

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4338

BY DELEGATES FAST, R. MILLER, HANSHAW, SHOTT, ELDRIDGE,
ROBINSON, LOVEJOY, LANE, WILLIAMS, ISNER AND FOSTER

(BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY)

[Passed March 10, 2018; in effect July 1, 2018.]

1 AN ACT to repeal §25-1-1, §25-1-1a, §25-1-3, §25-1-3a, §25-1-3b, §25-1-3c, §25-1-4, §25-1-5,
2 §25-1-5a, §25-1-6, §25-1-7, §25-1-8, §25-1-11, §25-1-11a, §25-1-11b, §25-1-11c, §25-1-
3 11d, §25-1-11e, §25-1-11f, §25-1-13, §25-1-14, §25-1-15, §25-1-16, §25-1-16a, §25-1-
4 17, §25-1-18, §25-1-19, §25-1-20, §25-1-21, and §25-1-22 of the Code of West Virginia,
5 1931, as amended; to repeal §28-5-7, §28-5-8a, §28-5-23, §28-5-24 and §28-5-27 of said
6 code; to repeal §31-20-1, §31-20-1a, §31-20-2, §31-20-3, §31-20-4, §31-20-5, §31-20-5a,
7 §31-20-5b, §31-20-5c, §31-20-5d, §31-20-5e, §31-20-5f, §31-20-5g, §31-20-5h, §31-20-
8 8, §31-20-8a, §31-20-9, §31-20-9a, §31-20-10, §31-20-10a, §31-20-10b, §31-20-11, §31-
9 20-12, §31-20-13, §31-20-14, §31-20-15, §31-20-20, §31-20-22, §31-20-23, §31-20-24,
10 §31-20-27, §31-20-27a, §31-20-28, §31-20-29, §31-20-30, §31-20-30a, §31-20-31, and
11 §31-20-32 of said code; to repeal §62-12-14, §62-12-14a, §62-12-15 and §62-12-25 of
12 said code; to repeal §62-13-3, §62-13-4, §62-13-5 and §62-13-6a of said code; to amend
13 and reenact §6-7-2a of said code; to amend said code by adding thereto a new chapter,
14 designated §15A-1-1, §15A-1-2, §15A-1-3, §15A-1-4, §15A-1-5, §15A-1-6, §15A-2-1,
15 §15A-2-2, §15A-2-3, §15A-3-1, §15A-3-2, §15A-3-3, §15A-3-4, §15A-3-5, §15A-3-6,
16 §15A-3-7, §15A-3-8, §15A-3-9, §15A-3-10, §15A-3-11, §15A-3-12, §15A-3-13, §15A-3-
17 14, §15A-3-15, §15A-3-16, §15A-3-17, §15A-3-18, §15A-4-1, §15A-4-2, §15A-4-3, §15A-
18 4-4, §15A-4-5, §15A-4-6, §15A-4-7, §15A-4-8, §15A-4-9, §15A-4-10, §15A-4-11, §15A-4-
19 12, §15A-4-13, §15A-4-14, §15A-4-15, §15A-4-16, §15A-4-17, §15A-4-18, §15A-4-19,
20 §15A-4-20, §15A-4-21, §15A-5-1, §15A-5-2, §15A-5-3, §15A-5-4, §15A-5-5, §15A-5-6,
21 §15A-5-7, §15A-5-8, §15A-5-9, §15A-6-1, §15A-6-2, §15A-6-3, §15A-6-4, §15A-6-5,
22 §15A-7-1, §15A-7-2, §15A-7-3, §15A-7-4, §15A-7-5, §15A-7-6, §15A-8-1, §15A-8-2, and
23 §15A-8-3; to amend and reenact §19-12A-5 of said code,; and to amend and reenact §50-
24 3-2 and §50-3-4a of said code, all relating generally to supervision of persons committed
25 to the custody of the Division of Corrections, Division of Juvenile Services, and the
26 Regional Jail and Correctional Facility Authority; setting forth rules of construction; defining

27 terms; creating Division of Administrative Services within Department of Military Affairs
28 and Public Safety; defining scope of duties for Division of Administrative Services;
29 authorizing appointment of director; setting qualifications for director; providing authority
30 and duties for director; authorizing director to enter into memorandum of understanding
31 with certain agencies to provide services; transferring certain employees, responsibilities,
32 equipment and records to Division of Administrative Services; providing for classified
33 service coverage for certain employees; creating Division of Corrections and
34 Rehabilitation within Department of Military Affairs and Public Safety; eliminating Division
35 of Corrections and Division of Juvenile Services and transferring powers and authority to
36 Division of Corrections and Rehabilitation; transferring certain powers and authority of
37 Regional Jail and Correctional Facility Authority to Division of Corrections and
38 Rehabilitation; setting forth purpose and legislative intent; requiring chapter be construed
39 in favor of public safety; authorizing appointment of commissioner of Division of
40 Corrections and Rehabilitation; requiring commissioner subscribe to oath and execute
41 bond; abolishing office of Commissioner of Division of Corrections, Director of Juvenile
42 Services, and Executive Director of Regional Jail and Correctional Facility Authority;
43 vesting powers of abolished offices in office of commissioner of Division of Corrections
44 and Rehabilitation; setting salary for commissioner; setting requirements for
45 commissioner; setting powers and duties of commissioner; providing for the hiring of
46 officers and employees of corrections institutions; providing authority for commissioner or
47 designee to manage and administer certain affairs of correctional units and juvenile
48 facilities under the division's jurisdiction; providing powers of superintendents of
49 institutions or correctional units; requiring commissioner to investigate complaints made
50 against superintendents or employees of institutions; requiring preemployment drug
51 screening of prospective correctional employees; providing authority for superintendent
52 and commissioner over employees; providing exceptions; authorizing hiring of correctional

53 officer employees without regard to position on register; providing for compensation of
54 employees; providing for reimbursement or provision of traveling and other expenses
55 under certain circumstances; providing for certain reporting by commissioner and chief
56 officers of institutions to State Auditor; prohibiting special compensation of officers and
57 employees; providing penalties for violations of provision; setting forth certain law-
58 enforcement powers of employees; establishing Corrections Special Operations Team;
59 authorizing commissioner to prescribe design of employee uniforms; providing limitations
60 on commissioner and municipalities with respect to uniform design; establishing criminal
61 penalties for wearing or using uniform, badge, identification card or insignia with intent to
62 deceive; establishing criminal penalty for falsely representing oneself as officer or
63 employee of division; establishing criminal penalty for employee using position to threaten
64 or coerce any other person to receive benefit; providing exceptions; identifying institutions
65 to be managed by commissioner; authorizing certain contracts; authorizing the
66 establishment of certain work and study release units; authorizing contract with nonprofit
67 or charitable entities; setting terms of placing person in half-way house or transitional
68 housing facility; placing adult persons sentenced to incarceration under the jurisdiction of
69 the commissioner in the custody of the commissioner; authorizing transfer of adult inmates
70 among institutions; granting contracting authority to commissioner for county jails or other
71 incarceration facilities; directing establishment of a per diem rate for felony sentenced
72 inmates; authorizing transfer of mentally disturbed adult prisoners or inmates; directing
73 commissioner evaluate all facilities for most appropriate space to house each type of
74 inmate; requiring consultation with Juvenile Justice Commission regarding current or
75 prospective juvenile facilities; requiring report on evaluation to Joint Committee on
76 Government and Finance; prohibiting conversion of juvenile facilities to adult facilities or
77 adult facilities to juvenile facilities absent legislative authorization; vesting title to certain
78 properties in the state; making commissioner custodian of deeds; authorizing lease of

79 West Virginia penitentiary in Moundsville, subject to certain conditions, with approval of
80 secretary of Military Affairs and Public Safety; exempting division from purchasing;
81 providing procedures to be followed when purchasing is done by division; providing
82 conditions for emergency purchasing; authorizing certain agreements with medical
83 schools and higher education institutions; authorizing mutual aid agreements, subject to
84 certain conditions, with approval of secretary of Military Affairs and Public Safety;
85 continuing certain funds from Regional Jail and Correctional Facility Authority; providing
86 for transfer of fund administration from Regional Jail and Correctional Facility Authority or
87 its executive director; limiting use of jail funds to certain operations and expenses;
88 authorizing investment under certain circumstances; identifying contents of funds;
89 authorizing certain expenditures of funds; requiring incarceration of persons by counties
90 in jail facilities; providing exceptions; clarifying authority of circuit and magistrate courts
91 with respect to detention and commitment; requiring payment by county or municipality for
92 per-day cost of incarceration; providing for establishment of per-day cost; capping per-day
93 cost for a period of time; providing conditions for calculating per-day cost; establishing
94 period of time for which county is responsible for costs of housing and maintaining inmates
95 in its facilities; directing preparation of a report on feasibility of phasing out per diem
96 charges; directing contents of report; continuing Jail Operations Partial Reimbursement
97 Fund; establishing source of revenues; providing for use of funds; providing for
98 administration of fund; granting rule-making authority; granting authority to develop
99 policies; continuing legislative rules and policies of former Division of Corrections, Division
100 of Juvenile Services, and Regional Jail and Correctional Facility Authority; authorizing
101 furlough programs; authorizing rule-making; providing certain parameters for furlough
102 program; granting immunity, with certain limitations, to certain persons and entities for
103 claims arising out of furlough program; authorizing electronic monitoring; requiring
104 commissioner charge reasonable fee; providing exceptions; providing for deposit and use

105 of fees; setting parameters for electronic devices; authorizing continuation and
106 establishment of diagnostic and classification subdivisions; requiring all persons
107 committed to the custody of the division to undergo diagnosis and classification; requiring
108 division perform mental health preliminary screenings; authorizing commissioner to
109 transfer inmates; providing conditions for transfer under certain circumstances;
110 authorizing monitoring of inmate telephone calls, inmate mail, and inmate electronic
111 correspondence; requiring notice to inmates of monitoring; providing procedures for and
112 restrictions on monitoring; excepting communications to or from attorneys; requiring
113 promulgation of policy directive establishing record-keeping procedures; providing for use
114 of records when inmate is charged with crimes based on conversations; authorizing
115 establishment of trustee accounts; providing for handling of money and personal property
116 of inmates or residents; requiring certain incarcerated offenders make reimbursement
117 toward cost of incarceration; requiring certain reports concerning the average cost per
118 inmate; authorizing facility superintendent expend up to one half of inmate's money to
119 satisfy certain obligations; providing for distribution of funds upon inmate departure or
120 death; providing for notice of credit of money credited to former inmate or resident under
121 certain circumstances; directing establishment of inmate or resident benefit funds for each
122 institution; requiring reports on inmate benefit funds; continuing special revenue account;
123 identifying sources of moneys for inmate or resident benefit funds; providing for use of
124 funds in inmate or resident benefit funds; requiring division assist inmates in developing
125 financial plans to meet any child support obligations; directing deduction by superintendent
126 from inmate earnings for all legitimate court-ordered financial obligations; providing for
127 civil judgments awarded to inmate to be subject to deductions for child support, restitution
128 or other court-ordered obligations; directing investment of remaining funds with Municipal
129 Bond Commission; limiting reimbursement rate to medical service providers for services
130 outside division facilities; authorizing assessment of certain reasonable charges against

131 inmates for certain services provided by the state; providing exceptions to authority to
132 assess charges; authorizing interpretive rules; directing preparation and preservation of
133 records for indictment and conviction, or charges and adjudication, and a register
134 containing certain information; authorizing establishment of plant for the manufacture of
135 license plates, road signs, or markers; making it unlawful for state employee or official to
136 obtain license plates, road signs, or markers other than through plant; prohibiting certain
137 persons from making gifts to or receiving gifts from inmates or residents; directing
138 commissioner promulgate disciplinary rules and policies; setting penalties for violations;
139 requiring commutation of certain sentences for good conduct; providing exceptions;
140 setting conditions and procedures for commutation of sentences; authorizing Governor to
141 authorize commissioner to consent to transfer or exchange of inmates in his or her custody
142 in accordance with treaty between United States and a foreign country; providing for
143 handling of mentally ill patients; disallowing mentally ill patients being denied parole or a
144 parole hearing based upon condition; providing for facts to be presented to superintendent
145 if convicted person is believed to be mentally ill, intellectually disabled, or addicted;
146 providing for application of transfer to be filed; providing for appointment of special counsel
147 for convict who is indigent; providing for notice to convicted person; setting forth process
148 after application for transfer is filed; authorizing establishment of work program for
149 qualified inmates; setting conditions on work program; providing immunity for certain
150 persons and entities; authorizing employment of Director of Employment and Director of
151 Housing for released inmates; setting authority and duties of directors; directing
152 commissioner establish Bureau of Prisons and Jails; directing appointment of assistant
153 commissioner to oversee Bureau of Prisons and Jails; transferring duties and funds of
154 Division of Corrections to Bureau of Prisons and Jails; directing appointment of
155 superintendents for facilities within Bureau of Prisons and Jails; requiring superintendents
156 post bond; setting authority of superintendents; authorizing establishment of imprest fund;

157 authorizing appointment of deputy superintendents; requiring deputy superintendents post
158 bond; authorizing hiring of other assistants and employees by superintendents with
159 approval of commissioner; providing for oversight of employees; requiring commissioner
160 to make space in every adult institution for both jail and prison populations; setting
161 limitations on requirement to house both jail and prison populations in each adult
162 institution; requiring division conduct pretrial risk assessment of person within three
163 calendar days of arrest and placement in jail; directing pretrial risk assessment be
164 provided to magistrate and circuit clerks; making pretrial risk assessment inadmissible
165 evidence; requiring person committed to be housed in jail pay processing fee; directing
166 where processing fee to be credited; directing refund of fee if person is not convicted;
167 authorizing commissioner or employee to refuse certain offenders if offender appears to
168 need medical attention; directing commissioner establish Bureau of Juvenile Services;
169 transferring duties and funds of Division of Juvenile Services to Bureau of Juvenile
170 Services; directing appointment of assistant commissioner to oversee Bureau of Juvenile
171 Services; directing appointment of superintendents for facilities within Bureau of Juvenile
172 Services; requiring superintendents post bond; setting authority of superintendents;
173 authorizing establishment of imprest fund; authorizing appointment of deputy
174 superintendents; requiring deputy superintendents post bond; authorizing hiring of other
175 assistants and employees by superintendents with approval of commissioner; providing
176 for oversight of employees; directing commissioner establish Bureau of Community
177 Corrections; directing appointment of assistant commissioner to oversee Bureau of
178 Community Corrections; directing appointment of superintendents for facilities within
179 Bureau of Community Corrections; requiring superintendents post bond; authorizing hiring
180 of other assistants and employees by superintendents; providing for supervision of
181 persons on probation or released on parole; directing rules regarding supervision of
182 probationers and parolees; clarifying authority retained by Parole Board; setting powers

183 and duties of state parole officers; authorizing issuance of certificates for state parole
184 officers under certain conditions; continuing Parole Supervision Benefit Fund; authorizing
185 use of money for payment to community corrections program; continuing Regional Jail
186 and Correctional Facility Authority Board; continuing certain powers; transferring certain
187 power and authority to Division of Corrections and Rehabilitation; abolishing certain
188 powers; modifying composition of Regional Jail and Correctional Facility Authority Board;
189 providing for appointment and qualifications of board members; providing for governance
190 by and operation of board; directing authority review per diem cost set by state Budget
191 Office; providing procedures if amount is challenged or believed incorrect; providing
192 certain employees of State Board of Education not subject to supervision and approval of
193 employees of division; making certain employees members of classified service;
194 exempting Division of Corrections and Rehabilitation from requirement to buy certain
195 products from Department of Agriculture; repealing provisions of code related to Division
196 of Corrections; repealing provisions of code related to state correctional and penal
197 institutions; repealing provisions of code related to West Virginia Regional Jail and
198 Correctional Facility Authority; repealing provisions of code related to probation and
199 parole; repealing provisions of code related to corrections management; updating code
200 references; eliminating obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.

1 (a) Each of the following appointive state officers named in this subsection shall be
2 appointed by the Governor, by and with the advice and consent of the Senate. Each of the

3 appointive state officers serves at the will and pleasure of the Governor for the term for which the
4 Governor was elected and until the respective state officers' successors have been appointed
5 and qualified. Each of the appointive state officers are subject to the existing qualifications for
6 holding each respective office and each has and is hereby granted all of the powers and authority
7 and shall perform all of the functions and services heretofore vested in and performed by virtue
8 of existing law respecting each office.

9 The annual salary of each named appointive state officer is as follows:

10 Commissioner, Division of Highways, \$92,500; Commissioner, Division of Corrections and
11 Rehabilitation, \$90,000; Director, Division of Natural Resources, \$75,000; Superintendent, State
12 Police, \$85,000; Commissioner, Division of Financial Institutions, \$75,000; Commissioner,
13 Division of Culture and History, \$65,000; Commissioner, Alcohol Beverage Control Commission,
14 \$75,000; Commissioner, Division of Motor Vehicles, \$75,000; Director, Human Rights
15 Commission, \$55,000; Commissioner, Division of Labor, \$70,000; Chairperson, Board of Parole,
16 \$55,000; members, Board of Parole, \$50,000; members, Employment Security Review Board,
17 \$17,000; and Commissioner, Workforce West Virginia, \$75,000. Secretaries of the departments
18 shall be paid an annual salary as follows: Health and Human Resources, \$95,000: *Provided*, That
19 effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be
20 paid an annual salary not to exceed \$175,000; Transportation, \$95,000: *Provided, however*, That
21 if the same person is serving as both the Secretary of Transportation and the Commissioner of
22 Highways, he or she shall be paid \$120,000; Revenue, \$95,000; Military Affairs and Public Safety,
23 \$95,000; Administration, \$95,000; Education and the Arts, \$95,000; Commerce, \$95,000;
24 Veterans' Assistance, \$95,000; and Environmental Protection, \$95,000: *Provided further*, That
25 any officer specified in this subsection whose salary is increased by more than \$5,000 as a result
26 of the amendment and reenactment of this section during the 2011 regular session of the
27 Legislature shall be paid the salary increase in increments of \$5,000 per fiscal year beginning
28 July 1, 2011, up to the maximum salary provided in this subsection.

29 (b) Each of the state officers named in this subsection shall continue to be appointed in
30 the manner prescribed in this code and shall be paid an annual salary as follows:

31 Director, Board of Risk and Insurance Management, \$80,000; Director, Division of
32 Rehabilitation Services, \$70,000; Director, Division of Personnel, \$70,000; Executive Director,
33 Educational Broadcasting Authority, \$75,000; Secretary, Library Commission, \$72,000; Director,
34 Geological and Economic Survey, \$75,000; Executive Director, Prosecuting Attorneys Institute,
35 \$80,000; Executive Director, Public Defender Services, \$70,000; Commissioner, Bureau of
36 Senior Services, \$75,000; Executive Director, Women's Commission, \$45,000; Director, Hospital
37 Finance Authority, \$35,000; member, Racing Commission, \$12,000; Chairman, Public Service
38 Commission, \$85,000; members, Public Service Commission, \$85,000; Director, Division of
39 Forestry, \$75,000; and Executive Director of the Health Care Authority, \$80,000.

40 (c) Each of the following appointive state officers named in this subsection shall be
41 appointed by the Governor, by and with the advice and consent of the Senate. Each of the
42 appointive state officers serves at the will and pleasure of the Governor for the term for which the
43 Governor was elected and until the respective state officers' successors have been appointed
44 and qualified. Each of the appointive state officers are subject to the existing qualifications for
45 holding each respective office and each has and is hereby granted all of the powers and authority
46 and shall perform all of the functions and services heretofore vested in and performed by virtue
47 of existing law respecting each office.

48 The annual salary of each named appointive state officer shall be as follows:

49 Commissioner, State Tax Division, \$92,500; Insurance Commissioner, \$92,500; Director,
50 Lottery Commission, \$92,500; Director, Division of Homeland Security and Emergency
51 Management, \$65,000; and Adjutant General, \$125,000.

52 (d) No increase in the salary of any appointive state officer pursuant to this section may
53 be paid until and unless the appointive state officer has first filed with the State Auditor and the
54 Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General,

55 certifying that his or her spending unit is in compliance with any general law providing for a salary
56 increase for his or her employees. The Attorney General shall prepare and distribute the form to
57 the affected spending units.

CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.

ARTICLE 1. DEFINITIONS.

§15A-1-1. Rules of construction generally.

1 Whenever in this chapter, or in any rule or regulation authorized by it, any of the words,
2 terms, or phrases defined in this article are used, they shall be taken and construed to have the
3 meaning, application, and effect ascribed to them in this article, unless otherwise specified or
4 clearly intended.

§15A-1-2. “Department.”

1 “Department” means the Department of Military Affairs and Public Safety.

§15A-1-3. “Secretary.”

1 “Secretary” means the Secretary of the Department of Military Affairs and Public Safety.

§15A-1-4. “Commissioner” defined.

1 “Commissioner” means the Commissioner of the Division of Corrections and
2 Rehabilitation within the Department of Military Affairs and Public Safety.

§15A-1-5. “Inmate” defined.

1 “Inmate” means an adult incarcerated person.

§15A-1-6. “Resident” defined.

1 “Resident” means a juvenile within the custody of the Division of Corrections and
2 Rehabilitation.

ARTICLE 2. DIVISION OF ADMINISTRATIVE SERVICES.

§15A-2-1. Division of Administrative Services.

1 (a) The Division of Administrative Services is created within the department to perform the
2 administrative services for identified agencies within the department.

3 (b) The Division of Administrative Services shall provide fiscal services, payroll services,
4 human resources services, and procurement services for the Division of Corrections and
5 Rehabilitation, created in §15A-3-1 *et seq.* of this code, and any other agencies or boards required
6 by the secretary: *Provided*, That the secretary may not require the administrative services of the
7 State Police, the West Virginia National Guard, or the West Virginia Military Authority be provided
8 by the Division of Administrative Services.

9 (c) The State Police, the West Virginia National Guard, and the West Virginia Military
10 Authority may elect to utilize the services of the Division of Administrative Services. The director
11 of the Division of Administrative Services is authorized to enter into a memorandum of
12 understanding with the head of the State Police, the West Virginia National Guard, or the West
13 Virginia Military Authority to effectuate this utilization.

§15A-2-2. Division director; appointment and qualifications; powers and duties.

1 (a) The secretary shall appoint a director for the Division of Administrative Services who
2 shall serve at the will and pleasure of the secretary. The director shall have extensive knowledge
3 in the field of public safety and the principles and practices of administration and experience in
4 the civil service system.

5 (b) The director shall have control and supervision of the Division of Administrative
6 Services and shall be responsible for the work of each of its employees.

7 (c) The director shall have the authority to employ all personnel necessary to perform the
8 functions of the Division of Administrative Services. The director shall also have the authority to
9 employ assistants and attorneys as may be necessary for the efficient operation of the Division
10 of Administrative Services.

11 (d) The director shall perform the duties herein specified and shall also perform other
12 duties as the secretary may prescribe.

13 (e) Where reference in this article is made to the “director”, it shall mean the Director of
14 the Division of Administrative Services.

§15A-2-3. Transfer of employees; continuation of programs; transfer of equipment and records; protection.

1 (a) Effective July 1, 2018, all persons employed on the effective date of this article by the
2 Division of Juvenile Services, the Regional Jail and Correctional Facility Authority or the Division
3 of Corrections whose current employment responsibilities include those to be provided by the
4 Division of Administrative Services are hereby assigned and transferred to the Division of
5 Administrative Services.

6 (1) The Division of Administrative Services shall assume all responsibilities of the
7 administrative services sections of the Division of Juvenile Services, the Regional Jail and
8 Correctional Facility Authority and the Division of Corrections, including those related to ongoing
9 programs, benefits, litigation or grievances.

10 (2) All equipment and records necessary to effectuate the purposes of this article shall be
11 transferred to the Division of Administrative Services.

12 (b) Any person transferred to the office of the director of the division of administrative
13 services who on the effective date of this article is a classified civil service employee shall, within
14 the limits contained in §29-6-1 *et seq.* of this code, remain in the civil service system as a covered
15 employee. Any person transferred to the office of the director of the division of administrative
16 services who on the effective date of this article is a classified exempt civil service employee,
17 other than the Director, and his or her Deputy Directors, and one exempt assistant, shall, within
18 the limits contained in §29-6-1 *et seq.* of this code, be transferred into the civil service system as
19 a permanent covered employee, and is no longer exempt: *Provided*, That any transferred
20 employee that has been employed in his or her position for less than the required probationary
21 period must first complete the probationary period prior to becoming a permanent covered
22 employee.

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-1. Purpose and legislative intent.

1 (a) The primary purpose of the Division of Corrections and Rehabilitation is to enhance
2 public safety by providing for the detention of juvenile offenders, both pretrial and adjudicated,
3 pretrial detention of adult persons facing criminal charges, and incarceration and care of adult
4 convicted offenders who have been sentenced by courts of proper jurisdiction to serve terms of
5 incarceration.

6 (b) It is the intent of the Legislature:

7 (1) That juveniles and adult offenders be afforded appropriate education and treatment to
8 reestablish their ability to live peaceably, consistent with the protection of the community;

9 (2) That persons held in pretrial detention, and committed to jails and correctional
10 institutions of the state for whom release is available for crimes, be afforded appropriate treatment
11 to reestablish their ability to live peaceably, consistent with the protection of the community;

12 (3) That persons committed to jails and correctional institutions of the state be released at
13 the earliest possible date, consistent with public safety;

14 (4) To establish a just, humane, and efficient corrections program; and

15 (5) To avoid duplication and waste of effort and money on the part of public and private
16 agencies.

(c) This chapter shall be construed in favor of public safety.

§15A-3-2. Division of Corrections and Rehabilitation established.

1 (a) The Division of Corrections and Rehabilitation is hereby established within the
2 Department of Military Affairs and Public Safety. The executive and administrative head of the
3 Division of Correction and Rehabilitation shall be the Commissioner appointed pursuant to §15A-
4 3-3 of this code.

5 (b) Effective July 1, 2018, the Division of Corrections and the Division of Juvenile Services
6 are hereby abolished. Except as otherwise provided in this chapter, the powers and authority of
7 those divisions are hereby transferred to the Division of Corrections and Rehabilitation.

8 (c) Effective July 1, 2018, the powers and authority of the Regional Jail and Correctional
9 Facility Authority Board, in relation to all functions of correctional operations, are hereby
10 transferred to the Division of Corrections and Rehabilitation. The Regional Jail and Correctional
11 Facility Authority Board shall only retain the powers authorized in §15A-8-1 *et seq.* of this code.

12 (d) Whenever in this code a reference is made to the Division of Corrections, it shall be
13 construed to mean the Division of Corrections and Rehabilitation. Wherever in this code a
14 reference is made to the Division of Juvenile Services, it shall be construed to mean the Division
15 of Corrections and Rehabilitation. Whenever in this code reference is made to the Regional Jail
16 and Correctional Facility Authority Board in relation to operations of any of the regional jails, it
17 shall be construed to mean the Division of Corrections and Rehabilitation.

18 (e) Any person employed by the Division of Corrections and Rehabilitation who on the
19 effective date of this article is a classified service employee shall, within the limits contained in
20 §29-6-1 *et seq.* of this code, remain in the classified service system as a covered employee.

21 (f) Where reference in this article is made to the “division”, it shall mean the Division of
22 Corrections and Rehabilitation.

§15A-3-3. Commissioner of division; qualifications, oath and bond.

1 (a) A commissioner of the Division of Corrections and Rehabilitation shall be appointed by
2 the Governor, by and with the advice and consent of the Senate, as provided in §6-7-2a of this
3 code.

4 (b) Effective July 1, 2018, the offices of Commissioner of Division of Corrections, the
5 Director of Juvenile Services, and the Executive Director of the Regional Jail and Correctional
6 Facility Authority are hereby abolished. Except as otherwise provided in this chapter, the powers
7 and authority of those officers are vested in the Commissioner of the Division of Corrections and
8 Rehabilitation.

9 (c) The commissioner shall take and subscribe to the oath prescribed by the Constitution
10 for public officials and shall execute an official bond in a penalty of \$15,000, conditioned as

11 required by law. Premiums on the bond shall be paid from appropriations made for the
12 commissioner's office. The bond shall be approved as to form by the Attorney General and as to
13 sufficiency by the Governor and, when fully executed and approved, shall be filed in the office of
14 the Secretary of State.

15 (d) Whenever in this code, reference is made to the Commissioner of the Division of
16 Corrections or the Director of the Division of Juvenile Services, it shall be construed to mean the
17 Commissioner of the Division of Corrections and Rehabilitation. Whenever in this code reference
18 is made to the Executive Director of the Regional Jail and Correctional Facility Authority, in relation
19 to operations of any of the regional jails, it shall be construed to mean the Commissioner of the
20 Division of Corrections and Rehabilitation.

§15A-3-4. Powers and duties of commissioner generally.

1 (a) The commissioner, in order to carry out the purposes and intent of this chapter, shall:

2 (1) Exercise general supervision over the administration of the institutions under the
3 jurisdiction of the division;

4 (2) Establish separate subdivisions, including a Bureau of Prisons and Jails, a Bureau of
5 Juvenile Services, and a Bureau of Community Corrections, each to be headed by assistant
6 commissioners, and other subdivisions as he or she deems advisable, which may be headed by
7 one of the assistant commissioners, or by deputy directors. Nothing herein shall prohibit the
8 commissioner from appointing the same person to head more than one subdivision;

9 (3) Establish rules, policies, and regulations in writing governing all subdivisions and
10 institutions within the division;

11 (4) Establish an appropriate training program for personnel of the division;

12 (5) Classify the institutions of the division, varying according to the factors as security
13 features, program, age, and sex of inmates, physical stature or size, character of inmates;

14 (6) Establish a system of classification of inmates and residents, through a reception and
15 examination procedure;

16 (7) Cooperate with the Department of Education in providing for the education of inmates
17 and residents in all institutions within the division, as provided in §18-2-13f of this code and any
18 other provision of this code;

19 (8) Supervise the treatment, custody, and discipline of all inmates and residents and the
20 maintenance of the institutions and their industries;

21 (9) Establish a system of compensation for inmates and residents of the institutions of the
22 state who perform good and satisfactory work either within the industrial program or in the
23 servicing and maintenance of the institutions or any other institutions or camps within the state.
24 The commissioner, or his or her designee, may establish a graduated scale of compensation to
25 be paid to inmates and residents in accordance with their skill in industry; and

26 (10) Subject to the provisions in §25-1A-5 of this code, provide for the transportation of
27 inmates between the jails and local holding facilities for court appearances.

28 (b) The commissioner, in order to carry out the purposes and intent of this chapter, may:

29 (1) Appoint a deputy commissioner to assist in the day to day operations of the division;

30 (2) Employ professional and support staff, including, but not limited to, certified public
31 accountants, attorneys, assistants, and other employees as necessary for the efficient operation
32 of the division;

33 (3) Acquire, own, hold, and dispose of property, real and personal, tangible and intangible;

34 (4) Lease property, whether as a lessee or lessor;

35 (5) Conduct examinations and investigations and hear testimony and take proof, under
36 oath or affirmation;

37 (6) Issue subpoenas requiring the attendance of witnesses and the production of books
38 and papers relevant to any hearing before the commissioner, or his or her designee, to conduct
39 any hearing;

40 (7) Apply to the circuit court having venue of the offense to have punished for contempt
41 any witness who refuses to obey a subpoena, refuses to be sworn or affirmed, or refuses to testify,
42 or who commits any contempt after being summoned to appear;

43 (8) Sue and be sued, implead and be impleaded, and complain and defend in any court;

44 (9) Propose rules for legislative approval for the management and regulation of the affairs
45 of the division pursuant to the provisions of §29A-3-1 *et seq.* of this code;

46 (10) Make policies for the management and regulation of the affairs of the divisions;

47 (11) Make contracts of every kind and nature and to execute all instruments necessary or
48 convenient for carrying on its business, including contracts with any other governmental agency
49 of this state or of the federal government or with any person, individual, partnership, or corporation
50 to affect any or all of the purposes of this chapter;

51 (12) Accept gifts or grants of property, funds, security interests, money, materials, labor,
52 supplies, or services from the United States of America or from any governmental unit or any
53 person, firm, or corporation, acceptance or disposition of gifts or grants; and

54 (13) Designate a facility as a rehabilitation facility; a rehabilitation facility may utilize
55 recommendations on programming from West Virginia higher education institutions and share
56 statistical data with the same institutions for study on the effectiveness of services provided by
57 the institution.

§15A-3-5. Officers and employees of corrections institutions.

1 (a) The commissioner, or his or her designee, has the authority to manage and administer
2 the finances, business, operations, security, and personnel affairs of correctional units and
3 juvenile facilities under the jurisdiction of the division.

4 (b) The superintendent of each institution or correctional unit has the power to hire all
5 assistants and employees required for the management of the institution in his or her charge, but
6 the number of the assistants and employees, and their compensation, shall first be approved by
7 the commissioner.

8 (c) It is the duty of the commissioner to investigate any complaint made against the
9 superintendent of any institution, and against any other officer or employee thereof, if the same
10 has not been investigated.

11 (d) All prospective correctional employees shall pass a preemployment drug screening
12 prior to being hired.

13 (e) All persons employed at a state-operated correctional institution or correctional unit
14 are subject to the supervision and approval of the superintendent and the authority of the
15 commissioner, or his or her designee, except those persons employed by the State Board of
16 Education, pursuant to §18-2-13f of this code.

§15A-3-6. Hiring of correctional officer without regard to position on the register.

1 Notwithstanding any provision of law to the contrary or any rule promulgated under the
2 provisions of this code, the Division of Corrections and Rehabilitation may hire any person listed
3 on the Correctional Officer I Register for employment as a Correctional Officer I without regard to
4 the person's position on the register: *Provided*, That no person on the Correctional Officer I
5 Register may be offered employment or hired before an otherwise qualified person on a
6 preference register who is willing to accept the position.

§15A-3-7. Compensation of employees; traveling and other expenses.

1 The commissioner shall, in accordance with the provisions of §29-6-1 *et seq.* of this code,
2 approve the salaries of all employees of the division. Salaries shall be commensurate with their
3 duties and responsibilities, but no meals or other emoluments of any kind shall be furnished,
4 given, or paid to the employee as all or part of their salary. The employees may be provided
5 meals, household facilities, and supplies as may be necessary for them to perform their duties, if
6 the employees agree to pay the reasonable cost as established by the commissioner. In the event
7 of an emergency, such as a riot or other disturbance, the commissioner may authorize meals to
8 be provided to employees at no cost. Additionally, the commissioner may establish a procedure
9 to reimburse employees reasonable costs in the event the employee's personal property is stolen
10 or damaged by an inmate or resident. All persons employed under this article are entitled to be
11 reimbursed for necessary traveling and other expenses.

§15A-3-8. Reports by commissioner and chief officers of institutions to Auditor.

1 The commissioner shall, from time to time, as may be necessary, make a report to the
2 Auditor, which shall state the name of each person employed at any of the institutions named in
3 §15A-3-12 of this code, his or her official designation and biweekly rate of compensation, and out
4 of what funds or appropriation the same is payable. The superintendent of the institution, or other
5 person who may have been appointed for the purpose by the commissioner, shall make and
6 certify to the Auditor at the end of each month a list of persons to whom any payments may be
7 due, stating for what purpose due, the amount due each person, and the fund or appropriation
8 from which payable; one copy whereof shall be filed in the office of the institution where made,
9 and one in the office of the commissioner. If the Auditor finds the list correct and in accordance
10 with the reports made to him or her by the commissioner, he or she may pay to the persons
11 entitled thereto the amounts so certified as due each.

§15A-3-9. Special compensation of officers and employees prohibited; penalty.

1 No officer or employee shall receive, directly or indirectly, any other compensation for his
2 or her services than that provided by law, or by the commissioner before his or her appointment,
3 nor shall he or she receive any compensation whatever, directly or indirectly, for any act or service
4 which he or she may do or perform for or on behalf of any contractor, or agent, or employee of a
5 contractor. For any violation of this section the officer, agent, or employee of the state engaged
6 therein shall be dismissed from his or her office or service, and every contractor, or employee, or
7 agent of a contractor, engaged therein shall be expelled from the grounds of an institution, and
8 not again employed in any institution as a contractor, agent, or employee.

§15A-3-10. Law-enforcement powers of employees.

1 (a) Other than as outlined in this section, a correctional officer employed by the division is
2 not a law-enforcement officer as that term is defined in §30-29-1 of this code.

3 (b) The commissioner is a law-enforcement official, and has the authority to use, and
4 permit and allow or disallow his or her designated employees to use, publicly provided carriage

5 to travel from their residences to their workplace and return: *Provided*, That the usage is subject
6 to the supervision of the Commissioner and is directly connected with and required by the nature
7 and in the performance of the official's or designated employee's duties and responsibilities.

8 (c) All employees of the division are responsible for enforcing rules and laws necessary
9 for the control and management of correctional units and the maintenance of public safety that is
10 within the scope of responsibilities of the division.

11 (d) Persons employed by the Division of Corrections and Rehabilitation as correctional
12 officers are hereby authorized and empowered to make arrests of persons already charged with
13 a violation of law who surrender themselves to the correctional officer, to arrest persons already
14 in the custody of the division for violations of law occurring in the officer's presence, to detain
15 persons for violations of state law committed on the property of any facility under the jurisdiction
16 of the commissioner, and to conduct investigations, pursue, and apprehend escapees from the
17 custody of a facility of the division.

18 (e) The commissioner may designate correctional employees as correctional peace
19 officers who have the authority:

20 (1) To detain persons for violations of state law committed on the property of any state
21 correctional institution;

22 (2) To conduct investigations regarding criminal activity occurring within a correctional
23 facility;

24 (3) To execute criminal process or other process in furtherance of these duties; and

25 (4) To apply for, obtain, and execute search warrants necessary for the completion of his
26 or her duties and responsibilities.

27 (f) The Corrections Special Operations Team is hereby established and shall consist of
28 the Corrections Emergency Response Team, the K9 unit, and the Crisis Negotiations team
29 created under the former Division of Corrections. The Corrections Special Operations Team
30 serves as the first responder necessary for the protection of life, liberty, and property. It shall have

31 limited law-enforcement authority regarding matters occurring at jails, correctional centers, and
32 juvenile centers, and arrest powers to apprehend escapees, absconders, and in all matters arising
33 on the grounds of a facility under the care and control of the commissioner: *Provided*, That at any
34 time the Corrections Special Operations Team is apprehending an escapee or an absconder
35 outside the confinement of the facility grounds, it does so with the assistance and cooperation of
36 local law enforcement or the West Virginia State Police.

**§15A-3-11. Unauthorized use of uniform, badge, identification card, or other insignia;
impersonation of member; and penalty.**

1 (a) The commissioner shall prescribe the design, or designs, of uniforms used by
2 employees of the division, which shall be dissimilar to the design of the uniform worn by the
3 members of the State Police or the established statewide uniform of a sheriff or deputy sheriffs.
4 A municipality shall not adopt for its police officers or other employees a uniform which is similar
5 in design to the uniform adopted by the commissioner.

6 (b) No person who is not an officer or employee of the Division of Corrections and
7 Rehabilitation, and no officer or employee of the division who is not authorized to do so, may, with
8 intent to deceive, wear, use, order to be used or worn, copy, or imitate in any respect or manner
9 the uniform, badge, identification card, or other insignia prescribed for employees of the division.

10 (c) No person who is not an officer or employee of the Division of Corrections and
11 Rehabilitation may falsely represent himself or herself to be an officer or employee of the Division
12 of Corrections and Rehabilitation or to be under the order or direction of any officer or employee
13 of the division.

14 (d) No person employed as an officer or employee of the Division of Corrections and
15 Rehabilitation may use his or her position as such to threaten or coerce any other person in order
16 to receive any favoritism, employment, or thing of favor by virtue of his or her employment with
17 the division: *Provided*, That this subsection does not apply to violations of the Prison Rape
18 Elimination Act.

19 (e) Any person who violates the provisions of §15A-3-11(b), §15A-3-11(c), or §15A-3-
20 11(d) of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more
21 than \$200, or confined in the county or regional jail for not more than six months, or both fined
22 and confined.

§15A-3-12. Institutions managed by commissioner.

1 (a) The commissioner shall manage, direct, control, and govern the prisons, jails, or
2 correctional institutions of this state, and the juvenile facilities of this state, including, but not
3 limited to:

- 4 Mount Olive Correctional Complex and Jail;
- 5 Huttonsville Correctional Center and Jail;
- 6 Anthony Correctional Center and Jail;
- 7 Denmark Correctional Center and Jail;
- 8 Pruntytown Correctional Center and Jail;
- 9 Northern Regional Jail and Correctional Center;
- 10 Saint Marys Correctional Center and Jail;
- 11 Lakin Correctional Center and Jail;
- 12 Ohio County Correctional Center and Jail;
- 13 Beckley Correctional Center and Jail;
- 14 Martinsburg Correctional Center and Jail;
- 15 Salem Correctional Center and Jail;
- 16 Parkersburg Correctional Center and Jail;
- 17 Charleston Correctional Center and Jail;
- 18 Central Regional Jail and Corrections Facility;
- 19 Eastern Regional Jail and Corrections Facility;
- 20 North Central Regional Jail and Corrections Facility;
- 21 Potomac Highlands Regional Jail and Corrections Facility;

22 South Central Regional Jail and Corrections Facility;
23 Southern Regional Jail and Corrections Facility;
24 Southwestern Regional Jail and Corrections Facility;
25 Tygart Valley Regional Jail and Corrections Facility;
26 Western Regional Jail and Corrections Facility;
27 Donald R. Kuhn Juvenile Center;
28 Gene Spadaro Juvenile Center;
29 J.M. Chick Buckbee Juvenile Center;
30 Kenneth "Honey" Rubenstein Juvenile Center;
31 Lorrie Yeager Juvenile Center;
32 Robert L. Shell Juvenile Center;
33 Sam Perdue Juvenile Center;
34 Tiger Morton Juvenile Center;
35 Vicki Douglas Juvenile Center; and
36 Any other juvenile or adult facility later transferred to the commissioner.

37 (b) The commissioner may contract with the county commission of McDowell County to
38 house and incarcerate inmates at the Stevens Correctional Center consistent with all
39 requirements and standards governing the division.

40 (c) The commissioner may contract with Youth Services System to house and detain
41 juveniles at the Ronald Mulholland Juvenile Center consistent with all the requirements and
42 standards governing the division.

43 (d) The commissioner may establish work and study release units as extensions and
44 subsidiaries of those state institutions under his or her control and authority. The work and study
45 release units may be coeducational and shall be managed, directed, and controlled as provided
46 in this article.

47 (e) The commissioner may contract with nonprofit or charitable entities including, but not
48 limited to, nonprofit community mental health clinics, operating half-way houses, or transitional
49 housing facilities for the placement of persons in the commissioner's custody, whether confined
50 or under parole supervision, as long as the facilities meet standards and criteria established by
51 the commissioner.

52 (1) The commissioner may direct that a person who is placed in a half-way house or
53 transitional housing facility under this section make reimbursement to the state in the amount of
54 a reasonable sum calculated to offset all or part of the costs of the placement. Prior to ordering
55 the person to make the reimbursement, the commissioner, or his or her designee, shall consider
56 the following:

57 (A) The person's ability to pay;

58 (B) The nature and extent of the person's responsibilities to his or her dependents, if any;

59 (C) The length of probable incarceration under the court's sentence; and

60 (D) The effect, if any, that reimbursement might have on the person's rehabilitation.

61 (2) The division shall provide the number of persons placed in a half-way house or a
62 transitional housing facility as authorized in this section in its report made pursuant to §5-1-20 of
63 this code, and shall describe its plans to use the authority provided under the provisions of §15A-
64 3-12(g) of this code in furtherance of the duties and responsibilities imposed by this article.

65 (f) All adult persons sentenced by a court to serve a sentence of incarceration in a prison,
66 jail, or correctional institution under the jurisdiction of the commissioner shall be deemed to be
67 sentenced to the custody of the commissioner. The commissioner, or his or her designee, has
68 the authority to and may order the transfer of any adult to any appropriate institution within the
69 division.

70 (g) The commissioner has full discretionary authority to contract with any county jail, or
71 other appropriate facility or institution for the incarceration and care of adult inmates. If a felony
72 sentenced inmate is held in a jail facility or unit, under the jurisdiction of the commissioner, the

73 commissioner shall pay a per diem rate, not subject to the limitations set forth in §15A-3-16(g) of
74 this code.

75 (h) The commissioner, or his or her designee, may transfer any adult prisoner or inmate
76 who is mentally disturbed and who would more appropriately be treated in an institution under the
77 jurisdiction of the Bureau of Health, to the Bureau, subject to the approval of the Director of Health,
78 and may transfer any adult prisoner or inmate to an appropriate mental facility for specialized
79 medical treatment.

80 (i) The commissioner shall, no later than July 1, 2019, complete an evaluation of all
81 facilities within his or her control for the most appropriate space to house each type of inmate,
82 and shall consult with the Juvenile Justice Commission on any and all intended uses of current
83 or prospective juvenile facilities. This evaluation shall include an assessment of the physical plant
84 of each institution, the inmate population size and type, and classification of inmates. Following
85 completion of the evaluation, the commissioner shall develop a plan on how to best utilize the
86 institutional space, and shall report to the Joint Committee on Government and Finance with
87 recommendations regarding implementation of that plan. The commissioner may, from time to
88 time, and as circumstances dictate, reorganize the facilities, and units within the facilities, to house
89 pretrial inmates, convicted misdemeanants, and convicted felons in the most appropriate manner.
90 No facility shall be converted from a juvenile to an adult facility, or from an adult to a juvenile
91 facility, without legislative authorization.

**§15A-3-13. Title to property of state institutions; custody of deeds and other muniments of
title; authority of Commissioner.**

1 The title to all property constituting or belonging to the several institutions named in §15A-
2 3-12 of this code is vested in the state. The commissioner is custodian of all deeds and other
3 muniments of title and shall cause such as are susceptible of recordation to be recorded in the
4 proper offices. The commissioner is authorized, as lessor, to lease the West Virginia penitentiary
5 in Moundsville, title to which is vested in the state by prior act of the Legislature, for a term of not

6 more than five years: *Provided*, That this section does not affect any lease in effect as of the
7 effective date of this section. Any agreement entered into under this section shall be with the
8 consent and approval of the Secretary of the Department of Military Affairs and Public Safety, and
9 shall include a provision within each agreement allowing for the immediate termination by the
10 secretary or commissioner at any time.

§15A-3-14. Exempt from Purchasing Division; purchasing procedures.

1 (a) The provisions established in §5A-3-1 *et seq.* of this code do not apply to the division
2 or any institution under the control of the division.

3 (b) When the cost under any contract or agreement entered into by the division, other than
4 compensation for personal services, involves an expenditure of more than \$2,500 and less than
5 \$25,000, the division shall solicit at least 3 bids, if possible, from vendors and make a written
6 contract with the lowest responsible bidder. When the cost under any contract or agreement
7 entered into by the division, other than compensation for personal services, involves an
8 expenditure of \$25,000 or more, the division shall make a written contract with the lowest
9 responsible bidder after public notice published as a Class II legal advertisement in compliance
10 with the provisions of §59-3-1 *et seq.* of this code, the publication area for the publication to be
11 the county or counties wherein the work is to be performed or which is affected by the contract,
12 which notice shall state the general character of the work and general character of the materials
13 to be furnished, the place where plans and specifications therefor may be examined and the time
14 and place of receiving bids. But a contract for lease of a correctional facility is not subject to the
15 foregoing requirements and the division may enter into the contract for lease pursuant to
16 negotiation upon the terms and conditions and for the period as it finds to be reasonable and
17 proper under the circumstances and in the best interests of proper operation or efficient
18 acquisition or construction of the projects. The division may reject any and all bids. A bond with
19 good and sufficient surety, approved by the division, shall be required of all contractors in an

20 amount equal to at least 50 percent of the contract price, conditioned upon faithful performance
21 of the contract.

22 (c) If the division has to make a purchase under emergency conditions, or an emergency
23 situation, which jeopardizes the safe, secure, and orderly operations of the division, as deemed
24 by the Commissioner, and approved by the Secretary, §15A-3-14(a) and §15A-3-14(b) of this
25 code shall not apply.

26 (d) The commissioner may enter into agreements with medical schools and institutions of
27 higher education in this state to develop standards for appropriate and innovative medical
28 programming and care for inmates: *Provided*, That the division will follow the procedures set forth
29 in §15A-3-14(b) of this code for delivery of regular and normal medical care within the facilities.

§15A-3-15. Mutual aid agreements.

1 (a) The commissioner may enter into agreements to provide for the rendering of mutual
2 aid with the political subdivisions of this state, other states, and the federal government to provide
3 for the common defense, protect the public peace, health, and safety and to preserve the lives
4 and property of the people of this state.

5 (b) Any agreement entered into under this section shall be with the consent and approval
6 of the Secretary of the Department of Military Affairs and Public Safety, and shall include a
7 provision within each agreement allowing for the immediate termination by the secretary or
8 commissioner at any time.

§15A-3-16. Funds for operations of jails under the jurisdiction of the commissioner.

1 (a) Any special revenue funds previously administered by the Regional Jail and
2 Correctional Facility Authority or its Executive Director are continued, and shall be administered
3 by the commissioner.

4 (b) Funds that have been transferred by §15A-3-16(a) of this code shall be limited in use
5 to operations of jail functions, and for payment to the Regional Jail and Correctional Facility
6 Authority Board, for payment of indebtedness. In no case shall a fund be utilized to offset or pay

7 operations of nonjail parts of the facility: *Provided*, That funds may be utilized on a pro rata basis
8 for shared staff and for operational expenses of facilities being used as both prisons and jails.

9 (c) Whenever the commissioner determines that the balance in these funds is more than
10 the immediate requirements of this article, he or she may request that the excess be invested
11 until needed. Any excess funds so requested shall be invested in a manner consistent with the
12 investment of temporary state funds. Interest earned on any moneys invested pursuant to this
13 section shall be credited to these funds.

14 (d) These funds consist of the following:

15 (1) Moneys collected and deposited in the State Treasury which are specifically
16 designated by Acts of the Legislature for inclusion in these funds;

17 (2) Contributions, grants, and gifts from any source, both public and private, specifically
18 directed to the operations of jails under the control of the commissioner;

19 (3) All sums paid pursuant to §15A-3-16(g) of this code; and

20 (4) All interest earned on investments made by the state from moneys deposited in these
21 funds.

22 (e) The amounts deposited in these funds shall be accounted for and expended in the
23 following manner:

24 (1) Amounts deposited shall be pledged first to the debt service on any bonded
25 indebtedness;

26 (2) After any requirements of debt service have been satisfied, the Commissioner shall
27 requisition from these funds the amounts that are necessary to provide for payment of the
28 administrative expenses of this article, as limited by this section;

29 (3) The commissioner shall requisition from these funds, after any requirements of debt
30 service have been satisfied, the amounts that are necessary for the maintenance and operation
31 of jails under his or her control. These funds shall make an accounting of all amounts received

32 from each county by virtue of any filing fees, court costs or fines required by law to be deposited
33 in these funds and amounts from the jail improvement funds of the various counties;

34 (4) Notwithstanding any other provisions of this article, sums paid into these funds by each
35 county pursuant to §15A-3-16(g) of this code for each inmate shall be placed in a separate
36 account and shall be requisitioned from these funds to pay for costs incurred; and

37 (5) Any amounts deposited in these funds from other sources permitted by this article shall
38 be expended based on particular needs to be determined by the commissioner.

39 (f)(1) After a jail facility becomes available pursuant to this article for the incarceration of
40 inmates, each county within the region shall incarcerate all persons whom the county would have
41 incarcerated in any jail prior to the availability of the jail facility in the jail facility, except those
42 whose incarceration in a local jail facility used as a local holding facility is specified as appropriate
43 under the previously promulgated, and hereby transferred standards and procedures developed
44 by the Jail Facilities Standards Commission, and whom the sheriff or the circuit court elects to
45 incarcerate therein.

46 (2) Notwithstanding the provisions of §15A-3-16(f)(1) of this code, circuit and magistrate
47 courts are authorized to:

48 (A) Detain persons who have been arrested or charged with a crime in a county or
49 municipal jail specified as appropriate under the standards and procedures referenced in §15A-
50 3-16(f)(1), for a period not to exceed 96 hours; or

51 (B) Commit persons convicted of a crime in a county or municipal jail, specified as
52 appropriate under the standards and procedures referenced in §15A-3-16(f)(1) of this code, for a
53 period not to exceed 14 days.

54 (g) When inmates are placed in a jail facility under the jurisdiction of the commissioner
55 pursuant to §15A-3-16(f) of this code, the county, and municipality if the incarceration is a
56 municipal violation, shall pay into this fund a cost per day for each incarcerated inmate to be
57 determined by the state Budget Office, by examining the most recent three years of costs

58 submitted by the commissioner for the cost of operating the jail facilities and units under his or
59 her jurisdiction, and taking an average per day, per inmate cost of maintaining the operations of
60 the jail facilities or units: *Provided*, That beginning July 1, 2018, and continuing through July 1,
61 2021, in no case shall any county or municipality be required to pay a rate that exceeds \$48.25
62 per day, per inmate. Nothing in this section shall be construed to mean that the per diem cannot
63 be decreased or be less than \$48.25 per day per inmate.

64 (h) The per diem costs for incarcerating inmates may not include the cost of construction,
65 acquisition, or renovation of the regional jail facilities: *Provided*, That each jail facility or unit
66 operating in this state shall keep a record of the date and time that an inmate is incarcerated, and
67 a county may not be charged for a second day of incarceration for an individual inmate until that
68 inmate has remained incarcerated for more than 24 hours. After that, in cases of continuous
69 incarceration, subsequent per diem charges shall be made upon a county only as subsequent
70 intervals of 24 hours pass from the original time of incarceration.

71 (i) The county is responsible for costs incurred by the division for housing and maintaining
72 inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of
73 housing shall be borne by the division on a felony conviction on which an inmate is incarcerated
74 beginning the calendar day following the day of sentencing: *Provided*, That beginning July 1,
75 2019, the costs of housing shall be borne by the division on a felony conviction when an inmate
76 is incarcerated beginning the calendar day following the day of conviction. In no case shall the
77 county be responsible for any costs of housing and maintaining felony convicted inmate
78 populations.

79 (j) The county is responsible for the costs incurred by the authority for housing and
80 maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and
81 is awaiting transportation to a state correctional facility for a 60 day evaluation period as provided
82 in §62-12-7a of this code.

83 (k) On or before July 1, 2020, the commissioner shall prepare a report on the feasibility of
84 phasing out the county and municipal per diem charges required by §15A-3-16(g) of this code.
85 This report shall include information regarding savings realized because of the consolidation of
86 the former Division of Corrections, Division of Juvenile Services, and the operations of the
87 Regional Jail and Correctional Facility Authority, as well as any other recommendations that might
88 ease the burden of paying the per diem inmate costs by the counties or municipalities. On or
89 before January 1, 2019, January 1, 2020 and January 1, 2021, the commissioner shall report to
90 the Joint Committee on Government and Finance and the co-chairmen of the Joint Standing
91 Committee on Finance the actual per diem rate as calculated pursuant to §15A-3-16(g) of this
92 code and any amount not assessed to counties if the actual per diem cost is larger than the
93 amount charged to the counties or municipalities pursuant to §15A-3-16(g) between July 1, 2018
94 and July 1, 2021.

§15A-3-17. Jail Operations Partial Reimbursement Fund.

1 (a) There is continued in the State Treasury the Jail Operations Partial Reimbursement
2 Fund.

3 (b) Revenues deposited into this fund shall be composed of fees collected by magistrate
4 courts pursuant to §50-3-2(a) of this code, and by circuit courts pursuant to §59-1-11 of this code.

5 (c) Revenues deposited into this fund shall be used to reimburse those counties and
6 municipalities participating in the jail system for the cost of incarceration.

7 (d) The State Treasurer shall, in cooperation with the division, administer the fund. The
8 State Treasurer shall determine the amount of funds available for reimbursement and, upon
9 receiving a report from the commissioner containing the total number of inmate days in the fiscal
10 year immediately concluded, the State Treasurer shall calculate the reimbursement to each
11 participant based upon a pro rata share formula: *Provided*, That only counties and municipalities
12 that, on July 1 of each year, are not more than 90 days delinquent in payments for moneys to

13 incarcerate its offenders are eligible to receive this reimbursement: *Provided, however,* That the
14 pro rata share formula shall not include the counties or municipalities which are not entitled to
15 reimbursement pursuant to this section.

16 (e) A participant's share shall be comparable with its total of inmate days, which shall
17 consist of the number of inmates it contributed to the regional jail system and the number of days
18 those inmates remained incarcerated.

19 (f) A participant's share shall be disbursed annually, within 90 days of July 1 each year,
20 as provided in §15A-3-17(d) of this section.

§15A-3-18. Rules.

1 (a) The commissioner is authorized to propose rules for legislative authorization pursuant
2 to §29A-3-1 *et seq.* of this code or develop policies for the proper execution of his or her duties
3 and powers; adopt rules or policies for the government of the institutions named or referred to in
4 §15A-3-12 of this code; adopt rules or policies for the administration of the financial and business
5 affairs of the institutions named or referred to in §15A-3-12 of this code, and establish policies
6 regarding the treatment of mentally ill inmates, which reflect the safety and security concerns
7 specific to jails and correctional facilities.

8 (b) All legislative rules and policies of the former Division of Corrections, the former
9 Division of Juvenile Services, and the Regional Jail and Correctional Facility Authority shall
10 remain effective until amended or terminated pursuant to the provisions of §29A-3-1 *et seq.* of
11 this code by the Division of Correction and Rehabilitation: *Provided,* That these rules shall expire
12 on July 1, 2021, if not superseded sooner.

13 (c) Notwithstanding any provisions of law to the contrary, the division is not subject to the
14 rules promulgated by, nor any mandates upon, the board of health for the treatment of mentally
15 ill patients.

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-1. Applicability of article.

1 (a) Except as otherwise provided herein, the provisions of this article relate to adult
2 inmates housed in jails, prisons, and correctional facilities, and do not apply to juvenile residents
3 housed in juvenile centers.

4 (b) Where reference in this article is made to the “division”, it shall mean the Division of
5 Corrections and Rehabilitation.

§15A-4-2. Furlough programs.

1 (a) The commissioner may establish a furlough program for inmates committed to his or
2 her custody for a felony offense. The program may provide that selected inmates be permitted to
3 reside outside an institution operated by the division pursuant to legislative rules promulgated
4 pursuant to §29A-3-1 *et seq.* of this code.

5 (b) The commissioner, or his or her designee, is authorized to propose rules for legislative
6 authorization, pursuant to §29A-3-1 *et seq.* of this code, or policy directives, promulgated by the
7 commissioner, a furlough program for pretrial and misdemeanor inmates under his or her control
8 and custody in accordance with the following provisions:

9 (1) The program may include, but is not limited to, granting furloughs or special escorts
10 for specified inmates under the commissioner’s control and custody to attend funerals or make
11 hospital visits to terminally ill family members.

12 (2) The commissioner shall establish criteria to be used in determining which inmates are
13 not likely to jeopardize public safety and should be granted a furlough or a special escort through
14 this program.

15 (3) The commissioner is authorized to establish any other guidelines he or she considers
16 necessary to administer the program and to ensure public safety, including, but not limited to:

17 (A) Eligibility for consideration, restrictions, conditions, and procedures; and

18 (B) The family relationship an inmate must have with the deceased or terminally ill
19 individual in order to qualify for consideration for a furlough.

20 (c)(1) The division, the commissioner, members of the Regional Jail and Correctional
21 Facility Authority Board, and employees of the division are immune from suit and liability, either
22 personally or in their official capacity, for any claim for damage to or loss of property or personal
23 injury or other civil liability caused or arising out of any actual or alleged act of an inmate while on
24 a furlough granted under this section.

25 (2) The immunity from suit and liability provided in this subsection does not extend to
26 liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton
27 misconduct of any person identified in §15A-4-2(c)(1) of this code.

§15A-4-3. Electronic monitoring of offenders; special account.

1 (a) The commissioner may use electronic monitoring equipment to aid in the supervision
2 of offenders.

3 (b) The commissioner shall charge offenders subject to supervision by means of electronic
4 monitoring equipment a reasonable fee, to be established under a legislative rule proposed by
5 the commissioner for legislative authorization pursuant to §29A-3-1 *et seq.* of this code, to help
6 defray the costs of the purchase and use of the equipment and the division's operational costs:
7 *Provided,* That an offender's inability to pay a fee does not preclude the offender from being
8 eligible for this program.

9 (c) All fees collected shall be deposited in a special account in the State Treasury
10 designated the "electronic monitoring program account." The funds deposited in the account may
11 be used by the commissioner only for the operation of the program and for the administration of
12 the division.

13 (d) For purposes of this section, "electronic monitoring equipment" means an electronic
14 device or apparatus approved by the division that is capable of recording or transmitting
15 information regarding the offender's presence or nonpresence in a designated area. The device

16 shall be minimally intrusive. Except to the extent provided in this section, the division shall not
17 approve any monitoring device which is capable of recording or transmitting: (1) Visual images,
18 except for that of a still image of the offender that can only be transmitted by the offender triggering
19 the monitoring system; or (2) information as to the offender's activities while he or she is within
20 the designated area. A monitoring device may transmit information regarding blood alcohol levels.
21 The monitoring device shall not be used to eavesdrop or record any conversation: *Provided*, That
22 conversations between the offender and the person supervising the offender may be recorded
23 solely for purpose of voice identification.

§15A-4-4. Diagnostic and classification divisions.

1 (a) The commissioner may continue and establish diagnostic and classification
2 subdivisions.

3 (b) Notwithstanding any provision of this code to the contrary, all persons committed to
4 the custody of the division for presentence diagnosis and classification, and all persons sentenced
5 to the custody of the division shall, upon transfer to the division, undergo diagnosis and
6 classification, which shall include:

7 (1) Assessments of a person's criminogenic risk and need factors that are reliable,
8 validated, and normed for a specific population and responsive to cultural and gender-specific
9 needs as well as individual learning styles and temperament;

10 (2) Application of a mental health preliminary screen; and

11 (3) If the mental health preliminary screen suggests the need for further assessment, a full
12 psychological evaluation.

13 (c) The division shall perform mental health preliminary screens, appraisals, and
14 evaluations according to standards provided by the American Correctional Association.

§15A-4-5. Transfer of inmates of state institutions or facilities.

1 (a) The commissioner shall have authority to cause the transfer of any inmate from any
2 facility under his or her control to any other state or federal institution or facility which is better
3 equipped for the care or treatment of the inmate, or for other good cause or reason.

4 (b) Whenever an inmate committed to the custody of the division becomes mentally ill and
5 his or her needs cannot be properly met within the correctional facility, the commissioner shall
6 proceed in accordance with §15A-4-19 of this code.

7 (c) Whenever an inmate committed to the custody of the division needs medical attention,
8 other than mental health care, not available at the prison, the superintendent of the facility shall
9 immediately notify the commissioner who, after proper investigation, shall cause the transfer of
10 the inmate to a facility properly equipped to render the medical attention necessary. The inmate,
11 while receiving treatment in the hospital, shall be under an appropriate level of supervision at all
12 times and shall forthwith be returned to his or her correctional facility upon release from the facility.

13 (d) In providing or arranging for the necessary medical and other care and treatment of a
14 pregnant inmate, the superintendent of the facility shall take reasonable measures to assure that
15 pregnant inmates will not be restrained after reaching the second trimester of pregnancy until the
16 end of the pregnancy: *Provided*, That if the inmate, based upon her classification, discipline
17 history, or other factors deemed relevant by the superintendent poses a threat of escape, or to
18 the safety of herself, the public, staff, or the fetus, the inmate may be restrained in a manner
19 reasonably necessary: *Provided, however*, That prior to directing the application of restraints and
20 where there is no threat to the safety of the inmate, the public, staff, or the fetus, the
21 superintendent, or designee shall consult with an appropriate health care professional to assure
22 that the manner of restraint will not pose an unreasonable risk of harm to the inmate or the fetus.

**§15A-4-6. Monitoring of inmate telephone calls; procedures and restrictions; calls to or
from attorneys excepted.**

1 (a) The commissioner, or his or her designee, is authorized to monitor, intercept, record,
2 and disclose telephone calls to or from adult inmates of state institutions under his or her control,
3 in accordance with the following provisions:

4 (1) All adult inmates of state institutions shall be notified in writing that their telephone
5 conversations may be monitored, intercepted, recorded, and disclosed;

6 (2) Only the commissioner, superintendent, or their designee shall have access to
7 recordings of inmates' telephone calls unless disclosed pursuant to §15A-4-6(a)(4) of this code;

8 (3) Notice shall be prominently placed on, or immediately near, every telephone that may
9 be monitored;

10 (4) The contents of inmates' telephone calls may be disclosed to an appropriate law-
11 enforcement agency, or the West Virginia Intelligence Fusion Center, when disclosure is
12 necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly
13 operation of the correctional institution. Disclosure may also be made in civil or administrative
14 proceedings pursuant to an order of a court or an administrative tribunal when the disclosure is:

15 (A) Necessary to safeguard and protect the orderly operation of the correctional institution;
16 or

17 (B) Necessary to protect persons from physical harm or the threat of physical harm;

18 (5) All recordings of telephone calls shall be retained for at least three years and
19 maintained and destroyed in accordance with the record retention policy of the division adopted
20 as required by §5A-8-1 *et seq.* of this code; or

21 (6) To safeguard the sanctity of the attorney-client privilege, a telephone line that is not
22 monitored shall be made available for telephone calls to or from an attorney. These calls may not
23 be monitored, intercepted, recorded, or disclosed in any matter.

24 (b) The commissioner shall promulgate a policy directive establishing a record-keeping
25 procedure which requires retention of: (1) A copy of the contents of any inmate telephone
26 conversation provided to law enforcement; and (2) the name of the law-enforcement officer and
27 the law-enforcement agency to which the contents of the telephone conversation were provided.
28 The records required to be retained pursuant to this subsection shall be retained in accordance
29 with the record retention policy specified in §29B-1-4(a)(4) of this code. The inmate's telephone
30 conversation and the information regarding law enforcement are law-enforcement records under
31 that subdivision.

32 (c) Should an inmate be charged with a crime based, in whole or in part, on the inmate's
33 telephone conversation supplied to law enforcement, the inmate's attorney in the criminal matter
34 shall be entitled to access to and copies of the inmate's telephone conversations in the custody
35 of the commissioner which are not evidence in or the subject of another criminal investigation.

36 (d) The provisions of this section apply only to those persons in the physical custody of
37 the commissioner.

**§15A-4-7. Monitoring inmate mail; procedures and restrictions; identifying mail from a
state institution; mail to or from attorneys excepted.**

1 (a) The commissioner, or his or her designee, is authorized to monitor, open, review, copy,
2 and disclose mail sent to adult inmates of state institutions under his or her control, in accordance
3 with the following provisions:

4 (1) All adult inmates of state institutions shall be notified in writing that their mail may be
5 monitored, opened, reviewed, copied, and disclosed;

6 (2) Only the commissioner and his or her designee shall have access to copies of inmates'
7 mail unless disclosed pursuant to §15A-4-7(a)(4) of this code;

8 (3) Notice that the mail may be monitored shall be prominently placed on or immediately
9 near every mail receptacle or other designated area for the collection or delivery of mail;

10 (4) The contents of inmate's mail may be disclosed to an appropriate law-enforcement
11 agency, or the West Virginia Intelligence Fusion Center, when disclosure is necessary for the
12 investigation, prevention, or prosecution of a crime or to safeguard the orderly operation of the
13 institution. Disclosure may also be made in civil or administrative proceedings pursuant to an
14 order of a court or administrative tribunal when the disclosure is:

15 (A) Necessary to safeguard and protect the orderly operation of the institution; or

16 (B) Necessary to protect persons from physical harm or the threat of physical harm;

17 (5) All copies of mail shall be retained for at least three years and maintained and
18 destroyed in accordance with the records retention policy of the division adopted as required by
19 §5A-8-1 *et seq.* of this code; or

20 (6) The inmate whose mail has been copied and disclosed under this section shall be
21 given a copy of that mail when it is determined by the commissioner, or superintendent, not to
22 jeopardize the safe and secure operation of the facility or to be detrimental to an ongoing
23 investigation or administrative action.

24 (b) To safeguard the sanctity of the attorney-client privilege, mail to or from an inmate's
25 attorney shall not be monitored, reviewed, copied, and kept by the institution, or disclosed in any
26 manner unless required by an order of a court of competent jurisdiction. However, that mail may
27 be checked for weapons, drugs, and other contraband provided it is done in the presence of the
28 inmate and there is a reasonable basis to believe that any weapon, drug, or other contraband
29 exists in the mail.

30 (c) All inmate's outgoing mail must be clearly identified as being sent from an inmate at a
31 state correctional institution and must include on the face of the envelope the name and full
32 address of the institution.

33 (d) The commissioner or his or her designee is authorized to open, monitor, review, copy,
34 and disclose an inmate's outgoing mail in accordance with the provisions of §5A-4-7(a) of this
35 code.

36 (e) The commissioner shall promulgate a policy directive establishing a record-keeping
37 procedure which requires retention of: (1) All inmate mail provided to law enforcement; and (2)
38 the name of the law-enforcement officer and the law-enforcement agency to which the inmate
39 mail was provided. The records required to be retained pursuant to this subsection shall be
40 retained in accordance with the record retention policy specified in §15A-4-7(a)(5) of this code.
41 The inmate mail and the information regarding law enforcement are law-enforcement records
42 under §29B-1-4(a)(4) of this code.

43 (f) Should an inmate be charged with a criminal offense based, in whole or in part, on the
44 inmate's mail supplied to law enforcement, the inmate's attorney in the criminal matter shall be

45 entitled access to and copies of the inmate's mail in the custody of the commissioner which are
46 not evidence in or the subject of another criminal investigation.

47 (g) The provisions of this section apply only to those persons in the physical custody of
48 the commissioner.

**§15A-4-8. Monitoring of inmate electronic correspondence; procedures and restrictions;
to or from attorneys excepted.**

1 (a) The commissioner, or his or her designee, is authorized to monitor, intercept, record,
2 and disclose electronic communications to or from adult inmates of state institutions under his or
3 her control, in accordance with the following provisions:

4 (1) All adult inmates of state institutions shall be notified in writing that their electronic
5 communications may be monitored, intercepted, recorded, and disclosed;

6 (2) Only the commissioner, superintendent, or their designees, shall have access to copies
7 or recordings of inmates' electronic communications unless disclosed pursuant to §15A-4-8(a)(4)
8 of this code;

9 (3) Notice shall be prominently placed on, or immediately near, every electronic
10 communications device that may be monitored;

11 (4) The contents of inmates' electronic communications may be disclosed to an
12 appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, when
13 disclosure is necessary for the investigation, prevention, or prosecution of a crime or to safeguard
14 the orderly operation of the correctional institution. Disclosure may also be made in civil or
15 administrative proceedings pursuant to an order of a court or an administrative tribunal when the
16 disclosure is:

17 (A) Necessary to safeguard and protect the orderly operation of the correctional institution;

18 or

19 (B) Necessary to protect persons from physical harm or the threat of physical harm;

20 (5) All recordings or copies of electronic communications shall be retained for at least
21 three years and maintained and destroyed in accordance with the record retention policy of the
22 division adopted as required by §5A-8-1 *et seq.* of this code; or

23 (6) To safeguard the sanctity of the attorney-client privilege, a method of electronic
24 communications that is not monitored shall be made available for communications to or from an
25 attorney. These communications shall not be monitored, intercepted, recorded, or disclosed in
26 any matter.

27 (b) The commissioner shall promulgate a policy directive establishing a record-keeping
28 procedure which requires retention of: (1) A copy of the contents of any inmate electronic
29 communication provided to law enforcement; and (2) the name of the law-enforcement officer and
30 the law-enforcement agency to which the contents of the communications were provided. The
31 records required to be retained pursuant to this subsection shall be retained in accordance with
32 the record retention policy specified in §15A-4-8(a)(5) of this code. The inmate's electronic
33 communication and the information regarding law enforcement are law-enforcement records
34 under §29B-1-4(a)(4) of this code.

35 (c) Should an inmate be charged with a crime based, in whole or in part, on the inmate's
36 electronic communication supplied to law enforcement, the inmate's attorney in the criminal
37 matter shall be entitled to access to and copies of the inmate's electronic communications in the
38 custody of the commissioner which are not evidence in or the subject of another criminal
39 investigation.

40 (d) The provisions of this section shall apply only to those persons in the physical custody
41 of the commissioner.

§15A-4-9. Trustee accounts and funds, earnings and personal property of inmates and residents.

1 (a) The commissioner is authorized to establish at each institution under his or her
2 jurisdiction a "Trustee Fund". The superintendent of each institution shall receive and take charge

3 of the money and personal property, as defined by policy, of all inmates or residents in his or her
4 institution and all money or personal property, as defined by policy, sent to the inmates or
5 residents or earned by the inmates as compensation for work performed while they are domiciled
6 there. The superintendent shall credit the money and earnings to the inmate or resident entitled
7 to it and shall keep an accurate account of all the money and personal property so received, which
8 account is subject to examination by the commissioner. The superintendent shall deposit the
9 moneys in one or more responsible banks in accounts to be designated "Trustee Fund".

10 (b) For all felony sentenced inmates, except those serving life without mercy and those
11 the superintendent determines are likely to serve the remainder of their natural lives in the custody
12 of the division due to their age and the length of their sentences, the superintendent shall keep in
13 an account at least 10 percent of all money earned during the inmate's or resident's incarceration
14 and pay the money to the inmate or resident at the time of the inmate's or resident's release. The
15 superintendent may authorize the inmate to withdraw money from his or her mandatory savings
16 for the purpose of preparing the inmate for reentry into society.

17 (c) The commissioner may direct that offenders who work in community work programs,
18 including work release inmates who have obtained employment, make reimbursement to the state
19 toward the cost of his or her incarceration.

20 (d)(1) Prior to ordering an incarcerated offender to make reimbursement toward the costs
21 of his or her incarceration, the commissioner, or his or her designee, shall consider the following:

22 (A) The offender's ability to pay;

23 (B) The nature and extent of the offender's responsibilities to his or her dependents, if any;

24 (C) The length of probable incarceration under the court's sentence; and

25 (D) The effect, if any, that reimbursement might have on the offender's rehabilitation.

26 (2) No order of reimbursement entered pursuant to this section may exceed \$500 per
27 month unless the offender gives his or her express consent; and

28 (3) The commissioner shall, prior to the beginning of each fiscal year, prepare a report
29 that details the average cost per inmate incurred by the division for the care and supervision of
30 those individuals in his or her custody.

31 (e) The superintendent of any facility, on request of an inmate or resident, may expend up
32 to one half of the money earned by the inmate or resident on behalf of the family of the inmate or
33 resident if the 10 percent mandatory savings has first been set aside and other fees or court
34 ordered obligations owed by the inmate or resident have been paid. The remainder of the money
35 earned, after deducting amounts expended as authorized, shall be accumulated to the credit of
36 the inmate or resident and be paid to the inmate or resident at times as may be prescribed by
37 rules. The funds so accumulated on behalf of inmates or residents shall be held by the
38 superintendent of each institution under a bond approved by the Attorney General.

39 (f) The superintendent shall deliver to the inmate or resident at the time he or she leaves
40 the institution, or as soon as practicable after departure, all personal property, moneys, and
41 earnings then credited to the inmate or resident, or in case of the death of the inmate or resident
42 before authorized release from the institution, the superintendent shall deliver the property to the
43 inmate's or resident's personal representative. In case a conservator is appointed for the inmate
44 or resident while he or she is domiciled at the institution, the superintendent shall deliver to the
45 conservator, upon proper demand, all moneys and personal property belonging to the inmate or
46 resident that are in the custody of the superintendent.

47 (g) If any money is credited to a former inmate or resident after remittance of the sum of
48 money as provided in §15A-4-9(f) of this code, the commissioner shall notify the former inmate or
49 resident within 30 days of receipt of the money. The former inmate or resident will be afforded the
50 opportunity to collect the money if he or she pays the cost of the transaction. If the former inmate
51 or resident does not claim the money within 30 days of receiving the notice and the sum of money
52 is less than \$10, the commissioner may place the money into the inmate benefit fund.

53 (h) The provisions of this section apply to both juveniles and adults within the custody of
54 the commissioner.

§15A-4-10. Inmate or resident benefit funds.

1 (a) The commissioner shall establish an inmate, or resident, benefit fund for each of the
2 institutions under his or her jurisdiction. The inmate, or resident, benefit fund is a fund held by the
3 institutions for the benefit and welfare of inmates incarcerated, or juveniles placed in facilities
4 under the jurisdiction of the commissioner, and for the benefit of victims.

5 (b) There is continued a special revenue account in the State Treasury for each inmate,
6 or resident, benefit fund established by the commissioner. If an account does not currently exist
7 for an institution, the commissioner may establish the account for that institution. Moneys received
8 by an institution for deposit in an inmate, or resident, benefit fund shall be deposited with the State
9 Treasurer to be credited to the special revenue account created for the institution's inmate, or
10 resident, benefit fund: *Provided*, That commissions on any contract providing services to jail
11 inmates shall not be deposited into this account. Moneys in a special revenue account established
12 for an inmate benefit fund may be expended by the institution for the purposes set forth in this
13 section. Moneys to be deposited into an inmate, or resident, benefit fund consist of, but are not
14 limited to:

15 (1) All profit from the exchange or commissary operation and if the commissary is operated
16 by a vendor, whether a public or private entity, the profit is the negotiated commission paid to the
17 Division of Corrections and Rehabilitation by the vendor;

18 (2) All net proceeds from vending machines used for inmate or resident visitation;

19 (3) All proceeds from contracted inmate or resident telephone commissions;

20 (4) Any funds that may be assigned by inmates or donated to the institution by the general
21 public or an inmate service organization on behalf of all inmates or residents;

22 (5) Any funds confiscated considered contraband; and

23 (6) Any unexpended balances in individual inmate or resident trustee funds if designated
24 by the inmate upon his or her discharge from the institution.

25 (c) The inmate benefit fund may only be used for the following purposes at facilities:

26 (1) Open-house visitation functions or other nonroutine inmate or resident functions;

27 (2) Holiday functions which may include decorations and gifts for children of inmates or
28 residents;

29 (3) Cable television service;

30 (4) Rental of movies;

31 (5) Payment of video license;

32 (6) Recreational supplies, equipment, or area surfacing;

33 (7) Reimbursement of employee wages for overtime incurred during open-house
34 visitations and holiday functions;

35 (8) Post-secondary education classes;

36 (9) Reimbursement of a pro rata share of inmate or resident work compensation;

37 (10) Household equipment and supplies in day rooms or units as approved by
38 superintendents of institutions, excluding supplies used in the daily maintenance and sanitation
39 of the unit;

40 (11) Christmas or other holidays gift certificates for each inmate or resident to be used at
41 the exchange or commissary;

42 (12) Any expense associated with the operation of the fund;

43 (13) Expenditures necessary to properly operate an automated inmate family and victim
44 information notification system;

45 (14) Any expense for improvement of the facility which will benefit the inmate or resident
46 population that is not otherwise funded;

47 (15) Any expense related to the installation, operation, and maintenance of the inmate or
48 resident telephone system; and

49 (16) Restitution of any negative balance on any inmate's trustee account for inmate
50 medical copay, legal and ancillary related postage, and photocopy fees that are due the State of
51 West Virginia, if the balance is uncollectible from an inmate after one calendar year from an
52 inmate's release on parole or discharge date.

53 (d) The institution shall compile a monthly report that specifically documents inmate benefit
54 fund receipts and expenditures and a yearly report for the previous fiscal year by September 1 of
55 each year and submit the reports to the commissioner.

56 (e) The provisions of this section apply to both juveniles and adults within the custody of
57 the commissioner.

§15A-4-11. Financial responsibility program for inmates.

1 (a) The Legislature finds that:

2 (1) There is an urgent need for vigorous enforcement of child support, restitution, and
3 other court ordered obligations;

4 (2) The duty of inmates to provide for the needs of dependent children, including their
5 necessary food, clothing, shelter, education, and health care should not be avoided because of
6 where the inmate resides;

7 (3) A person owing a duty of child support who chooses to engage in behaviors that result
8 in the person becoming incarcerated should not be able to avoid child support obligations; and

9 (4) Each sentenced inmate should be encouraged to meet his or her legitimate court-
10 ordered financial obligations.

11 (b) As part of the initial classification process into a correctional facility, the division shall
12 assist each inmate in developing a financial plan for meeting the inmate's child support
13 obligations, if any exist. At subsequent program reviews, the division shall consider the inmate's
14 efforts to fulfill those obligations as indicative of that individual's acceptance and demonstrated
15 level of responsibility.

16 (c)(1) The superintendent shall deduct from the earnings of each inmate all legitimate
17 court-ordered financial obligations. The superintendent shall also deduct child support payments
18 from the earnings of each inmate who has a court-ordered financial obligation. The commissioner
19 shall develop a policy that outlines the formula for the distribution of the offender's income and
20 the formula shall include a percentage deduction, not to exceed 50 percent in the aggregate, for
21 any court ordered victim restitution, court fees, and child support obligations owed under a support
22 order, including an administrative fee, consistent with the provisions of §48-14-406(c) of this code,
23 to support the division's administration of this financial service;

24 (2) If the inmate worker's income is subject to garnishment for child support enforcement
25 deductions, it shall be calculated on the net wages after taxes, legal financial obligations, and
26 garnishment;

27 (3) The division shall develop the necessary administrative structure to record inmates
28 wages and keep records of the amount inmates pay for child support; and

29 (4) Nothing in this section limits the authority of the Bureau for Child Support Enforcement
30 of the Department of Health and Human Resources from taking collection action against an
31 inmate's moneys, assets, or property.

32 (d) If an inmate is awarded a civil judgment which awards him or her monetary damages,
33 the court in which those damages are awarded shall enter an order which deducts all outstanding
34 child support, restitution, or other court-ordered obligations from the award to the inmate, and
35 satisfies those obligations, prior to releasing any funds to the inmate.

36 (e) The accumulation of the total funds, not necessary for current distribution, shall be
37 invested, with the approval of the commissioner or as appropriate, through the West Virginia
38 Municipal Bond Commission, in short term bonds or treasury certificates or equivalent of the
39 United States. Bonds and certificates so purchased shall remain in the custody of the State
40 Treasurer. The earnings from investments so made shall be reported to the principal officer of
41 each institution from time to time, as earned, and shall be credited to the respective accounts of

42 the institutions by the West Virginia Municipal Bond Commission. When the earnings are
43 transferred to the respective institutions, they shall be credited by the superintendent to the credit
44 of, and for the benefit of, the inmate, or resident, benefit fund.

**§15A-4-12. Limitation on reimbursement rate to medical service providers for services
outside division facilities.**

1 The division, or its contracted medical providers, may not pay an amount to an outside
2 provider of a medical service for an adult inmate residing in a jail or correctional facility greater
3 than the reimbursement rate applicable to service providers established in the West Virginia state
4 Medicaid plan by the Bureau for Medical Services: *Provided*, That critical access hospitals shall
5 be reimbursed at 75 percent of the billed charges. These limitations apply to all medical care
6 services, goods, prescription drugs, and medications provided to a person who is in the custody
7 of a correctional facility and is provided these services outside of a correctional facility: *Provided*,
8 *however*, That the Department of Military Affairs and Public Safety and the Department of Health
9 and Human Resources effectuate an interagency agreement for the electronic processing and
10 payment of medical services.

§15A-4-13. Charges assessed against inmates for services provided by state.

1 (a) The commissioner is authorized to assess inmates serving a sentence in any state jail,
2 penal, or correctional facility reasonable charges for health care and treatment services provided
3 to them by the state. The charges assessed against an inmate may be deducted directly from the
4 inmate's trustee account without the inmate's consent. The inmate shall be notified of the amount
5 deducted and the charges to which it has been applied.

6 (b) As used in this section, a "reasonable charge" may not exceed the sum of \$25 for any
7 billable service. Inmates shall be notified of the fee schedule, billable services, and exempt
8 services. Services initiated by the inmate shall be assessed a fee, except that no charge may be
9 assessed for: (1) a specific health care service required under the law of this state, including, by
10 way of illustration, tuberculin testing; (2) an emergency service following a traumatic injury other

11 than a self-induced injury, or necessary to prevent death or severe or permanent disability; (3)
12 diagnosis and treatment of communicable diseases, including, by way of illustration, tuberculosis
13 or hepatitis; (4) treatment of diagnosed severe mental illness; (5) treatment of specific chronic
14 conditions identified by the commissioner, including, by way of illustration, heart disease and
15 diabetes; (6) staff-initiated care, including follow-up and referral visits; (7) preventive services that
16 the commissioner determines are to be provided or made available to all inmates, including
17 services related to disease prevention and promotion of proper health habits; or (8) other services
18 as may be exempted by rule of the commissioner. No inmate may be denied any necessary
19 billable medical service because of inability to pay the charge.

20 (c) Any inmate who intentionally ingests, inhales, injects, absorbs, applies, or otherwise
21 exposes himself or herself to, in any manner whatsoever not otherwise specified herein, an illegal
22 drug, a drug not legally prescribed to him or her, a drug in quantities above that recommended by
23 a prescribing physician, a synthetic intoxicant, or any substance for the purpose of causing an
24 excited, euphoric, or stupefied state, or altered perception, including hallucinations or delusions,
25 and the inmate requires medical treatment due to the ingestion, inhalation, injection, absorption,
26 application, or exposure shall reimburse the cost of the medical treatment to the division.

27 (d) Each inmate shall be afforded an opportunity at least quarterly to review all deposits
28 into, withdrawals from, and balance remaining in the inmate's trustee account during the
29 preceding three months.

30 (e) The commissioner shall promulgate interpretive rules implementing this section
31 pursuant to §29A-3-1 *et seq.* of this code prior to making any assessment under this section. The
32 policy directive rules may establish the fee schedule and list of billable services and further define
33 services to be exempted.

§15A-4-14. Record of inmate or resident.

1 The commissioner shall file and preserve the record of the indictment and conviction, in
2 the case of an adult, or the charges and adjudication, in the case of a juvenile, of each inmate or

3 resident, and keep a register describing him or her, the term of his or her confinement, for what
4 offense, and when received into the institution.

§15A-4-15. Manufacture of license plates, road signs or markers; securing signs and markers when federal government reimburses state for cost thereof.

1 For the purpose of obtaining license plates to be used upon motor vehicles licensed for
2 operation in this state and road signs or markers of any description for state roads, the
3 commissioner is hereby authorized and empowered on behalf of the state, to establish and
4 operate a plant for the manufacture of the license plates and road signs or markers in his or her
5 institution.

6 It shall be unlawful for any state official or employee to manufacture or obtain the license
7 plates, road signs, or markers otherwise than as herein specified: *Provided*, That the
8 Commissioner of Highways may originally secure road signs or markers from sources other than
9 that provided herein.

§15A-4-16. Gifts to or dealings with inmate or resident.

1 No officer or employee of the state, or contractor, or employee of a contractor shall make
2 any gift or present to an inmate or resident, or receive any from an inmate or resident, or have
3 any barter or dealings with a convict, except as allowed and permitted by the commissioner.

4 For every violation of this section, the party engaged therein shall be dismissed from his
5 or her office or service, and every contractor, or employee, or agent of a contractor engaged
6 therein shall be expelled from any facility within the jurisdiction of the commissioner, and not again
7 employed in any institution as a contractor, agent, or employee.

§15A-4-17. Deduction from sentence for good conduct; mandatory supervision.

1 (a) All current and future adult inmates sentenced to a felony and, placed in the custody
2 of the division, except those committed pursuant to §25-4-1 *et seq.* of this code, shall be granted
3 commutation from their sentences for good conduct in accordance with this section: *Provided*,
4 That nothing in this section shall be considered to recalculate the “good time” of inmates currently

5 serving a sentence or of giving back good time to inmates who have previously lost good time
6 earned for a disciplinary violation, except for those inmates currently serving a sentence for a
7 misdemeanor.

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

10 (c) Each inmate committed to the custody of the commissioner and incarcerated in a
11 facility pursuant to that commitment shall be granted one day good time for each day he or she is
12 incarcerated, including any and all days in jail awaiting sentence which are credited by the
13 sentencing court to his or her sentence pursuant to §61-11-24 of this code or for any other reason
14 relating to the commitment. An inmate may not be granted any good time for time served either
15 on parole or bond or in any other status when he or she is not physically incarcerated.

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

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

21 (f) The commissioner shall promulgate disciplinary rules and policies. The rules and
22 policies shall describe acts that inmates are prohibited from committing, procedures for charging
23 individual inmates for violation of the rules, and for determining the guilt or innocence of inmates
24 charged with the violations, and the sanctions which may be imposed for the violations. A copy of
25 the rules shall be given to each inmate. For each violation, by a sanctioned inmate, any part or all
26 of the good time which has been granted to the inmate pursuant to this section may be forfeited
27 and revoked by the superintendent of the institution in which the violation occurred. The
28 superintendent when appropriate and with approval of the commissioner, may restore any
29 forfeited good time.

30 (g) Each inmate, upon his or her commitment to, and being placed into the custody of the
31 commissioner, or upon his or her return to custody as the result of violation of parole pursuant to
32 §62-12-19 of this code, shall be given a statement setting forth the term or length of his or her
33 sentence or sentences and the time of his or her minimum discharge computed according to this
34 section.

35 (h) Each inmate shall be given a revision of the statement described in §15A-4-17(g) of
36 this code when any part or all of the good time has been forfeited and revoked or restored
37 pursuant to §15A-4-17(f) of this code, by which the time of his or her earliest discharge is changed.

38 (i) The superintendent may, with the approval of the commissioner, allow extra good time
39 for inmates who perform exceptional work or service.

40 (j) There shall be no grants or accumulations of good time or credit to any current or future
41 inmate serving a sentence in the custody of the Division of Corrections and Rehabilitation except
42 in the manner provided in this section.

43 (k) Prior to the calculated discharge date of an inmate serving a sentence for a felony
44 crime of violence against the person, a felony offense where the victim was a minor child or a
45 felony offense involving the use of a firearm, one year shall be deducted from the inmate's
46 accumulated good time to provide for one year of mandatory post-release supervision following
47 the first instance in which the inmate reaches his or her calculated discharge date. All inmates
48 released pursuant to this subsection shall be subject to electronic or GPS monitoring for the entire
49 period of supervision. The provisions of this subsection are applicable to offenses committed on
50 or after July 1, 2013.

51 (l) Upon sentencing of an inmate for a felony offense not referenced in §15A-4-17(k) of
52 this code, the court may order that 180 days of the sentence, or some lesser period, be served
53 through post-release mandatory supervision if the court determines supervision is appropriate
54 and in the best interest of justice, rehabilitation, and public safety. All inmates released pursuant

55 to this subsection shall be subject to electronic or GPS monitoring for the entire period of
56 supervision. The provisions of this subsection are applicable to offenses committed on or after
57 July 1, 2013.

58 (m) The commissioner shall adopt policies and procedures to implement the mandatory
59 supervision provided for in §15A-4-17(k) and §15A-4-17(l) of this code, which may include terms,
60 conditions, and procedures for supervision, modification, and violation applicable to persons on
61 parole.

62 (n) As used in this section, "felony crime of violence against the person" means felony
63 offenses set forth in §61-2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, or §61-8D-1 *et seq.* of
64 this code, and the felony offenses of arson and burglary of a residence where an individual is
65 physically located at the time of the offense as set forth in §61-3-1 *et seq.* of this code.

66 (o) As used in this section, "felony offense where the victim was a minor child" means any
67 felony crime of violence against the person and any felony offense set forth in §61-8-1 *et seq.*,
68 §61-8A-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code.

§15A-4-18. Governor's authority to authorize commissioner to consent to transfer of inmates under a federal treaty.

1 If a treaty in effect between the United States and a foreign country provides for the
2 transfer or exchange of convicted offenders to the country of which they are citizens or nationals,
3 the Governor may, on behalf of the state and subject to the terms of the treaty and with the
4 consent of the offender, authorize the commissioner to consent to the transfer or exchange of
5 inmates in his or her custody and take any other action necessary to initiate the participation of
6 this state in the treaty. No transfer may occur pursuant to the provisions of this section until the
7 inmate is informed of his or her rights and the procedures involved in his or her native language
8 unless it is determined that the inmate's knowledge of English is sufficient.

§15A-4-19. Mentally ill inmates; treatment; transfer between correctional and mental health facilities; correctional facility procedures.

1 (a) No person who is, or was considered to be, mentally ill, intellectually disabled, or
2 addicted shall be denied parole or a parole hearing based upon the past or present condition. In
3 the event a convicted person is deemed to be an appropriate candidate for parole, but for a
4 condition warranting involuntary hospitalization of the person, shall be paroled, and proceedings
5 instituted pursuant to §27-5-4 of this code. Any time spent in such a facility shall be considered
6 part of the term, and any person whose sentence expires while receiving treatment for a mental
7 condition shall be discharged unless proceedings have been instituted and a determination made
8 pursuant to §27-5-4 of this code.

9 (b) When a convicted person in a jail, prison, or other facility is believed to be mentally ill,
10 intellectually disabled, or addicted, as those terms are defined in §27-1-1 *et seq.* of this code, and
11 in need of treatment, training, or other services, the facts relating to the illness, shall be presented
12 to the superintendent of the facility. The facts may be presented by a correctional officer, member
13 of a correctional institution medical staff, relative, or the convicted person. Immediately upon
14 receipt of the facts, the superintendent shall arrange for psychiatric or psychological examination
15 of the person alleged to be so afflicted. If the report of the examination is to the effect that the
16 individual is mentally ill, intellectually disabled, or addicted and that treatment, training, or other
17 services are required which cannot reasonably be provided at the correctional facility, the
18 superintendent shall file within 20 days after presentation of the facts an application for transfer
19 with the clerk of the circuit court of the county of location of the correctional facility. The application
20 for transfer shall include a statement of the nature of the treatment which the person's condition
21 warrants and the facility to which transfer is sought.

22 Within 10 days of receipt of the application from the superintendent, the mental hygiene
23 commissioner or circuit judge shall appoint counsel for the convicted person if the person is
24 indigent.

25 The clerk of the circuit court shall forthwith notify the convicted person, by certified mail,
26 return receipt requested, delivered only to addressee, that the application has been filed,
27 enclosing therewith a copy of the application with an explanation of the place and purpose of the
28 transfer and the type of treatment to be afforded, together with the name, address, and telephone
29 number of any appointed counsel. The person shall be afforded reasonable telephone access to
30 his or her counsel. The clerk shall also notify the superintendent or other chief administrative
31 officer of the facility to which transfer is sought. Within 15 days after receipt of notice, the convicted
32 person, through counsel, shall file a verified return admitting or denying the allegations and
33 informing the court or mental hygiene commissioner as to whether the respondent wishes to
34 oppose the transfer. Counsel shall file the return only after personal consultation with the
35 convicted person. The superintendent of the facility to which transfer is sought shall also file a
36 return within 15 days of the receipt of notice, informing the court or mental hygiene commissioner
37 as to whether the needed treatment or other services can be provided within that facility. If the
38 superintendent objects to receiving the convicted person for treatment or services, the reasons
39 for the objection shall be specified in detail.

40 If the transfer is opposed by either the convicted person or by the superintendent of the
41 facility to which transfer is sought, the matter shall forthwith be set for hearing, in no event to
42 exceed 30 days from the date of the return opposing the transfer, and the clerk shall provide to
43 the convicted person, the superintendent of the facility to which transfer is sought, and the
44 superintendent of the correctional facility, at least 10 days written notice, by certified mail, return
45 receipt requested, of the purpose, time, and place of the hearing.

46 The convicted person shall be present at the hearing, and be afforded an opportunity to
47 testify and to present and cross-examine witnesses. Counsel for the convicted person shall be
48 entitled to copies of all medical reports upon request. The person shall have the right to an
49 examination by an independent expert of the person's choice and testimony from the expert as a
50 medical witness on the person's behalf. The cost of providing the medical expert shall be borne

51 by the state if the person is indigent. The person shall not be required to give testimony which is
52 self-incriminating. The circuit court or mental hygiene commissioner shall hear evidence from all
53 parties, in accord with the rules of evidence. A transcript or recording shall be made of all
54 proceedings, and transcript made available to the person within 30 days, if the same is requested
55 for the purpose of further proceedings, and without cost if the person is indigent.

56 Upon completion of the hearing, and consideration of the evidence presented therein, the
57 circuit court or mental hygiene commissioner shall make findings of facts as to whether or not: (1)
58 The individual is mentally ill, intellectually disabled, or addicted; (2) the individual because of
59 mental illness, mental retardation, or addiction is likely to cause serious harm to self or others; (3)
60 the individual could not obtain the requisite treatment or training at the correctional facility or
61 another appropriate correctional facility; and (4) the designated facility to which transfer is sought
62 could provide the treatment or training with the security as the court finds appropriate; and, if all
63 the findings are in the affirmative, the circuit court may order the transfer of the person to the
64 appropriate facility. The findings of fact shall be incorporated into the order entered by the circuit
65 court. In all proceedings hereunder, proof of mental condition and of likelihood of serious harm
66 must be established by clear, cogent, and convincing evidence, and the likelihood of serious harm
67 must be based upon evidence of recent overt acts.

§15A-4-20. Work program.

1 (a) The commissioner is authorized to establish at each institution a work program for
2 qualified inmates. The commissioner shall establish guidelines and qualifications to allow inmates
3 sentenced to a regional jail facility to be gainfully employed with local businesses and
4 governmental entities as part of a job program. A qualified inmate does not include an inmate
5 convicted of a sexual offense or a violent felony.

6 (b) An inmate who works in work programs established under this section may be required
7 to make reimbursement to the division toward the cost of his or her incarceration to be credited
8 to the agency billed for that incarceration, pursuant to the conditions set forth in §15A-4-19 of this
9 code.

10 (c) Notwithstanding any provision of this code to the contrary, the county commission, its
11 members and agents, the Division of Corrections and Rehabilitation or designee, its employees,
12 agents, or assigns, the Regional Jail and Correctional Facility Authority Board, its members,
13 agents, or assigns, the sheriff, and his or her deputies, shall be immune from all liability of any
14 kind except for accident, injury, or death resulting directly from gross negligence or
15 malfeasance.

§15A-4-21. Director of employment; director of housing; released inmates; duties.

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

ARTICLE 5. BUREAU OF PRISONS AND JAILS.

§15A-5-1. Creation of Bureau of Prisons and Jails; organization of facilities.

1 (a) The commissioner shall establish a Bureau of Prisons and Jails. The commissioner
2 shall determine what adult facilities or institutions shall appropriately be managed by the Bureau
3 of Prisons and Jails.

4 (b) The commissioner shall appoint an assistant commissioner, who shall oversee the
5 Bureau of Prisons and Jails.

6 (c) Where reference in this article is made to the “division”, it shall mean the Division of
7 Corrections and Rehabilitation.

§15A-5-2. Transfer of duties and funds of Division of Corrections.

1 All prior conveyed responsibilities of the Division of Corrections, and its Commissioner are
2 hereby transferred to the Division of Corrections and Rehabilitation. All funds, both general
3 revenue and special revenue, are hereby transferred to the Division of Corrections and
4 Rehabilitation. Any funds administered by the Division of Corrections are to be administered by
5 the Division of Corrections and Rehabilitation, and its Commissioner.

§15A-5-3. Superintendents; duties and authority; bond; residence.

1 (a) The commissioner shall appoint a superintendent for each institution under the control
2 of the division. Each superintendent shall be bonded by the Board of Risk and Insurance
3 Management.

4 (b) The superintendent shall be the chief executive officer of his or her assigned
5 correctional institution and, subject to the direction of the commissioner, has the responsibility for
6 the overall management of all operations within his or her assigned institution. The superintendent
7 shall be in charge of its internal police and management and shall provide for feeding, clothing,
8 working and taking care of the inmates, subject to the control of the commissioner.

9 (c) The superintendent shall promptly enforce all orders and rules made by the
10 commissioner. He or she shall protect and preserve the property of the state and may for that
11 purpose punish the inmates in the manner authorized by the commissioner. The superintendent
12 shall have the custody and control of all the real and personal property at the correctional
13 institution, subject to the orders of the commissioner.

14 (d) The commissioner may authorize the superintendent to establish an imprest fund in
15 accordance with the provisions of §12-2-2 of this code for the sole purpose of providing employees
16 with funds to transport inmates for any purpose as determined by the superintendent, and any of
17 the fund that currently exists is hereby continued. The employee is required to complete a travel

18 reimbursement form for the travel within five days of returning to the correctional facility. The funds
19 shall be used to reimburse the imprest fund for the amount expended by the employee.

§15A-5-4. Appointment of deputy superintendent; duties; bond.

1 Each superintendent, with the approval of the commissioner, may hire a deputy
2 superintendent. The deputy superintendent's duties shall be fixed by the superintendent, as
3 approved by the commissioner. In the absence of the superintendent, the deputy superintendent
4 shall perform all the duties required of the superintendent. The deputy superintendent shall be
5 bonded by the Board of Risk and Insurance Management.

§15A-5-5. Hiring of other assistants and employees.

1 The superintendent of each correctional institution or unit shall, in the manner provided in
2 §15A-3-5 of this code, hire all assistants and employees required for the management of the
3 correctional institutions or units, including a sufficient number of correctional employees to
4 preserve order and enforce discipline among the inmates, to prevent escapes, and to remove all
5 persons convicted and sentenced to the custody of the Division of Corrections and Rehabilitation,
6 from the place confined to a correctional institution, all of whom shall be under the control of the
7 superintendent: *Provided*, That the number of the assistants and employees, and their
8 compensation, shall first be approved by the commissioner.

9 All persons employed at a state-operated correctional institution or correctional unit are
10 subject to the supervision and approval of the superintendent and the authority of the
11 commissioner, or his or her designee, except those persons employed by the State Board of
12 Education, pursuant to §18-2-13f of this code.

§15A-5-6. Jail intake facilities; housing of adult inmates.

1 To the extent practicable, and in a manner consistent with providing for the safety of the
2 public, correctional employees, and inmates, the commissioner will create space in every adult
3 institution for both jail and prison populations: *Provided*, That in no case shall the commissioner
4 be required to provide jail space in every institution in excess of space necessary for initial

5 receiving, booking, and holding of an inmate to await transport by the Division of Corrections and
6 Rehabilitation to the most appropriate housing placement for that inmate. In no case may a person
7 who is a pretrial detainee, who is not currently serving a felony sentence in the custody of the
8 commissioner, be held in a space designated as a prison unit. Further, no convicted
9 misdemeanor actively serving a sentence on a misdemeanor shall be held in a space designated
10 as a prison unit.

§15A-5-7. Pretrial risk assessment.

1 (a) Within three calendar days of the arrest and placement of any person in a jail, the
2 division shall conduct a pretrial risk assessment using a standardized risk assessment instrument
3 approved and adopted by the Supreme Court of Appeals of West Virginia. The results of all
4 standardized risk and needs assessments are confidential and shall only be provided to the court,
5 court personnel, the prosecuting attorney, defense counsel, and the person who is the subject of
6 the pretrial risk assessment. Upon completion of the assessment, the Division of Corrections and
7 Rehabilitation shall provide it to the magistrate and circuit clerks for delivery to the appropriate
8 circuit judge or magistrate.

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

§15A-5-8. Jail processing fee.

1 (a) A person committed to be housed in jail by order of magistrate, circuit judge, or by
2 temporary commitment order shall, at the time of initial booking into the jail, pay a processing fee
3 of \$30. If the person is unable to pay at the time of booking, the fee shall be deducted, at a rate
4 of 50 percent, from any new deposits made into the person's trust account until the jail processing
5 fee is paid in full. The fee shall be credited to:

- 6 (1) The Jail's operating budget if the person is committed to and housed in a jail;
- 7 (2) The county commission if the person is committed to and housed in a county jail; or

8 (3) The municipality if the person is committed to and housed in a municipal jail. The fee
9 should be paid prior to the offender being released.

10 (b) A refund of a fee collected under this section shall be made to a person who has paid
11 the fee if the person is not convicted of the offense for which the person was booked and the
12 person provides documentation from the court showing that all charges for which the person was
13 booked were dismissed, accurate current name and address and a valid photographic
14 identification. In the case of multiple offenses, if the person is convicted of any of the offenses the
15 fee may not be refunded. If the person is convicted of a lesser included offense or a related
16 offense, no refund may be made.

§15A-5-9. Ability to refuse offenders.

1 Notwithstanding any other provision of this code, the commissioner, or any employee of
2 the division, having authority to accept offenders in a jail is not required to accept those offenders
3 if an offender appears to be in need of medical attention of a degree necessitating treatment by
4 a physician. If an offender is refused pursuant to the provisions of this section, he or she may not
5 be accepted for detention until a written clearance from a licensed physician reflecting that the
6 offender has been examined and if necessary treated, and which states that it is the physician's
7 medical opinion that the offender can be safely housed in a jail.

ARTICLE 6. BUREAU OF JUVENILE SERVICES.

§15A-6-1. Creation of Bureau of Juvenile Services; organization of facilities.

1 (a) The Commissioner of Corrections and Rehabilitation shall establish a Bureau of
2 Juvenile Services. This bureau shall manage any juvenile facilities or units, as determined
3 pursuant to §15A-3-12 of this code.

4 (b) The commissioner shall appoint an assistant commissioner, who shall oversee the
5 Bureau of Juvenile Services.

6 (c) Where reference in this article is made to the "division", it shall mean the Division of
7 Corrections and Rehabilitation.

§15A-6-2. Transfer of duties and funds.

1 All prior conveyed responsibilities and duties of the Division of Juvenile Services, and the
2 Director of Juvenile Services, outlined in §49-1-101 *et seq.* of this code, are hereby transferred
3 and conveyed to the Division of Corrections and Rehabilitation, and to its Commissioner. Any
4 funds administered by the Division of Juvenile Services are to be administered by the Division of
5 Corrections and Rehabilitation, and its Commissioner.

§15A-6-3. Superintendents; duties and authority; bond; residence.

1 (a) The commissioner shall appoint a superintendent for each institution under the control
2 of the division. Each superintendent shall be bonded by the Board of Risk and Insurance
3 Management.

4 (b) The superintendent shall be the chief executive officer of his or her assigned
5 correctional institution and, subject to the direction of the commissioner, has the responsibility for
6 the overall management of all operations within his or her assigned institution. The superintendent
7 shall be in charge of its internal police and management and shall provide for feeding, clothing,
8 working and taking care of the inmates, subject to the control of the commissioner.

9 (c) The superintendent shall promptly enforce all orders and rules made by the
10 commissioner. He or she shall protect and preserve the property of the state and may for that
11 purpose punish the inmates in the manner authorized by the commissioner. The superintendent
12 shall have the custody and control of all the real and personal property at the correctional
13 institution, subject to the orders of the commissioner.

14 (d) The commissioner may authorize the superintendent to establish an imprest fund in
15 accordance with the provisions of §12-2-2 of this code for the sole purpose of providing employees
16 with funds to transport inmates for any purpose as determined by the superintendent, and any of
17 the fund that currently exists is hereby continued. The employee is required to complete a travel
18 reimbursement form for the travel within five days of returning to the correctional facility. The funds
19 shall be used to reimburse the imprest fund for the amount expended by the employee.

§15A-6-4. Appointment of deputy superintendent; duties; bond.

1 Each superintendent, with the approval of the commissioner, may hire a deputy
2 superintendent. The deputy superintendent's duties shall be fixed by the superintendent, as
3 approved by the commissioner. In the absence of the superintendent, the deputy superintendent
4 shall perform all the duties required of the superintendent. The deputy superintendent shall be
5 bonded by the Board of Risk and Insurance Management.

§15A-6-5. Hiring of other assistants and employees; duties of correctional employees.

1 The superintendent of each juvenile institution or unit shall, in the manner provided in
2 §15A-3-5 of this code, hire all assistants and employees required for the management of the
3 juvenile institutions or units, including a sufficient number of correctional employees to preserve
4 order and enforce internal rules among the juvenile inmates, to prevent escapes, and carry out
5 all other responsibilities as outlined in chapter 49 of this code.

6 All persons employed at a state-operated juvenile facility are subject to the supervision
7 and approval of the superintendent and the authority of the commissioner, or his or her designee,
8 except those persons employed by the State Board of Education, pursuant to §18-2-13f of this
9 code.

ARTICLE 7. BUREAU OF COMMUNITY CORRECTIONS.

§15A-7-1. Creation of Bureau of Community Corrections; Organization of facilities.

1 (a) The commissioner shall establish a Bureau of Community Corrections. The
2 commissioner shall establish which adult facilities or institutions shall appropriately be managed
3 by the Bureau of Community Corrections.

4 (b) The commissioner shall appoint an assistant commissioner, who shall oversee the
5 Bureau of Community Corrections.

6 (c) Where reference in this article is made to the "division", it shall mean the Division of
7 Corrections and Rehabilitation.

§15A-7-2. Duties of superintendents; bond; residence.

1 The commissioner shall appoint a Superintendent for each institution under the control of
2 the division. The superintendent of a community corrections facility shall have the same duties
3 and responsibilities as described in §15A-3-1 *et seq.* of this code.

§15A-7-3. Hiring of other assistants and employees; duties of employees.

1 (a) Each superintendent of a community corrections facility shall, in the manner provided
2 in §15A-3-5 of this code, hire all assistants and employees required for the management of these
3 facilities or units, including a sufficient number of correctional employees to preserve order and
4 enforce discipline among the inmates or parolees, to prevent escapes, to enforce laws, rules, and
5 policies, and to protect the public. Any person employed by the office of the Commissioner of the
6 Division of Corrections and Rehabilitation who on the effective date of this article is a classified
7 civil service employee shall, within the limits contained in §29-6-1 *et seq.* of this code, remain in
8 the civil service system as a covered employee.

9 (b) The commissioner shall, in the manner provided in §15A-3-5 of this code, hire all
10 probation and parole officers, assistants, and employees required to carry out the duties as
11 proscribed in this code for management of the parolee population, and probation population, as
12 set forth in §15A-7-4 and §62-13-2(b) of this code, for the management of parolees, to preserve
13 order, and enforce discipline among the parolees, to enforce laws, rules, and policies, and to
14 protect the public. Any person employed by the office of the Commissioner of the Division of
15 Corrections and Rehabilitation who on the effective date of this article is a classified civil service
16 employee shall, within the limits contained in §29-6-1 *et seq.* of this code, remain in the civil
17 service system as a covered employee. Nothing in this section shall limit the abilities of the
18 Supreme Court of Appeals of this state to carry forth their responsibilities and duties as proscribed
19 in this code. All persons appointed or employed by the director shall be paid all necessary
20 expenses incurred in the discharge of their duties.

§15A-7-4. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.

1 The commissioner shall supervise all persons released on parole and placed in the charge
2 of a state parole officer and all persons released on parole under any law of this state. He or she
3 shall also supervise all probationers and parolees whose supervision may have been undertaken
4 by this state by reason of any interstate compact entered into pursuant to the uniform act for out-
5 of-state probation and parolee supervision. The commissioner shall prescribe rules for the
6 supervision of probationers and parolees under his or her supervision and control, and shall
7 succeed to all administrative and supervisory powers of the Parole Board and the authority of the
8 Parole Board in those matters only.

9 The commissioner shall administer all other laws affecting the custody, control, treatment,
10 and employment of persons sentenced or committed to institutions under the supervision of the
11 department or affecting the operation and administration of institutions or functions of the division.

12 The final determination regarding the release of inmates from penal institutions and the
13 final determination regarding revocation of parolees from those institutions pursuant to the
14 provisions of §62-12-1 *et seq.* of this code shall remain within the exclusive jurisdiction of the
15 Parole Board.

§15A-7-5. Powers and duties of state parole officers.

1 (a) Each state probation and parole officer employed by the Division of Corrections and
2 Rehabilitation shall:

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

5 (2) Update the standardized risk and needs assessment adopted by the Division of
6 Corrections and Rehabilitation pursuant to §62-12-13(h) of this code for each parolee for whom
7 an assessment has not been conducted for parole by a specialized assessment officer;

8 (3) Supervise each parolee according to the assessment and supervision standards
9 determined by the Commissioner of Corrections and Rehabilitation;

10 (4) Furnish to each parolee under his or her supervision a written statement of the
11 conditions of his or her parole together with a copy of the rules prescribed by the Commissioner
12 of Corrections and Rehabilitation for the supervision of parolees;

13 (5) Keep informed concerning the conduct and condition of each parolee under his or her
14 supervision and report on the conduct and condition of each parolee in writing as often as required
15 by the Commissioner of Corrections and Rehabilitation;

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

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

19 (8) Keep accurate and complete accounts of, and give receipts for, all money collected
20 from parolees under his or her supervision, and pay over the money to persons designated by a
21 circuit court or the Commissioner of Corrections and Rehabilitation;

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

25 (10) Perform any other duties required by the Commissioner of Corrections and
26 Rehabilitation.

27 (b) Each probation and parole officer, as described in this article, may, with or without an
28 order or warrant: (1) Arrest or order confinement of any parolee or probationer under his or her
29 supervision; and (2) search a parolee or probationer, or a parolee or probationer's residence or
30 property, under his or her supervision. A probation and parole officer may apply for a search
31 warrant, and execute the search warrant, in connection to a parolee's whereabouts, or a parolee's
32 activities. He or she has all the powers of a notary public, with authority to act anywhere within
33 the state.

34 (c) The Commissioner of Corrections and Rehabilitation may issue a certificate authorizing
35 any state parole officer who has successfully completed the Division of Corrections and
36 Rehabilitation's training program for firearms certification, which is the equivalent of that required
37 of any correctional employee under §15A-3-10 of this code, to carry firearms or concealed
38 weapons. Any parole officer authorized by the Commissioner of Corrections and Rehabilitation
39 may, without a state license, carry firearms and concealed weapons. Each state parole officer,
40 authorized by the Commissioner of Corrections and Rehabilitation, shall carry with him or her a
41 certificate authorizing him or her to carry a firearm or concealed weapon bearing the official
42 signature of the Commissioner of Corrections and Rehabilitation.

§15A-7-6. Parole supervision benefit fund.

1 (a) There is continued a special revenue account in the State Treasury designated the
2 "Parole Supervision Benefit Fund". The fund is to be used by the Division of Corrections and
3 Rehabilitation for the benefit of parolee supervision with approval of the commissioner. The fund
4 shall consist of moneys received from any source, including, but not limited to, funds donated by
5 the general public or an organization dedicated to parole supervision improvement, and funds
6 seized from parolees that are forfeited pursuant to the provisions of §60A-7-701 *et seq.* of this
7 code.

8 (b) Notwithstanding any other provision of this code to the contrary, the commissioner may
9 authorize use of the money in the fund created pursuant to this section for payment to a
10 community corrections program established pursuant to §62-11C-1 *et seq.* of this code for
11 providing enhanced supervision of parolees.

ARTICLE 8. REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY BOARD.

**§15A-8-1. Powers and authority of the Regional Jail and Correctional Facility Authority
Board; continuation of the Regional Jail and Correctional Facility Authority Board;
payment of bonds; appeal of per diem rate.**

1 (a) The Regional Jail and Correctional Facility Authority Board is continued, as follows:

2 (1) The powers and authority of the Regional Jail and Correctional Facility Authority Board,
3 in relation to all functions of correctional operations, are hereby abolished, and these powers and
4 authority are transferred to the Division of Corrections and Rehabilitation as of July 1, 2018. The
5 Regional Jail and Correctional Facility Authority Board shall only retain the powers as now
6 outlined in this chapter. Where reference in this code is made to the Regional Jail and Correctional
7 Facility Authority, in relation to operations of any of the regional jails, it shall be construed to mean
8 the Division of Corrections and Rehabilitation.

9 (2) The following powers and authority of the Regional Jail and Correctional Facility Board
10 are hereby specifically abolished:

11 (A) To mortgage or otherwise grant security interests in its property;

12 (B) To borrow money and to issue its negotiable bonds, security interests, or notes and to
13 provide for and secure the payment thereof, and to provide for the rights of the holders thereof,
14 and to purchase, hold, and dispose of any of its bonds, security interests, or notes;

15 (C) To sell, at public or private sale, any bond or other negotiable instrument, security
16 interest or obligation of the authority in a manner and upon terms that the authority considers
17 would best serve the purposes of this article;

18 (D) To issue its bonds, security interests, and notes payable solely from the revenues or
19 other funds available to the authority therefor; and the authority may issue its bonds, security
20 interests, or notes in those principal amounts as it considers necessary to provide funds for any
21 purposes under this article, including:

22 (i) The payment, funding, or refunding of the principal of, interest on, or redemption
23 premiums on, any bonds, security interests, or notes issued by it whether the bonds, security
24 interests, notes, or interest to be funded or refunded have or have not become due; and

25 (ii) The establishment or increase of reserves to secure or to pay bonds, security interests,
26 notes, or the interest thereon and all other costs or expenses of the Division of Corrections and
27 Rehabilitation incident to and necessary or convenient to carry out its purposes and powers. Any

28 bonds, security interests, or notes may be additionally secured by a pledge of any revenues,
29 funds, assets, or moneys of the authority from any source whatsoever;

30 (E) To issue renewal notes or security interests, to issue bonds to pay notes or security
31 interests and, whenever it considers refunding expedient, to refund any bonds by the issuance of
32 new bonds, whether the bonds to be refunded have or have not matured except that no renewal
33 notes shall be issued to mature more than 10 years from date of issuance of the notes renewed
34 and no refunding bonds may be issued to mature more than 25 years from the date of issuance;

35 (F) To apply the proceeds from the sale of renewal notes, security interests, or refunding
36 bonds to the purchase, redemption, or payment of the notes, security interests, or bonds to be
37 refunded; and

38 (G) To sell security interests in the loan portfolio of the authority. The security interests
39 shall be evidenced by instruments issued by the authority.

40 (3) The powers and duties of the board in relation to paying the current bond series,
41 designated as The State Building Commission of West Virginia Lease Revenue Refunding Bonds
42 (West Virginia Regional Jail and Correctional Facility Authority) Series 1998A, Series 1998B, and
43 Series 1998C are specifically continued. The board, however, may not reissue these bonds,
44 renegotiate the terms of the current bonds, or refinance these bonds. There is hereby created in
45 the State Treasury a Regional Jail and Correctional Facility Board Fund. The fund shall be
46 controlled by the board, and shall be utilized for the sole purpose of payment of the outstanding
47 bond series as provided above. The Commissioner of the Division of Corrections and
48 Rehabilitation shall, on or before the fifth day of every month, transfer to this fund the amount
49 necessary for the monthly payment of the bond, as set forth by the yearly communication from
50 the creditor of the bonds. Further, on the effective date of this section, the commissioner shall
51 transfer to this fund the reserve amount required by the bonds. On the date that the bonds are
52 satisfied in full, these obligations shall cease, and any funds left in the board fund shall be
53 transferred to the Commissioner of the Division of Corrections and Rehabilitation: *Provided, That*

54 the funds can only be used in the manner directed or established by the board. Further, the board
55 retains the authority to be able, and with consent of the Secretary of the Department of Military
56 Affairs and Public Safety, to the extent permitted under its contracts with the holders of bonds,
57 security interests, or notes of the authority, consent to any modification of the rate of interest, time
58 of payment of any installment of principal or interest, security or any other term of any bond,
59 security interest, note, or contract or agreement of any kind to which the authority is a party.

60 (4) The Regional Jail Authority shall review the per diem cost set by the state Budget
61 Office, pursuant to §15A-3-16 of this code. If the authority believes that the amount set by the
62 state Budget Office is incorrect, or that the amounts submitted by the Division of Corrections and
63 Rehabilitation include more than what should be attributed to the efficient operation of jail facilities
64 and units, the authority may institute an action in regard to this pursuant to §29A-5-1 *et seq.* of
65 this code.

66 (5) The Regional Jail Authority retains the ability to sue, as defined in this article, and to
67 be sued.

68 (b) Where reference in this article is made to the “division”, it shall mean the Division of
69 Corrections and Rehabilitation.

**§15A-8-2. West Virginia Regional Jail and Correctional Facility Authority Board;
composition; appointment; terms; compensation and expenses.**

1 The West Virginia Regional Jail and Correctional Facility Authority Board is continued. The
2 members of the board in office on the date this section takes effect shall, unless sooner removed,
3 continue to serve until their respective terms expire and until their successors have been
4 appointed and qualified.

5 The authority shall be governed by a board of nine members, seven of whom are entitled
6 to vote on matters coming before the authority. The complete governing board shall consist of the
7 Commissioner of the Division of Corrections; the Assistant Commissioner for the Bureau of
8 Juvenile Services; the Secretary of the Department of Military Affairs and Public Safety; the

9 Secretary of the Department of Administration, or his or her designated representative; two county
10 commissioners and one sheriff appointed by the Governor, no more than two of which may be of
11 the same political party; and two citizens appointed by the Governor to represent the areas of law
12 and medicine. The Commissioner of the Division of Corrections and Rehabilitation and the
13 Assistant Commissioner for the Bureau of Juvenile Services shall serve in an advisory capacity
14 and are not entitled to vote on matters coming before the authority. Members of the Legislature
15 are not eligible to serve on the board.

16 The Governor shall nominate and, by and with the advice and consent of the Senate,
17 appoint the five appointed members of the authority for staggered terms of four years.

18 Any appointed member whose term has expired shall serve until his or her successor has
19 been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the
20 unexpired term. Any appointed member is eligible for reappointment. Members of the board are
21 not entitled to compensation for services performed as members, but are entitled to
22 reimbursement for all reasonable and necessary expenses actually incurred in the performance
23 of their duties.

24 All members of the board shall execute an official bond in a penalty of \$10,000,
25 conditioned as required by law. Premiums on the bond shall be paid from funds accruing to the
26 Division of Corrections and Rehabilitation. The bond shall be approved as to form by the Attorney
27 General and as to sufficiency by the Governor and, when fully executed and approved, shall be
28 filed in the office of the Secretary of State.

§15A-8-3. Governing body; organization and meetings; quorum; administrative expenses.

1 (a) The board shall consist of the voting members of the board as provided for in §15A-8-
2 2 of this code and shall exercise all the powers given to the authority in this article. On the second
3 Monday of July of each odd-numbered year, the board shall meet to elect a chairman and a
4 secretary from among its own members. The Secretary of the Department of Administration or

5 his or her designated representative shall serve as treasurer of the board. The board shall
6 otherwise meet two times a year, unless a special meeting is called by its chairman.

7 (b) A majority of the members of the board constitute a quorum, and a quorum must be
8 present for the board to conduct business. Unless the bylaws require a larger number, action may
9 be taken by majority vote of the members present.

10 (c) The board shall prescribe, amend, and repeal bylaws and rules governing the manner
11 in which the business of the authority is conducted and shall review and approve the budget
12 prepared by the executive director annually.

13 (d) All costs incidental to the administration of the board shall be paid from the jail
14 operation fund by the Commissioner of Corrections and Rehabilitation.

CHAPTER 19. AGRICULTURE.

ARTICLE 12A. LAND DIVISION.

§19-12A-5. Powers, duties and responsibilities of commission.

1 (a) On or before July 1, 1990, the commission shall meet and confer with respect to the
2 development of a management plan to determine the optimum use or disposition of all institutional
3 farms, at which time the Farm Management Director shall provide the commission with a complete
4 inventory of all institutional farms, and such information relating to easements, mineral rights,
5 appurtenances, farm equipment, agricultural products, livestock, inventories, and farm facilities
6 as may be necessary to develop such management plan. The commission shall complete and
7 provide to the Governor a management plan, which plan shall set forth the objectives of the
8 commission with respect to institutional farms, the criteria by which the commission shall
9 determine the optimum use or disposition of such property, and determinations as to whether
10 each institutional farm shall be used in production, sold, or leased, in whole or in part. Prior to the
11 adoption of any plan, the commission shall consult with the secretaries of the various departments
12 of state government and shall request from such secretaries suggestions for land use and

13 resource development on farm commission lands. On or before December 1, 1990, such
14 management plan shall be presented to the Legislature, by providing a copy to the President of
15 the Senate and the Speaker of the House of Delegates. The commission may confer with any
16 other agency or individual in implementing and adjusting its management plan. The management
17 plan established pursuant to this subsection may be amended, from time to time, as may be
18 necessary.

19 (b) The commission shall manage its institutional farms, equipment, and other property in
20 order to most efficiently produce food products for state institutions and shall implement the intent
21 of the Legislature as set forth by this article. From the total amount of food, milk and other
22 commodities produced on institutional farms, the commission shall sell, at prevailing wholesale
23 prices, and each of the institutions under the control of the Bureau of Public Health shall purchase,
24 a proportionate amount of these products based on the dietary needs of each institution.

25 (c) If requested by the Commissioner of Corrections and Rehabilitation, the commission
26 may authorize the Division of Corrections and Rehabilitation to operate a farm or other enterprise
27 using inmates as labor on those lands. The Commissioner of Corrections and Rehabilitation is
28 responsible for the selection, direction, and supervision of the inmates and shall assign the work
29 to be performed by inmates.

30 (d) The commission is hereby authorized and empowered to:

31 (1) Lease to public or private parties, for purposes including agricultural production or
32 experimentation, public necessity, or other purposes permitted by the management plan, any
33 land, easements, equipment, or other property, except that property may not be leased for any
34 use in any manner that would render the land toxic for agricultural use, nor may toxic or hazardous
35 materials as identified by the Commissioner of Agriculture be used or stored upon such property
36 unless all applicable state and federal permits necessary are obtained. Any lease for an annual
37 consideration of \$1,000 or more shall be by sealed bid auction and the commission shall give
38 notice of such auction by publication thereof as a Class II-0 legal advertisement in compliance

39 with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication is
40 the county in which the property to be leased is located;

41 (2) Transfer to the public land corporation land designated in its management plan as land
42 to be disposed of, which land shall be sold, exchanged, or otherwise transferred pursuant to §5A-
43 11-4 and §5A-11-5 of this code: *Provided*, That the net proceeds of the sale of farm commission
44 lands shall be deposited in the General Revenue Fund of the state: *Provided, however*, That no
45 sale may be concluded until on or after March 15, 1991, except with respect to: (A) Properties
46 located at institutions closed on or before the effective date of this section, March 10, 1990; or (B)
47 properties conveyed to or from the farm management commission to or from any other entity in
48 order to facilitate the construction of a regional jail or correctional facility by the Regional Jail and
49 Correctional Facilities Authority or the State Building Commission, with the decision to execute
50 any such conveyance being solely within the discretion of, and at the direction of, the Regional
51 Jail and Correctional Facilities Authority;

52 (3) Develop lands to which it has title for the public use including forestation, recreation,
53 wildlife, stock grazing, agricultural production, rehabilitation and/or other conservation activities
54 and may contract or lease for the proper development of timber, oil, gas, or mineral resources,
55 including coal by underground mining or by surface mining where reclamation as required by
56 specifications of the Division of Environmental Protection will increase the beneficial use of such
57 property. Any such contract or lease shall be by sealed bid auction as provided for in subdivision
58 (1) above;

59 (4) Exercise all other powers and duties necessary to effectuate the purposes of this
60 article.

61 (e) Notwithstanding the provisions of subsection (d) of this section, no timberland may be
62 leased, sold, exchanged, or otherwise disposed of unless the Division of Forestry of the
63 Department of Commerce, Labor and Environmental Resources certifies that there is no
64 commercially salable timber on the timberland, an inventory is provided, an appraisal of the timber

65 is provided, and the sale, lease, exchange, or other disposition is accomplished by the sealed bid
66 auction procedure provided above in subdivisions (1) or (2), as applicable.

67 (f) The commission shall promulgate, pursuant to §29-1-1 *et seq.* of this code, rules and
68 regulations relating to the powers and duties of the commission as enumerated in this section.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

**§25-1-1. Office of commissioner of public institutions abolished; department and
commissioner of corrections established; qualifications, oath and bond.**

1 [Repealed.]

§25-1-1a. Purpose and legislative intent.

1 [Repealed.]

**§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions
transferred to Department of Health and Human Resources; establishment of work
and study release units; contracting with certain entities for reentry and direct
placement services; reports to Governor.**

1 [Repealed.]

§25-1-3a. Trustee accounts and funds, earnings and personal property of inmates.

1 [Repealed.]

§25-1-3b. Inmate benefit funds.

1 [Repealed.]

§25-1-3c. Financial responsibility program for inmates.

1 [Repealed.]

**§25-1-4. Limitation on reimbursement rate to medical service providers for services
provided for services outside division facilities.**

1 [Repealed.]

§25-1-5. Rules and regulations.

1 [Repealed.]

§25-1-5a. Mutual aid agreements.

1 [Repealed.]

§25-1-6. Title to property of state institutions; custody of deeds and other muniments of title; authority of commissioner.

1 [Repealed.]

§25-1-7. Pruntytown Correctional Center established as a minimum security facility; limitations on type of residents therein.

1 [Repealed.]

§25-1-8. Charges assessed against inmates for services provided by state.

1 [Repealed.]

§25-1-11. Officers and employees of corrections institutions.

1 [Repealed.]

§25-1-11a. Duties of wardens and administrators; bond; residence.

1 [Repealed.]

§25-1-11b. Appointment of deputy warden; duties; bond.

1 [Repealed.]

§25-1-11c. Hiring of other assistants and employees; duties of correctional employees; right to carry weapons; powers of correctional peace officers.

1 [Repealed.]

§25-1-11d. Compensation of employees approved by commissioner; traveling and other expenses; payment of salaries.

1 [Repealed.]

§25-1-11e. Unauthorized use of uniform, badge, identification card or other insignia; impersonation of member; and penalty.

1 [Repealed.]

§25-1-11f. Hiring of correctional officer without regard to position on the register.

1 [Repealed.]

§25-1-13. Furlough programs.

1 [Repealed.]

§25-1-14. Electronic monitoring of offenders; special account.

1 [Repealed.]

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

1 [Repealed.]

§25-1-16. Transfer of inmates of state institutions or facilities.

1 [Repealed.]

§25-1-16a. Governor's authority to authorize commissioner of corrections to consent to transfer of inmates under a federal treaty.

1 [Repealed.]

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

1 [Repealed.]

§25-1-18. Monitoring inmate mail; procedures and restrictions; identifying mail from a state correctional institution; mail to or from attorneys excepted.

1 [Repealed.]

§25-1-19. Reports by Commissioner of Public Institutions and chief officers of institutions to Auditor.

1 [Repealed.]

§25-1-20. Reports to Governor.

1 [Repealed.]

§25-1-21. Employment of displaced correctional employees at other facilities.

1 [Repealed.]

§25-1-22. Task Force to Study the Feasibility of Establishing a Correctional Facility for the Incarceration and Treatment of Sex Offenders; members; duties.

1 [Repealed.]

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

§28-5-7. Record of convict.

1 [Repealed.]

§28-5-8a. Manufacture of license plates, road signs or markers; securing signs and markers when federal government reimburses state for cost thereof.

1 [Repealed.]

§28-5-23. Special compensation of officers and employees prohibited; penalty.

1 [Repealed.]

§28-5-24. Gifts to or dealings with convicts.

1 [Repealed.]

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

1 [Repealed.]

CHAPTER 31. CORPORATIONS.

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

§31-20-1. Short title.

1 [Repealed.]

§31-20-1a. Legislative findings and purposes.

1 [Repealed.]

§31-20-2. Definitions.

1 [Repealed.]

§31-20-3. West Virginia Regional Jail and Correctional Facility Authority; composition; appointment; terms; compensation and expenses.

1 [Repealed.]

§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.

1 [Repealed.]

§31-20-5. Powers and duties of the authority; bidding procedures.

1 [Repealed.]

§31-20-5a. Bidding procedures.

1 [Repealed.]

§31-20-5b. Prohibition against use or possession of tobacco products by inmates held by regional facility authority in regional jails operated solely by the authority; authorization to establish smoking cessation program.

1 [Repealed.]

§31-20-5c. Additional powers and duties of the authority; juvenile detention facilities.

1 [Repealed.]

§31-20-5d. Good-time credit.

1 [Repealed.]

§31-20-5e. Monitoring of inmate telephone calls and electronic communications; procedures and restrictions; attorney-client privilege protected and exempted.

1 [Repealed.]

§31-20-5f. Charges assessed against inmates for services provided by the authority.

1 [Repealed.]

§31-20-5g. Pretrial risk assessment.

1 [Repealed.]

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

1 [Repealed.]

§31-20-8. Jail facilities standards commission; appointment; compensation; vacancies; quorum.

1 [Repealed.]

§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.

1 [Repealed.]

§31-20-9. Jail facilities standards commission: Purpose, powers and duties.

1 [Repealed.]

§31-20-9a. Juvenile facilities standards commission; purpose; powers; and duties.

1 [Repealed.]

§31-20-10. Regional jail and correctional facility authority funds.

1 [Repealed.]

§31-20-10a. Criteria and procedures for determining the cost per day for inmates incarcerated in facilities operated by the authority and allocating cost.

1 [Repealed.]

§31-20-10b. Regional Jail Operations Partial Reimbursement Fund.

1 [Repealed.]

§31-20-11. Borrowing of money.

1 [Repealed.]

§31-20-12. Notes, security interests and bonds as general obligations of authority.

1 [Repealed.]

§31-20-13. Notes, security interests and bonds as negotiable instruments.

1 [Repealed.]

§31-20-14. Authorizing resolutions.

1 [Repealed.]

§31-20-15. Redemption of notes, security interests or bonds.

1 [Repealed.]

§31-20-20. Authorized limit on borrowing.

1 [Repealed.]

§31-20-22. Money of the authority.

1 [Repealed.]

§31-20-23. Conflict of interest; when contracts void.

1 [Repealed.]

§31-20-24. Agreement with federal agencies not to alter or limit powers of authority.

1 [Repealed.]

§31-20-27. Correctional officers; regional jails; priority of hiring.

1 [Repealed.]

§31-20-27a. Regional jail employees right to carry firearm; arrest authority of correctional officers.

1 [Repealed.]

§31-20-28. Limitations on contracts for sale of bonds or other securities.

1 [Repealed.]

§31-20-29. Furlough program.

1 [Repealed.]

§31-20-30. Limitation on reimbursement rate to medical service providers for services outside regional jail facilities.

1 [Repealed.]

§31-20-30a. Mechanical restraints during pregnancy.

1 [Repealed.]

§31-20-31. Work program.

1 [Repealed.]

§31-20-32. Jail processing fee.

1 ([Repealed.]

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2. Costs in criminal proceedings.

1 (a) In each criminal case before a magistrate court in which the defendant is convicted,
2 whether by plea or at trial, there is imposed, in addition to other costs, fines, forfeitures or penalties
3 as may be allowed by law: (1) Costs in the amount of \$60, of which \$5 of that amount shall be
4 deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-
5 six, chapter twenty-nine of this code; (2) an amount equal to the one-day per diem provided for in
6 §15A-3-16(g) of this code; and (3) costs in the amount of \$30 to be deposited in the Regional Jail
7 Operations Partial Reimbursement Fund created by §15A-3-16 of this code. A magistrate may
8 not collect costs in advance. Notwithstanding any other provision of this code, a person liable for
9 fines and court costs in a criminal proceeding in which the defendant is confined in a jail or prison
10 and not participating in a work release program shall not be held liable for the fines and court
11 costs until one hundred eighty days after completion of the term in jail or prison. A magistrate
12 court shall deposit \$5 from each of the criminal proceedings fees collected pursuant to this section
13 in the Court Security Fund created in section fourteen, article three, chapter fifty-one of this code.
14 A magistrate court shall, on or before the tenth day of the month following the month in which the
15 fees imposed in this section were collected, remit an amount equal to the one-day per diem
16 provided for in §15A-3-16(g) of this code from each of the criminal proceedings in which the fees
17 specified in this section were collected to the magistrate court clerk, or if there is no magistrate

18 court clerk to the clerk of the circuit, together with information as may be required by the rules of
19 the Supreme Court of Appeals and the rules of the Office of Chief Inspector. These moneys are
20 paid to the sheriff who shall distribute the moneys solely in accordance with the provisions of
21 section fifteen, article five, chapter seven of this code. Amendments made to this section during
22 the 2001 regular session of the Legislature, are effective after June 30, 2001.

23 (b) A magistrate shall assess costs in the amount of \$2.50 for issuing a sheep warrant and
24 the appointment and swearing appraisers and docketing the proceedings.

25 (c) In each criminal case which must be tried by the circuit court but in which a magistrate
26 renders some service, costs in the amount of \$10 shall be imposed by the magistrate court and
27 is certified to the clerk of the circuit court in accordance with the provisions of section six, article
28 five, chapter sixty-two of this code.

**§50-3-4a. Disposition of criminal costs and civil filing fees into State Treasury account for
Regional Jail and Prison Development Fund.**

1 (a) The clerk of each magistrate court shall, at the end of each month, pay into the
2 Regional Jail and Prison Development Fund in the state Treasury an amount equal to \$40 of the
3 costs collected in each criminal proceeding and all but \$10 of the costs collected for the filing of
4 each civil action.

5 (b) The clerk of each magistrate court shall, at the end of each month, pay into the
6 Regional Jail Operations Partial Reimbursement Fund established in §15A-3-17 of this code the
7 fees collected pursuant to subsection (g), section one and subdivision (3), subsection (a), section
8 two of this article.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

**§62-12-14. Appointment of probation and parole officers and clerical assistants;
qualifications of officers; salaries and expenses.**

1 [Repealed.]

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

1 [Repealed.]

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

1 [Repealed.]

§62-12-25. Parole supervision benefit fund.

1 [Repealed.]

ARTICLE 13. CORRECTIONS MANAGEMENT.

§62-13-3. Appointment and qualifications of director.

1 [Repealed.]

§62-13-4. Powers and duties of commissioner or director generally; compensation and funds of inmates.

1 [Repealed.]

§62-13-5. Commitments; transfers.

1 [Repealed.]

§62-13-6a. Payment of jail fees to county commissions.

1 [Repealed.]

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect July 1, 2018.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2018.

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Governor