

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4451**

BY DELEGATES SHOTT, HANSHAW, HOWELL, FAST, MR.

SPEAKER (MR. ARMSTEAD), LANE, MOORE, ZATEZALO,

HOLLEN, HARSHBARGER AND CAPITO

[Introduced February 7, 2018; Referred

to the Committee on the Judiciary.]

1 A BILL to amend and reenact §15-9-4 of the Code of West Virginia, 1931, as amended, and to  
 2 amend said code by adding thereto a new article, designated §15-9C-1, §15-9C-2, §15-  
 3 9C-3, §15-9C-4 and §15-9C-5, all relating to creating the West Virginia Sentencing  
 4 Commission; establishing the commission as a standing subcommittee of the Governor's  
 5 committee on crime, delinquency and correction; authorizing commission to seek and  
 6 utilize funding and grants; setting forth legislative findings; establishing composition and  
 7 membership of commission; setting forth the powers and duties of the commission; setting  
 8 forth objectives for the commission; directing commission provide annual assessment and  
 9 recommendations to the Legislature; and authorizing the commission to make additional  
 10 recommendations to the Legislature.

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

**ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND  
 CORRECTION.**

**§15-9-4. Criminal sentencing research Sentencing Commission Subcommittee.**

1 ~~The Governor's committee on crime, delinquency and correction shall conduct~~  
 2 ~~comprehensive research on the state's criminal sanctioning process for adult offenders. The~~  
 3 ~~purpose of the research is to promote a fuller understanding of this state's criminal justice system,~~  
 4 ~~and shall include the review of issues of sentence length imposed, actual sentence length served,~~  
 5 ~~parole eligibility, parole revocation, determinate or indeterminate sentences, availability of~~  
 6 ~~alternatives to incarceration for certain offenses, and the respective roles that each of these and~~  
 7 ~~other criminal sanction issues may play in the increased demand for prison bed space. The~~  
 8 ~~committee shall report to the Governor and the Legislature on or before January 1, 2004, and at~~  
 9 ~~its discretion thereafter, the findings of its research and make any recommendations for~~  
 10 ~~modifications of criminal sentencing laws or procedures provided that no such recommendations~~  
 11 ~~or modifications shall become effective without further action of the Legislature~~

12           The Governor's committee on crime, delinquency and correction shall have a standing  
13 subcommittee known as the West Virginia Sentencing Commission. To the extent requested or  
14 necessary, the commission shall be staffed and supported by the Division of Justice and  
15 Community Services. The commission, by and through the division, may seek and utilize funding  
16 and grants in furtherance of the purposes and mission of the commission.

## **ARTICLE 9C. WEST VIRGINIA SENTENCING COMMISSION.**

### **§15-9C-1. Legislative findings.**

1           The Legislature finds and declares that there is:

2           (1) A need for fair and uniform sentencing;

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

5           (3) A need for establishing priorities with regard to the severity of the criminal offenses;

6 and

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

### **§15-9C-2. Creation of sentencing commission; purpose; composition.**

1           (a) The West Virginia Sentencing Commission is hereby created as a standing  
2 subcommittee of the Governor's committee on crime, delinquency, and correction.

3           (b) The purpose of the commission is to promote a fuller understanding of this state's  
4 criminal justice sentencing system, and shall include the review and research of issues of  
5 sentence length imposed, actual sentence length served, parole eligibility, parole revocation,  
6 determinate or indeterminate sentences, availability of alternatives to incarceration for certain  
7 offenses, and the respective roles that each of these and other criminal sanction issues may play  
8 in the increased demand for prison bed space.

9           (c) The commission shall consist of the following members, who shall serve without  
10 compensation:

11 (1) The Secretary of the Department of Military Affairs and Public Safety, or his or her  
12 designee;

13 (2) Three prosecuting attorneys, or assistant prosecuting attorneys, from three different  
14 counties chosen by the President of the West Virginia Prosecuting Attorneys Association;

15 (3) Two public defenders, or assistant public defenders, from two different judicial circuits  
16 chosen by the Director of the Public Defender Services;

17 (4) Two practicing attorneys licensed to practice in West Virginia who maintain offices in  
18 different judicial circuits who regularly serve as appointed counsel for criminal defendants, to be  
19 appointed by the President of the West Virginia State Bar;

20 (5) One representative chosen from the West Virginia Association of Counties who shall  
21 be chosen by the Executive Director of that organization;

22 (6) One representative from the West Virginia Chief of Police Association who shall be  
23 chosen by the Executive Director of that organization;

24 (7) One representative from the West Virginia Sheriff's Association who shall be chosen  
25 by the Executive Director of that organization;

26 (8) The Superintendent of the West Virginia State Police, or his or her designee;

27 (9) Two representatives from the West Virginia Judicial Association who shall be current  
28 circuit court judges and chosen by the executive committee of that organization, who shall serve  
29 as ex officio members;

30 (10) Two retired or non-serving circuit court judges or magistrates who shall be appointed  
31 by the presiding Chief Justice of the West Virginia Supreme Court of Appeals; and

32 (11) Two members of the West Virginia Association on Alcoholism and Drug Abuse  
33 Counselors who shall be chosen by the President of that Organization.

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

36 (e) The chairperson of this commission shall be elected by the other members of the  
37 commission. The first meeting shall be chaired by the Director of the Division of Justice and

38 Community Services.

39 (f) Eight members of the commission is a quorum.

40 (g) The Director of the Division of Justice and Community Services shall serve as  
41 Executive Director of the Commission and the division shall provide administrative services to the  
42 commission.

**§15-9C-3. Powers and duties of the commission.**

1 (a) The Sentencing Commission established pursuant to this article:

2 (1) May request information, data and reports from any officer or agency of the state  
3 government, as the commission may from time to time require and as may be produced consistent  
4 with other law;

5 (2) Issue invitations requesting the attendance and testimony of witnesses and the  
6 production of any evidence that relates directly to a matter with respect to which the commission  
7 or any member thereof is empowered to make a determination under this article;

8 (3) Shall establish a research and development program within the commission for the  
9 purpose of:

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

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

14 (4) Shall collect data obtained from studies, research and the empirical experience of  
15 public and private agencies concerning the sentencing processes;

16 (5) Shall publish data concerning the sentencing process;

17 (6) Shall collect and disseminate information concerning sentences actually imposed;

18 (7) Shall, collect and disseminate information regarding effectiveness of sentences  
19 imposed;

20 (8) Shall make recommendations to the Legislature concerning modification or enactment  
21 of sentencing and correctional statutes which the commission finds to be necessary and advisable

22 to carry out an effective, humane and rational sentencing policy;

23 (9) Shall establish a plan and timetable to collect and disseminate information relating to  
24 incapacitation, recidivism, deterrence and overall effectiveness of sentences imposed; and

25 (10) Shall provide recommendations to the Legislature for the creation of programs and  
26 establishment of facilities in the state that provide how the state can best shift its expenditures in  
27 a revenue neutral fashion away from incarceration to interdiction programs, facilities, and related  
28 services, as well as improvements and facilities that may be necessary to house the growing  
29 prison population.

**§15-9C-4. Objectives of the commission.**

1 (a) In performing its powers and duties, the commission shall pursue the following  
2 objectives:

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

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

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

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

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

15 (b) The commission shall also conduct a comprehensive review and study of national and  
16 local trends and programs that have proven successful in addressing and overcoming addiction  
17 and identifying the nature of the causes of addiction and criminal behavior related to drug  
18 addiction. The commission shall provide recommendations to the Legislature for the creation of

19 programs and establishment of facilities in the state that provide how the state can best shift its  
 20 expenditures in a revenue neutral fashion away from incarceration to interdiction programs,  
 21 facilities, and related services.

**§15-9C-5. Recommendations to Legislature**

1 (a) In addition to the dissemination of information set forth in section three of this article,  
 2 the commission shall provide, on or before January 1, 2019, and in each successive year,  
 3 assessments and updates to the Legislature as to their progress, findings, analysis and  
 4 recommendations, if any, as to the state’s sentencing and correctional laws and policies.

5 (b) As part of the report set forth in subsection (a) of this section, the commission may, or  
 6 at the request of the President of the Senate or the Speaker of the House of Delegates, make  
 7 recommendations regarding the following issues:

8 (1) Whether the state should adopt guided discretion sentencing guidelines and, if so,  
 9 what type of guided discretion sentencing guidelines should be adopted;

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

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

15 (4) Any other matters relating to state and local laws and policies governing sentencing,  
 16 parole, mandatory supervision and correctional options programs.

NOTE: The purpose of this bill is to create the West Virginia Sentencing Commission and provide for its powers and duties.

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