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H. B. 4123

(By Delegates Frazier, Miley, Barker, Manypenny,
Michael, Moore, Skaff and Ellem)

[Introduced January 18, 2012; referred to the
Committee on the Judiciary then Finance.]

**Interim
Bill**

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §4-1-24; to amend said code by adding thereto two new sections, designated §15-9-6 and §15-9-7; to amend and reenact §25-1-1a and §25-1-15 of said code; to amend said code by adding thereto three new sections, designated §25-1-23, §25-1-24 and §25-1-25; to amend and reenact §28-5-27 of said code; to amend said code by adding thereto a new section, designated §31-20-33; to amend said code by adding thereto three new sections, designated §51-1-22, §51-1-23 and §51-1-24; to amend and reenact §60A-1-101 of said code; to amend said code by adding thereto a new section, designated, §60A-1-102; to amend and reenact §60A-4-401 and §60A-4-407 of said code; to amend said code by adding thereto two new sections, designated

1 §60A-4-414 and §60A-4-415; to amend and reenact §62-1-5a of
2 said code; to amend and reenact §62-1C-3 of said code; to
3 amend said code by adding thereto a new section, designated
4 §62-11C-3a; to amend said code by adding thereto fifteen new
5 sections, designated §62-12-1a, §62-12-5a, §62-12-29,
6 §62-12-30, §62-12-31, §62-12-32, §62-12-33, §62-12-34,
7 §62-12-35, §62-12-36, §62-12-37, §62-12-38, §62-12-39,
8 §62-12-40, §62-12-41; to amend and reenact §62-12-13 and
9 §62-12-18 of said code; to amend said code by adding thereto
10 a new section, designated §62-13-1; and to amend said code by
11 adding thereto a new article, designated §62-16-1, §62-16-2,
12 §62-16-3, §62-16-4, §62-16-5, §62-16-6, §62-16-7, §62-16-8 and
13 §62-16-9, all relating to the Public Safety and Offender
14 Accountability Act; requiring completion of a Corrections
15 Impact Statement to determine the fiscal impact of bills that
16 propose to increase, decrease or otherwise impact
17 incarceration; establishing baselines for performance and
18 comparisons to national averages to measure and document
19 possible cost savings from the Public Safety and Offender
20 Accountability Act; reinvesting and distribution of savings;
21 identifying the primary objective for the Division of
22 Corrections and sentencing policy as maintaining public
23 safety, holding offenders accountable and maintaining the

1 lowest possible recidivism rate; requiring the Division of
2 Corrections to administer validated risk and needs assessments
3 for inmates eligible for parole; creating an intensive secured
4 substance abuse recovery program; requiring evidence-based
5 practice to be used in treatment and intervention programs;
6 requiring the Division of Corrections to provide annual
7 reports to the Governor and the Legislature; providing for
8 additional good time credit for successful completion of
9 education or treatment programs; providing additional good
10 time credit for exceptionally meritorious service; requiring
11 the Regional Jail and Correctional Facility Authority to
12 provide annual reports to the Governor and the Legislature;
13 requiring the Supreme Court of Appeals to provide annual
14 reports to the Governor and the Legislature; amending the
15 Uniform Controlled Substances Act; requiring the Supreme Court
16 of Appeals to develop an online system that provides courts,
17 attorneys, probation and parole officers and victims with
18 information about sentencing; distinguishing between serious
19 drug trafficking by maintaining severe penalties for serious
20 drug traffickers; establishing a proportionate scale of
21 penalties; reduces sentence for small quantities of certain
22 controlled substances for a first offense; permitting deferred
23 prosecution or a presumptive probation sentence for first and

1 second time possession offenders; requiring a law-enforcement
2 officer to issue a citation instead of making an arrest for
3 many misdemeanor offenses and providing for exceptions, such
4 as when the offender poses a risk of danger to himself or
5 others; prohibiting bail amounts for misdemeanors to exceed
6 the fines and fees of the offenses charged; requiring courts
7 and corrections authorities to incorporate risk and needs
8 assessment information into their decision-making process;
9 requiring state expenditures on supervision and intervention
10 programs for pretrial defendants, inmates and persons on
11 parole and probation be spent on evidence-based programs;
12 requiring offenders to be supervised using practices proven
13 to reduce or otherwise maintain low recidivism rates;
14 requiring the parole board to hear cases at least sixty days
15 prior to the offender's parole eligibility date; requiring the
16 use of administrative caseloads for low-risk offenders;
17 authorizing compliance credits for parolees and early
18 termination for probationers who successfully comply with
19 supervision conditions; requiring six months of supervision
20 for offenders who would otherwise be discharged without
21 supervision at the end of their sentences; authorizing the
22 Division of Corrections to allow offenders to complete
23 required programming in the community and be monitored;

1 increasing accountability for probation and parole violations
2 by authorizing administrative, graduated sanctions for parole
3 and probation violators; creating two pilot projects that
4 require frequent drug testing with immediate sanctions for
5 positive drug tests or other violations and referral to
6 treatment, if necessary; and creating an intermediate
7 punishment program that provides substance abuse treatment for
8 offenders sentenced to a state correctional facility.

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

10 That the Code of West Virginia, 1931, as amended, be amended
11 by adding thereto a new section, designated §4-1-24; that said code
12 be amended by adding thereto two new sections, designated §15-9-6
13 and §15-9-7; that §25-1-1a and §25-1-15 of said code be amended and
14 reenacted; that said code be amended by adding thereto three new
15 sections, designated §25-1-23, §25-1-24 and §25-1-25; that §28-5-27
16 of said code be amended and reenacted; that said code be amended by
17 adding thereto a new section, designated §31-20-33; that said code
18 be amended by adding thereto three new sections, designated
19 §51-1-22, §51-1-23 and §51-1-24; that §60A-1-101 of said code be
20 amended and reenacted; that said code be amended by adding thereto
21 a new section, designated §60A-1-102; that §60A-4-401 and
22 §60A-4-407 of said code be amended and reenacted; that said code be
23 amended by adding thereto two new sections, designated §60A-4-414

1 and §60A-4-415; that §62-1-5a of said code be amended and
 2 reenacted; that §62-1C-3 of said code be amended and reenacted;
 3 that said code be amended by adding thereto a new section,
 4 designated §62-11C-3a; that said code be amended by adding thereto
 5 fifteen new sections, designated §62-12-1a, §62-12-5a, §62-12-29,
 6 §62-12-30, §62-12-31, §62-12-32, §62-12-33, §62-12-34, §62-12-35,
 7 §62-12-36, §62-12-37, §62-12-38, §62-12-39, §62-12-40, §62-12-41;
 8 that §62-12-13 and §62-12-18 of said code be amended and reenacted;
 9 that said code be amended by adding thereto a new section,
 10 designated §62-13-1; and that said code be amended by adding
 11 thereto a new article, designated §62-16-1, §62-16-2, §62-16-3,
 12 §62-16-4, §62-16-5, §62-16-6, §62-16-7, §62-16-8 and §62-16-9, all
 13 to read as follows:

14 **CHAPTER 4. THE LEGISLATURE.**

15 **ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS;**
 16 **INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF**
 17 **CAPITOL BUILDING; PREFILING OF BILLS AND**
 18 **RESOLUTIONS; STANDING COMMITTEES; INTERIM**
 19 **MEETINGS; NEXT MEETING OF THE SENATE.**

20 §4-1-24. Corrections Impact Statement; conditions requiring
 21 preparation; contents of statement; calculation of
 22 costs and savings of creation of new crime or

1 revision of existing crime; statement of sponsor
2 regarding source of funds for additional costs of
3 legislation.

4 (a) Upon the request of the Legislative Services Division of
5 the Joint Committee on Government and Finance, a "Corrections
6 Impact Statement" shall be prepared by the staff of the Governor's
7 Committee on Crime, Delinquency and Correction with the assistance
8 of the Division of Corrections, Regional Jail and Correctional
9 Facilities Authority, State Police, Administrative Office of
10 Supreme Court of Appeals, Parole Board, and other persons,
11 agencies, or organizations deemed necessary by the Governor's
12 Committee on Crime, Delinquency and Correction's staff assigned to
13 prepare the corrections impact statement. The Division of
14 Corrections, Regional Jail and Correctional Facilities Authority,
15 State Police, Administrative Office of the Supreme Court of
16 Appeals, Parole Board, and other persons, agencies, and
17 organizations that have been requested to provide information for
18 the Corrections Impact Statement shall do so within the period of
19 time specified by the Governor's Committee on Crime, Delinquency
20 and Correction's staff person requesting the information, which in
21 no case shall exceed five business days, unless an extension is
22 granted by the division.

23 (b) The Corrections Impact Statement shall contain the

1 estimated costs, estimated savings and necessary appropriations
2 based upon:

3 (1) Incarceration in jail prior to trial and during trial
4 based on the available information about persons granted bail or
5 other form of pretrial release and the length of time spent in jail
6 prior to release;

7 (2) Supervision of a person who has been granted bail or
8 pretrial release based on the average time spent between the time
9 of release until the time of trial for the offense;

10 (3) Incarceration in jail for a misdemeanor following
11 conviction based on the maximum time of incarceration authorized
12 for the offense;

13 (4) Incarceration in a state correctional facility for a
14 felony offense based on the maximum and minimum length of
15 incarceration authorized for the offense;

16 (5) Probation or conditional discharge supervision based on
17 the maximum time of probation or conditional discharge authorized
18 for the offense;

19 (6) Parole supervision based on the average length of parole
20 supervision authorized for the offense assuming full parole
21 supervision; and

22 (7) Mandated treatment, education, and other programs which
23 are to be paid by the state, unit of local government, or public

1 agency, based on the number of persons anticipated to be required
2 to complete the program if the education, treatment or other
3 program is not normally offered as a part of a defendant's
4 incarceration and is required to be completed outside of a
5 correctional facility.

6 © Insofar as possible, costs and savings for a change to an
7 existing crime shall be calculated using:

8 (1) Arrest data for the crime from the State Police;

9 (2) Pretrial incarceration data from the Administrative Office
10 of the Supreme Court of Appeals;

11 (3) Preconviction jail data from the Administrative Office of
12 the Supreme Court of Appeals;

13 (4) Conviction data from the Administrative Office of the
14 Supreme Court of Appeals;

15 (5) Probation data from the Administrative Office of the
16 Supreme Court of Appeals;

17 (6) Postconviction jail and imprisonment data from the
18 Division of Corrections;

19 (7) Parole data from the Division of Corrections and Board of
20 Parole; and

21 (8) Data from applicable agencies or organizations providing
22 treatment, education and other mandated programs.

23 (d) Insofar as possible, costs or savings for a new crime

1 shall be calculated in the same manner as specified in subsection
2 © of this section using data for similar crimes unless that is
3 determined by the Governor's Committee on Crime, Delinquency and
4 Correction's staff person to be impractical or impossible in which
5 case the estimate for a new crime may be prepared using: (1) The
6 maximum and minimum length of incarceration for the offense;
7 (2) An estimate of cost based on ten persons being charged
8 with the offense, and based on one hundred persons being charged
9 with the offense;
10 (3) An estimate of cost based on ten persons and one hundred
11 persons being convicted of the offense and sent to jail if the
12 offense is a misdemeanor using the criteria specified in subsection
13 (e) of this section; and
14 (4) An estimate of cost based on ten persons and one hundred
15 persons being convicted of a felony offense requiring imprisonment
16 in a correctional facility.
17 (e) Costs or savings shall be based on the average costs
18 actually paid by the Division of Corrections and the Regional Jail
19 and Correctional Facilities Authority, during the previous fiscal
20 year for incarceration of a person in a state correctional
21 facility, the average cost for supervision of a person placed on
22 probation without electronic monitoring, the average cost of a
23 person placed on probation with electronic monitoring, the average

1 cost of parole supervision without electronic monitoring and the
2 average cost of parole supervision with electronic monitoring.

3 **CHAPTER 15. PUBLIC SAFETY.**

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

6 **§15-9-6. Measurement and documentation of cost savings from the**
7 **Public Safety and Offender Accountability Act; average**
8 **cost of incarceration; savings to benefit treatment**
9 **programs; budget requests and enactments.**

10 (a) The Governor's Committee on Crime, Delinquency and
11 Correction shall measure and document cost savings resulting from
12 amendments to or creation of statutes in the Public Safety and
13 Offender Accountability Act. Measured and documented savings shall
14 be reinvested or distributed as provided in this section.

15 (b) The Governor's Committee on Crime, Delinquency and
16 Correction shall establish a baseline for measurement using the
17 average number of inmates incarcerated at each of the correctional
18 facilities administered by the Division of Corrections or Regional
19 Jail and Correctional Facilities Authority in fiscal year
20 2012-2013.

21 © The Governor's Committee on Crime, Delinquency and
22 Correction shall determine the average cost of incarceration for

1 each correctional facility administered by the Division of
2 Corrections or Regional Jail and Correctional Facilities Authority,
3 including health care costs, transportation costs, and other
4 related costs, for one inmate for one year for the immediately
5 preceding fiscal year.

6 (d) Beginning with the budget request for the 2013-2014 fiscal
7 year, savings shall be estimated using the baseline established in
8 subsection (b) of this section to determine the estimated average
9 reduction of inmates due to the implementation of amendments to or
10 creation of statutes in the Public Safety and Offender
11 Accountability Act and multiplied by the appropriate average cost
12 determined in subsection © of this section.

13 (e) The estimated amount of savings shall be used solely for
14 expanding and enhancing treatment programs that employ
15 evidence-based or promising practices designed to reduce the
16 likelihood of future criminal behavior, which shall include
17 treatment programs at existing correctional facilities.

18 (f) The amount of savings shall be estimated for the 2013-2014
19 fiscal year, and for each year of each fiscal year thereafter, as
20 specified in subsection (d) of this section.

21 (g) In submitting its budget request for the 2013-2014 fiscal
22 year and each fiscal year thereafter, the Secretary of the
23 Department of Military Affairs and Public Safety shall estimate the

1 amount of savings measured under this section, and shall request
2 the amount necessary to distribute or allocate those savings as
3 provided in subsection (e) of this section.

4 (h) In enacting the budget for the Department of Military
5 Affairs and Public Safety, beginning in the 2013-2014 fiscal year
6 and each fiscal year thereafter, the Legislature shall determine
7 the estimated amount necessary for reinvestment in programs and
8 initiatives as provided by subsection (e) of this section, based
9 upon projected savings as measured by this section, and shall
10 ensure that appropriations to the Department of Military Affairs
11 and Public Safety are sufficient to meet the funding requirements
12 of this section.

13 **§15-9-7. Measurement and documentation of cost savings resulting**
14 **from the Public Safety and Offender Accountability**
15 **Act; reinvestment or distribution of savings;**
16 **determination of average cost of incarceration and**
17 **probation and parole services; budget allocations.**

18 (a) The Governor's Committee on Crime, Delinquency and
19 Correction shall measure and document cost savings resulting from
20 the Public Safety and Offender Accountability Act and its
21 amendments. Measured and documented savings shall be reinvested or
22 distributed as provided in this section.

1 (b) The Governor's Committee on Crime, Delinquency and
2 Correction shall establish a baseline for measurement using the
3 average number of inmates incarcerated at each of the correctional
4 facilities administered by the Division of Corrections or Regional
5 Jail and Correctional Facilities Authority in fiscal year
6 2012-2013.

7 © The Governor's Committee on Crime, Delinquency and
8 Correction shall determine the average cost of:

9 (1) Incarceration for each correctional facility administered
10 by the Division of Corrections or Regional Jail and Correctional
11 Facilities Authority, including health care costs, transportation
12 costs, and other related costs, for one inmate for one year for the
13 immediately preceding fiscal year;

14 (2) Providing parole services for one parolee for one year for
15 the immediately preceding fiscal year; and

16 (3) Providing probation services for one probationer for one
17 year for the immediately preceding fiscal year.

18 (d) Beginning with the budget request for the 2013-2014 fiscal
19 year, savings shall be estimated from the baseline established in
20 subsection (b) of this section as follows:

21 (1) The estimated average reduction of inmates due to
22 mandatory reentry supervision as required by subsection ©, section
23 eighteen, article twelve, chapter sixty-two of the code,

1 multiplied by the appropriate average cost as determined in
2 subdivision (1), subsection © of this section;

3 (2) The estimated average reduction of inmates due to
4 accelerated parole multiplied by the appropriate average cost as
5 determined in subdivision (1), subsection © of this section;

6 (3) The estimated average increase of parolees due to
7 paragraphs (1) and (2) of this subsection multiplied by the average
8 cost as determined in subdivision (2), subsection © of this
9 section;

10 (4) The estimated average reduction of parolees due to parole
11 credit for good behavior as provided in section thirty-three,
12 article twelve, chapter sixty-two of this code, multiplied by the
13 average cost as determined in subdivision (2), subsection © of this
14 section;

15 (5) The estimated average reduction of inmates due to deferred
16 prosecution and presumptive probation as provided in sections four
17 hundred seven and four hundred eight, article four, chapter sixty-a
18 of this code, multiplied by the appropriate average cost as
19 determined in subdivision (1), subsection © of this section;

20 (6) The estimated average increase of probationers due to
21 subdivision (5) of this subsection multiplied by the average cost
22 as determined in subdivision (3), subsection © of this section; and

23 (7) The estimated average reduction of probationers due to

1 early termination of probation for good behavior as provided in
2 section thirty-five, article twelve, chapter sixty-two of this
3 code, multiplied by the average cost as determined in subdivision
4 (3), subsection © of this section.

5 (e) The following amounts shall be allocated or distributed
6 from the estimated amount of savings that would otherwise remain in
7 the general fund:

8 (1) Twenty-five percent shall be distributed to the West
9 Virginia Community Corrections Fund established by section four,
10 article eleven-c, chapter sixty-two of this code; and

11 (2) In enacting the budget for the Department of Military
12 Affairs and Public Safety and the Supreme Court of Appeals,
13 beginning in the 2013-2014 fiscal year and each fiscal year
14 thereafter, the Legislature shall:

15 (A) Determine the estimated amount necessary for reinvestment
16 in:

17 (I) Expanded treatment programs and expanded probation and
18 parole services; and

19 (ii) Additional pretrial services and drug court personnel;
20 and

21 (B) Shall allocate and appropriate sufficient amounts to fully
22 fund these reinvestment programs.

23 (f) The amount of savings shall be estimated for the 2013-2014

1 fiscal year and for each fiscal year thereafter, as specified in
2 subsection (d) of this section.

3 (g) (1) In submitting its budget request for the 2013-2014
4 fiscal year and each fiscal year thereafter, the Secretary of the
5 Department of Military Affairs and Public Safety shall estimate the
6 amount of savings measured under this section and request the
7 amount necessary to distribute or allocate those savings as
8 provided in subsection (e) of this section.

9 (2) In submitting its budget request for the 2013-2014 fiscal
10 year and each fiscal year thereafter, the Supreme Court of Appeals
11 shall request the amount necessary to distribute or allocate those
12 savings as provided in subsection (e) of this section.

13 **CHAPTER 25. DIVISION OF CORRECTIONS.**

14 **ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.**

15 **§25-1-1a. Purpose and legislative intent.**

16 (a) The primary purpose of the Division of Corrections is to
17 enhance public safety and hold offenders accountable while reducing
18 recidivism or otherwise maintaining low recidivism rates and
19 criminal behavior, and improving outcomes for offenders under its
20 supervision by providing for the incarceration and care of
21 convicted offenders who have been sentenced by courts of proper
22 jurisdiction to serve terms of incarceration. It is the intent of
23 the Legislature:

1 (1) That persons committed to correctional institutions of the
2 state for whom release is available for crimes be afforded
3 appropriate treatment to reestablish their ability to live
4 peaceably, consistent with the protection of the community;

5 (2) That persons committed to correctional institutions of the
6 state be released at the earliest possible date, consistent with
7 public safety;

8 (3) To establish a just, humane and efficient corrections
9 program; ~~and~~

10 (4) To avoid duplication and waste of effort and money on the
11 part of public and private agencies; and

12 (5) That the division shall create and implement policies and
13 programs to achieve these objectives.

14 (b) This section shall be construed in favor of public safety.

15 **ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.**

16 **§25-1-15. Diagnostic and classification divisions.**

17 (a) The Commissioner of Corrections may establish diagnostic
18 and classification divisions.

19 (b) Notwithstanding any provision of the code to the contrary,
20 all persons committed to the custody of the Commissioner of the
21 Division of Corrections for presentence diagnosis and
22 classification and all persons sentenced to the custody of the
23 Division of Corrections shall, upon transfer to the Division of

1 Corrections, undergo diagnosis and classification, which may
2 include assessments of a person's criminogenic risk and need
3 factors that are reliable, validated and normed for a specific
4 population and responsive to cultural and gender-specific needs as
5 well as individual learning styles and temperament.

6 **§25-1-23. Intensive secured substance abuse recovery program.**

7 (a) The Division of Corrections shall develop an intensive
8 secured substance abuse recovery program utilizing existing
9 resources or by contract to house and care for persons suffering
10 from substance abuse who have been charged with a felony offense.

11 (b) The program shall accept persons referred to it under
12 section twenty-two, article eleven, chapter sixty-one of this code
13 or a sentence of intermediate punishment as provided by article
14 sixteen, chapter sixty-two of this code.

15 © Persons may agree to be ordered into the program for a
16 period of not less than ninety days and not more than three hundred
17 sixty-five days.

18 (d) No person may be involuntarily ordered into the program.
19 A commitment may not occur before the court has considered an
20 evaluation of the defendant's treatment needs and conducted a
21 hearing where the defendant may appear with counsel with an
22 opportunity to present evidence on his or her own behalf, and
23 persons in the program may petition the court to review the

1 program's determination as to the length of time the person is to
2 remain in the program or to issue an order to leave the program,
3 which the court shall grant upon request, at any time. However,
4 that departure shall constitute a material breach of any agreement
5 to hold the person's case in abeyance or of the person's pretrial
6 diversion agreement.

7 (e) The court shall revoke a defendant's program commitment
8 over the defendant's objection prior to the expiration of the
9 commitment period only pursuant to an order of the committing court
10 issued after the court has conducted a hearing on the matter where
11 the defendant may appear with counsel and present evidence on his
12 or her behalf.

13 (f) The division shall locate the program in a secure facility
14 with security standards comparable to those found in a minimum
15 security correctional institution operated by the division.

16 (g) The program shall be capable of concurrently housing no
17 fewer than two hundred persons. The division has regulatory
18 authority, when the program is at or near capacity, to prioritize
19 admissions to the program.

20 (h) The program's recovery component shall be designed to
21 serve the committed person's substance abuse condition, and to
22 provide the person with the skills and training needed to prevent
23 the person from engaging in substance abuse upon release from the

1 program. The program shall provide each person leaving the program
2 with an aftercare plan, which shall include a referral to a local
3 substance abuse provider capable of providing a level of continuing
4 substance abuse care appropriate to the released person's needs. In
5 designing the program, the division may consult with and may
6 contract with the Division on Alcoholism and Drug Abuse in the
7 Division of Health.

8 **§25-1-24. Evidence-based practices to be used in treatment and**
9 **intervention programs; standards; funding**
10 **restrictions.**

11 (a) As used in this section, "evidence-based practices" means
12 supervision policies, procedures, treatment and intervention
13 programs, and practices that scientific research demonstrates
14 reduces or otherwise maintains low recidivism among inmates and
15 individuals on parole, or other form of post-release supervision
16 when implemented competently.

17 (b) In order to increase the effectiveness of treatment and
18 intervention programs funded by the state and provided by the
19 Division of Corrections for inmates and parolees, the division
20 shall require that such programs use evidence-based practices.

21 © The division shall measure the effectiveness of each
22 treatment and intervention program and demonstrate that the program
23 has a documented evidence base and has been evaluated for

1 effectiveness in reducing recidivism or otherwise maintaining low
2 recidivism rates.

3 (d) The division shall establish a policy to provide, at a
4 minimum:

5 (1) A process for reviewing the objective criteria for
6 evidence-based practices established by the agency providing the
7 program;

8 (2) A process for auditing the effectiveness of the program;

9 (3) An opportunity for programs that do not meet the criteria
10 based on the audit results to improve performance; and

11 (4) A mechanism to defund any program that does not meet the
12 criteria upon a second audit.

13 (e) Beginning July 1, 2013, twenty-five percent of state
14 moneys expended on programs shall be for programs that are in
15 accordance with evidence-based practices. Beginning July 1, 2014,
16 fifty percent of state moneys expended on programs shall be for
17 programs that are in accordance with evidence-based practices.
18 Beginning July 1, 2016 and thereafter, seventy-five percent of
19 state moneys expended on programs shall be for programs that are in
20 accordance with evidence-based practices.

21 (f) By fiscal year 2015-2016, the division shall eliminate
22 supervision policies, procedures, programs, and practices intended
23 to reduce recidivism that scientific research demonstrates do not

1 reduce recidivism or otherwise maintain low recidivism rates.
2 However, the division may utilize a new supervision policy,
3 procedure, program, or practice if the division determines that the
4 new supervision policy, procedure, program, or practice has the
5 potential for qualifying as an evidence-based practice after more
6 scientific research is conducted.

7 **§25-1-25. Annual report.**

8 (a) The Commissioner of the Division of Corrections shall
9 annually on December 1 of each year report to the Governor and the
10 Legislature on:

11 (1) The placement of prisoners within the state's correctional
12 system by institution, whether confined in a correctional facility
13 or other institution, including regional jails, paroled, housed in
14 halfway houses, sentenced to community service or otherwise;

15 (2) Numbers of prisoners by type of offense;

16 (3) Numbers of prisoners paroled by type of offense and by
17 length of time served;

18 (4) Numbers of prisoners serving their full sentence by type
19 of offense;

20 (5) The percentage of felony offenders on parole or some form
21 of parole who are participating or completing treatment consistent
22 with assessment results, in prison and in the community;

23 (6) The percentage of felony offenders whose reassessment

1 results demonstrate reductions in criminal risk factors;

2 (7) The percentage of programs that demonstrate their
3 effectiveness in reducing recidivism or otherwise maintaining low
4 recidivism rates;

5 (8) The percentage of felony offenders on parole or some form
6 of post-release supervision, by supervision type, who:

7 (A) Are employed or in school within thirty days, six months,
8 and one year of the start of supervision;

9 (B) Have had part-time employment for a minimum of six months,
10 and the percentage of offenders who have had full-time employment
11 for a minimum of six months;

12 © Have housing upon release from incarceration;

13 (D) Had stable housing for at least six months; and

14 (E) Are arrested, convicted, or incarcerated within six
15 months, one year, and three years;

16 (9) The percentage of admissions to prison by offenders under
17 supervision at the time of admission, including information
18 regarding whether the violations were criminal or technical;

19 (10) Any other data that provides information on state-funded
20 crime reduction and recidivism reduction efforts, including,
21 participation in treatment and intervention programming, public
22 safety outcomes, and cost effectiveness;

23 (11) Numbers and types of prison beds necessary to meet

1 current population needs and six year projections of those needs;

2 (12) Current personnel needs of the Division of Corrections
3 and five year projections of the needs; and

4 (13) A six year projection of needed capital construction,
5 program development, and anticipated requests for appropriations.

6 (b) The provisions of this section become effective on
7 December 1, 2014.

8 **CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.**

9 **ARTICLE 5. THE PENITENTIARY.**

10 **§28-5-27. Deduction from sentence for good conduct.**

11 (a) All adult inmates now in the custody of the Commissioner
12 of the Division of Corrections, or hereafter committed to the
13 custody of the Commissioner of the Division of Corrections, except
14 those committed pursuant to article four, chapter twenty-five of
15 this code, shall be granted commutation from their sentences for
16 good conduct in accordance with this section.

17 (b) Such commutation of sentence, hereinafter called "good
18 time," shall be deducted from the maximum term of indeterminate
19 sentences or from the fixed term of determinate sentences.

20 © Each inmate committed to the custody of the Commissioner of
21 the Division of Corrections and incarcerated in a penal facility
22 pursuant to such commitment shall:

23 (1) Be granted one day good time for each day he or she is

1 incarcerated, including any and all days in jail awaiting sentence
2 and which is credited by the sentencing court to his or her
3 sentence pursuant to section twenty-four, article eleven, chapter
4 sixty-one of this code or for any other reason relating to such
5 commitment. No inmate may be granted any good time for time served
6 either on parole or bond or in any other status whereby he or she
7 is not physically incarcerated;

8 (2) Successfully receiving a general equivalency diploma or a
9 high school diploma, a two or four year college degree, a two year
10 or four year certification in applied sciences, a technical
11 education diploma as provided and defined by the division, or a
12 civics education program that requires passing a final exam, in the
13 amount of ninety days good time per diploma, degree, or
14 certification received; and

15 (3) Successfully completing a drug treatment program or other
16 program as defined by the division that requires participation for
17 a minimum of six months, in the amount of ninety days good time for
18 each program completed.

19 (d) An inmate committed to the custody of the Commissioner of
20 the Division of Corrections and incarcerated in a penal facility
21 pursuant to such commitment may receive credit on his or her
22 sentence for:

23 (1) Performing exceptionally meritorious service or performing

1 duties of outstanding importance in connection with institutional
2 operations and programs, awarded at the discretion of the
3 commissioner in an amount not to exceed seven days per month; and

4 (2) Acts of exceptional service during times of emergency,
5 awarded at the discretion of the commissioner in an amount not to
6 exceed seven days per month.

7 (e) No inmate sentenced to serve a life sentence shall be
8 eligible to earn or receive any good time pursuant to this section.

9 ~~(e)~~ (f) An inmate under two or more consecutive sentences
10 shall be allowed good time as if the several sentences, when the
11 maximum terms thereof are added together, were all one sentence.

12 ~~(f)~~ (g) The Commissioner of the Division of Corrections shall
13 promulgate ~~separate~~ disciplinary rules for each institution under
14 his or her control in which adult felons are incarcerated, which
15 rules shall describe acts which inmates are prohibited from
16 committing, procedures for charging individual inmates for
17 violation of such rules and for determining the guilt or innocence
18 of inmates charged with such violations and the sanctions which may
19 be imposed for such violations. A copy of such rules shall be
20 given to each inmate. For each such violation, by an inmate so
21 sanctioned, any part or all of the good time which has been granted
22 to such inmate pursuant to this section may be forfeited and
23 revoked by the warden or superintendent of the institution in which

1 the violation occurred. The warden or superintendent, when
2 appropriate and with approval of the commissioner, may restore any
3 good time so forfeited.

4 ~~(g)~~ (h) Each inmate, upon his or her commitment to and being
5 received into the custody of the Commissioner of the ~~department~~
6 Division of Corrections, or upon his or her return to custody as
7 the result of violation of parole pursuant to section nineteen,
8 article twelve, chapter sixty-two of this code, shall be given a
9 statement setting forth the term or length of his or her sentence
10 or sentences and the time of his or her minimum discharge computed
11 according to this section.

12 ~~(h)~~ (I) Each inmate shall be given a revision of the statement
13 described in subsection ~~(g)~~ (h) if and when any part or all of the
14 good time has been forfeited and revoked or restored pursuant to
15 subsection ~~(f)~~ (g) whereby the time of his or her earliest
16 discharge is changed.

17 ~~(I) The Commissioner of Corrections may, with the approval of~~
18 ~~the governor, allow extra good time for inmates who perform~~
19 ~~exceptional work or service.~~

20 (j) In order to ensure equitable good time for all inmates now
21 in the custody of the commissioner of corrections or hereafter
22 committed to the custody of ~~such~~ the commissioner, except as to
23 those persons committed pursuant to article ~~4~~ four, chapter

1 twenty-five of this code, all good times shall be computed
 2 according to this section and all previous computations of good
 3 time under prior statutes or regulations are hereby voided. All
 4 inmates who have previously forfeited good time are hereby restored
 5 to good time computed according to this section and all inmates
 6 will receive a new discharge date computed according to this
 7 section. All inmates that have been awarded overtime good time or
 8 extra good time pursuant to sections twenty-seven-a and
 9 twenty-seven-b of this article which are repealed simultaneously
 10 with the amendment to this section during the regular session of
 11 the legislature in the year 1984, shall receive such good time in
 12 addition to the good time computed according to this section.

13 (k) There shall be no grants or accumulations of good time or
 14 credit to any inmate now or hereafter serving a sentence in the
 15 custody of the ~~department~~ Division of Corrections except in the
 16 manner provided in this section.

17 **CHAPTER 31. CORPORATIONS.**

18 **ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY**

19 **AUTHORITY.**

20 **§31-20-33. Annual report.**

21 (a) The Executive Director of the Regional Jail and
 22 Correctional Facility Authority shall on December 1 of each year
 23 report to the Governor and the Legislature on:

1 (1) The placement of prisoners within the regional jails by
2 institution;

3 (2) Numbers of prisoners by type of offense;

4 (3) Numbers of prisoners by number and type of prior
5 convictions;

6 (4) Numbers of prisoners paroled by type of offense and by
7 length of time served;

8 (5) Numbers of prisoners serving their full sentence by type
9 of offense;

10 (6) The percentage of offenders on probation or some form of
11 post-release supervision who are participating or completing
12 treatment consistent with assessment results, in jail and in the
13 community;

14 (7) The percentage of offenders whose reassessment results
15 demonstrate reductions in criminal risk factors;

16 (8) The percentage of programs that demonstrate their
17 effectiveness in reducing recidivism or otherwise maintaining low
18 recidivism rates;

19 (9) The percentage of admissions to jail by offenders under
20 supervision at the time of admission, including information
21 regarding whether the violations were criminal or technical;

22 (10) Any other data that provides information on state-funded
23 crime reduction and recidivism reduction efforts, including

1 caseload sizes by risk level, participation in treatment and
2 intervention programming, public safety outcomes, and cost
3 effectiveness;

4 (11) Numbers and types of beds necessary to meet current
5 population needs and six year projections of those needs;

6 (12) Current personnel needs of the authority and five year
7 projections of the needs; and

8 (13) A six year projection of needed capital construction,
9 program development, and anticipated requests for appropriations.

10 **CHAPTER 51. COURTS AND THEIR OFFICERS.**

11 **ARTICLE 1. WEST VIRGINIA SUPREME COURT OF APPEALS.**

12 **§51-1-22. Annual report on state-funded crime reduction and**
13 **recidivism reduction efforts.**

14 (a) The Chief Justice of the Supreme Court of Appeals shall
15 submit an annual report to the Legislature by November 1 of each
16 year that provides information on state-funded crime reduction and
17 recidivism reduction efforts, including participation in
18 intervention programming, public safety outcomes, and cost
19 effectiveness. The report shall, at a minimum, include:

20 (1) The percentage of defendants on pretrial supervision who
21 appear for court and do not commit a new crime;

22 (2) The percentage of drug court clients who successfully
23 complete drug court;

1 (3) The percentage of drug court clients who are arrested,
2 convicted, and incarcerated within six months, one year, and three
3 years of successful completion of drug court; and

4 (4) The amount of restitution paid while in drug court.

5 (b) The provisions of this section are effective on November
6 1, 2013.

7 **§51-1-23. Online system based on state statistics of offenders for**
8 **use in plea negotiations and sentencing.**

9 (a) The Supreme Court of Appeals shall develop an online
10 system based on state statistics of actual offenders to provide
11 courts, attorneys, parole officers, and victims with objective
12 information for use in plea negotiations and sentencing. The system
13 shall include, but not be limited to, the following information:

14 (1) Sentencing information for all felonies, including the
15 amount of time likely to be served for particular offenses;

16 (2) The offender's risk assessment rating;

17 (3) The offender's expected time to serve, including, but not
18 limited to, parole eligibility date, good time release date,
19 maximum expiration of sentence date, and the historic percentage of
20 time served for similar offenders;

21 (4) The costs for various sentencing options and costs for
22 various alternatives to incarceration; and

23 (5) The offender's likelihood of being reincarcerated within

1 two years under the different sentencing options and alternatives,
2 taking into account the offender's risk assessment rating.

3 (b) This section becomes effective on July 1, 2013.

4 **§51-1-24. Authorization of pilot-project on Hawaii Opportunity**
5 **Probation and Enforcement (HOPE) model.**

6 (a) In an effort to improve public safety and reduce failure
7 rates of individuals on probation, the Supreme Court of Appeals may
8 choose two judicial circuits, one urban circuit and one rural
9 circuit, to implement a twelve-month pilot project similar to the
10 Hawaii Opportunity Probation and Enforcement (HOPE) model to
11 establish a program that:

12 (1) Identifies for enrollment in the program through a
13 validated risk assessment instrument individuals who are serving a
14 term of probation and who are at high risk of failing to observe
15 the conditions of supervision and of being returned to
16 incarceration as a result of such failure;

17 (2) Identifies the key partners that will be included in the
18 program, including the chief judges of the participating judicial
19 circuits and other participating judges in such jurisdiction,
20 Director of the Administrative Office of the Courts, probation
21 officers, regional jail administrators, prosecutors, public
22 defenders and defense attorneys, and sheriff or police
23 administrators;

1 (3) Notifies probationers of the rules of the pilot project
2 and consequences for violating such rules;

3 (4) Monitors probationers for illicit drug use with regular
4 and rapid-result drug screening;

5 (5) Monitors probationers for violations of other rules and
6 probation terms, including failure to pay court-ordered financial
7 obligations such as child support or victim restitution;

8 (6) Responds to violations of such rules with immediate arrest
9 of the violating probationer, and swift and certain modification of
10 the conditions of probation, including imposition of short jail
11 stays that may gradually become longer with each additional
12 violation and modification;

13 (7) Immediately responds to probationers who have absconded
14 from supervision with service of bench warrants and immediate
15 sanctions;

16 (8) Provides rewards to probationers who comply with such
17 rules;

18 (9) Targets treatment resources to offenders who request
19 treatment and those who are repeat violators;

20 (10) Establishes procedures to terminate program participation
21 by, and initiates revocation to a term of incarceration for,
22 probationers who habitually fail to abide by program rules and pose
23 a threat to public safety;

1 (11) Includes regular coordination meetings for the key
2 partners of the pilot project, including the partners identified in
3 subdivision (2) of this subsection; and

4 (12) Reduces violation behavior and new crimes, and reduces
5 revocations to prison.

6 (b) If a pilot project is implemented by the Supreme Court of
7 Appeals, and two judicial circuits, they shall submit an annual
8 report on the results of the pilot project to the Interim Joint
9 Committee on Judiciary one year after implementation of the pilot
10 project. The results shall include at a minimum:

11 (1) Key process measures, including the number of individuals
12 enrolled in the program, the frequency of drug testing of such
13 individuals, the certainty of sanctions for a violation of the
14 terms of probation, the average period of time from detection of a
15 violation to issuance of a sanction for the violation and sanction
16 severity;

17 (2) An unbiased comparison of the outcomes between program
18 participants and similarly situated probationers not in the
19 program, including the positive and negative drug test rates,
20 probation and substance abuse treatment appearance rates, probation
21 term modifications, revocations, arrests, time spent in jail or
22 prison and total correctional costs incurred; and

23 (3) The amount of cost savings, if any, resulting from the

1 reduced incarceration achieved through the pilot project.

2 **CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.**

3 **ARTICLE 1. DEFINITIONS.**

4 **§60A-1-101. Definitions.**

5 As used in this act:

6 ~~(a)~~ (1) "Administer" means the direct application of a
7 controlled substance whether by injection, inhalation, ingestion or
8 any other means to the body of a patient or research subject by:

9 ~~(1)~~ (A) A practitioner (or, in his or her presence, by his
10 authorized agent); or

11 ~~(2)~~ (B) The patient or research subject at the direction and
12 in the presence of the practitioner.

13 ~~(b)~~ (2) "Agent" means an authorized person who acts on behalf
14 of or at the direction of a manufacturer, distributor or dispenser.
15 It does not include a common or contract carrier, public
16 warehouseman or employee of the carrier or warehouseman.

17 (3) "Analogue" means a substance that, in relation to a
18 controlled substance, has a substantially similar chemical
19 structure.

20 ~~(d)~~ (4) "Bureau" means the "Bureau of Narcotics and Dangerous
21 Drugs, United States Department of Justice" or its successor
22 agency.

23 (5) "Cocaine" means a substance containing any quantity of

1 cocaine, its salts, optical and geometric isomers, and salts of
2 isomers.

3 (e) (6) "Controlled substance" means a drug, substance or
4 immediate precursor in Schedules I through V of article two of this
5 chapter.

6 (f) (7) "Counterfeit substance" means a controlled substance
7 which, or the container or labeling of which, without
8 authorization, bears the trademark, trade name or other identifying
9 mark, imprint, number or device, or any likeness thereof, of a
10 manufacturer, distributor or dispenser other than the person who in
11 fact manufactured, distributed or dispensed the substance.

12 ~~(g) "Imitation controlled substance" means: (1) A controlled~~
13 ~~substance which is falsely represented to be a different controlled~~
14 ~~substance; (2) a drug or substance which is not a controlled~~
15 ~~substance but which is falsely represented to be a controlled~~
16 ~~substance; or (3) a controlled substance or other drug or substance~~
17 ~~or a combination thereof which is shaped, sized, colored, marked,~~
18 ~~imprinted, numbered, labeled, packaged, distributed or priced so as~~
19 ~~to cause a reasonable person to believe that it is a controlled~~
20 ~~substance.~~

21 (8) "Criminal risk factors" means those characteristics and
22 behaviors that, when addressed or changed, affect a person's risk
23 for committing crimes. The characteristics may include, but are

1 not limited to, the following risk and criminogenic need factors:
2 antisocial behavior, antisocial personality, criminal thinking,
3 criminal associates, dysfunctional family, low levels of employment
4 or education, poor use of leisure and recreation and substance
5 abuse.

6 ~~(h)~~ (9) "Deliver" or "delivery" means the actual, constructive
7 or attempted transfer from one person to another of: (1) A
8 controlled substance, whether or not there is an agency
9 relationship; (2) a counterfeit substance; or (3) an imitation
10 controlled substance.

11 ~~(i)~~ (10) "Dispense" means to deliver a controlled substance to
12 an ultimate user or research subject by or pursuant to the lawful
13 order of a practitioner, including the prescribing, administering,
14 packaging, labeling or compounding necessary to prepare the
15 substance for that delivery.

16 ~~(j)~~ (11) "Dispenser" means a practitioner who dispenses.

17 ~~(k)~~ (12) "Distribute" means to deliver, other than by
18 administering or dispensing, a controlled substance, a counterfeit
19 substance or an imitation controlled substance.

20 ~~(l)~~ (13) "Distributor" means a person who distributes.

21 (14) "Dosage unit" means a single pill, capsule, ampule,
22 liquid, or other form of administration available as a single unit.

23 ~~(m)~~ (15) "Drug" means: ~~(1)~~ (A) Substances recognized as drugs

1 in the official "United States Pharmacopoeia, official Homeopathic
2 Pharmacopoeia of the United States or official National Formulary",
3 or any supplement to any of them; ~~(2)~~ (B) substances intended for
4 use in the diagnosis, cure, mitigation, treatment or prevention of
5 disease in man or animals; ~~(3)~~ © substances (other than food)
6 intended to affect the structure or any function of the body of man
7 or animals; and ~~(4)~~ (D) substances intended for use as a component
8 of any article specified in ~~clause (1), (2) or (3)~~ paragraph (A),
9 (B) or © of this subdivision. It does not include devices or their
10 components, parts or accessories.

11 (16) "Heroin" means a substance containing any quantity of
12 heroin, or any of its salts, isomers, or salts of isomers;

13 (17) "Imitation controlled substance" means:

14 (A) A controlled substance which is falsely represented to be
15 a different controlled substance;

16 (B) A drug or substance which is not a controlled substance
17 but which is falsely represented to be a controlled substance; or

18 © A controlled substance or other drug or substance or a
19 combination thereof which is shaped, sized, colored, marked,
20 imprinted, numbered, labeled, packaged, distributed or priced so as
21 to cause a reasonable person to believe that it is a controlled
22 substance.

23 ~~(n)~~ (18) "Immediate derivative" means a substance which the

1 "West Virginia Board of Pharmacy" has found to be and by rule
2 designates as being the principal compound or any analogue of the
3 parent compound manufactured from a known controlled substance
4 primarily for use and which has equal or similar pharmacologic
5 activity as the parent compound which is necessary to prevent,
6 curtail or limit manufacture.

7 ~~(o)~~ (19) "Immediate precursor" means a substance which the
8 "West Virginia Board of Pharmacy" (hereinafter in this act referred
9 to as the State Board of Pharmacy) has found to be and by rule
10 designates as being the principal compound commonly used or
11 produced primarily for use and which is an immediate chemical
12 intermediary used or likely to be used in the manufacture of a
13 controlled substance, the control of which is necessary to prevent,
14 curtail or limit manufacture.

15 ~~(p)~~ (20) "Manufacture" means the production, preparation,
16 propagation, compounding, conversion or processing of a controlled
17 substance, either directly or indirectly or by extraction from
18 substances of natural origin, or independently by means of chemical
19 synthesis, or by a combination of extraction and chemical
20 synthesis, and includes any packaging or repackaging of the
21 substance or labeling or relabeling of its container, except that
22 this term does not include the preparation, compounding, packaging
23 or labeling of a controlled substance:

1 ~~(1)~~ (A) By a practitioner as an incident to his or her
2 administering or dispensing of a controlled substance in the course
3 of his professional practice; or

4 ~~(2)~~ (B) By a practitioner, or by his or her authorized agent
5 under his or her supervision, for the purpose of, or as an incident
6 to, research, teaching or chemical analysis and not for sale.

7 ~~(q)~~ (21) "Marijuana" means all parts of the plant "Cannabis
8 sativa L.", whether growing or not; the seeds thereof; the resin
9 extracted from any part of the plant; and every compound,
10 manufacture, salt, immediate derivative, mixture or preparation of
11 the plant, its seeds or resin. It does not include the mature
12 stalks of the plant, fiber produced from the stalks, oil or cake
13 made from the seeds of the plant, any other compound, manufacture,
14 salt, immediate derivative, mixture or preparation of the mature
15 stalks (except the resin extracted therefrom), fiber, oil or cake,
16 or the sterilized seed of the plant which is incapable of
17 germination.

18 ⊕ (22) "Narcotic drug" means any of the following, whether
19 produced directly or indirectly by extraction from substances of
20 vegetable origin or independently by means of chemical synthesis,
21 or by a combination of extraction and chemical synthesis:

22 ~~(1)~~ (A) Opium and opiate and any salt, compound, immediate
23 derivative or preparation of opium or opiate;

1 ~~(2)~~ (B) Any salt, compound, isomer, immediate derivative or
2 preparation thereof which is chemically equivalent or identical
3 with any of the substances referred to in paragraph (1) of this
4 subdivision, but not including the isoquinoline alkaloids of opium;

5 ~~(3)~~ © Opium poppy and poppy straw; and

6 ~~(4)~~ (D) Coca leaves and any salt, compound, immediate
7 derivative or preparation of coca leaves and any salt, compound,
8 isomer, immediate derivative or preparation thereof which is
9 chemically equivalent or identical with any of these substances,
10 but not including decocainized coca leaves or extractions of coca
11 leaves which do not contain cocaine or ecgonine.

12 ~~(s)~~ (23) "Opiate" means any substance having an
13 addiction-forming or addiction-sustaining liability similar to
14 morphine or being capable of conversion into a drug having
15 addiction-forming or addiction-sustaining liability. It does not
16 include, unless specifically designated as controlled under section
17 two hundred one, article two of this chapter, the dextrorotatory
18 isomer of 3-methoxy-n-methylmorphinan and its salts
19 (dextromethorphan). It does not include its racemic and
20 levorotatory forms.

21 ~~(t)~~ (24) "Opium poppy" means the plant of the species "Papaver
22 somniferum L.", except its seeds.

23 ~~(u)~~ (25) "Person" means individual, corporation, government or

1 governmental subdivision or agency, business trust, estate, trust,
2 partnership or association, or any other legal entity.

3 ~~(v)~~ (26) "Placebo" means an inert medicament or preparation
4 administered or dispensed for its psychological effect, to satisfy
5 a patient or research subject or to act as a control in
6 experimental series.

7 ~~(w)~~ (27) "Poppy straw" means all parts, except the seeds, of
8 the opium poppy after mowing.

9 ~~(x)~~ (28) "Practitioner" means:

10 ~~(1)~~ (A) A physician, dentist, veterinarian, scientific
11 investigator or other person licensed, registered or otherwise
12 permitted to distribute, dispense, conduct research with respect
13 to, or to administer a controlled substance in the course of
14 professional practice or research in this state; or

15 ~~(2)~~ (B) A pharmacy, hospital or other institution licensed,
16 registered or otherwise permitted to distribute, dispense, conduct
17 research with respect to, or to administer a controlled substance
18 in the course of professional practice or research in this state.

19 (29) "Presumptive probation" means a sentence of probation not
20 to exceed the maximum term specified for the offense, subject to
21 conditions otherwise authorized by law, that is presumed to be the
22 appropriate sentence for certain offenses designated in this
23 article, notwithstanding contrary provisions of article twelve,

1 chapter sixty-two of this code. That presumption shall only be
2 overcome by a finding on the record by the sentencing court of
3 substantial and compelling reasons why the defendant cannot be
4 safely and effectively supervised in the community, is not amenable
5 to community-based treatment, or poses a significant risk to public
6 safety.

7 ~~(y)~~ (30) "Production" includes the manufacture, planting,
8 cultivation, growing or harvesting of a controlled substance.

9 (31) "Recovery program" means an evidence-based, nonclinical
10 service that assists individuals and families working toward
11 sustained recovery from substance use and other criminal risk
12 factors. This can be done through an array of support programs and
13 services that are delivered through residential and nonresidential
14 means.

15 (32) "Risk and needs assessment" or "validated risk and needs
16 assessment" means an actuarial tool scientifically proven to
17 determine a person's risk to reoffend and criminal risk factors,
18 that when properly addressed, can reduce that person's likelihood
19 of committing future criminal behavior.

20 ~~(z)~~ (33) "State", when applied to a part of the United States,
21 includes any state, district, commonwealth, territory, insular
22 possession thereof and any area subject to the legal authority of
23 the United States of America.

1 (34) "Treatment" when used in a criminal justice context,
2 means targeted interventions that focus on criminal risk factors in
3 order to reduce the likelihood of criminal behavior. Treatment
4 options may include, but may not be limited to, community-based
5 programs that are consistent with evidence-based practices,
6 cognitive-behavioral programs, faith-based programs, inpatient and
7 outpatient substance abuse or mental health programs, and other
8 available prevention and intervention programs that have been
9 scientifically proven to produce reductions in recidivism when
10 implemented competently. "Treatment" does not include medical
11 services.

12 ~~(aa)~~ (35) "Ultimate user" means a person who lawfully
13 possesses a controlled substance for his or her own use or for the
14 use of a member of his or her household or for administering to an
15 animal owned by him or her or by a member of his or her household.

16 **§60A-1-102. Legislative findings and declaration.**

17 The Legislature hereby finds, determines, and declares that:

18 (1) The regulation of controlled substances in this state is
19 important and necessary for the preservation of public safety and
20 public health; and

21 (2) Successful, community-based treatment can be used as an
22 effective tool in the effort to reduce criminal risk factors.
23 Therapeutic intervention and ongoing individualized treatment plans

1 prepared through the use of meaningful and validated research-based
2 assessment tools and professional evaluations offer a potential
3 alternative to incarceration in appropriate circumstances and shall
4 be used accordingly.

5 **ARTICLE 4. OFFENSES AND PENALTIES.**

6 **§60A-4-401. Prohibited acts A; penalties.**

7 (a) Except as authorized by this act, it is unlawful for any
8 person to manufacture, deliver, or possess with intent to
9 manufacture or deliver, a controlled substance.

10 Any person who violates this subsection with respect to: ~~(I)~~

11 (1) (A) Four grams or more of cocaine; (B) two grams or more of
12 heroin or methamphetamine; © ten or more dosage units of a
13 controlled substance classified in Schedule I or II, which and is
14 a narcotic drug; or (D) any quantity of lysergic acid diethylamide,
15 phencyclidine, gamma hydroxybutyric acid (GHB), including its
16 salts, isomers, salts of isomers and analogues or flunitrazepam,
17 including its salts, isomers or salts of isomers is guilty of a
18 felony and, upon conviction, may be imprisoned in the state
19 correctional confined in a correctional facility for not less than
20 one year nor more than fifteen years, or fined not more than
21 \$25,000, or both fined and confined;

22 (2) Any quantity of a controlled substance specified in
23 subdivision (1) of this subsection in an amount less than the

1 amounts specified, is guilty of a felony and, upon conviction, may
2 be confined in a correctional facility for not less than one year
3 nor more than five years, or fined not more than \$15,000, or both
4 fined and confined;

5 ~~(ii) Any other~~ (3) (A) Ten or more dosage units of a controlled
6 substance classified in Schedule I or II that is not a narcotic
7 drug; or (B) twenty or more dosage units of a controlled substance
8 classified in schedule III is guilty of a felony and, upon
9 conviction, may be imprisoned in the state confined in a
10 correctional facility for not less than one year nor more than five
11 years, or fined not more than \$15,000, or both fined and confined;

12 (4) Any quantity of a controlled substance specified in
13 subdivision (3) of this subsection in an amount less than the
14 amounts specified, is guilty of a felony and, upon conviction, may
15 be confined in a correctional facility for not less than one year
16 nor more than three years, or fined not more than \$10,000, or both
17 fined and confined;

18 ~~(iii) (5) A substance classified in Schedule IV is guilty of~~
19 ~~a felony and, upon conviction, may be imprisoned in the state~~
20 ~~correctional facility for not less than one year nor more than~~
21 ~~three years, or fined not more than ten thousand dollars, or both;~~

22 ~~(iv) A substance classified in or~~ Schedule V is guilty of a
23 misdemeanor and, upon conviction, may be confined in jail for not

1 less than six months nor more than one year, or fined not more than
2 \$5,000, or both fined and confined: *Provided*, That for offenses
3 relating to any substance classified as Schedule V in article ten
4 of this chapter, the penalties established in ~~said~~ that article
5 apply;

6 (6) A quantity of a controlled substance specified in
7 subdivision (5) of this subsection in an amount less than twenty
8 dosage units, is subject to the imposition of presumptive probation
9 as provided in section four hundred fourteen of this article; and

10 (7) The amounts specified in subdivision (1) of this
11 subsection may occur in a single transaction or in a series of
12 transactions over a period of time not to exceed ninety days that
13 cumulatively result in the quantities specified in this subsection.

14 (b) Except as authorized by this act, it is unlawful for any
15 person to create, deliver, or possess with intent to deliver, a
16 counterfeit substance.

17 Any person who violates this subsection with respect to:

18 ~~(I)~~ (1) A counterfeit substance classified in Schedule I or
19 II, which is a narcotic drug, is guilty of a felony and, upon
20 conviction, may be ~~imprisoned in the state~~ confined in a
21 correctional facility for not less than one year nor more than
22 fifteen years, or fined not more than \$25,000, or both fined and
23 confined;

1 ~~(ii)~~ (2) Any other counterfeit substance classified in
2 Schedule I, II or III is guilty of a felony and, upon conviction,
3 may be ~~imprisoned in the state~~ confined in a correctional facility
4 for not less than one year nor more than five years, or fined not
5 more than \$15,000, or both fined and confined;

6 ~~(iii)~~ (3) A counterfeit substance classified in Schedule IV is
7 guilty of a felony and, upon conviction, may be ~~imprisoned in the~~
8 ~~state~~ confined in a correctional facility for not less than one
9 year nor more than three years, or fined not more than \$10,000, or
10 both fined and confined; and

11 ~~(iv)~~ (4) A counterfeit substance classified in Schedule V is
12 guilty of a misdemeanor and, upon conviction, may be confined in
13 jail for not less than six months nor more than one year, or fined
14 not more than \$5,000, or both fined and confined: *Provided*, That
15 for offenses relating to any substance classified as Schedule V in
16 article ten of this chapter, the penalties established in ~~said~~ that
17 article apply.

18 © It is unlawful for any person knowingly or intentionally to
19 possess a controlled substance unless the substance was obtained
20 directly from, or pursuant to, a valid prescription or order of a
21 practitioner while acting in the course of his or her professional
22 practice, or except as otherwise authorized by this act. Any
23 person who violates this subsection is guilty of a misdemeanor and,

1 disposition may be made under section four hundred seven of this
2 article, subject to the limitations specified in said section, or
3 upon conviction, such person may be confined in jail not less than
4 ninety days nor more than six months, or fined not more than
5 \$1,000, or both fined and confined: *Provided*, That notwithstanding
6 any other provision of this act to the contrary, any first offense
7 for possession of Synthetic Cannabinoids ~~as defined by subdivision~~
8 ~~(32) subsection (d), section 101, article 1 of this chapter;~~
9 3,4-methylenedioxypropylone (MPVD) and
10 3,4-methylenedioxypropylone and/or mephedrone ~~as defined in~~
11 ~~subsection (f), section 101, article 1 of this chapter;~~ or less
12 than ~~15~~ fifteen grams of marijuana, shall be disposed of under ~~said~~
13 that section.

14 (d) It is unlawful for any person knowingly or intentionally:

15 (1) To create, distribute or deliver, or possess with intent
16 to distribute or deliver, an imitation controlled substance; or

17 (2) To create, possess or sell or otherwise transfer any
18 equipment with the intent that such equipment shall be used to
19 apply a trademark, trade name, or other identifying mark, imprint,
20 number or device, or any likeness thereof, upon a counterfeit
21 substance, an imitation controlled substance, or the container or
22 label of a counterfeit substance or an imitation controlled
23 substance.

1 (3) Any person who violates this subsection is guilty of a
2 misdemeanor and, upon conviction, may be ~~imprisoned~~ confined in
3 jail for not less than six months nor more than one year, or fined
4 not more than \$5,000, or both fined and confined. Any person being
5 eighteen years old or more who violates subdivision (1) of this
6 subsection and, in so doing, distributes or delivers an imitation
7 controlled substance to a minor child who is at least three years
8 younger than such person is guilty of a felony and, upon
9 conviction, may be ~~imprisoned in the state~~ confined in a
10 correctional facility for not less than one year nor more than
11 three years, or fined not more than \$10,000, or both fined and
12 confined.

13 (4) The provisions of subdivision (1) of this subsection shall
14 not apply to a practitioner who administers or dispenses a placebo.

15 **§60A-4-407. Deferred prosecution.**

16 ~~(a) Whenever any person who has not previously been convicted~~
17 ~~of any offense under this chapter or under any statute of the~~
18 ~~United States or of any state relating to narcotic drugs,~~
19 ~~marihuana, or stimulant, depressant, or hallucinogenic drugs,~~
20 ~~pleads guilty to or is found guilty of possession of a controlled~~
21 ~~substance under section 401©, the court, without entering a~~
22 ~~judgment of guilt and with the consent of the accused, may defer~~
23 ~~further proceedings and place him or her on probation upon terms~~

1 ~~and conditions. Upon violation of a term or condition, the court~~
2 ~~may enter an adjudication of guilt and proceed as otherwise~~
3 ~~provided. Upon fulfillment of the terms and conditions, the court~~
4 ~~shall discharge the person and dismiss the proceedings against him~~
5 ~~or her. Discharge and dismissal under this section shall be~~
6 ~~without adjudication of guilt and is not a conviction for purposes~~
7 ~~of this section or for purposes of disqualifications or~~
8 ~~disabilities imposed by law upon conviction of a crime, including~~
9 ~~the additional penalties imposed for second or subsequent~~
10 ~~convictions under section 408. The effect of the dismissal and~~
11 ~~discharge shall be to restore the person in contemplation of law to~~
12 ~~the status he or she occupied prior to arrest and trial. No person~~
13 ~~as to whom a dismissal and discharge have been effected shall be~~
14 ~~thereafter held to be guilty of perjury, false swearing, or~~
15 ~~otherwise giving a false statement by reason of his or her failure~~
16 ~~to disclose or acknowledge his or her arrest or trial in response~~
17 ~~to any inquiry made of him or her for any purpose. There may be~~
18 ~~only one discharge and dismissal under this section with respect to~~
19 ~~any person.~~

20 ~~(b) After a period of not less than six months which shall~~
21 ~~begin to run immediately upon the expiration of a term of probation~~
22 ~~imposed upon any person under this chapter, the person may apply to~~
23 ~~the court for an order to expunge from all official records all~~

1 ~~recordations of his or her arrest, trial, and conviction, pursuant~~
2 ~~to this section. If the court determines after a hearing that the~~
3 ~~person during the period of his or her probation and during the~~
4 ~~period of time prior to his or her application to the court under~~
5 ~~this section has not been guilty of any serious or repeated~~
6 ~~violation of the conditions of his or her probation, it shall order~~
7 ~~the expungement.~~

8 (a) A defendant charged with his or her first or second
9 offense under subsection ©, section four hundred one of this
10 article, may enter a deferred prosecution program subject to the
11 following provisions:

12 (1) The defendant requests deferred prosecution in writing and
13 the prosecutor agrees;

14 (2) The defendant may not be required to plead guilty or enter
15 an Alford plea as a condition of applying for participation in the
16 deferred prosecution program;

17 (3) The defendant agrees to the terms and conditions set forth
18 by the prosecuting attorney and approved by the court, which may
19 include any provision authorized for pretrial diversion pursuant to
20 section twenty-two, article eleven, chapter sixty-one of this code;
21 and

22 (4) The maximum length of participation in the program shall
23 be two years.

1 (b) If a prosecutor denies a defendant's request to enter a
2 deferred prosecution program, the prosecutor shall state on the
3 record the substantial and compelling reasons why the defendant
4 cannot be safely and effectively supervised in the community, is
5 not amenable to community-based treatment, or poses a significant
6 risk to public safety.

7 © If the defendant successfully completes the deferred
8 prosecution program, the charges against the defendant shall be
9 dismissed, and all records relating to the case, including, but not
10 limited to, arrest records and records relating to the charges,
11 shall be sealed. The offense shall be deemed never to have
12 occurred, except for the purposes of determining the defendant's
13 eligibility for deferred prosecution, and the defendant may not be
14 required to disclose the arrest or other information relating to
15 the charges or participation in the program unless required to do
16 so by state or federal law.

17 (d) If the defendant is charged with violating the conditions
18 of the program, the court, upon motion of the prosecuting attorney,
19 shall hold a hearing to determine whether the defendant violated
20 the conditions of the program.

21 (e) If the court finds that the defendant violated the
22 conditions of the program, the court may, with the approval of the
23 prosecutor:

1 (1) Continue the defendant's participation in the program;

2 (2) Change the terms and conditions of the defendant's
3 participation in the program; or

4 (3) Order the defendant removed from the program and proceed
5 with ordinary prosecution for the offense charged.

6 (f) If a person does not enter a deferred prosecution for his
7 or her first or second offense, he or she shall be subject to a
8 period of presumptive probation, unless a court determined the
9 defendant is not eligible for presumptive probation as defined by
10 section four hundred fourteen of this article,

11 ⊗ (g) Notwithstanding any provision of this code to the
12 contrary, any person prosecuted pursuant to the provisions of this
13 article whose case is disposed of pursuant to the provisions of
14 this section shall be liable for any court costs assessable against
15 a person convicted of a violation of section 401⊗ of this article.
16 Payment of such costs may be made a condition of probation.

17 The costs assessed pursuant to this section, whether as a term
18 of probation or not, shall be distributed as other court costs in
19 accordance with section two, article three, chapter fifty, section
20 four, article two-a, chapter fourteen, section four, article
21 twenty-nine, chapter thirty and sections two, seven and ten,
22 article five, chapter sixty-two of this code.

23 **§60A-4-414. Presumptive Probation.**

1 (a) Any statute to the contrary notwithstanding, a defendant
2 charged with an offense under this chapter for which a conviction
3 may result in presumptive probation shall be placed on pretrial
4 release on his or her own recognizance or on unsecured bond by the
5 court subject to any conditions, other than bail, specified in
6 articles eleven-a, eleven-b, eleven-c or twelve of chapter
7 sixty-two of this code.

8 (b) The provisions of this section may not be applied to a
9 defendant who is found by the court to present a flight risk, or to
10 be a danger to himself or herself or a danger to others.

11 © If a court determines that a defendant is not to be released
12 pursuant to subsection (b) of this section, the court shall
13 document the reasons for denying the release in a written order.

14 **§60A-4-415. Assessment and treatment program for first offenders**
15 **of possession of controlled substance; rescission**
16 **of treatment order; voiding of conviction; sealing**
17 **of records.**

18 (a) A court may request a risk and needs assessment for any
19 person found guilty of possession of a controlled substance
20 pursuant to this article. The risk and needs assessment shall
21 include a recommendation to the court as to whether treatment is
22 indicated by the assessment, and, if so, the most appropriate
23 treatment or recovery program environment. If treatment is

1 indicated for the person, the court may order him or her to the
2 appropriate treatment or recovery program that will effectively
3 respond to the person's level of risk, criminal risk factors, and
4 individual characteristics, a program of treatment or recovery not
5 to exceed one year in duration may be prescribed. The person
6 ordered to the designated treatment or recovery program shall
7 present himself or herself for registration and initiation of the
8 treatment or recovery program within five days of the date of
9 sentencing. If, without good cause, the person fails to appear at
10 the designated treatment or recovery program within the specified
11 time, or if at any time during the program of treatment or recovery
12 prescribed, the authorized director of the treatment or recovery
13 program finds that the person is unwilling to participate in his or
14 her treatment, the director shall notify the sentencing court. Upon
15 receipt of notification, the court shall cause the person to be
16 brought before it and may continue the order of treatment, or may
17 rescind the treatment order and impose a sentence for the
18 possession offense. Upon discharge of the person from the treatment
19 or recovery program prior to the expiration of the one year period
20 or upon satisfactory completion of one year of treatment, the
21 person shall be deemed finally discharged from sentence.

22 (b) The Secretary of the Department of Health and Human
23 Resources, or his or her designee, shall inform the Supreme Court

1 of Appeals of the identity and location of treatment or recovery
2 programs to which a person may sentenced.

3 © Transportation to an inpatient facility shall be provided by
4 order of the court when the court finds the person unable to convey
5 himself or herself to the facility within five days of sentencing
6 by reason of physical infirmity or financial incapability.

7 (d) The sentencing court shall immediately notify the
8 designated treatment or recovery program of the sentence and its
9 effective date.

10 (e) The Secretary of the Department of Health and Human
11 Resources, or his or her designee, may authorize transfer of the
12 person from the initially designated treatment or recovery program
13 to another treatment or recovery program for therapeutic purposes.
14 The sentencing court shall be notified of termination of treatment
15 by the terminating treatment or recovery program and shall be
16 notified by the secretary of the new treatment or recovery program
17 to which the person was transferred.

18 (f) Responsibility for payment for treatment services rendered
19 to persons pursuant to this section shall be as under the statutes
20 pertaining to payment of patients and others for services rendered
21 by the Department of Health and Human Resources, unless the person
22 and the treatment or recovery program shall arrange otherwise.

23 (g) None of the provisions of this section shall be deemed to

1 preclude the court from exercising its usual discretion with regard
2 to ordering probation or conditional discharge.

3 (h) In the case of any person who has been convicted for the
4 first time of a misdemeanor possession of controlled substances,
5 the court may set aside and void the conviction upon satisfactory
6 completion of treatment, probation, or other sentence, and issue to
7 the person a certificate to that effect. A conviction voided under
8 this subsection may not be deemed a first offense for purposes of
9 this article or deemed a conviction for purposes of
10 disqualifications or disabilities imposed by law upon conviction of
11 a crime. Voiding of a conviction under this subsection and
12 dismissal may occur only once with respect to any person.

13 (I) If the court voids a conviction under this section, the
14 court shall order the sealing of all records in the custody of the
15 court and any records in the custody of any other agency or
16 official, including law-enforcement records. Every agency with
17 records relating to the arrest, charge, or other matters arising
18 out of the arrest or charge that is ordered to seal records, shall
19 certify to the court within sixty days of the entry of the order
20 that the required sealing action has been completed.

21 (j) After the sealing of the record, the proceedings in the
22 matter may not be used against the defendant except for the
23 purposes of determining the person's eligibility to have his or her

1 conviction voided under subsection (h) of this section. The court
2 and other agencies shall reply to any inquiry that no record exists
3 on the matter. The person whose record has been sealed may not have
4 to disclose the fact of the record or any matter relating thereto
5 on an application for employment, credit, or other type of
6 application.

7 (k) Inspection of the sealed records may thereafter be
8 permitted by the court upon a motion by the person who is the
9 subject of the records and only to those persons named in the
10 motion or upon a motion of the prosecutor to verify a defendant's
11 eligibility to have his or her conviction voided under subsection
12 (h) of this section.

13 **CHAPTER 62. CRIMINAL PROCEDURE.**

14 **ARTICLE 1. PRELIMINARY PROCEDURE.**

15 **§62-1-5a. Citation in lieu of arrest; failure to appear.**

16 (a) Except as provided in subsections (b) and © of this
17 section, a law-enforcement officer ~~may~~ shall issue a citation
18 instead of making an arrest for the following offenses, if there
19 are reasonable grounds to believe that the person being cited will
20 appear to answer the charge:

21 (1) Any misdemeanor, not involving injury to the person,
22 committed in a law-enforcement officer's presence: Provided, That
23 the officer may arrest the person if he or she has reasonable

1 grounds to believe that the person is likely to cause serious harm
2 to himself or others; and

3 (2) When any person is being detained for the purpose of
4 investigating whether such person has committed or attempted to
5 commit shoplifting, pursuant to section four, article three-a,
6 chapter sixty-one of this code.

7 (b) A law-enforcement officer may make an arrest instead of
8 issuing a citation for a misdemeanor committed in his or her
9 presence if the misdemeanor is:

10 (1) A violation of articles two or eight of this code or
11 involves the use of a firearm or other deadly weapon:

12 (2) An offense in which the defendant poses a risk of danger
13 to himself, herself, or another person; or

14 (3) An offense in which the defendant refuses to follow the
15 law-enforcement officer's reasonable instructions.

16 © A law-enforcement officer shall make an arrest for
17 violations of protective orders issued pursuant to article
18 twenty-seven, chapter forty-eight of this code.

19 (d) The citation issued pursuant to this section shall provide
20 that the defendant shall appear within a designated time.

21 (e) If the defendant fails to appear in response to the
22 citation or if there are reasonable grounds to believe that he or
23 she will not appear, a complaint may be made and a warrant shall

1 issue. When a physical arrest is made and a citation is issued in
2 relation to the same offense the officer shall mark on the
3 citation, in the place specified for court appearance date, the
4 word "arrested" in lieu of the date of court appearance.

5 **ARTICLE 1C. BAIL.**

6 **§62-1C-3. Fixing of amount; bail may cover two or more charges.**

7 (a) The amount of bail shall be fixed by the court or ~~justice~~
8 magistrate with consideration given to the seriousness of the
9 offense charged, the previous criminal record of the defendant, his
10 or her financial ability, and the probability of his or her
11 appearance. When two or more charges are filed or are pending
12 against the same person at or about the same time, the bail given
13 may be made to include all offenses charged against the defendant.

14 (b) When a person has been charged with one or more
15 misdemeanors, the amount of the bail for all charges shall be
16 encompassed by a single amount of bail that may not exceed the
17 amount of the fine and court costs for the one highest misdemeanor
18 charged. This subsection shall apply only to misdemeanor offenses
19 not involving physical injury or sexual contact.

20 © When a person has been convicted of a misdemeanor offense
21 and a sentence of jail, probation, conditional discharge, or
22 sentence other than a fine only has been imposed, the amount of
23 bail for release on appeal may not exceed double the amount of the

1 maximum fine that could have been imposed for the one highest
2 misdemeanor offense for which the person was convicted. This
3 subsection shall apply only to misdemeanors not involving physical
4 injury or sexual contact.

5 (d) This section does not apply to a defendant who is found
6 by the court to present a flight risk or to be a danger to others.

7 (e) If a court determines that a defendant is not to be
8 released pursuant to subsection (d) of this section, the court
9 shall document the reasons for denying the release in a written
10 order.

11 **ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.**

12 **§62-11C-3a. Evidence-based practices to be used in community**
13 **corrections programs; standards; funding**
14 **restrictions.**

15 (a) As used in this section, "evidence-based practices" means
16 supervision policies, procedures, treatment and intervention
17 programs, and practices that scientific research demonstrates
18 reduce or otherwise maintaining low recidivism among inmates and
19 individuals on probation, parole, or other form of post-release
20 supervision when implemented competently.

21 (b) In order to increase the effectiveness of treatment and
22 intervention programs funded by the state and provided by the West
23 Virginia Community Corrections Fund, the Governor's committee shall

1 require that such programs use evidence-based practices.

2 © The Governor's committee shall measure the effectiveness of
3 each community corrections program and demonstrate that the program
4 has a documented evidence base and has been evaluated for
5 effectiveness in reducing or otherwise maintaining low recidivism.

6 (d) The Governor's committee shall promulgate legislative
7 rules to provide, at a minimum:

8 (1) A process for reviewing the objective criteria for
9 evidence-based practices established by the community corrections
10 program;

11 (2) A process for auditing the effectiveness of the program;

12 (3) An opportunity for programs that do not meet the criteria
13 based on the audit results to improve performance; and

14 (4) A mechanism to defund any program that does not meet the
15 criteria upon a second audit.

16 (e) Beginning July 1, 2012, twenty-five percent of state
17 moneys expended on programs shall be for programs that are in
18 accordance with evidence-based practices. Beginning July 1, 2014,
19 fifty percent of state moneys expended on programs shall be for
20 programs that are in accordance with evidence-based practices.
21 Beginning July 1, 2016 and thereafter, seventy-five percent of
22 state moneys expended on programs shall be for programs that are in
23 accordance with evidence-based practices.

1 (f) By fiscal year 2015-2016, the Governor's committee shall
2 eliminate supervision policies, procedures, programs, and practices
3 intended to reduce recidivism that scientific research demonstrates
4 do not reduce recidivism. However, the Governor's committee may
5 utilize a new supervision policy, procedure, program, or practice
6 if the Governor's committee determines that the new supervision
7 policy, procedure, program, or practice has the potential for
8 qualifying as an evidence-based practice after more scientific
9 research is conducted.

10 **ARTICLE 12. PROBATION AND PAROLE.**

11 **§62-12-1a. Definitions.**

12 As used in this article:

13 (1) "Case plan" means an individualized accountability and
14 behavior change strategy for supervised individuals that:

15 (A) Targets and prioritizes the specific criminal risk factors
16 of the individual based upon his or her assessment results;

17 (B) Matches the type and intensity of supervision and
18 treatment conditions to the individual's level of risk, criminal
19 risk factors, and individual characteristics, such as gender,
20 culture, motivational stage, developmental stage, and learning
21 style;

22 © Establishes a timetable for achieving specific behavioral
23 goals, including a schedule for payment of victim restitution,

1 child support, and other financial obligations; and

2 (D) Specifies positive and negative actions that will be taken
3 in response to the supervised individual's behaviors.

4 (2) "Criminal risk factors" are characteristics and behaviors
5 that, when addressed or changed, affect a person's risk for
6 committing crimes. The characteristics may include, but are not
7 limited to, the following risk and criminogenic need factors:
8 Antisocial behavior; antisocial personality; criminal thinking;
9 criminal associates; dysfunctional family; low levels of employment
10 or education; poor use of leisure and recreation; and substance
11 abuse.

12 (3) "Evidence-based practices" means policies, procedures,
13 programs and practices proven by scientific research to reliably
14 produce reductions or otherwise maintain low recidivism when
15 implemented competently.

16 (4) "Graduated sanction" means any of a wide range of
17 accountability measures and programs for supervised individuals,
18 including, but not limited to, electronic monitoring; drug and
19 alcohol testing or monitoring; day or evening reporting centers;
20 restitution centers; disallowance of future earned compliance
21 credits; rehabilitative interventions such as substance abuse or
22 mental health treatment; reporting requirements to probation and
23 parole officers; community service or work crews; secure or

1 unsecure residential treatment facilities or halfway houses; and
2 short-term or intermittent incarceration.

3 (5) "Risk and needs assessment" or "validated risk and needs
4 assessment" means an actuarial tool scientifically proven to
5 determine a person's risk to reoffend and criminal risk factors,
6 that when properly addressed, can reduce that person's likelihood
7 of committing future criminal behavior.

8 (6) "Supervised individual" means an individual placed on
9 probation by a court or serving a period of parole or post-release
10 supervision from prison.

11 (7) "Treatment" when used in a criminal justice context, means
12 targeted interventions that focus on criminal risk factors in order
13 to reduce the likelihood of criminal behavior. Treatment options
14 may include, but may not be limited to, community-based programs
15 that are consistent with evidence-based practices;
16 cognitive-behavioral programs; faith-based programs; inpatient and
17 outpatient substance abuse or mental health programs; and other
18 available prevention and intervention programs that have been
19 scientifically proven to produce reductions in recidivism when
20 implemented competently. "Treatment" does not include medical
21 services.

22 **§62-12-5a. Evidence-based practices to be used in supervision and**
23 **intervention programs; standards; funding**

1 restrictions.

2 (a) As used in this section, "evidence-based practices" means
3 intervention programs and supervision policies, procedures,
4 programs, and practices that scientific research demonstrate
5 reductions in instances of a defendant's failure to appear in court
6 and criminal activity among pretrial defendants when implemented
7 competently.

8 (b) In order to increase the effectiveness of supervision and
9 intervention programs funded by the state and provided to pretrial
10 defendants, the Supreme Court of Appeals shall require that a
11 vendor or contractor providing supervision and intervention
12 programs for adult criminal defendants use evidence-based
13 practices.

14 © The Supreme Court of Appeals shall measure the effectiveness
15 of supervision and intervention programs provided by vendors or
16 contractors and demonstrate that the programs have a documented
17 evidence base and have been evaluated for effectiveness in reducing
18 a defendant's failure to appear in court and criminal activity.

19 (d) The Supreme Court of Appeals shall require, at a minimum,
20 the following:

21 (1) A process for reviewing the objective criteria for
22 evidence-based practices established by the vendor or contractor
23 providing the program;

1 (2) A process for auditing the effectiveness of the program;

2 (3) An opportunity for programs that do not meet the criteria
3 based on the audit results to improve performance; and

4 (4) A mechanism to defund any program provided by a vendor or
5 contractor that does not meet the criteria upon a second audit.

6 (e) Beginning July 1, 2012, twenty-five percent of state

7 moneys expended on supervision and intervention programs for

8 pretrial defendants shall be for programs that are in accordance

9 with evidence-based practices. Beginning July 1, 2014, fifty

10 percent of state moneys expended on supervision and intervention

11 programs shall be for programs that are in accordance with

12 evidence-based practices. Beginning July 1, 2016 and thereafter,

13 seventy-five percent of state moneys expended on supervision and

14 intervention programs shall be for programs that are in accordance

15 with evidence-based practices.

16 **§62-12-13. Powers and duties of board; eligibility for parole;**
17 **procedure for granting parole.**

18 (a) The board of parole, whenever it is of the opinion that

19 the best interests of the state and of the inmate will be served,

20 and subject to the limitations hereinafter provided, shall release

21 any inmate on parole for terms and upon conditions as are provided

22 by this article.

23 (b) Any inmate of a state correctional center is eligible for

1 parole if he or she:

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

5 (B) He or she:

6 (I) Has applied for and been accepted by the Commissioner of
7 Corrections into an accelerated parole program;

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

12 (iii) Has no record of institutional disciplinary rule
13 violations for a period of one hundred twenty days prior to parole
14 consideration unless the requirement is waived by the commissioner;

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

20 (v) Has successfully completed a rehabilitation treatment
21 program created with the assistance of a standardized risk and
22 needs assessment;

23 (I) As used in this section "felony crime of violence against

1 the person" means felony offenses set forth in article two,
2 three-e, eight-b or eight-d of chapter sixty-one of this code; and

3 (II) As used in this section "felony offense where the victim
4 was a minor child" means any felony crime of violence against the
5 person and any felony violation set forth in article eight,
6 eight-a, eight-c or eight-d of chapter sixty-one of this code.

7 © Notwithstanding any provision of this code to the contrary,
8 any person who committed, or attempted to commit a felony with the
9 use, presentment or brandishing of a firearm, is not eligible for
10 parole prior to serving a minimum of three years of his or her
11 sentence or the maximum sentence imposed by the court, whichever is
12 less: *Provided*, That any person who committed, or attempted to
13 commit, any violation of section twelve, article two, chapter
14 sixty-one of this code, with the use, presentment or brandishing of
15 a firearm, is not eligible for parole prior to serving a minimum of
16 five years of his or her sentence or one third of his or her
17 definite term sentence, whichever is greater. Nothing in this
18 paragraph applies to an accessory before the fact or a principal in
19 the second degree who has been convicted as if he or she were a
20 principal in the first degree if, in the commission of or in the
21 attempted commission of the felony, only the principal in the first
22 degree used, presented or brandished a firearm. A person is not
23 ineligible for parole under the provisions of this paragraph

1 because of the commission or attempted commission of a felony with
2 the use, presentment or brandishing of a firearm unless that fact
3 is clearly stated and included in the indictment or presentment by
4 which the person was charged and was either: (I) Found by the
5 court at the time of trial upon a plea of guilty or nolo
6 contendere; (ii) found by the jury, upon submitting to the jury a
7 special interrogatory for such purpose if the matter was tried
8 before a jury; or (iii) found by the court, if the matter was tried
9 by the court without a jury.

10 For the purpose of this section, the term "firearm" means any
11 instrument which will, or is designed to, or may readily be
12 converted to, expel a projectile by the action of an explosive,
13 gunpowder or any other similar means.

14 (D) The amendments to this subsection adopted in the year
15 1981:

16 (I) Apply to all applicable offenses occurring on or after
17 August 1 of that year;

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

21 (iii) Apply with respect to the submission of a special
22 interrogatory to the jury and the finding to be made thereon in any
23 case submitted to the jury on or after August 1 of that year or to

1 the requisite findings of the court upon a plea of guilty or in any
2 case tried without a jury: *Provided*, That the state gives notice
3 in writing of its intent to seek such finding by the jury or court,
4 as the case may be, which notice shall state with particularity the
5 grounds upon which the finding will be sought as fully as such
6 grounds are otherwise required to be stated in an indictment,
7 unless the grounds therefor are alleged in the indictment or
8 presentment upon which the matter is being tried; and

9 (iv) Does not apply with respect to cases not affected by the
10 amendments and in such cases the prior provisions of this section
11 apply and are construed without reference to the amendments.

12 (1) Insofar as the amendments relate to mandatory sentences
13 restricting the eligibility for parole, all matters requiring a
14 mandatory sentence shall be proved beyond a reasonable doubt in all
15 cases tried by the jury or the court;

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

18 (3) Has maintained a record of good conduct in prison for a
19 period of at least three months immediately preceding the date of
20 his or her release on parole;

21 (4) Has prepared and submitted to the board a written parole
22 release plan setting forth proposed plans for his or her place of
23 residence, employment and, if appropriate, his or her plans

1 regarding education and post-release counseling and treatment. The
2 Commissioner of Corrections or his or her designee shall review the
3 plan to be reviewed and investigated and provide recommendations to
4 the board as to the suitability of the plan: *Provided*, That in
5 cases in which there is a mandatory thirty-day notification period
6 required prior to the release of the inmate, pursuant to section
7 twenty-three of this article, the board may conduct an initial
8 interview and deny parole without requiring the development of a
9 plan. In the event the board does not believe parole should be
10 denied, it may defer a final decision pending completion of an
11 investigation and receipt of recommendations. Upon receipt of the
12 plan together with the investigation and recommendation, the board,
13 through a panel, shall make a final decision regarding the granting
14 or denial of parole; and

15 (5) Has satisfied the board that if released on parole he or
16 she will not constitute a danger to the community.

17 © Except in the case of a person serving a life sentence, no
18 person who has been previously twice convicted of a felony may be
19 released on parole until he or she has served the minimum term
20 provided by law for the crime for which he or she was convicted.
21 A person sentenced for life may not be paroled until he or she has
22 served ten years, and a person sentenced for life who has been
23 previously twice convicted of a felony may not be paroled until he

1 or she has served fifteen years: *Provided*, That a person convicted
2 of first degree murder for an offense committed on or after June
3 10, 1994, is not eligible for parole until he or she has served
4 fifteen years.

5 (d) In the case of a person sentenced to any state
6 correctional center, it is the duty of the board, ~~as soon as to~~
7 ensure that all persons who have longer than ninety days to serve,
8 are considered for parole not less than sixty days prior to the
9 date a person becomes eligible ~~to consider the advisability of his~~
10 ~~or her release on~~ for parole.

11 (e) If, upon consideration, parole is denied, the board shall
12 promptly notify the inmate of the denial. The board shall, at the
13 time of denial, notify the inmate of the month and year he or she
14 may apply for reconsideration and review. The board shall at least
15 once a year reconsider and review the case of every inmate who was
16 denied parole and is still eligible: *Provided*, That the board may
17 reconsider and review parole eligibility anytime within three years
18 following the denial of parole of an inmate serving a life sentence
19 with the possibility of parole.

20 (f) Any person serving a sentence on a felony conviction who
21 becomes eligible for parole consideration prior to being
22 transferred to a state correctional center may make written
23 application for parole. The terms and conditions for parole

1 consideration established by this article apply to such inmates.

2 (g) The board shall, with the approval of the Governor, adopt
3 rules governing the procedure in the granting of parole. No
4 provision of this article and none of the rules adopted hereunder
5 are intended or may be construed to contravene, limit or otherwise
6 interfere with or affect the authority of the Governor to grant
7 pardons and reprieves, commute sentences, remit fines or otherwise
8 exercise his or her Constitutional powers of executive clemency.

9 (h) The Division of Corrections shall promulgate policies and
10 procedures for developing a rehabilitation treatment plan created
11 with the assistance of a standardized risk and needs assessment.
12 The policies and procedures shall include, but not be limited to,
13 policy and procedures for screening and selecting inmates for
14 rehabilitation treatment and development and use of standardized
15 risk and needs assessment tools. An inmate ~~shall~~ may not be
16 paroled solely due to having successfully completed a
17 rehabilitation treatment plan but completion of all the
18 requirements of a rehabilitation parole plan along with compliance
19 with the requirements of subsection (b) of this section shall
20 create a rebuttable presumption that parole is appropriate. The
21 presumption created by this subsection may be rebutted by a parole
22 board finding that at the time parole release is sought the inmate
23 still constitutes a reasonable risk to the safety or property of

1 other persons if released. Nothing in subsection (b) of this
2 section or in this subsection may be construed to create a right to
3 parole.

4 (I) Notwithstanding the provisions of subsection (b) of this
5 section, the parole board may, in its discretion, grant or deny
6 parole to an inmate against whom a detainer is lodged by a
7 jurisdiction other than West Virginia for service of a sentence of
8 incarceration, upon a written request for parole from the inmate.
9 A denial of parole under this subsection shall preclude
10 consideration for a period of one year or until the provisions of
11 subsection (b) of this section are applicable.

12 (j) Where an inmate is otherwise eligible for parole pursuant
13 to subsection (b) of this section but the parole board determines
14 that the inmate should participate in an additional program or
15 complete an assigned task or tasks prior to actual release on
16 parole, the board may grant parole contingently, effective upon
17 successful completion of the program or assigned task or tasks,
18 without the need for a further hearing. The Commissioner of
19 Corrections shall provide notice to the parole board of the
20 imminent release of a contingently paroled inmate to effectuate
21 appropriate supervision.

22 (k) The Division of Corrections is charged with the duty of
23 supervising all probationers and parolees whose supervision may

1 have been undertaken by this state by reason of any interstate
2 compact entered into pursuant to the uniform act for out-of-state
3 parolee supervision.

4 (1)(1) When considering an inmate of a state correctional
5 center for release on parole, the parole board panel considering
6 the parole is to have before it an authentic copy of or report on
7 the inmate's current criminal record as provided through the West
8 Virginia State Police, the United States Department of Justice or
9 other reliable criminal information sources and written reports of
10 the warden or superintendent of the state correctional center to
11 which the inmate is sentenced:

12 (A) On the inmate's conduct record while in custody, including
13 a detailed statement showing any and all infractions of
14 disciplinary rules by the inmate and the nature and extent of
15 discipline administered therefor;

16 (B) On improvement or other changes noted in the inmate's
17 mental and moral condition while in custody, including a statement
18 expressive of the inmate's current attitude toward society in
19 general, toward the judge who sentenced him or her, toward the
20 prosecuting attorney who prosecuted him or her, toward the
21 policeman or other officer who arrested the inmate and toward the
22 crime for which he or she is under sentence and his or her previous
23 criminal record;

1 © On the inmate's industrial record while in custody which
2 shall include: The nature of his or her work, occupation or
3 education, the average number of hours per day he or she has been
4 employed or in class while in custody and a recommendation as to
5 the nature and kinds of employment which he or she is best fitted
6 to perform and in which the inmate is most likely to succeed when
7 he or she leaves prison;

8 (D) On physical, mental and psychiatric examinations of the
9 inmate conducted, insofar as practicable, within the two months
10 next preceding parole consideration by the board; and

11 (E) On the results of an inmate's validated risk and needs and
12 any other scientific means for personality analysis that may
13 hereafter be developed, to define the terms and intensity of
14 supervision before granting parole. The terms and intensity of
15 supervision shall be based on an individual's level of risk to
16 public safety, criminal risk factors, and the need for treatment
17 and other interventions.

18 (2) The board panel considering the parole may waive the
19 requirement of any report when not available or not applicable as
20 to any inmate considered for parole but, in every such case, shall
21 enter in the record thereof its reason for the waiver: *Provided,*
22 That in the case of an inmate who is incarcerated because the
23 inmate has been found guilty of, or has pleaded guilty to a felony

1 under ~~the provisions of~~ section twelve, article eight, chapter
2 sixty-one of this code or ~~under the provisions of~~ article eight-b
3 or eight-c of ~~said~~ that chapter, the board panel may not waive the
4 report required by this subsection and the report is to include a
5 study and diagnosis including an on-going treatment plan requiring
6 active participation in sexual abuse counseling at an approved
7 mental health facility or through some other approved program:
8 *Provided, however,* That nothing disclosed by the person during the
9 study or diagnosis may be made available to any law-enforcement
10 agency, or other party without that person's consent, or admissible
11 in any court of this state, unless the information disclosed
12 indicates the intention or plans of the parolee to do harm to any
13 person, animal, institution or to property. Progress reports of
14 outpatient treatment are to be made at least every six months to
15 the parole officer supervising the person. In addition, in such
16 cases, the Parole Board shall inform the prosecuting attorney of
17 the county in which the person was convicted of the parole hearing
18 and shall request that the prosecuting attorney inform the Parole
19 Board of the circumstances surrounding a conviction or plea of
20 guilty, plea bargaining and other background information that might
21 be useful in its deliberations.

22 (m) Before releasing any inmate on parole, the board of parole
23 shall arrange for the inmate to appear in person before a parole

1 board panel and the panel may examine and interrogate him or her on
2 any matters pertaining to his or her parole, including reports
3 before the board made pursuant to the provisions hereof: *Provided,*
4 That an inmate may appear by video teleconference if the members of
5 the panel conducting the examination are able to contemporaneously
6 see the inmate and hear all of his or her remarks and if the inmate
7 is able to contemporaneously see each of the members of the panel
8 conducting the examination and hear all of the members' remarks.
9 The panel shall reach its own written conclusions as to the
10 desirability of releasing the inmate on parole and the majority of
11 the panel considering the release shall concur in the decision.
12 The warden or superintendent shall furnish all necessary assistance
13 and cooperate to the fullest extent with the parole board. All
14 information, records and reports received by the board are to be
15 kept on permanent file.

16 (n) The board and its designated agents are at all times to
17 have access to inmates ~~imprisoned in any state correctional center~~
18 confined in a correctional facility or in any jail in this state
19 and may obtain any information or aid necessary to the performance
20 of its duties from other departments and agencies of the state or
21 from any political subdivision thereof.

22 (o) The board shall, if so requested by the Governor,
23 investigate and consider all applications for pardon, reprieve or

1 commutation and shall make recommendation thereon to the Governor.

2 (p) Prior to making a recommendation for pardon, reprieve or
3 commutation and prior to releasing any inmate on parole, the board
4 shall notify the sentencing judge and prosecuting attorney at least
5 ten days before the recommendation or parole.

6 (q) Any person released on parole shall participate as a
7 condition of parole in the litter control program of the county to
8 the extent directed by the board, unless the board specifically
9 finds that this alternative service would be inappropriate.

10 ® Except for the amendments to this section contained in
11 subdivision (4), subsection (b) and subsection (I) of this section
12 the amendments to this section enacted during the 2010 regular
13 session of the Legislature shall become effective on January 1,
14 2011.

15 **§62-12-18. Period of parole; mandatory reentry supervision;
16 discharge**

17 (a) The period of parole shall be the maximum of any sentence,
18 less deductions for good conduct and work as provided by law, for
19 which the paroled inmate, at the time of release, was subject to
20 imprisonment under his or her definite or indeterminate sentence,
21 as the case may be: *Provided*, That any time after a parolee has
22 been on parole for a period of one year from the date of his or her
23 release, a panel of the board may, when in its judgment the ends of

1 parole have been attained and the best interests of the state and
2 the parolee will be served thereby, release the parolee from
3 further supervision and discharge him or her from parole:
4 *Provided, however,* That no inmate sentenced to serve a life term of
5 imprisonment and released on parole shall be discharged from
6 supervision and parole in a period less than five years from the
7 date of his or her release on parole.

8 **(b)** No parolee who has violated the terms of his or her
9 release on parole by confession to, or being convicted of, in any
10 state of the United States, the District of Columbia or the
11 territorial possessions of the United States, the crime of treason,
12 murder, aggravated robbery, first degree sexual assault, second
13 degree sexual assault, a sexual offense against a minor, incest or
14 offenses with the same essential elements if known by other terms
15 in other jurisdictions shall be discharged from parole. A parolee
16 serving a sentence in any correctional facility of another state or
17 the United States may, unless incarcerated for one of the above
18 enumerated crimes, be discharged from parole while so serving his
19 or her sentence in said correctional facility or be continued on
20 parole or returned to West Virginia as a parole violator, in the
21 discretion of the parole board.

22 © The board shall order mandatory reentry supervision and the
23 terms of supervision, which may include electronic monitoring, for

1 an inmate who has not been granted discretionary parole six months
2 prior to the inmate's minimum expiration of sentence.

3 (1) An inmate granted mandatory reentry supervision pursuant
4 to this section may be returned by the board to a correctional
5 facility for violation of the conditions of supervision and may not
6 again be eligible for mandatory reentry supervision during the same
7 period of incarceration.

8 (2) An inmate released to mandatory reentry supervision shall
9 be considered to be released on parole.

10 (3) Mandatory reentry supervision is not a commutation of
11 sentence or any other form of clemency.

12 (4) The board shall consider an inmate's risk and needs
13 assessment results when setting the terms and conditions of
14 mandatory reentry supervision.

15 (5) Subject to subdivision (1) of this subsection, the period
16 of mandatory reentry supervision shall conclude upon completion of
17 the individual's minimum expiration of sentence.

18 **§62-12-29. Policies or rules requiring supervision and treatment**
19 **in accordance with evidence-based practices.**

20 (a) The Commissioner of the Division of Corrections and the
21 Supreme Court of Appeals shall each promulgate policies or rules
22 that require the supervision and treatment of supervised
23 individuals in accordance with evidence-based practices.

1 (b) The policies or rules shall, at a minimum, include:

2 (1) The administration of a validated risk and needs
3 assessment on all supervised individuals at regular intervals to
4 determine their criminal risk factors and to identify intervention
5 targets;

6 (2) Use of assessment scores and other objective criteria
7 throughout the period of community supervision to determine the
8 risk level and program needs of each supervised individual;

9 (3) Caseload size guidelines that are based on supervised
10 individuals' risk levels and take into account resources and
11 employee workload and prioritization of supervision and program
12 resources for supervised individuals who are at higher risk to
13 reoffend;

14 (4) Definitions of various risk levels to apply to supervised
15 individuals during the period of community supervision;

16 (5) Development of a case plan for each individual who is
17 assessed to be moderate-to-high risk based on the risk and needs
18 assessment, that targets the criminal risk factors identified in
19 the assessment, is responsive to individual characteristics, and
20 provides supervision of offenders according to that case plan;

21 (6) Implementation of swift, certain, proportionate, and
22 graduated sanctions that a parole officer shall apply in response
23 to a supervised individual's noncompliant behaviors; and

1 (7) Establishment of protocols and standards that assess the
2 degree to which policies, procedures, programs, interventions, and
3 practices relating to offender recidivism reduction, whether
4 utilized by the department or contract or referral agencies, are
5 evidence-based.

6 **§62-12-30. Training and professional development for personnel**
7 **concerning implementation of evidence-based**
8 **practices.**

9 (a) The Division of Corrections and the Supreme Court of
10 Appeals shall each provide its probation and parole officers with
11 intensive initial and on-going training and professional
12 development services to support the implementation of
13 evidence-based practices.

14 (b) The training and professional development services shall
15 include assessment techniques, case planning, risk reduction and
16 intervention strategies, effective communication skills,
17 cognitive-behavioral treatment, substance abuse, and other topics
18 identified by the Division or the Supreme Court of Appeals.

19 **§62-12-31. Annual report on efforts to implement evidence-based**
20 **practices to reduce recidivism.**

21 By December 1 of each year, beginning in 2012, the
22 Commissioner of the Division of Corrections and the Chief Justice

1 of the Supreme Court of Appeals shall each submit to the Governor
2 and the Legislature, a comprehensive report on its efforts to
3 implement evidence-based practices to reduce recidivism. The report
4 shall include at a minimum:

5 (1) The percentage of supervised individuals being supervised
6 in accordance with evidence-based practices;

7 (2) The percentage of state moneys expended by the Division of
8 Corrections and the Supreme Court of Appeals for programs that are
9 evidence based, and a list of all programs with identification of
10 which are evidence based;

11 (3) Specification of supervision policies, procedures,
12 programs, and practices that were created, modified or eliminated;
13 and

14 (4) The commissioner's and the chief justice's recommendations
15 for resource allocation, and any additional collaboration with
16 other state, regional, or local public agencies, private entities,
17 or faith-based and community organizations.

18 **§62-12-32. Duties of Division of Corrections and Supreme Court of**
19 **Appeals concerning risk and needs assessment**
20 **instrument.**

21 The Division of Corrections and the Supreme Court of Appeals
22 each shall:

23 (1) Conduct an initial administration of a validated risk and

1 needs assessment instrument on supervised individuals upon intake
2 to community supervision, unless an initial assessment has been
3 previously conducted within a reasonable time period as specified
4 in rules promulgated by the Division of Corrections or the Supreme
5 Court of Appeals;

6 (2) While the supervised individual is on community
7 supervision, readminister the risk and needs assessment at regular
8 intervals as determined by policy or rules promulgated pursuant to
9 section twenty-nine of this article;

10 (3) Apply the results of the risk and needs assessment to:

11 (A) Establish an appropriate level of supervision;

12 (B) Determine the content of a case plan that addresses the
13 supervised individual's criminal needs; and

14 © Respond to compliant and noncompliant behavior; and

15 (4) Promulgate policies or rules to determine appropriate
16 levels of supervision, guidelines for case planning, and guidelines
17 for responses to specified behavior by supervised individuals.

18 **§62-12-33. Compliance credits for parolees.**

19 (a) An individual on parole shall receive compliance credits
20 to be applied toward the individual's sentence, if the paroled
21 individual does all of the following:

22 (1) Fulfills the terms of his or her case plan;

23 (2) Has no new arrests; and

1 (3) Makes scheduled monthly payments for restitution.

2 (b) The Division of Corrections shall promulgate a policy for
3 the awarding of earned compliance credits to an individual who is
4 on parole.

5 **§62-12-34. Graduated sanctions for probation violations;**
6 **administrative rules.**

7 (a) The Supreme Court of Appeals shall promulgate rules to
8 develop a system of graduated sanctions for responding to
9 violations of probation that otherwise do not involve the
10 commission of new crimes.

11 (b) The rules shall create a system of graduated sanctions
12 with the following objectives:

13 (1) Responding quickly and consistently to violations of
14 probation, based on the nature of the violation and the risk level
15 of the supervised individual;

16 (2) Reducing the time and resources expended by the probation
17 officers and the courts to respond to violations; and

18 (3) Reducing the commission of new crimes and revocation
19 rates.

20 **§62-12-35. Early termination of probation; rules.**

21 (a) The Supreme Court of Appeals shall promulgate rules to
22 establish procedures to:

23 (1) Recommend to the court the early termination of probation

1 for a supervised individual who has:

2 (A) Fulfilled the terms of his or her case plan;

3 (B) No new arrests;

4 © Demonstrated a reduction in criminal risk factors upon
5 reassessment; and

6 (D) Fulfilled all restitution and substantially fulfilled all
7 other financial obligations to the court.

8 (2) Review the compliance of the individual on probation with
9 the requirements in subdivision (1) of this subsection. This review
10 for compliance shall occur at the same time as the regular
11 reassessment pursuant to sections twenty-nine and thirty-two of
12 this article.

13 (b) A probation officer shall petition the court with a
14 request for early termination if the individual on probation has:

15 (1) Complied with the requirements in subdivision (1),
16 subsection (a) of this section;

17 (2) Completed at least eighteen months of his or her term of
18 supervision; and

19 (3) Not violated the terms of his or her supervision in the
20 last twelve months.

21 **§62-12-36. Administrative caseload supervision program for**
22 **supervised offenders; rules.**

23 (a) The Commissioner of the Division of Corrections and the

1 Supreme Court of Appeals each shall promulgate policies or rules in
2 accordance with the provisions of this section to establish an
3 administrative caseload supervision program for supervised
4 individuals whose results from a risk and needs assessment indicate
5 that they are low-risk offenders.

6 (b) The administrative caseload supervision program shall
7 consist of monitoring supervised individuals to ensure that they
8 have not engaged in new criminal activity and are fulfilling
9 financial obligations to the court.

10 © If a supervised individual on administrative caseload
11 supervision:

12 (1) Does not fulfill his or her restitution or other financial
13 obligations to the court, he or she may be placed on a higher level
14 of supervision at the discretion of the supervising officer; or

15 (2) Engages in criminal activity, he or she may be prosecuted,
16 revoked, or placed on a higher level of supervision; or

17 (3) Exhibits signs or symptoms of a substance abuse disorder,
18 he or she may be assessed for consideration of admission into a
19 drug court.

20 (d) A supervised individual on a higher level of supervision
21 who demonstrates a reduction in criminal risk factors upon
22 reassessment and who has achieved the goals established in his or
23 her case plan may be placed on administrative caseload supervision.

1 (e) A supervised individual on a higher level of supervision
2 shall presumptively be placed on administrative supervision if he
3 or she has:

4 (1) Completed twelve months of community supervision;

5 (2) Not violated the terms of his or her community supervision
6 in the previous twelve months;

7 (3) Fulfilled all restitution and other financial obligations
8 to the court;

9 (4) Demonstrated a reduction in criminal risk factors upon
10 reassessment; and

11 (5) Achieved the goals established in his or her case plan.

12 (f) If the conditions or level of community supervision of a
13 probationer are modified under this section, the probation officer
14 shall file a copy of the modified conditions or level with the
15 sentencing court.

16 (g) The Division of Correction and the Supreme Court of
17 Appeals each may establish, by policy or rule, conditions for
18 overriding presumptive administrative supervision.

19 **§62-12-37. Supervised individuals; sanctions.**

20 A person on probation or parole shall be subject to:

21 (1) Violation revocation proceedings and possible
22 incarceration for failure to comply with the conditions of
23 supervision when such failure constitutes a significant risk to

1 prior victims of the supervised individual or the community at
2 large and cannot be appropriately managed in the community; or

3 (2) Sanctions other than revocation and incarceration as
4 appropriate to the severity of the violation behavior, the risk of
5 future criminal behavior by the offender, and the need for, and
6 availability of, interventions which may assist the offender to
7 remain compliant and crime-free in the community.

8 **§62-12-38. System of graduated sanctions for violations of**
9 **conditions of community supervision; rules.**

10 (a) The Division of Corrections and the Supreme Court of
11 Appeals each shall, by January 1, 2013, adopt a system of graduated
12 sanctions for violations of conditions of community supervision.
13 Notwithstanding sections ten and nineteen of this article, the
14 system shall set forth a menu of presumptive sanctions for the most
15 common types of supervision violations, including, but not limited
16 to, failure to report; failure to pay fines, fees, and victim
17 restitution; failure to participate in a required program or
18 service; failure to complete community service; violation of a
19 protective or no contact order; and failure to refrain from the use
20 of alcohol or controlled substances. The system of sanctions shall
21 take into account factors such as the severity of the current
22 violation, the supervised individual's previous criminal record,
23 the number and severity of any previous supervision violations, the

1 supervised individual's assessed risk level, and the extent to
2 which graduated sanctions were imposed for previous violations. The
3 system also shall define positive reinforcements that supervised
4 individuals may receive for compliance with conditions of
5 supervision.

6 (b) The Division of Corrections and the Supreme Court of
7 Appeals each shall establish, by policy or rules, an administrative
8 process to review and approve or reject, prior to imposition,
9 graduated sanctions that deviate from those prescribed.

10 © The Division of Corrections shall establish a policy to
11 review graduated sanctions contested by supervised individuals
12 under this section.

13 **§62-12-39. Modification of conditions of community supervision;**
14 **imposition of graduated sanctions.**

15 (a) Notwithstanding any policy, rule or law to the contrary,
16 a probation or parole officer may:

17 (1) Modify the conditions of community supervision for the
18 limited purpose of imposing graduated sanctions; and

19 (2) Place a supervised individual who violates the conditions
20 of community supervision in a state or local correctional or
21 detention facility or residential center for a period of not more
22 than ten days consecutively, and not more than thirty days in any
23 one calendar year. The Division of Corrections shall reimburse the

1 local correctional or detention facility or residential center for
2 the costs of incarcerating a parolee confined under this
3 subdivision at the rate authorized by section ten-a, article
4 twenty, chapter thirty-one of this code.

5 (b) A probation and parole officer intending to modify the
6 conditions of community supervision by imposing a graduated
7 sanction shall issue to the supervised individual a notice of the
8 intended sanction. The notice shall inform the supervised
9 individual of the violation or violations alleged, the date or
10 dates of the violation or violations, and the graduated sanction to
11 be imposed.

12 © The imposition of a graduated sanction or sanctions by a
13 probation and parole officer shall comport with the system of
14 graduated sanctions adopted by the Division of Corrections and the
15 Supreme Court of Appeals section thirty-eight of this article. Upon
16 receipt of the notice, the supervised individual shall immediately
17 accept or object to the sanction or sanctions proposed by the
18 officer. The failure of the supervised individual to comply with a
19 sanction shall constitute a violation of community supervision.

20 (d) If the supervised individual objects to the imposition of
21 the sanction or sanctions, then the parole or probation officer
22 shall present the violations to the court or parole board
23 respectively, for formal adjudication.

1 (e) If the graduated sanction involves confinement in a
2 correctional or detention facility, confinement shall be approved
3 by the Director of Parole Services of the Division of Corrections
4 or the Director of Probation for the Supreme Court of Appeals, but
5 the supervised individual may be taken into custody while such
6 approval is obtained. If the supervised individual is employed, the
7 probation and parole officer shall, to the extent feasible, impose
8 this sanction on weekend days or other days and times when the
9 supervised individual is not working.

10 (f) A sanction that confines a supervised individual in a
11 correctional or detention facility for a period of more than ten
12 consecutive days, or extends the term of community supervision, may
13 not be imposed as a graduated sanction, except pursuant to an order
14 of the court or the board of parole.

15 (g) Upon successful completion of a graduated sanction or
16 sanctions, a court or the board of parole may not revoke the term
17 of community supervision or impose additional sanctions for the
18 same violation: *Provided*, That nothing herein shall prohibit such
19 graduated sanction from being considered as an aggravating factor
20 for a sanction for any subsequent violation of terms and conditions
21 of parole or probation.

22 (h) If a probation and parole officer modifies the conditions
23 of community supervision by imposing a graduated sanction, the

1 officer shall:

2 (1) Deliver a copy of the modified conditions to the
3 supervised individual;

4 (2) File a copy of the modified conditions with the sentencing
5 court or releasing authority; and

6 (3) Note the date of delivery of the copy in the supervised
7 individual's file or case management system.

8 **§62-12-40. Judicial determination of conditions of community**
9 **supervision.**

10 For supervised individuals on probation, the court having
11 jurisdiction of the case shall determine the conditions of
12 community supervision and may impose as a condition of community
13 supervision that the probation officer supervising the individual
14 shall, in accordance with section thirty-eight of this article,
15 impose graduated sanctions for violations of the conditions of
16 community supervision.

17 **§62-12-41. Quarterly review of recommended confinement sanctions.**

18 The Director of Parole Services of the Division of Corrections
19 and the Director of Probation for the Supreme Court of Appeals
20 shall review confinement sanctions recommended by probation and
21 parole officers on a quarterly basis to assess any disparities that
22 may exist among officers, evaluate the effectiveness of the
23 sanction as measured by the supervised individuals' subsequent

1 conduct, and monitor the impact on the number and type of
2 revocations for violations of the conditions of supervision.

3 **ARTICLE 13. CORRECTIONS MANAGEMENT.**

4 **§62-13-1. Sentencing policy.**

5 It is the sentencing policy of the state that:

6 (1) The primary objective of sentencing shall be to maintain
7 public safety and hold offenders accountable while reducing or
8 otherwise maintaining low recidivism and criminal behavior and
9 improving outcomes for those offenders who are sentenced;

10 (2) Reduction or maintenance of low recidivism and criminal
11 behavior is a key measure of the performance of the criminal
12 justice system;

13 (3) Sentencing judges shall consider:

14 (A) Beginning July 1, 2013, the results of a defendant's risk
15 and needs assessment included in the presentence investigation; and

16 (B) The likely impact of a potential sentence on the reduction
17 of the defendant's potential future criminal behavior;

18 (4) All supervision and treatment programs provided for
19 defendants shall utilize evidence-based practices to reduce the
20 likelihood of future criminal behavior; and

21 (5) All supervision and treatment programs shall be evaluated
22 at regular intervals to measure and ensure reduction of criminal
23 behavior by defendants in the criminal justice system.

1 **ARTICLE 16. INTERMEDIATE PUNISHMENT.**

2 **§62-16-1. Short Title.**

3 This article may be known and cited as the "Intermediate
4 Punishment Act."

5 **§62-16-2. Findings and purpose.**

6 The Legislature finds that:

7 (1) Many crimes are committed by persons who, because of their
8 addiction to drugs or alcohol, are unable to maintain gainful
9 employment.

10 (2) These persons often commit crimes as a means of obtaining
11 the funds necessary to purchase drugs or alcohol.

12 (3) Many persons commit crimes while under the influence of
13 drugs or alcohol even though they are not addicted to such
14 substances in a clinical sense.

15 (4) Punishing persons who commit crimes is an important aspect
16 of recognizing the harm that criminals visit upon their victims.

17 (5) Many people who commit crimes will be able to become
18 law-abiding, contributing members of society if they are able to
19 obtain treatment for their drug or alcohol addiction or abuse.

20 (6) The purpose of this article is to create a program that
21 punishes persons who commit crimes, but also provides treatment
22 that offers the opportunity for those persons to address their drug
23 or alcohol addiction or abuse and thereby reduce the incidents of

1 recidivism and enhance public safety.

2 **§62-16-3. Definitions.**

3 The following words and phrases, when used in this article,
4 shall have the meanings given to them in this section unless the
5 context clearly indicates otherwise:

6 (1) "Community-based therapeutic community" means a long-term
7 residential addiction treatment program licensed by the Division of
8 Health to provide addiction treatment services using a therapeutic
9 community model and determined by the Division of Corrections to be
10 qualified to provide addiction treatment to eligible offenders.

11 (2) "Court" means the trial judge exercising sentencing
12 jurisdiction over an eligible offender under this article.

13 (3) "Defendant" means an individual charged with a
14 drug-related offense.

15 (4) "Division" means the Division of Corrections.

16 (5) "Drug offender treatment program" means an individualized
17 treatment program established by the Division of Corrections
18 consisting primarily of drug and alcohol addiction treatment that
19 satisfies the terms and conditions contained in section five of
20 this article.

21 (6) "Drug-related offense" means a criminal offense for which
22 a defendant is convicted and that the court determines was
23 motivated by the defendant's consumption of or addiction to alcohol

1 or a controlled substance, counterfeit substance, drug, immediate
2 precursor or marijuana, as those terms are defined in the chapter
3 sixty-a of this code.

4 (7) "Eligible offender" means a defendant designated by the
5 sentencing court as a person convicted of a drug-related offense
6 who:

7 (A) Has undergone an assessment performed by the Division of
8 Corrections, which assessment has concluded that the defendant is
9 in need of drug and alcohol addiction treatment and would benefit
10 from commitment to a drug offender treatment program and that
11 placement in a drug offender treatment program would be
12 appropriate.

13 (B) Does not demonstrate a history of present or past violent
14 behavior.

15 © Would be placed in the custody of the division if not
16 sentenced to an intermediate punishment.

17 (D) Provides written consent permitting release of information
18 pertaining to the defendant's participation in a drug offender
19 treatment program.

20 The term does not include a defendant who committed, or
21 attempted to commit a felony with the use, presentment or
22 brandishing of a firearm, as defined pursuant to section thirteen,
23 article twelve, of this chapter, or who has been convicted of

1 violating of a felony or of any offense described in section
2 twelve, article eight, chapter sixty-one of this code, or in
3 article eight-a, eight-b, eight-c, or eight-d, chapter sixty-one of
4 this code against a child.

5 (8) "Expulsion" means the permanent removal of a participant
6 from a drug offender treatment program.

7 (9) "Group home" means residential program that is contracted
8 out by the Division of Corrections to a private service provider
9 for inmates with prerelease status or who are on parole.

10 (10) "Individualized drug offender treatment plan" means an
11 individualized addiction treatment plan within the framework of the
12 drug offender treatment program.

13 (11) "Institutional therapeutic community" means a residential
14 drug treatment program in a state correctional facility, accredited
15 as a therapeutic community for treatment of drug and alcohol abuse
16 and addiction by the American Correctional Association or other
17 nationally recognized accreditation organization for therapeutic
18 community drug and alcohol addiction treatment.

19 (12) "Outpatient addiction treatment facility" means an
20 addiction treatment facility licensed by the Division of Health and
21 designated by the Division of Corrections as qualified to provide
22 addiction treatment to criminal justice offenders.

23 (13) "Participant" means an eligible offender sentenced to

1 intermediate punishment pursuant to this article.

2 (14) "Transitional residence" means a residence investigated
3 and approved by the Division of Corrections as appropriate for
4 housing a participant in a drug offender treatment program.

5 (15) "Work-release center" means residential program for
6 inmates with prerelease status or who are on parole.

7 **§62-16-4. Referral to program.**

8 (a) Referral for evaluation. --

9 (1) Prior to imposing a sentence, the court may, upon motion
10 of the prosecuting attorney and agreement of the defendant, commit
11 a defendant to the custody of the division for the purpose of
12 evaluating whether the defendant would benefit from a drug offender
13 treatment program and whether placement in the drug offender
14 treatment program is appropriate.

15 (2) Upon committing a defendant to the division, the court
16 shall forward to the division:

17 (A) A summary of the offense for which the defendant has been
18 convicted.

19 (B) Information relating to the defendant's history of
20 delinquency or criminality, including the information relating to
21 juvenile matters maintained by the court under article five,
22 chapter forty-nine of this code, when available.

23 © Information relating to the defendant's history of drug or

1 alcohol abuse or addiction, when available.

2 (D) A presentence investigation report, when available.

3 (E) Any other information the court deems relevant to assist
4 the division with its assessment of the defendant.

5 (b) Assessment of addiction. --

6 (1) The division shall conduct an assessment of the addiction
7 and other treatment needs of a defendant and determine whether the
8 defendant would benefit from a drug offender treatment program. The
9 assessment shall be conducted using a nationally recognized
10 assessment instrument or an instrument that has been normed and
11 validated on the division's inmate population by a recognized
12 expert in such matters. The assessment instrument shall be
13 administered by persons skilled in the treatment of drug and
14 alcohol addiction and trained to conduct assessments. The
15 assessments shall be reviewed and approved by a supervisor with at
16 least three years of experience providing drug and alcohol
17 counseling services.

18 (2) The division shall conduct risk and other assessments it
19 deems appropriate and shall provide a report of its assessments to
20 the court, the defendant and the prosecuting attorney within sixty
21 days of the court's commitment of the defendant to the custody of
22 the division.

23 © Proposed drug offender treatment program. -- If the division

1 in its discretion believes a defendant would benefit from a drug
2 offender treatment program and placement in the drug offender
3 treatment program is appropriate, the division shall provide the
4 court, the defendant and the prosecuting attorney with a proposed
5 drug offender treatment program detailing the type of treatment
6 proposed.

7 (d) Prerequisites for commitment. -- Upon receipt of a
8 recommendation for placement in a drug offender treatment program
9 from the division and the agreement of the prosecuting attorney and
10 the defendant, the court may sentence an eligible offender to a
11 period of twenty-four months of intermediate punishment if the
12 court finds that:

13 (1) The eligible offender is likely to benefit from
14 intermediate punishment.

15 (2) Public safety would be enhanced by the eligible offender's
16 participation in intermediate punishment.

17 (3) Sentencing the eligible offender to intermediate
18 punishment would not depreciate the seriousness of the offense.

19 (e) Resentencing. -- The division may make a written request
20 to the sentencing court that an offender who is otherwise eligible
21 but has not been referred for evaluation or originally sentenced to
22 intermediate punishment, be sentenced to intermediate punishment.
23 The court may resentence the offender to intermediate punishment if

1 all of the following apply:

2 (1) The division has recommended placement in a drug offender
3 treatment program;

4 (2) The prosecuting attorney and the offender have agreed to
5 the placement and modification of sentence;

6 (3) The court makes the findings set forth under subsection
7 (d) of this section;

8 (4) The resentencing has occurred within three hundred sixty-
9 five days of the date of the defendant's admission to the custody
10 of the division; and

11 (5) The court has otherwise complied with all other
12 requirements for the imposition of sentence including victim
13 notification under section eight, article eleven-a, chapter
14 sixty-one of this code.

15 (f) Consecutive probation. -- Nothing in this article shall
16 prohibit the court from sentencing an eligible offender to a
17 consecutive period of probation. The total duration of the sentence
18 may not exceed the maximum term for which the eligible offender
19 could otherwise be sentenced.

20 (g) Applicability and program limitations. -- The court may
21 not modify or alter the terms of the division's proposed
22 individualized drug offender treatment plan without the agreement
23 of the division and the prosecuting attorney.

1 **§62-16-5. Drug offender treatment program.**

2 (a) Establishment. -- The division shall establish and
3 administer a drug offender treatment program as an intermediate
4 punishment. The program shall be designed to address the
5 individually assessed drug and alcohol abuse and addiction needs of
6 a participant and shall address other issues essential to the
7 participant's successful reintegration into the community,
8 including, but not limited to, educational and employment issues.

9 (b) Duration and components. -- Notwithstanding any credit to
10 which the defendant may be entitled under section twenty-four,
11 article eleven, chapter sixty-one of this code, the duration of the
12 drug offender treatment program shall be twenty-four months and
13 shall include the following:

14 (1) A period in a correctional facility of not less than seven
15 months. This period shall include:

16 (A) The time during which the defendant is evaluated by the
17 division under subsection (b), section four of this article; and

18 (B) Following evaluation under paragraph (A) of this
19 subdivision, not less than four months shall be in an institutional
20 therapeutic community.

21 (2) A period of treatment in a community-based therapeutic
22 community of at least two months;

23 (3) A period of at least six-months' treatment through an

1 outpatient addiction treatment facility. During the outpatient
2 addiction treatment period of the drug offender treatment program,
3 the participant may be housed in a work-release center or group
4 home or placed in an approved transitional residence. The
5 participant must comply with any conditions established by the
6 division regardless of where the participant resides during the
7 outpatient addiction treatment portion of the drug offender
8 treatment program; and

9 (4) A period of supervised reintegration into the community
10 for the balance of the drug offender treatment program, during
11 which the participant shall continue to be supervised by the
12 division and comply with any conditions imposed by the division.

13 © Program management. --

14 (1) Consistent with the minimum time requirements set forth in
15 subsection (b) of this section, the division may transfer, at its
16 discretion, a participant between a correctional facility, an
17 institutional therapeutic community, a community-based therapeutic
18 community, an outpatient addiction treatment program and an
19 approved transitional residence. The division may also transfer a
20 participant back and forth between less restrictive and more
21 restrictive settings based upon the participant's progress or
22 regression in treatment or for medical, disciplinary or other
23 administrative reasons.

1 (2) This subsection shall be construed to provide the division
2 with the maximum flexibility to administer the drug offender
3 treatment program both as a whole and for individual participants.

4 (d) Right of refusal to admit. -- The administrator of a
5 community-based therapeutic community or outpatient addiction
6 treatment facility may refuse to accept a participant whom the
7 administrator deems to be inappropriate for admission and may
8 immediately discharge to the custody of the division any
9 participant who fails to comply with facility rules and treatment
10 expectations or refuses to constructively engage in the treatment
11 process.

12 (e) Notice to court of completion of program. -- When the
13 division determines that a participant has successfully completed
14 the drug offender treatment program, it shall notify the sentencing
15 court and the prosecuting attorney.

16 (f) Expulsion from program. --

17 (1) A participant may be expelled from the drug offender
18 treatment program at any time in accordance with guidelines
19 established by the division, including failure to comply with
20 administrative or disciplinary procedures or requirements set forth
21 by the division.

22 (2) The division shall promptly notify the court, the
23 defendant and the prosecuting attorney of the expulsion of a

1 participant from the drug offender treatment program and the reason
2 for such expulsion. The participant shall be housed in a
3 correctional facility or regional jail pending action by the court.

4 (3) The court shall schedule a prompt intermediate punishment
5 revocation hearing pursuant section eight.

6 **§62-16-6. Guidelines and legislative rules.**

7 (a) The division shall develop written guidelines for
8 participant selection criteria and the establishment of drug
9 offender treatment program and shall address suspensions and
10 expulsions from the drug offender treatment program. The guidelines
11 are not subject to chapter twenty-nine-a of this code and shall be
12 effective for a period of two years upon publication in the State
13 Register.

14 (b) The guidelines developed pursuant to subsection (a) of
15 this section shall be replaced by legislative rules proposed by the
16 division and promulgated pursuant to the provision of chapter
17 twenty-nine-a, within the two-year period during which the
18 guidelines are effective as provided in that subsection (a). The
19 legislative rules shall include a requirement that community-based
20 therapeutic communities utilized in the drug offender treatment
21 program be accredited as a therapeutic community for treatment of
22 drug and alcohol abuse and addiction by the Commission on
23 Accreditation of Rehabilitation Facilities or other nationally

1 recognized accreditation organization for community-based
2 therapeutic communities for drug and alcohol addiction treatment.

3 **§62-16-7. Reports.**

4 (a) Final report. -- The division shall provide a final report
5 to the court, the defendant, and the prosecuting attorney on a
6 participant's progress in the drug offender treatment program.

7 (b) Evaluation and report to Legislature. -- The division
8 shall monitor and evaluate the drug offender treatment program to
9 ensure that the programmatic objectives are met. Beginning in 2014,
10 the division shall submit, before February 1 of each year, to the
11 Governor, the Speaker of the House of Delegates, the President of
12 the Senate and, upon request, to any individual member of the
13 Legislature a report of its evaluation and on its activities during
14 the previous year. The report shall include:

15 (1) The number of offenders evaluated for the drug offender
16 treatment program;

17 (2) The number of offenders sentenced to the drug offender
18 treatment program;

19 (3) The number of offenders sentenced to a state correctional
20 facility who may have been eligible for the drug offender treatment
21 program;

22 (4) The number of offenders successfully completing the drug
23 offender treatment program;

1 (5) The six-month, one-year, three-year and five-year
2 recidivism rates for offenders who have completed the drug offender
3 treatment program and for a comparison group of offenders who were
4 not placed in the drug offender treatment program; and

5 (6) Any changes the division believes will make the drug
6 offender treatment program more effective.

7 **§62-16-8. Revocation of intermediate punishment.**

8 (a) Generally. -- The court may at any time terminate a
9 sentence of intermediate punishment.

10 (b) The court shall revoke a sentence of intermediate
11 punishment if after a hearing it determines that the participant
12 was expelled from or failed to complete the program.

13 © Proceedings upon revocation. -- Upon revocation of a
14 intermediate punishment sentence, the sentencing alternatives
15 available to the court shall be the same as the alternatives
16 available at the time of initial sentencing.

17 **§62-16-9. Construction of article.**

18 Notwithstanding any other provision of law to the contrary,
19 this article may not be construed to:

20 (1) Confer any legal right upon any individual, including an
21 individual participating in the drug offender treatment program,
22 to:

23 (A) Participate in a drug offender treatment program;

- 1 (B) Continue participation in a drug offender treatment
2 program;
- 3 © Modify the contents of the drug offender treatment program;
4 or
- 5 (D) File any cause of action in any court challenging the
6 division's determination that a participant is to be suspended or
7 expelled from or that a participant has successfully completed or
8 failed to successfully complete treatment to be provided during any
9 portion of a drug offender treatment program; or
- 10 (2) Enlarge or limit the right of a participant to appeal the
11 participant's sentence.

NOTE: The purpose of this bill is to enact the Public Safety and Offender Accountability Act. The bill requires completion of a Corrections Impact Statement to determine the fiscal impact for any bill that proposes to increase, decrease or otherwise impact incarceration. The bill establishes baselines for performance and comparisons to national averages to measure and document possible cost savings from the Public Safety and Offender Accountability Act. The bill reinvestment and distribution of savings. The bill identifies the primary objective for both the Division of Corrections and sentencing policy as maintaining public safety, holding offenders accountable and maintaining the lowest possible recidivism rate. The bill requires the Division of Corrections administer validated risk and needs assessments for inmates eligible for parole. The bill creates of an intensive secured substance abuse recovery program. The bill requires evidence-based practice to be used in treatment and intervention programs. The bill requiring the Division of Corrections to make an annual report to Governor and Legislature. The bill provides additional good time credit for successful completion of education or treatment programs. The bill provides additional good time credit for

exceptionally meritorious service. The bill requires the Regional Jail and Correctional Facility Authority to make an annual report to the Governor and Legislature. The bill requires the Supreme Court of Appeals to make an annual report to Governor and Legislature. The bill amends the Uniform Controlled Substances Act. The bill requires the Supreme Court of Appeals to develop an online system that provides courts, attorneys, probation and parole officers, and victims with information about sentencing. The bill distinguishes between serious drug trafficking by maintaining severe penalties for serious drug traffickers. The bill establishes a proportionate scale of penalties and reduces sentence for small quantities of certain controlled substances for a first offense. The bill permits deferred prosecution or a presumptive probation sentence for first and second time possession offenders. The bill requires a law-enforcement officer to issue a citation instead of making an arrest for many misdemeanor offenses with certain exceptions, such as when the offender poses a risk of danger to himself or others. The bill prohibits bail amounts for misdemeanors to exceed the fines and fees of the offenses charged. The bill requires courts and corrections authorities incorporate risk and needs assessment information into the decision-making process. The bill requires state expenditures on supervision and intervention programs for pretrial defendants, inmates and those on parole and probation to be spent on programs that are evidence-based. The bill requires offenders to be supervised using practices proven to reduce or otherwise maintain low recidivism rates. The bill requires parole board to hear cases at least sixty days prior to the offender's parole eligibility date allows parole. The bill requires the use of administrative caseloads for low-risk offenders. The bill authorizes compliance credits for parolees and early termination for probationers who successfully comply with supervision conditions. The bill requires six months of supervision for offenders who would otherwise be discharged without supervision at the end of their sentences. The bill authorizes the Division of Corrections to allow offenders to complete required programming in the community and be monitored. The bill increases accountability for probation and parole violations by authorizing imposition of administrative, graduated sanctions for parole and probation violators. The bill creates two pilot projects that require frequent drug testing with immediate sanctions for positive drug tests or other violations and referral to treatment if necessary. The bill creates an intermediate punishment program that provides substance abuse treatment for offenders sentenced to a state correctional facility.

§4-1-24, §15-9-6, §15-9-7, §25-1-23, §25-1-24, §25-1-25, §31-20-33, §51-1-22, §51-1-23 and §51-1-24, §60A-1-102, §60A-4-414, §60A-4-415, §62-11C-3a, §62-12-1a, §62-12-5a, §62-12-29, §62-12-30, §62-12-31, §62-12-32, §62-12-33, §62-12-34, §62-12-35, §62-12-36, §62-12-37, §62-12-38, §62-12-39, §62-12-40, §62-12-41, §62-13-1, §62-16-1, §62-16-2, §62-16-3, §62-16-4, §62-16-5, §62-16-6, §62-16-7, §62-16-8 and §62-16-9 are new; therefore, it has been completely underscored.

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

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Committee on the Judiciary.