

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5415

By Delegates Ridenour, Steele, Martin, Foster, Kirby,
Hillenbrand, Ward, Kimble, Phillips, Mallow, and
Marple

[Introduced February 01, 2024; Referred to the
Committee on Veterans' Affairs and Homeland
Security then the Judiciary]

1 A BILL to amend and reenact §15-2-24 of the Code of West Virginia, as amended, to amend said
2 code by adding thereto four new sections, designated §29-12A-19, §29-12A-20, §29-12A-
3 21, and §29-12A-22; to amend said code by adding thereto a new article, designated §61-
4 17-1, §61-17-2, §61-17-3, and §61-17-4; to amend and reenact §62-11C-11 of said code;
5 to amend and reenact §62-12-2 and §62-12-13 of said code; and to amend said code by
6 adding thereto a new article, designated §62-17-1, §62-17-2, and §62-17-3, all relating to
7 procedures regarding illegal entry into the state; requiring the Criminal Identification
8 Bureau maintain certain records regarding illegal entry into state; providing immunity to
9 local and state officials for actions taken to enforce law regarding illegal entry into state;
10 establishing findings and definitions regarding illegal entry into state; creating the offense
11 of illegal entry into state; creating the offense of illegal reentry into state; creating the
12 offense of refusal to comply with an order; prohibiting community supervision for person
13 convicted of certain offenses; prohibiting parole for persons convicted of illegal entry or
14 reentry; prohibiting enforcement of crimes of illegal entry or reentry in certain locations;
15 establishing procedures for court to order deportation of certain individuals; and providing
16 no abatement of prosecution for defendants whose status is not determined by federal
17 government.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-24. Criminal Identification Bureau; establishment; supervision; purpose; fingerprints, photographs, records and other information; reports by courts and prosecuting attorneys; offenses and penalties.

1 (a) The superintendent of the department shall establish, equip and maintain at the
2 departmental headquarters a Criminal Identification Bureau, for the purpose of receiving and filing

3 fingerprints, photographs, records and other information pertaining to the investigation of crime
4 and the apprehension of criminals, as hereinafter provided. The superintendent shall appoint or
5 designate a supervisor to be in charge of the Criminal Identification Bureau and such supervisor
6 shall be responsible to the superintendent for the affairs of the bureau. Members of the department
7 assigned to the Criminal Identification Bureau shall carry out their duties and assignments in
8 accordance with internal management rules and regulations pertaining thereto promulgated by the
9 superintendent.

10 (b) The Criminal Identification Bureau shall cooperate with identification bureaus of other
11 states and of the United States to develop and carry on a complete interstate, national and
12 international system of criminal identification.

13 (c) The Criminal Identification Bureau may furnish fingerprints, photographs, records or
14 other information to authorized law-enforcement and governmental agencies of the United States
15 and its territories, of foreign countries duly authorized to receive the same, of other states within
16 the United States and of the State of West Virginia upon proper request stating that the
17 fingerprints, photographs, records or other information requested are necessary in the interest of
18 and will be used solely in the administration of official duties and the criminal laws.

19 (d) The Criminal Identification Bureau may furnish, with the approval of the superintendent,
20 fingerprints, photographs, records or other information to any private or public agency, person,
21 firm, association, corporation or other organization, other than a law-enforcement or governmental
22 agency as to which the provisions of subsection (c) of this section shall govern and control, but all
23 requests under the provisions of this subsection for such fingerprints, photographs, records or
24 other information must be accompanied by a written authorization signed and acknowledged by
25 the person whose fingerprints, photographs, records or other information is to be released.

26 (e) The Criminal Identification Bureau may furnish fingerprints, photographs, records and
27 other information of persons arrested or sought to be arrested in this state to the identification
28 bureau of the United States government and to other states for the purpose of aiding law-

29 enforcement.

30 (f) Persons in charge of any penal or correctional institution, including any city or county jail
31 in this state, shall take, or cause to be taken, the fingerprints and description of all persons lawfully
32 committed thereto or confined therein and furnish the same in duplicate to the Criminal
33 Identification Bureau, Department of Public Safety. Such fingerprints shall be taken on forms
34 approved by the superintendent of the Department of Public Safety. All such officials as herein
35 named may, when possible to do so, furnish photographs to the Criminal Identification Bureau of
36 such persons so fingerprinted.

37 (g) Members of the Department of Public Safety, and all other state law-enforcement
38 officials, sheriffs, deputy sheriffs and each and every peace officer in this state, shall take or cause
39 to be taken the fingerprints and description of all persons arrested or detained by them, charged
40 with any crime or offense in this state, in which the penalty provided therefor is confinement in any
41 penal or correctional institution, or of any person who they have reason to believe is a fugitive from
42 justice or a habitual criminal, and furnish the same in duplicate to the Criminal Identification
43 Bureau of the Department of Public Safety on forms approved by the superintendent of said
44 department. All such officials as herein named may, when possible to do so, furnish to the Criminal
45 Identification Bureau photographs of such persons so fingerprinted. For the purpose of obtaining
46 data for the preparation and submission to the Governor and the Legislature by the Department of
47 Public Safety of an annual statistical report on crime conditions in the state, the clerk of any court
48 of record, the magistrate of any magistrate court and the mayor or clerk of any municipal court
49 before which a person appears on any criminal charge shall report to the Criminal Identification
50 Bureau the sentence of the court or other disposition of the charge and the prosecuting attorney of
51 every county shall report to the Criminal Identification Bureau such additional information as the
52 bureau may require for such purpose, and all such reports shall be on forms prepared and
53 distributed by the Department of Public Safety, shall be submitted monthly and shall cover the
54 period of the preceding month.

55 (h) All persons arrested or detained pursuant to the requirements of this article shall give
56 fingerprints and information required by subsections (f) and (g) of this section. Any person who has
57 been fingerprinted or photographed in accordance with the provisions of this section who is
58 acquitted of the charges upon which he or she was arrested and who has no previous criminal
59 record may, upon the presentation of satisfactory proof to the department, have such fingerprints
60 or photographs, or both, returned to them.

61 (i) All state, county and municipal law-enforcement agencies shall submit to the bureau
62 uniform crime reports setting forth their activities in connection with law-enforcement. It shall be
63 the duty of the bureau to adopt and promulgate rules and regulations prescribing the form, general
64 content, time and manner of submission of such uniform crime reports. Willful or repeated failure
65 by any state, county or municipal law-enforcement official to submit the uniform crime reports
66 required by this article shall constitute neglect of duty in public office. The bureau shall correlate
67 the reports submitted to it and shall compile and submit to the Governor and the Legislature
68 semiannual reports based on such reports. A copy of such reports shall be furnished to all
69 prosecuting attorneys and law-enforcement agencies.

70 (j) Neglect or refusal of any person mentioned in this section to make the report required
71 herein, or to do or perform any act on his or her part to be done or performed in connection with the
72 operation of this section, shall constitute a misdemeanor and such person shall, upon conviction
73 thereof, be punished by a fine of not less than \$25 nor more than \$200, or by imprisonment in the
74 county jail for a period of not more than sixty days, or both. Such neglect shall constitute
75 misfeasance in office and subject such persons to removal from office. Any person who willfully
76 removes, destroys or mutilates any of the fingerprints, photographs, records or other information
77 of the Department of Public Safety shall be guilty of a misdemeanor and such person shall, upon
78 conviction thereof, be punished by a fine of not more than \$100, or by imprisonment in the county
79 jail for a period of not more than six months, or both.

80 (k) The Criminal Identification Bureau (CIB) and the Federal Bureau of Investigation (FBI)

81 shall retain applicant fingerprints for the purpose of participating in the Rap Back Program to
82 determine suitability or fitness for a permit, license or employment. Agencies participating in the
83 program shall notify applicants and employees subject to a criminal history check that their
84 fingerprint shall be retained by the CIB and the FBI. Notification shall also be given to the applicant
85 and employee subject to the Rap Back Program.

86 (l) The State Police may assess a fee to applicants, covered providers or covered
87 contractors for conducting the criminal background check and for collecting and retaining
88 fingerprints for Rap Back as authorized under article forty-nine, chapter sixteen of this code. The
89 assessment shall be deposited into a nonappropriated special revenue account within the State
90 Treasurer's office to be known as the WVSP Criminal History Account. Expenditures from this
91 account shall be made by the superintendent for purposes set forth in this article and are
92 authorized from collections. The account shall be administered by the superintendent and may not
93 be deemed a part of the general revenue of the state.

94 (m) Information maintained by the Criminal Identification Bureau must include any order
95 issued under §62-17-1 et seq. of this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12A. GOVERNMENTAL TORT CLAIMS AND INSURANCE REFORM ACT.

§29-12A-19. Civil immunity and indemnification of local government officials, employees, and contractors.

1 (a) Except as provided by subsection (d) of this section, a local government official,
2 employee, or contractor is immune from liability for damages arising from a cause of action under
3 state law resulting from an action taken by the official, employee, or contractor to enforce §61-17-1
4 et seq. of this code, or an order issued under §62-17-1 et seq. of this code, during the course and
5 scope of the official's, employee's, or contractor's office, employment, or contractual performance
6 for or service on behalf of the local government.

7 (b) Subject to subsection (c) of this section and except as provided by subsection (d) of this
8 section, a local government shall indemnify an official, employee, or contractor of the local
9 government for damages arising from a cause of action under federal law resulting from an action
10 taken by the official, employee, or contractor to enforce §61-17-1 et seq. of this code, or an order
11 issued under §62-17-1 et seq. of this code, during the course and scope of the official's,
12 employee's, or contractor's office, employment, or contractual performance for or service on
13 behalf of the local government.

14 (c) Indemnification payments made under subsection (b) of this section by a local
15 government may not exceed:

16 (1) \$100,000 to any one person or \$300,000 for any single occurrence in the case of
17 personal injury or death; or

18 (2) \$10,000 for a single occurrence of property damage.

19 (d) Subsections (a) and (b) of this section do not apply if the court or jury determines that
20 the local government official, employee, or contractor acted in bad faith, with conscious
21 indifference, or with recklessness.

22 (e) A local government shall indemnify an official, employee, or contractor of the local
23 government for reasonable attorney's fees incurred in defense of a criminal prosecution against
24 the official, employee, or contractor for an action taken by the official, employee, or contractor to
25 enforce §61-17-1 et seq. of this code, or an order issued under §62-17-1 et seq. of this code,
26 during the course and scope of the official's, employee's, or contractor's office, employment, or
27 contractual performance for or service on behalf of the local government.

28 (f) This section may not be construed to waive any statutory limits on damages under state
29 law.

§29-12A-20. Civil immunity and indemnification of state officials, employees, and
contractors.

1 (a) Except as provided by subsection (d) of this section, an elected or appointed state

2 official or a state employee or contractor is immune from liability for damages arising from a cause
3 of action under state law resulting from an action taken by the official, employee, or contractor to
4 enforce §61-17-1 et seq. of this code, or an order issued under §62-17-1 et seq. of this code,
5 during the course and scope of the official's, employee's, or contractor's office, employment, or
6 contractual performance for or service on behalf of the state.

7 (b) Except as provided by subsection (d) of this section, the state shall indemnify an
8 elected or appointed state official or a state employee or contractor for damages arising from a
9 cause of action under federal law resulting from an action taken by the official, employee, or
10 contractor to enforce §61-17-1 et seq. of this code, or an order issued under §62-17-1 et seq. of
11 this code, during the course and scope of the official's, employee's, or contractor's office,
12 employment, or contractual performance for or service on behalf of the state.

13 (c) Notwithstanding any other provision of this code to the contrary, an indemnification
14 payment made under subsection (b) of this section is not subject to an indemnification limit under
15 the laws of this state.

16 (d) Subsections (a) and (b) of this section do not apply if the court or jury determines that
17 the state official, employee, or contractor acted in bad faith, with conscious indifference, or with
18 recklessness.

19 (e) The state shall indemnify a state official, employee, or contractor for reasonable
20 attorney's fees incurred in defense of a criminal prosecution against the official, employee, or
21 contractor for an action taken by the official, employee, or contractor to enforce §61-17-1 et seq. of
22 this code, or an order issued under §62-17-1 et seq. of this code, during the course and scope of
23 the official's, employee's, or contractor's office, employment, or contractual performance for or
24 service on behalf of the state.

25 (f) A state official, employee, or contractor who may be entitled to indemnification under
26 subsection (b) of this section is entitled to representation by the attorney general in an action in
27 connection with which the official, employee, or contractor may be entitled to that indemnification.

28 (g) This section may not be construed to waive any statutory limits on damages under state
29 law.

§29-12A-21. Appeal to Supreme Court of Appeals.

1 For a civil action brought against a person who may be entitled to immunity or
2 indemnification under §29-12A-19 or §29-12A-20 of this code, an appeal must be taken directly to
3 the Supreme Court of Appeals.

§29-12A-22. Other laws not affected; definitions.

1 (a) The provisions of §29-12A-19 and §29-12A-20 of this code do not affect a defense,
2 immunity, or jurisdictional bar available to the state or a local government or an official, employee,
3 or contractor of the state or a local government.

4 (b) For purposes of §29-12A-19 and §29-12A-20 of this code, “damages” includes any and
5 all damages, fines, fees, penalties, court costs, attorney’s fees, or other assessments.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 17. ILLEGAL ENTRY INTO THIS STATE.

§61-17-1. Legislative findings; definitions.

1 (a) The Legislature of the State of West Virginia finds:

2 (1) That illegal immigration of aliens into the United States and West Virginia is a threat to
3 public safety;

4 (2) That illegal immigration is being used by criminals, including criminal enterprises and
5 gangs, to facilitate criminal activities, particularly human smuggling and trafficking in illegal drugs,
6 including fentanyl and other lethal drugs;

7 (3) That illegal immigration undermines the rule of law;

8 (4) That illegal immigration is being exacerbated by aberrant federal government
9 immigration policies, and that the costs of this illegal and illicit immigration policy are being borne
10 by the States, which are being bankrupted by federal government spending and inaction;

11 (5) That illegal immigration causes economic harm to the People and State of West
12 Virginia; and

13 (6) That the States must take action to counteract illegal immigration and reverse the
14 damage the federal government is imposing on the States.

15 (b) As used in this article:

16 (1) "Alien" has the meaning assigned by 8 U.S.C. Section 1101, as that provision existed
17 on January 1, 2023;

18 (2) "Port of entry" means a port of entry in the United States as designated by 19 C.F.R.
19 Part 101.

§61-17-2. Illegal entry from a foreign nation.

1 (a) A person who is an alien commits an offense if the person enters or attempts to enter
2 this state from a foreign nation after unlawfully entering the United States in violation of federal law.

3 (b) An offense under this section is a misdemeanor punishable by up to one year in a
4 regional jail, except that the offense is a felony punishable by not less than one nor more than
5 three years in a state correctional facility if it is shown on the trial of the offense that the defendant
6 has been previously convicted of an offense under this section.

7 (c) It is an affirmative defense to prosecution under this section that:

8 (1) The federal government has granted the defendant:

9 (A) Lawful presence in the United States; or

10 (B) Asylum under 8 U.S.C. Section 1158;

11 (2) The defendant's conduct does not constitute a violation of 8 U.S.C. Section 1325(a); or

12 (3) The defendant was approved for benefits under the federal deferred action for
13 childhood arrivals program between June 15, 2012, and July 16, 2021.

14 (d) The following federal programs do not provide an affirmative defense for purposes of
15 subsection (c)(1) of this section:

16 (1) The Deferred Action for Parents of Americans and lawful permanent residents

17 program; and

18 (2) Any program not enacted by the United States congress that is a successor to or
19 materially similar to the program described by subsection (c)(3) or (d)(1) of this section.

§61-17-3. Illegal reentry by certain aliens.

1 (a) A person who is an alien commits an offense if the person enters, attempts to enter, or
2 is at any time found in this state after the person:

3 (1) Has been denied admission to or excluded, deported, or removed from the United
4 States; or

5 (2) Has departed from the United States while an order of exclusion, deportation, or
6 removal is outstanding.

7 (b) An offense under this section is a misdemeanor punishable by up to one year in a
8 regional jail, except that the offense is:

9 (1) A felony punishable by not less than one nor more than three years in a state
10 correctional facility if:

11 (A) The defendant's removal was subsequent to a conviction for commission of two or
12 more misdemeanors involving drugs, crimes against a person, or both;

13 (B) The defendant was excluded pursuant to 8 U.S.C. Section 1225(c) because the
14 defendant was excludable under 8 U.S.C. Section 1182(a)(3)(b);

15 (C) The defendant was removed pursuant to the provisions of 8 U.S.C. Chapter 12,
16 Subchapter V; or

17 (D) The defendant was removed pursuant to 8 U.S.C. Section 1231(a)(4)(b); or

18 (2) A felony punishable by not less than one nor more than three years in a state
19 correctional facility if the defendant was removed subsequent to a conviction for the commission of
20 a felony.

21 (c) For purposes of this section, "removal" includes an order issued under §62-17-1 et seq.
22 of this code, or any other agreement in which an alien stipulates to removal pursuant to a criminal

23 proceeding under either federal or state law.

§61-17-4. Refusal to comply with order to return to a foreign nation.

1 (a) A person who is an alien commits an offense if:

2 (1) The person has been charged with or convicted of an offense under this chapter;

3 (2) A magistrate or judge, as applicable, has issued an order under §62-17-1 et seq. of this
4 code, for the person to return to their nation of origin, or the foreign nation from which the person
5 entered or attempted to enter; and

6 (3) The person refuses to comply with the order.

7 (b) An offense under this section is a felony punishable by not less than one nor more than
8 three years in a state correctional facility.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-11. Placement on community supervision prohibited for certain offenses involving
illegal entry into this state.

1 Notwithstanding any provision of this code to the contrary, a defendant is not eligible for
2 community supervision, including, but not limited to deferred adjudication, if this defendant is
3 charged with or convicted of an offense under §61-17-1 et seq. of this code.

ARTICLE 12. PROBATION AND PAROLE.
§62-12-2. Eligibility for probation.

1 (a) All persons who are found guilty of or plead guilty to any felony, the maximum penalty
2 for which is less than life imprisonment, and all persons who are found guilty of or plead guilty to
3 any misdemeanor are eligible for probation, notwithstanding the provisions of §61-11-18 and §61-
4 11-19 of this code.

5 (b) The provisions of subsection (a) of this section to the contrary notwithstanding, any
6 person who commits or attempts to commit a felony with the use, presentment, or brandishing of a

7 firearm is not eligible for probation. Nothing in this section may apply to an accessory before the
8 fact or a principal in the second degree who has been convicted as if he or she were a principal in
9 the first degree if, in the commission of or in the attempted commission of the felony, only the
10 principal in the first degree used, presented, or brandished a firearm.

11 (c)(1) The existence of any fact which would make any person ineligible for probation
12 under subsection (b) of this section because of the commission or attempted commission of a
13 felony with the use, presentment, or brandishing of a firearm may not be applicable unless the fact
14 is clearly stated and included in the indictment or presentment by which that person is charged and
15 is either:

16 (A) Found by the court upon a plea of guilty or nolo contendere;

17 (B) Found by the jury, if the matter is tried before a jury, upon submitting to the jury a special
18 interrogatory for that purpose; or

19 (C) Found by the court, if the matter is tried by the court, without a jury.

20 (2) The amendments to this subsection adopted in the year 1981:

21 (A) Apply to all applicable offenses occurring on or after August 1 of that year;

22 (B) Apply with respect to the contents of any indictment or presentment returned on or after
23 August 1 of that year irrespective of when the offense occurred;

24 (C) Apply with respect to the submission of a special interrogatory to the jury and the
25 finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to
26 the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided*,
27 That the state shall give notice in writing of its intent to seek that finding by the jury or court, as the
28 case may be, which notice shall state with particularity the grounds upon which the finding is
29 sought as fully as such grounds are otherwise required to be stated in an indictment, unless the
30 grounds therefor are alleged in the indictment or presentment upon which the matter is being tried;
31 and

32 (D) May not apply with respect to cases not affected by the amendment and in those cases

33 the prior provisions of this section shall apply and be construed without reference to the
34 amendment.

35 Insofar as the amendments relate to mandatory sentences without probation, all matters
36 requiring that sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or
37 the court.

38 (d) For the purpose of this section, the term "firearm" means any instrument which will, or is
39 designed to, or may readily be converted to, expel a projectile by the action of an explosive,
40 gunpowder, or any other similar means.

41 (e) Any person who has been found guilty of, or pleaded guilty to, a violation of §61-3C-
42 14b, §61-8-12, §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-5 of this code may
43 only be eligible for probation after undergoing a physical, mental, and psychiatric or psychological
44 study and diagnosis which shall include an ongoing treatment plan requiring active participation in
45 sexual abuse counseling at a mental health facility or through some other approved program:
46 *Provided*, That nothing disclosed by the person during that study or diagnosis may be made
47 available to any law-enforcement agency or other party without that person's consent, or
48 admissible in any court of this state, unless the information disclosed indicates the intention or
49 plans of the probationer to do harm to any person, animal, institution, or property, in which case the
50 information may be released only to those persons necessary for protection of the person, animal,
51 institution, or property.

52 Within 90 days of the effective date of this section as amended and reenacted during the
53 first extraordinary session of the Legislature, 2006, the Secretary of the Department of Health and
54 Human Resources shall propose rules and emergency rules for legislative approval in accordance
55 with §29A-3-1 *et seq.* of this code, establishing qualifications for sex offender treatment programs
56 and counselors based on accepted treatment protocols among licensed mental health
57 professionals.

58 (f) Any person who has been convicted of a violation of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*,

59 §61-8D-5, §61-8D-6, §61-2-14, §61-8-12, and §61-8-13 of this code, or of a felony violation
60 involving a minor of §61-8-6 or §61-8-7 of this code, or of a similar provision in another jurisdiction,
61 shall register upon release on probation. Any person who has been convicted of an attempt to
62 commit any of the offenses set forth in this subsection shall also be registered upon release on
63 probation.

64 (g) The probation officer shall within three days of release of the offender send written
65 notice to the State Police of the release of the offender. The notice shall include:

66 (1) The full name of the person;

67 (2) The address where the person shall reside;

68 (3) The person's Social Security number;

69 (4) A recent photograph of the person;

70 (5) A brief description of the crime for which the person was convicted;

71 (6) Fingerprints; and

72 (7) For any person determined to be a sexually violent predator as defined in §15-12-2a of
73 this code, the notice shall also include:

74 (i) Identifying factors, including physical characteristics;

75 (ii) A history of the offense; and

76 (iii) Documentation of any treatment received for the mental abnormality or personality
77 disorder.

78 (h) An inmate serving a sentence for an offense under §61-17-1 et seq. of this code may
79 not be released on probation.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

1 (a) The Parole Board, whenever it is of the opinion that the best interests of the state and of
2 the inmate will be served, and subject to the limitations provided in this section, shall release any
3 inmate on parole for terms and upon conditions provided by this article.

4 (b) Any inmate of a state correctional institution is eligible for parole if he or she:

5 (1) (A) Has served the minimum term of his or her indeterminate sentence or has served
6 one fourth of his or her definite term sentence, as the case may be; or

7 (B) He or she has applied for and been accepted by the Commissioner of Corrections and
8 Rehabilitation into an accelerated parole program. To be eligible to participate in an accelerated
9 parole program, the commissioner must determine that the inmate:

10 (i) Does not have a prior criminal conviction for a felony crime of violence against the
11 person, a felony offense involving the use of a firearm, or a felony offense where the victim was a
12 minor child;

13 (ii) Is not serving a sentence for a crime of violence against the person, or more than one
14 felony for a controlled substance offense for which the inmate is serving a consecutive sentence, a
15 felony offense involving the use of a firearm, or a felony offense where the victim was a minor child;
16 and

17 (iii) Has successfully completed a rehabilitation treatment program created with the
18 assistance of a standardized risk and needs assessment.

19 (C) Notwithstanding any provision of this code to the contrary, any inmate who committed,
20 or attempted to commit, a felony with the use, presentment, or brandishing of a firearm is not
21 eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum
22 sentence imposed by the court, whichever is less: *Provided*, That any inmate who committed, or
23 attempted to commit, any violation of §61-2-12 of this code, with the use, presentment, or
24 brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or
25 her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this
26 paragraph applies to an accessory before the fact or a principal in the second degree who has
27 been convicted as if he or she were a principal in the first degree if, in the commission of or in the
28 attempted commission of the felony, only the principal in the first degree used, presented, or
29 brandished a firearm. An inmate is not ineligible for parole under the provisions of this paragraph
30 because of the commission or attempted commission of a felony with the use, presentment, or

31 brandishing of a firearm unless that fact is clearly stated and included in the indictment or
32 presentment by which the person was charged and was either: (i) Found guilty by the court at the
33 time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury upon submitting to
34 the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found
35 guilty by the court if the matter was tried by the court without a jury.

36 (D) The amendments to this subsection adopted in the year 1981:

37 (i) Apply to all applicable offenses occurring on or after August 1 of that year;

38 (ii) Apply with respect to the contents of any indictment or presentment returned on or after
39 August 1 of that year irrespective of when the offense occurred;

40 (iii) Apply with respect to the submission of a special interrogatory to the jury and the
41 finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to
42 the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided*,
43 That the state gives notice in writing of its intent to seek such finding by the jury or court, as the
44 case may be. The notice shall state with particularity the grounds upon which the finding will be
45 sought as fully as the grounds are otherwise required to be stated in an indictment, unless the
46 grounds upon which the finding will be sought are alleged in the indictment or presentment upon
47 which the matter is being tried;

48 (iv) Does not apply with respect to cases not affected by the amendments and in those
49 cases the prior provisions of this section apply and are construed without reference to the
50 amendments; and

51 (v) Insofar as the amendments relate to mandatory sentences restricting the eligibility for
52 parole, all matters requiring a mandatory sentence shall be proved beyond a reasonable doubt in
53 all cases tried by the jury or the court.

54 (E) As used in this section, "felony crime of violence against the person" means felony
55 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 this
56 code.

57 (F) As used in this section, “felony offense where the victim was a minor child” means any
58 felony crime of violence against the person and any felony violation set forth in §61-8-1 *et seq.*,
59 §61-8A-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code.

60 (G) For the purpose of this section, the term “firearm” means any instrument which will, or
61 is designed to, or may readily be converted to, expel a projectile by the action of an explosive,
62 gunpowder, or any other similar means;

63 (2) Is not in punitive segregation or administrative segregation as a result of disciplinary
64 action;

65 (3) Has prepared and submitted to the Parole Board a written parole release plan setting
66 forth proposed plans for his or her place of residence, employment and, if appropriate, his or her
67 plans regarding education and post-release counseling and treatment which has been approved
68 by the Division of Corrections and Rehabilitation: *Provided*, That an inmate’s application for parole
69 may be considered by the board without the prior submission of a home plan, but the inmate shall
70 have a home plan approved by the division prior to his or her release on parole. The
71 Commissioner of the Division of Corrections and Rehabilitation, or his or her designee, shall
72 review and investigate the plan and provide findings to the board as to the suitability of the plan:
73 *Provided, however*, That in cases in which there is a mandatory 30-day notification period required
74 prior to the release of the inmate, pursuant to §62-12-23 of this code, the board may conduct an
75 initial interview and deny parole without requiring the development of a plan. In the event the board
76 believes parole should be granted, it may defer a final decision pending completion of an
77 investigation and receipt of the commissioner’s findings. Upon receipt of the plan, together with the
78 investigation and findings, the board, through a panel, shall make a final decision regarding the
79 granting or denial of parole;

80 (4) Has satisfied the board that if released on parole he or she will not constitute a danger
81 to the community; and

82 (5) Has successfully completed any individually required rehabilitative and educational

83 programs, as determined by the division, while incarcerated: *Provided*, That, effective September
84 1, 2021, any inmate who satisfies all other parole eligibility requirements but is unable, through no
85 fault of the inmate, to complete his or her required rehabilitative and educational programs while
86 incarcerated, which are eligible to be taken while on parole, may be granted parole with the
87 completion of such specified programs outside of the correctional institutions being a special
88 condition of that person's parole term: *Provided, however*, That the Parole Board may consider
89 whether completion of the inmate's outstanding amount of such programming would interfere with
90 his or her successful reintegration into society.

91 (c) Except in the case of an inmate serving a life sentence, a person who has been
92 previously twice convicted of a felony may not be released on parole until he or she has served the
93 minimum term provided by law for the crime for which he or she was convicted. An inmate
94 sentenced for life may not be paroled until he or she has served 10 years, and an inmate
95 sentenced for life who has been previously twice convicted of a felony may not be paroled until he
96 or she has served 15 years: *Provided*, That an inmate convicted of first degree murder for an
97 offense committed on or after June 10, 1994, is not eligible for parole until he or she has served 15
98 years.

99 (d) In the case of an inmate sentenced to a state correctional facility regardless of the
100 inmate's place of detention or incarceration, the Parole Board, as soon as that inmate becomes
101 eligible, shall consider the advisability of his or her release on parole.

102 (e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of the
103 denial. The board shall, at the time of denial, notify the inmate of the month and year he or she may
104 apply for reconsideration and review. The board shall at least once a year reconsider and review
105 the case of every inmate who was denied parole and who is still eligible: *Provided*, That the board
106 may reconsider and review parole eligibility any time within three years following the denial of
107 parole of an inmate serving a life sentence with the possibility of parole.

108 (f) Any inmate in the custody of the commissioner for service of a sentence who reaches

109 parole eligibility is entitled to a timely parole hearing without regard to the location in which he or
110 she is housed.

111 (g) The board shall, with the approval of the Governor, adopt rules governing the procedure
112 in the granting of parole. No provision of this article and none of the rules adopted under this article
113 are intended or may be construed to contravene, limit, or otherwise interfere with or affect the
114 authority of the Governor to grant pardons and reprieves, commute sentences, remit fines, or
115 otherwise exercise his or her constitutional powers of executive clemency.

116 (h) (1) The Division of Corrections and Rehabilitation shall promulgate policies and
117 procedures for developing a rehabilitation treatment plan created with the assistance of a
118 standardized risk and needs assessment. The policies and procedures shall provide for, at a
119 minimum, screening and selecting inmates for rehabilitation treatment and development, using
120 standardized risk and needs assessment and substance abuse assessment tools, and prioritizing
121 the use of residential substance abuse treatment resources based on the results of the
122 standardized risk and needs assessment and a substance abuse assessment. The results of all
123 standardized risk and needs assessments and substance abuse assessments are confidential.

124 (2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of
125 this section solely due to having successfully completed a rehabilitation treatment plan, but
126 completion of all the requirements of a rehabilitation treatment plan along with compliance with the
127 requirements of subsection (b) of this section creates a rebuttable presumption that parole is
128 appropriate. The presumption created by this subdivision may be rebutted by a Parole Board
129 finding that, according to the standardized risk and needs assessment, at the time parole release
130 is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if
131 released. Nothing in subsection (b) of this section or in this subsection may be construed to create
132 a right to parole.

133 (i) Notwithstanding the provisions of subsection (b) of this section, the Parole Board may
134 grant or deny parole to an inmate against whom a detainer is lodged by a jurisdiction other than

135 West Virginia for service of a sentence of incarceration, upon a written request for parole from the
136 inmate. A denial of parole under this subsection precludes consideration for parole for a period of
137 one year or until the provisions of subsection (b) of this section are applicable.

138 (j) If an inmate is otherwise eligible for parole pursuant to subsection (b) of this section, and
139 has completed the rehabilitation treatment program required under subdivision (1), subsection (h)
140 of this section, the Parole Board may not require the inmate to participate in an additional program,
141 but may determine that the inmate must complete an assigned task or tasks prior to actual release
142 on parole. The board may grant parole contingently, effective upon successful completion of the
143 assigned task or tasks, without the need for a further hearing.

144 (k) (1) The Division of Corrections and Rehabilitation shall supervise all probationers and
145 parolees whose supervision may have been undertaken by this state by reason of any interstate
146 compact entered into pursuant to the Uniform Act for Out-of-State Parolee Supervision.

147 (2) The Division of Corrections and Rehabilitation shall provide supervision,
148 treatment/recovery, and support services for all persons released to mandatory supervision under
149 §15A-4-17 of this code.

150 (l) (1) When considering an inmate of a state correctional facility for release on parole, the
151 Parole Board panel considering the parole shall have before it an authentic copy of, or report on,
152 the inmate's current criminal record as provided through the West Virginia State Police, the United
153 States Department of Justice, or any other reliable criminal information sources and written
154 reports of the superintendent of the state correctional institution to which the inmate is sentenced:

155 (A) On the inmate's conduct record while in custody, including a detailed statement
156 showing any and all infractions of disciplinary rules by the inmate and the nature and extent of
157 discipline administered for the infractions;

158 (B) On the inmate's industrial record while in custody which shall include: The nature of his
159 or her work, occupation or education, the average number of hours per day he or she has been
160 employed or in class while in custody and a recommendation as to the nature and kinds of

161 employment which he or she is best fitted to perform and in which the inmate is most likely to
162 succeed when he or she leaves the state correctional institution; and

163 (C) On any physical, mental, psychological, or psychiatric examinations of the inmate.

164 (2) The Parole Board panel considering the parole may waive the requirement of any
165 report when not available or not applicable as to any inmate considered for parole but, in every
166 case, shall enter in its record its reason for the waiver: *Provided*, That in the case of an inmate who
167 is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony
168 under the provisions of §61-8-12 of this code or under the provisions of §61-8B-1 *et seq.* or §61-
169 8C-1 *et seq.* of this code, the Parole Board panel may not waive the report required by this
170 subsection. The report shall include a study and diagnosis of the inmate, including an on-going
171 treatment plan requiring active participation in sexual abuse counseling at an approved mental
172 health facility or through some other approved program: *Provided, however*, That nothing
173 disclosed by the inmate during the study or diagnosis may be made available to any law-
174 enforcement agency, or other party without that inmate's consent, or admissible in any court of this
175 state, unless the information disclosed indicates the intention or plans of the parolee to do harm to
176 any person, animal, institution, or to property. Progress reports of outpatient treatment are to be
177 made at least every six months to the parole officer supervising the parolee. In addition, in such
178 cases, the Parole Board shall inform the prosecuting attorney of the county in which the person
179 was convicted of the parole hearing and shall request that the prosecuting attorney inform the
180 Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining, and
181 other background information that might be useful in its deliberations.

182 (m) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate to
183 appear in person before a Parole Board panel and the panel may examine and interrogate him or
184 her on any matters pertaining to his or her parole, including reports before the Parole Board made
185 pursuant to the provisions of this section: *Provided*, That an inmate may appear by video
186 teleconference if the members of the Parole Board panel conducting the examination are able to

187 contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to
188 contemporaneously see each of the members of the panel conducting the examination and hear
189 all of the members' remarks: *Provided, however,* That the requirement that an inmate personally
190 appear may be waived where a physician authorized to do so by the Commissioner of the Division
191 of Corrections and Rehabilitation certifies that the inmate, due to a medical condition or disease, is
192 too debilitated, either physically or cognitively, to appear. The panel shall reach its own written
193 conclusions as to the desirability of releasing the inmate on parole and the majority of the panel
194 considering the release must concur in the decision. The superintendent shall furnish all
195 necessary assistance and cooperate to the fullest extent with the Parole Board. All information,
196 records, and reports received by the Parole Board shall be kept on permanent file.

197 (n) The Parole Board and its designated agents are at all times to have access to inmates
198 imprisoned in any state correctional facility or in any jail in this state and may obtain any
199 information or aid necessary to the performance of its duties from other departments and agencies
200 of the state or from any political subdivision of the state.

201 (o) The Parole Board shall, if requested by the Governor, investigate and consider all
202 applications for pardon, reprieve, or commutation and shall make recommendation on the
203 applications to the Governor.

204 (p) Prior to making a recommendation for pardon, reprieve or commutation, the board shall
205 notify the sentencing judge and prosecuting attorney at least 10 days before the recommendation.

206 (q) A parolee shall participate as a condition of parole in the litter control program of the
207 county to which he or she is released to the extent directed by the Parole Board, unless the board
208 specifically finds that this alternative service would be inappropriate.

209 (r) The commissioner shall develop, maintain, and make publicly available a general list of
210 rehabilitative and educational programs available outside of the correctional institutions which an
211 inmate may be required to complete as a special condition of parole pursuant to subdivision (5) of
212 subsection (b) of this section, and the manner and method in which such programs shall be

213 completed by the parolee.

214 (s) An inmate serving a sentence for an offense under §61-17-1 et seq. of this code may
 215 not be released on parole.

ARTICLE 17. PROCEDURES FOR CERTAIN OFFENSES INVOLVING ILLEGAL
ENTRY INTO THIS STATE.

§62-17-1. Enforcement prohibited in certain locations.

1 (a) Notwithstanding any other provision of this code to the contrary, a law-enforcement
 2 officer may not arrest or detain a person for purposes of enforcing a provision of §61-17-1 et seq.
 3 of this code, if the person is on the premises or grounds of:

4 (1) A public or private primary or secondary school for educational purposes;

5 (2) A church, synagogue, or other established place of religious worship;

6 (3) A health care facility, as defined by §16-39-3 of this code, including a facility a state
 7 agency maintains or operates to provide health care, or the office of a health care worker, as
 8 defined by §16-39-3 of this code, provided that the person is on the premises or grounds of the
 9 facility or office for the purpose of receiving medical treatment; or

10 (4) A facility that provides forensic medical examinations to sexual assault survivors in
 11 accordance with §15-9B-1 et seq. of this code, provided that the person is on the premises or
 12 grounds of the facility for purposes of obtaining a forensic medical examination and treatment.

§62-17-2. Order to return to a foreign nation.

1 (a) A magistrate during a person's appearance under article §62-1-1 et seq. of this code
 2 may, after making a determination that probable cause exists for arrest for an offense under §61-
 3 17-2 or §61-17-3 of this code order the person released from custody and issue a written order in
 4 accordance with subsection (c) of this section.

5 (b) The judge in a person's case at any time after the person's appearance before a
 6 magistrate under §62-1-1 et seq. of this code may, in lieu of continuing the prosecution of or

7 entering an adjudication regarding an offense under §61-17-2 or §61-17-3 of this code, dismiss the
8 charge pending against the person and issue a written order in accordance with subsection (c) of
9 this section.

10 (c) A written order authorized by subsection (a) or (b) of this section must discharge the
11 person and require the person to return to the foreign nation from which the person entered or
12 attempted to enter, and may be issued only if:

13 (1) The person agrees to the order;

14 (2) The person has not previously been convicted of an offense under §61-17-1 et seq. of
15 this code, or previously obtained a discharge under an order described by subsection (a) or (b) of
16 this section;

17 (3) The person is not charged with another offense that is punishable as a misdemeanor
18 punishable by up to a year in a regional jail or any higher category of offense; and

19 (4) Before the issuance of the order, the arresting law-enforcement agency:

20 (A) Collects all available identifying information of the person, which must include taking
21 fingerprints from the person and using other applicable photographic and biometric measures to
22 identify the person; and

23 (B) Cross-references the collected information with:

24 (i) All relevant local, state, and federal criminal databases; and

25 (ii) Federal lists or classifications used to identify a person as a threat or potential threat to
26 national security.

27 (d) On a person's conviction of an offense under §61-17-1 et seq. of this code, the judge
28 shall enter in the judgment in the case an order requiring the person to return to the foreign nation
29 from which the person entered or attempted to enter an order issued under this subsection takes
30 effect on completion of the term of confinement or imprisonment imposed by the judgment.

31 (e) An order issued under this article must include:

32 (1) The manner of transportation of the person to a port of entry, as defined by §61-17-1 of
33 this code; and

34 (2) The law-enforcement officer or state agency responsible for monitoring compliance
35 with the order.

36 (f) An order issued under this article must be filed:

37 (1) With the circuit clerk of the county in which the person was arrested, for an order
38 described by subsection (a) of this section; or

39 (2) With the clerk of the court exercising jurisdiction in the case, for an order described by
40 subsection (b) or (d) of this section.

41 (g) Not later than the seventh day after the date an order is issued under this article, the
42 law-enforcement officer or state agency required to monitor compliance with the order shall report
43 the issuance of the order to the West Virginia State Police for inclusion in the computerized
44 criminal history system under §15-2-24 of this code.

§62-17-3. Abatement of prosecution on basis of immigration status determination
prohibited.

1 A court may not abate the prosecution of an offense under §61-17-1 *et seq.* of this code, on
2 the basis that a federal determination regarding the immigration status of the defendant is pending
3 or will be initiated.

NOTE: The purpose of this bill is to establish certain crimes, processes, and procedures regarding individuals who have illegally entered or reentered the state in violation of state and federal laws.

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