

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2849**

(BY MR. SPEAKER (MR. ARMSTEAD), MILLER,

WALTERS AND HANSHAW)

[Originating in the Committee on the Judiciary,

February 26, 2016.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §61-14-1, §61-14-2, §61-14-3 and §61-14-4, all relating to creating the West  
3 Virginia Sentencing Commission; establishing composition and membership of  
4 commission; providing legislative findings and purpose; setting forth objectives for the  
5 commission to pursue; and providing powers and duties of the commission.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
2 article, designated §61-14-1, §61-14-2, §61-14-3 and §61-14-4, all to read as follows:

**ARTICLE 14. WEST VIRGINIA SENTENCING COMMISSION.**

**§61-14-1. Creation of sentencing commission; how members are appointed; no  
compensation for service of members; terms of office for members; quorum; how  
chairperson elected; executive director.**

1 (a) There is created a West Virginia Sentencing Commission.

2 (b) The commission consists of the following members, who serve without compensation:

3 (1) Two members are from the West Virginia House of Delegates, to be appointed by the  
4 Speaker of the House of Delegates, who serve as ex-officio members;

5 (2) Two members are members of the West Virginia Senate, to be appointed by the  
6 President of the Senate, who serve as ex-officio members;

7 (3) Five members who are current or retired circuit judges, magistrates or municipal court  
8 judges, to be appointed by the Governor, who serve as ex-officio members;

9 (4) Two members that are citizens of West Virginia, with no required prerequisite other  
10 than citizenship in this state, to be appointed by the Governor;

11 (5) The presiding Chief Justice of the West Virginia Supreme Court of Appeals, who serves  
12 as an ex officio member;

13 (6) One county prosecutor and one public defender appointed by the Governor.

14 (c) Each member serves a two-year term, with the exception of the ex officio members  
15 who serve as long as they hold their respective offices.

16 (d) The chairperson of this commission shall be elected by the other members of the  
17 commission.

18 (e) Five members of the commission is a quorum.

19 (f) The commission shall elect one of its members to serve as the Executive Director of  
20 the Commission and provide administrative services to the commission.

**§61-14-2. Purpose of commission.**

1 The Legislature finds and declares that:

2 (1) There is a need for fair and uniform sentencing;

3 (2) There is a need for research on issues regarding sentencing in order to promote a  
4 fuller understanding of the efficient, just and fair operation of this state's criminal justice system;

5 (3) There is a need for establishing priorities with regard to the severity of the criminal  
6 offenses; and

7 (4) There is a need to use the limited correctional resources in a manner best able to fulfill  
8 the goals of criminal punishment, rehabilitation and protection of the public.

**§61-14-3. Objectives of the commission.**

1 The Sentencing Commission shall pursue the following objectives:

2 (1) Promoting sentencing that more accurately reflects the time that an offender will  
3 actually be incarcerated;

4 (2) Reducing unwarranted disparity in sentences for offenders who have committed similar  
5 offenses and have similar criminal histories;

6 (3) Preserving meaningful judicial discretion in the imposition of sentences and sufficient  
7 flexibility to permit individualized sentences;

8 (4) Ensuring that sentencing judges in every jurisdiction in the state are able to impose  
9 the most appropriate criminal penalties including correctional options programs for appropriate  
10 nonviolent offenders; and

11 (5) Determining whether the state needs to set out all criminal offenses in terms of priority  
12 in order of severity and harm to society and to provide alternatives to incarceration for certain  
13 offenses.

**§61-14-4. Powers and duties of the commission.**

1 The Sentencing Commission established pursuant to this article has the following powers  
2 and duties:

3 (1) The commission may establish general policies in accordance with article three,  
4 chapter twenty-nine-a of this code as are necessary to carry out the purposes of this article;

5 (2) The commission may request information, data and reports from any officer or agency  
6 of the state government, as the commission may from time to time require and as may be  
7 produced consistent with other law;

8 (3) The commission may issue invitations requesting the attendance and testimony of  
9 witnesses and the production of any evidence that relates directly to a matter with respect to which  
10 the commission or any member thereof is empowered to make a determination under this article;

11 (4) The commission shall establish a research and development program within the  
12 commission for the purpose of:

13 (A) Serving as a clearinghouse and information center for the collection, preparation and  
14 dissemination of information on sentencing practices; and

15 (B) Assisting and serving in a consulting capacity to state courts, departments and  
16 agencies in the development, maintenance and coordination of sound sentencing practices;

17 (5) The commission shall collect data obtained from studies, research and the empirical  
18 experience of public and private agencies concerning the sentencing processes;

19 (6) The commission shall publish data concerning the sentencing process;

20 (7) The commission shall collect and disseminate information concerning sentences  
21 actually imposed;

22           (8) The commission shall, collect and disseminate information regarding effectiveness of  
23 sentences imposed;

24           (9) The commission shall make recommendations to the Legislature concerning  
25 modification or enactment of sentencing and correctional statutes which the commission finds to  
26 be necessary and advisable to carry out an effective, humane and rational sentencing policy;

27           (10) The commission shall establish a plan and timetable to collect and disseminate  
28 information relating to incapacitation, recidivism, deterrence and overall effectiveness of  
29 sentences imposed;

30           (11) The commission shall provide recommendations to the Legislature for the creation of  
31 programs and establishment of facilities in the state that provide how the state can best shift its  
32 expenditures in a revenue neutral fashion away from incarceration to interdiction programs,  
33 facilities, and related services.

34           (12) The commission shall evaluate the state's sentencing and correctional laws and  
35 policies and make recommendations to the Governor and the Legislature on or before January 1,  
36 2018, and at its discretion after that or at the request of the President of the Senate or the Speaker  
37 of the House of Delegates, regarding the following issues:

38           (A) Whether the state should adopt guided discretion sentencing guidelines and, if so,  
39 what type of guided discretion sentencing guidelines should be adopted;

40           (B) Whether the state should alter the manner in which an inmate may obtain credit for  
41 good time served or released on mandatory supervision;

42           (C) Whether the state needs to take action to ensure that there is a coordinated system of  
43 correctional options to incarceration at the state and county levels and, if so, what action should  
44 be taken; and

45           (D) Any other matters relating to state and local laws and policies governing sentencing,  
46 parole, mandatory supervision and correctional options programs.

NOTE: The purpose of this bill is to create the West Virginia Sentencing Commission.

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