

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4042**

BY DELEGATES STANSBURY, HOUSEHOLDER,  
SUMMERS, ELLINGTON, ROHRBACH, MILLER,  
HANSHAW, WESTFALL, WHITE, B., PERDUE AND  
SMITH, R.

[Introduced January 18, 2016; referred to the  
committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §61-14-1, relating to granting judges the discretionary authority to depart from  
 3 otherwise minimum sentencing requirements; providing exceptions; requiring reports; and  
 4 requiring twenty-five percent of any financial savings realized be used to advance  
 5 evidence-based practices shown to reduce recidivism.

*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, to read as follows:

**ARTICLE 14. REDUCTION OF MINIMUM SENTENCES.**

**§61-14-1. Reduction of minimum sentences; discretionary; exceptions.**

1 (a) Notwithstanding any other provision of this code to the contrary, when sentencing a  
 2 person convicted of a violation for which there is a mandatory minimum sentence, but which did  
 3 not:

4 (1) Include the use, attempted use or threatened use of serious physical force by the  
 5 defendant against another person or result in the serious physical injury of another person by the  
 6 defendant; or

7 (2) Involve any sexual contact offense by the defendant against a minor, other than an  
 8 offense involving sexual conduct where the victim was at least thirteen years old and the offender  
 9 was not more than four years older than the victim and the sexual conduct was consensual;

10 a court may depart from the applicable mandatory minimum sentence if the court finds  
 11 substantial and compelling reasons on the record that, in giving due regard to the nature of the  
 12 crime, history and character of the defendant and his or her chances of successful rehabilitation  
 13 that the imposition of the mandatory minimum would result in substantial injustice to the defendant  
 14 and the mandatory minimum sentence is not necessary for the protection of the public.

15 (b) Subsection (a) of this section does not apply if:

16 (1) The individual has a conviction for the same offense during the ten-year period prior to

17 the commission of the offense;

18 (2) The individual intentionally uses a firearm in a manner that causes physical injury  
19 during the commission of the offense; or

20 (3) The individual was the leader, manager, or supervisor of others in a continuing criminal  
21 enterprise.

22 (c) Upon departing from mandatory minimum sentences, judges shall report to the West  
23 Virginia Supreme Court of Appeals which shall, one year following the enactment of this article  
24 and annually thereafter, make available in electronic form and on the Internet, a report as to the  
25 number of departures from mandatory minimum sentences made by each judge in the state.

26 (d) Twenty-five percent of any financial savings realized as a result of this article shall be  
27 used to advance evidence-based practices shown to reduce recidivism.

NOTE: The purpose of this bill is to grant judges the discretionary authority to depart from otherwise minimum sentencing requirements. The bill provides exceptions. The bill requires reports. The bill requires twenty-five percent of any financial savings realized be used to advance evidence-based practices shown to reduce recidivism.

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