 revoke his or her parole for the conduct which constituted  
87 the violation. ~~Failure of~~ If the parolee fails to comply with  
88 the conditions or restrictions and all other conditions of  
89 release, that failure is an additional violation of parole and  
90 the commissioner may proceed against the parolee may be



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91 ~~proceeded against~~ under the provisions of this section for the  
92 original violation as well as any subsequent violations.

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

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

109 confining the ~~paroled prisoner~~ parolee shall be paid out of  
110 the funds appropriated for the Division of Corrections.

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

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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  
133 the Division of Corrections for the costs of returning him or  
134 her 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 the Division~~ of Corrections may  
140 issue subpoenas for persons and records necessary to prove  
141 a 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 ~~panel of the Parole Board~~ panel. The subpoenas shall be  
144 served in the same manner provided in the Supreme Court  
145 of Appeals of West Virginia Rules of Criminal Procedure.  
146 The subpoenas may be enforced by the commissioner

147 through application or petition of the commissioner to the  
148 circuit court for contempt 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  
4 representatives of the judiciary, probation, parole, day report  
5 centers, magistrates, sheriffs, corrections and other members  
6 at the discretion of the director. The administrative director  
7 shall appoint a chair from among the members, and attend  
8 the 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;

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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  
6 accordance with the ~~standards, procedures, and diagnostic~~  
7 ~~criteria designed to provide effective and cost-beneficial use~~  
8 ~~of available resources~~ standardized risk and needs  
9 assessment and risk cut-off scores adopted by the West  
10 Virginia Supreme Court of Appeals.

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

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

19 (4) “Drug” means a controlled substance, an illegal drug  
20 or other harmful substance.

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

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24 (6) “Drug court team” ~~may~~ shall consist of the following  
25 members who are assigned to the drug court:

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

29 (B) The prosecutor;

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

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

35 (E) A law-enforcement officer;

36 (F) The drug court coordinator;

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

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

40 and

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

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

46 (8) “Dual Diagnosis” means a substance abuse and  
47 cooccurring mental health disorder.

48 (9) “Local advisory committee” may consist of the  
49 following members or their designees:

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

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

52 (C) The prosecutor;

53 (D) A public defender;

54 (E) The drug court coordinator;

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

56 (G) The circuit clerk;

57 (H) A day report center director;

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

60 (J) Law enforcement;



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

62 (L) A corrections representative; and

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

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

67 (11) “Memorandum of Understanding” means a written  
68 document setting forth an agreed upon procedure.

69 (12) “Offender” means an adult charged with a criminal  
70 offense punishable by incarceration.

71 (13) “Other harmful substance” means a misused  
72 substance otherwise legal to possess, including alcohol.

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

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

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

83 (17) “Relapse” means a return to substance use after a  
84 period of abstinence.

85 (18) “Split sentencing” means a sentence which includes  
86 a period of incarceration followed by a period of  
87 supervision.

88 (19) “Staffing” means the meeting before a drug  
89 offender’s appearance in drug court in which the drug court  
90 team discusses a coordinated response to the drug offender’s  
91 behavior.

92 (20) “Substance” means ~~drug~~ drugs or alcohol.

93 (21) “Substance abuse” means the illegal or improper  
94 consumption of a ~~drug~~ substance.

95 (22) “Substance abuse treatment” means a program  
96 designed to provide prevention, education, and therapy  
97 directed toward ending substance abuse and preventing a  
98 return to substance usage, through a continuum of care.

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99 including: treatment of cooccurring substance abuse and  
100 mental health issues; outpatient care; intensive outpatient  
101 care; residential care; peer support; relapse prevention; and  
102 cognitive behavioral programming, based on research about  
103 effective treatment models for the offender population.

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

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

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

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

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

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

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

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

126 (H) Monitoring and evaluation measure the achievement of  
127 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 to which a  
135 participant is ordered in lieu of a sentence of incarceration,  
136 which includes treatment for substance abuse.

**§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. As a  
6 condition of drug court or as a term of probation or as a  
7 modification of probation, a circuit court judge may impose  
8 treatment supervision ~~may be imposed~~ on an eligible drug  
9 offender convicted of a felony. Whenever a circuit judge  
10 determines that a participant has committed a violation of  
11 his or her conditions of treatment involving the participant's  
12 use of alcohol or a controlled substance which would, in the  
13 judge's opinion, warrant a period of incarceration to  
14 encourage compliance with program requirements, the cost  
15 of ~~said~~ the incarceration, not to exceed a period of thirty  
16 days in any one instance, shall be paid by the Division of  
17 Corrections. Upon written finding by the judge that the  
18 participant would otherwise be sentenced to the custody of

19 the Commissioner of Corrections for service of the  
20 underlying sentence. Whenever a circuit judge incarcerates  
21 a participant pursuant to this section a copy of the order of  
22 confinement shall be provided by the clerk of the circuit  
23 court within five days to the Commissioner of Corrections:  
24 *Provided*, That a judge may impose treatment supervision  
25 on a drug offender convicted of a felony, notwithstanding  
26 the results of the risk assessment, upon making specific  
27 written findings of fact as to the reason for departing from  
28 the requirements of this subsection. This subsection takes  
29 effect January 1, 2014.

30 (b) The Division of Justice and Community Services shall  
31 in consultation with the Governor's Advisory Council on  
32 Substance Abuse, created by Executive Order No. 5-11, use  
33 appropriated funds to develop proposed substance abuse  
34 treatment plans to serve those offenders under treatment  
35 supervision in each judicial circuit and on parole  
36 supervision, ~~in consultation with the Governor's Advisory~~

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37 ~~Council on Substance Abuse, created by Executive Order~~

38 ~~No. 5-11.~~

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

42 (1) Qualifications for provider certification to deliver a  
43 continuum of care to offenders;

44 (2) Fee reimbursement procedures; and

45 (3) Other matters related to the quality and delivery of  
46 services.

47 (d) The Division of Justice and Community Services shall  
48 require education and training for providers which shall  
49 include, but not be limited to, cognitive behavior training.

50 The duties of providers who provide services under this  
51 ~~program~~ section may include: notifying the probation  
52 department and the court of any offender failing to meet the  
53 conditions of probation or referrals to treatment; appearing  
54 at revocation hearings ~~as may be~~ when required; and

55 providing assistance with data reporting and treatment  
56 program quality evaluation.

57 (e) The cost for all drug abuse assessments and certified  
58 drug treatment under this section and subsection (e), section  
59 seventeen, article twelve of this chapter shall be paid by the  
60 Division of Justice and Community Services from funds  
61 appropriated for ~~such~~ that purpose. The Division of Justice  
62 and Community Services shall contract for payment for ~~such~~  
63 the services provided to eligible offenders.

64 (f) The Division of Justice and Community Services, in  
65 consultation with the Governor's Advisory Council on  
66 Substance Abuse, shall submit an annual report on or before  
67 September 30 ~~of each year~~, to the Governor, the Speaker of  
68 the House of Delegates, the President of the Senate and,  
69 upon request, to any individual member of the Legislature  
70 ~~a report on~~ containing:

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



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

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

82 (4) The type of services provided;

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

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

89 (7) The dollar amount needed to provide services in the  
90 upcoming year to meet demand and the projected impact of

91 reductions in program funding on cost and public safety  
92 measures; and

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

96 (g) With the exception of subsection (a) of this section,  
97 the provisions of this section shall take effect on July 1,  
98 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  
3 a 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

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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  
14 clerk of the circuit court shall provide a copy of the order of  
15 confinement within five days to the Commissioner of  
16 Corrections.