

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4004

BY DELEGATES D. KELLY, WAXMAN, HANNA, MANDT,

ROBINSON, MILLER AND CANESTRARO

[Passed March 7, 2020; in effect July 1, 2020.]

1 AN ACT 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, §15-9C-5, and §15-9C-6, all relating to creating the West Virginia
4 Sentencing Commission as a subcommittee of the Governor's Committee on Crime,
5 Delinquency and Correction; authorizing the commission to seek and use funding and
6 grants; setting forth legislative findings; setting forth the purpose of the commission;
7 establishing composition and membership of commission; setting forth the powers and
8 duties of the commission; setting forth objectives for the commission; directing
9 commission provide assessment and recommendations to the Legislature; authorizing the
10 commission to make additional recommendations to the Legislature; and establishing an
11 internal effective date and termination date for the subcommittee.

Be it enacted by the Legislature of West Virginia:

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

§15-9-4. Sentencing Commission Subcommittee.

1 Effective July 1, 2020, the Governor's Committee on Crime, Delinquency, and Correction
2 shall establish a subcommittee to be known as the West Virginia Sentencing Commission. To the
3 extent requested or necessary, the commission shall be staffed and supported by the Division of
4 Administrative Services of the Department of Military Affairs and Public Safety. The commission,
5 by and through the division, may seek and use funding and grants in furtherance of the purposes
6 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 while preventing
9 disparate treatment of offenders based on racial, ethnic, cultural, economic, or other factors
10 related to the social status of the offender.

§15-9C-2. Creation of Sentencing Commission; purpose; composition.

1 (a) The West Virginia Sentencing Commission is hereby created as a subcommittee of the
2 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 consists of the following members, who serve without compensation:

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

12 (2) Two prosecuting attorneys, or assistant prosecuting attorneys, from two different
13 counties chosen by the President of the West Virginia Prosecuting Attorneys Association;

14 (3) Two public defenders, or assistant public defenders, or panel attorneys who primarily
15 do court-appointed criminal representation, from two different judicial circuits chosen by the
16 Director of the Public Defender Services;

17 (4) One representative from the West Virginia Chief of Police Association who shall be
18 chosen by the executive director of that organization;

19 (5) One representative from the West Virginia Sheriff's Association who shall be chosen
20 by the executive director of that organization;

21 (6) Two representatives from the West Virginia Judicial Association who are current or
22 senior status circuit court judges and chosen by the executive committee of that organization,
23 who shall serve as ex officio members;

24 (7) One member of the West Virginia Association on Alcoholism and Drug Abuse
25 Counselors who shall be chosen by the president of the organization;

26 (8) Two members of the West Virginia Legislature, one chosen by the Speaker of the
27 House and one chosen by the President of the Senate, who shall serve as ex officio members of
28 the commission; and

29 (9) One professor of law with experience in the practice and teaching of criminal law
30 appointed by the Dean of the West Virginia University College of Law.

31 (d) Each member serves a two-year term, except for the ex officio members who serve as
32 long as they hold their respective offices.

33 (e) The chairperson of this commission shall be elected by the other members of the
34 commission. The first meeting shall be chaired by the Director of the Division of Administrative
35 Services of the Department of Military Affairs and Public Safety.

36 (f) Six members of the commission shall constitute a quorum.

37 (g) The Director of the Division of Administrative Services serves as executive director of
38 the commission and the division shall provide administrative services to the 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 required by the commission and as may be produced consistent with other laws;

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

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

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

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

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

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

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

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

19 (8) Shall make recommendations to the Legislature concerning modification or enactment
20 of sentencing and correctional statutes which the commission finds to be necessary and advisable
21 to carry out an effective, humane, and rational sentencing policy;

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

24 (10) Shall provide recommendations to the Legislature for the creation of programs and
25 establishment of facilities in the state that provide how the state can best shift its expenditures in
26 a revenue-neutral fashion away from incarceration to treatment programs, facilities, and related
27 services;

28 (11) Shall conduct a comprehensive review and study of national and local trends and
29 programs that have proven successful in addressing and overcoming addiction and identifying
30 the nature of the causes of addiction and criminal behavior related to drug addiction; and

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

1 In performing its powers and duties, the commission shall pursue the following objectives:

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

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

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

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

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

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

1 (a) In addition to the dissemination of information set forth in §15-9C-3 of this code, the
2 commission shall provide, on or before January 1, 2022, an assessment and report to the
3 Legislature as its findings, analysis, and recommendations, if any, as to the state's sentencing
4 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 and the Speaker of the House of Delegates, shall
7 make recommendations regarding the following issues:

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

10 (2) Whether the state should alter the manner in which an inmate obtains credit for good
11 time;

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

14 (4) Whether the state should establish additional guidelines and procedures to examine
15 or reexamine the reduction of long-term sentences of individuals who are not a danger to public
16 safety; and

17 (5) Any other matters relating to state and local laws and policies governing sentencing,
18 parole, mandatory supervision, and correctional alternative programs.

§15-9C-6. Sunset.

1 The Sentencing Commission Subcommittee established in this article terminates on June
2 30, 2023, unless continued by the Legislature.

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

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect July 1, 2020.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2020.

.....
Governor