

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 371**

4 (By Senators Kessler (Mr. President) and M. Hall,

5 By Request of the Executive)

6 _____
7 [Originating in the Committee on the Judiciary;

8 reported March 8, 2013.]
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11
12 A BILL to amend and reenact §25-1-15 of the Code of West Virginia,
13 1931, as amended; to amend and reenact §28-5-27 of said code;
14 to amend said code by adding thereto two new sections,
15 designated §31-20-5g and §31-20-5h; to amend and reenact
16 §61-7-6 of said code; to amend and reenact §62-11A-1a of said
17 code; to amend and reenact §62-11B-9 of said code; to amend
18 and reenact §62-11C-2, §62-11C-3 and §62-11C-6 of said code;
19 to amend said code by adding thereto a new section, designated
20 §62-11C-10; to amend and reenact §62-12-6, §62-12-7, §62-12-9,
21 §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and
22 §62-12-19 of said code; to amend said code by adding thereto
23 a new section, designated §62-12-29; to amend and reenact
24 §62-15-2 of said code; and to amend said code by adding

1 thereto two new sections, designated §62-15-6a and §62-15-6b,
2 all relating to public safety; requiring the Division of
3 Corrections to perform graduated methods of mental health
4 screens, appraisals and evaluations on persons committed to
5 its custody; mandating one year of supervised release for
6 violent inmates; mandating one hundred eighty days of
7 supervised release for nonviolent inmates; requiring the
8 Commissioner of Corrections to adopt policies regarding
9 mandatory supervised release; requiring the West Virginia
10 Regional Jail Authority and Correctional Facility to utilize
11 a standardized pretrial risk-screening instrument adopted by
12 the Supreme Court of Appeals of West Virginia; requiring the
13 authority to develop and implement cognitive behavioral
14 programming for inmates in regional jails committed to the
15 custody of the Commissioner of Corrections; exempting parole
16 officers from prohibitions against carrying concealed weapons;
17 moving definition of "day report center" to section relating
18 to conditions of release on probation; providing standards and
19 limitations under which judges and magistrates may impose a
20 period of supervision or participation in day report program;
21 clarifying language regarding confinement and revocation for
22 violations of the conditions of home incarceration; adding
23 representative of the Bureau for Behavioral Health and Health
24 Facilities to the community corrections subcommittee of the

1 Governor's Committee on Crime, Delinquency and Correction;
2 providing that the community corrections subcommittee review,
3 assess and report on the implementation of evidence-based
4 practices in the criminal justice system; adding member with
5 a background in substance abuse treatment and services to the
6 community criminal justice boards of each county or
7 combination of counties; providing oversight responsibility to
8 Division of Justice and Community Services to implement
9 standardized risk and needs assessment, evaluate effectiveness
10 of other modifications to community corrections programs and
11 provide annual report; requiring probation officers to conduct
12 a standardized risk and needs assessment for individuals
13 placed on probation and to supervise probationer and enforce
14 probation according to the same; requiring probation officers
15 to perform random drug tests of persons under supervision;
16 authorizing the Supreme Court of Appeals of West Virginia to
17 adopt a standardized risk and needs assessment for use by
18 probation officers; authorizing the Supreme Court of Appeals
19 of West Virginia to adopt a standardized pretrial screening
20 instrument for use by the Regional Jail Authority; providing
21 standards and limitations under which judges may impose a term
22 of reporting to a day report center or other community
23 corrections program as a condition of probation; authorizing
24 day report center programs to provide services based on the

1 results of a person's standardized risk and needs assessment;
2 providing for graduated sanctions in response to violations of
3 the conditions of release on probation other than absconding
4 or committing new criminal conduct; creating exceptions to new
5 criminal conduct provisions; requiring copies of graduated
6 sanctions confinement orders be supplied to the Commissioner
7 of Corrections; providing that graduated sanctions confinement
8 be paid by the Division of Corrections; revising eligibility
9 requirements for accelerated parole program; requiring that
10 Division of Corrections' policies and procedures for
11 developing a rehabilitation treatment plan include the use of
12 substance abuse assessment tools and prioritize treatment
13 resources based on the risk and needs assessment and substance
14 abuse assessment results; providing for rebuttable presumption
15 that parole is appropriate for inmates completing the
16 accelerated parole program and a rehabilitation treatment
17 program; providing standards and limitations for Parole Board;
18 outlining duties of the Division of Corrections to supervise,
19 treat and provide support services for persons released on
20 mandatory supervised release; removing temporal standard for
21 requirement that the Parole Board have access to a copy of an
22 inmate's physical, mental or psychiatric examination;
23 authorizing Division of Corrections employ directors of
24 housing and employment for released inmates with duties

1 relating to the reduction of parole release delays and finding
2 employment; requiring parole officers to update the
3 standardized risk and needs assessment for each person for
4 whom an assessment has not been conducted for parole and to
5 supervise each person according to the assessment and the
6 commissioner's supervision standards; authorizing the
7 Commissioner of Corrections to issue a certificate authorizing
8 a parole officer to carry firearms or concealed weapons;
9 providing standards and limitations under which the Division
10 of Corrections may order substance abuse treatment or impose
11 a term of reporting to a day report center or other community
12 corrections program as a condition or modification of parole;
13 authorizing the Commissioner of Corrections to enter into a
14 master agreement with the Division of Justice and Community
15 Services to reimburse counties for use of the community
16 corrections programs; clarifying that parolee participation in
17 community corrections is at program director's discretion;
18 providing for graduated sanctions in response to violations of
19 the conditions of release on parole other than absconding or
20 certain new criminal conduct; providing a parolee with the
21 right to a hearing, upon request, regarding whether he or she
22 violated the conditions of his or her release on parole;
23 providing that graduated sanctions incarceration for parolees
24 be paid for by Division of Corrections; providing for a

1 Community Supervision Committee to be appointed by the
2 Administrative Director of the Supreme Court of Appeals of
3 West Virginia to coordinate the sharing of information for
4 community supervision and requiring submittal of an annual
5 report; revising definitions; providing standards and
6 limitations under which judges may order treatment supervision
7 for drug offenders; requiring the Division of Justice and
8 Community Services to use appropriated funds to implement
9 substance abuse treatment to serve those under treatment
10 supervision in each judicial circuit; providing that the
11 Division of Justice and Community Services is responsible for
12 developing standards relating to quality and delivery of
13 substance abuse services, requiring certain education and
14 training, paying for drug abuse assessments and certified drug
15 treatment from appropriated funds and requiring submittal of
16 an annual report; outlining duties of treatment supervision
17 service providers; providing for state payment of drug court
18 participants' incarceration under certain circumstances;
19 defining terms; and making technical changes.

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

21 That §25-1-15 of the Code of West Virginia, 1931, as amended,
22 be amended and reenacted; that §28-5-27 of said code be amended and
23 reenacted; that said code be amended by adding thereto two new
24 sections, designated §31-20-5g and §31-20-5h; that §61-7-6 of said

1 code be amended and reenacted; that §62-11A-1a of said code be
2 amended and reenacted; that §62-11B-9 of said code be amended and
3 reenacted; that §62-11C-2, §62-11C-3 and §62-11C-6 of said code be
4 amended and reenacted; that said code be amended by adding thereto
5 a new section, designated §62-11C-10; that §62-12-6, §62-12-7,
6 §62-12-9, §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17
7 and §62-12-19 of said code be amended and reenacted; that said code
8 be amended by adding thereto a new section, designated §62-12-29;
9 that §62-15-2 of said code be amended and reenacted; and that said
10 code be amended by adding thereto two new sections, designated
11 §62-15-6a and §62-15-6b, all to read as follows:

12 **CHAPTER 25. DIVISION OF CORRECTIONS.**

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

14 **§25-1-15. Diagnostic and classification divisions.**

15 (a) The Commissioner of Corrections may establish diagnostic
16 and classification divisions.

17 (b) Notwithstanding any provision of the code to the contrary,
18 all persons committed to the custody of the Commissioner of the
19 Division of Corrections for presentence diagnosis and
20 classification and all persons sentenced to the custody of the
21 Division of Corrections shall, upon transfer to the Division of
22 Corrections, undergo diagnosis and classification, which may shall
23 include: (1) Assessments of a person's criminogenic risk and need
24 factors that are reliable, validated and normed for a specific

1 population and responsive to cultural and gender-specific needs as
2 well as individual learning styles and temperament; (2) application
3 of a mental health preliminary screen; and (3) if the mental health
4 preliminary screen suggests the need for further assessment, a full
5 psychological evaluation. The Division of Corrections shall
6 perform mental health preliminary screens, appraisals, and
7 evaluations according to standards provided by the American
8 Correctional Association.

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

10 **ARTICLE 5. THE PENITENTIARY.**

11 **§28-5-27. Deduction from sentence for good conduct; mandatory**
12 **supervision.**

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

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

22 (c) Except as provided in subsections (l) and (m) of this
23 section, each inmate committed to the custody of the Commissioner
24 of Corrections and incarcerated in a correctional facility pursuant

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

9 (d) No inmate sentenced to serve a life sentence shall be
10 eligible to earn or receive any good time pursuant to this section.

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

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

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

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

12 (h) Each inmate shall be given a revision of the statement
13 described in subsection (g) if and when any part or all of the good
14 time has been forfeited and revoked or restored pursuant to
15 subsection (f) whereby the time of his or her earliest discharge is
16 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 commissioner, except as to those
23 persons committed pursuant to article four, chapter twenty-five of
24 this code, all good times shall be computed according to this

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

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

16 (l) Prior to the calculated discharge date of an inmate serving
17 a sentence for a felony crime of violence against the person, a
18 felony offense where the victim was a minor child or a felony
19 offense involving the use of a firearm, one year shall be deducted
20 from the inmate's accumulated good time to provide for one year of
21 mandatory post release supervision following the first instance in
22 which the inmate reaches his or her calculated discharge date. As
23 used in this subsection, "a felony crime of violence against the
24 person" and "a felony crime where the victim was a minor child"

1 shall have the meaning ascribed thereto in section thirteen,
2 article twelve, chapter sixty-two of this code. The provisions of
3 this subsection are applicable to offenses committed on or after
4 July 1, 2013.

5 (m) Any inmate who is serving a sentence for an offense not
6 referenced in subsection (l) of this section shall be released to
7 and subject to a period of mandatory supervision of 180 days when
8 he or she is 180 days from his or her calculated discharge date.
9 The provisions of this subsection are applicable to offenses
10 committed before, on or after July 1, 2013.

11 (n) The Commissioner of Corrections shall adopt policies and
12 procedures to implement the mandatory supervision provided for in
13 subsections (l) and (m) of this section, which may include such
14 terms, conditions and procedures for supervision, modification and
15 violation as are applicable to persons on parole.

16 **CHAPTER 31. CORPORATIONS.**

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

18 **AUTHORITY.**

19 **§31-20-5g. Pretrial risk assessment.**

20 Within three calender days of the arrest and placement of any
21 person in a regional jail for inability to meet previously set
22 conditions of release, the authority shall conduct a pretrial risk
23 assessment using a standardized risk assessment instrument approved
24 and adopted by the Supreme Court of Appeals of West Virginia. Upon

1 completion of the assessment, it shall be provided to the
2 magistrate and circuit clerks for delivery to the appropriate
3 circuit judge or magistrate.

4 **§31-20-5h. Programs for inmates committed to prison.**

5 The authority shall develop and implement cognitive behavioral
6 programming to address the needs of inmates in regional jail but
7 committed to the custody of the Commissioner of Corrections. The
8 program shall be developed in consultation with and approved by the
9 Division of Corrections, and may be offered by video teleconference
10 or webinar technology. The costs of such programming shall be paid
11 out of funds appropriated to the Division of Corrections. The
12 programming shall be covered by the rehabilitation plan policies
13 and procedures adopted by the Division of Corrections under
14 subsection (h), section thirteen, article twelve, chapter
15 sixty-two of this code.

16 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

17 **ARTICLE 7. DANGEROUS WEAPONS.**

18 **§61-7-6. Exceptions as to prohibitions against carrying concealed**
19 **deadly weapons.**

20 The licensure provisions set forth in this article do not
21 apply to:

22 (1) Any person carrying a deadly weapon upon his or her own
23 premises; nor shall anything herein prevent a person from carrying
24 any firearm, unloaded, from the place of purchase to his or her

1 home, residence or place of business or to a place of repair and
2 back to his or her home, residence or place of business, nor shall
3 anything herein prohibit a person from possessing a firearm while
4 hunting in a lawful manner or while traveling from his or her home,
5 residence or place of business to a hunting site and returning to
6 his or her home, residence or place of business;

7 (2) Any person who is a member of a properly organized
8 target-shooting club authorized by law to obtain firearms by
9 purchase or requisition from this state or from the United States
10 for the purpose of target practice from carrying any pistol, as
11 defined in this article, unloaded, from his or her home, residence
12 or place of business to a place of target practice and from any
13 place of target practice back to his or her home, residence or
14 place of business, for using any such weapon at a place of target
15 practice in training and improving his or her skill in the use of
16 the weapons;

17 (3) Any law-enforcement officer or law-enforcement official as
18 defined in section one, article twenty-nine, chapter thirty of this
19 code;

20 (4) Any employee of the West Virginia Division of Corrections
21 duly appointed pursuant to the provisions of section five eleven-c,
22 article five one, chapter twenty-eight twenty-five of this code
23 while the employee is on duty;

24 (5) Any member of the Armed Forces of the United States or the

1 militia of this state while the member is on duty;

2 (6) Any circuit judge, including any retired circuit judge
3 designated senior status by the Supreme Court of Appeals of West
4 Virginia, prosecuting attorney, assistant prosecuting attorney or
5 a duly appointed investigator employed by a prosecuting attorney;

6 (7) Any resident of another state who holds a valid license to
7 carry a concealed weapon by a state or a political subdivision
8 which has entered into a reciprocity agreement with this state,
9 subject to the provisions and limitations set forth in section
10 six-a of this article;

11 (8) Any federal law-enforcement officer or federal police
12 officer authorized to carry a weapon in the performance of the
13 officer's duty; and

14 (9) Any Hatfield-McCoy regional recreation authority ranger
15 while the ranger is on duty. ; and

16 (10) Any parole officer appointed pursuant to section
17 fourteen, article twelve, chapter sixty-two of this code.

18 **CHAPTER 62. CRIMINAL PROCEDURE.**

19 **ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.**

20 **§62-11A-1a. Other sentencing alternatives.**

21 (a) Any person who has been convicted in a circuit court or in
22 a magistrate court under any criminal provision of this code of a
23 misdemeanor or felony, which is punishable by imposition of a fine
24 or confinement in the regional jail or a state correctional

1 facility, or both fine and confinement, may, in the discretion of
2 the sentencing judge or magistrate, as an alternative to the
3 sentence imposed by statute for the crime, be sentenced under one
4 of the following programs:

5 (1) The weekend jail program under which persons would be
6 required to spend weekends or other days normally off from work in
7 jail;

8 (2) The work program under which sentenced persons would be
9 required to spend the first two or more days of their sentence in
10 jail and then, in the discretion of the court, would be assigned to
11 a county agency to perform labor within the jail, or in and upon
12 the buildings, grounds, institutions, bridges, roads, including
13 orphaned roads used by the general public and public works within
14 the county. Eight hours of labor are to be credited as one day of
15 the sentence imposed. Persons sentenced under this program may be
16 required to provide their own transportation to and from the work
17 site, lunch and work clothes; or

18 (3) The community service program under which persons
19 sentenced would spend no time in jail but would be sentenced to a
20 number of hours or days of community service work with government
21 entities or charitable or nonprofit entities approved by the
22 circuit court. Regarding any portion of the sentence designated as
23 confinement, eight hours of community service work is to be
24 credited as one day of the sentence imposed. Regarding any portion

1 of the sentence designated as a fine, the fine is to be credited at
2 an hourly rate equal to the prevailing federal minimum wage at the
3 time the sentence was imposed. In the discretion of the court, the
4 sentence credits may run concurrently or consecutively. Persons
5 sentenced under this program may be required to provide their own
6 transportation to and from the work site, lunch and work clothes.

7 (4) A day-reporting center program if the program has been
8 implemented in the sentencing court's jurisdiction or in the area
9 where the offender resides. For purposes of this subdivision
10 "day-reporting center" means a court-operated or court-approved
11 facility where persons ordered to serve a sentence in this type of
12 facility are required to report under the terms and conditions set
13 by the court for purposes which include, but are not limited to,
14 counseling, employment training, alcohol or drug testing or other
15 medical testing.

16 (b) In no event may the duration of the alternate sentence
17 exceed the maximum period of incarceration otherwise allowed.

18 (c) In imposing a sentence under the provisions of this
19 section, the court shall first make the following findings of fact
20 and incorporate them into the court's sentencing order:

21 (1) The person sentenced was not convicted of an offense for
22 which a mandatory period of confinement is imposed by statute;

23 (2) In circuit court cases, that the person sentenced is not
24 a habitual criminal within the meaning of sections eighteen and

1 nineteen, article eleven, chapter sixty-one of this code;

2 (3) In circuit court cases, that the offense underlying the
3 sentence is not a felony offense for which violence or the threat
4 of violence to the person is an element of the offense;

5 (4) In circuit court cases, that adequate facilities for the
6 administration and supervision of alternative sentencing programs
7 are available through the court's probation officers or the county
8 sheriff or, in magistrate court cases, that adequate facilities for
9 the administration and supervision of alternative sentencing
10 programs are available through the county sheriff; and

11 (5) That an alternative sentence under provisions of this
12 article will best serve the interests of justice.

13 (d) Persons sentenced by the circuit court under the
14 provisions of this article remain under the administrative custody
15 and supervision of the court's probation officers or the county
16 sheriff. Persons sentenced by a magistrate remain under the
17 administrative custody and supervision of the county sheriff.

18 (e) Persons sentenced under the provisions of this section may
19 be required to pay the costs of their incarceration, including meal
20 costs: *Provided*, That the judge or magistrate considers the
21 person's ability to pay the costs.

22 (f) Persons sentenced under the provisions of this section
23 remain under the jurisdiction of the court. The court may withdraw
24 any alternative sentence at any time by order entered with or

1 without notice and require that the remainder of the sentence be
2 served in the county jail, regional jail or a state correctional
3 facility: *Provided*, That no alternative sentence directed by the
4 sentencing judge or magistrate or administered under the
5 supervision of the sheriff, his or her deputies, a jailer or a
6 guard, may require the convicted person to perform duties which
7 would be considered detrimental to the convicted person's health as
8 attested by a physician.

9 (g) No provision of this section may be construed to limit a
10 circuit judge or magistrate's judge's ability to impose a period of
11 supervision or participation in a community corrections program
12 created pursuant to article eleven-c, chapter sixty-two of this
13 code except that a person sentenced to a day report center must be
14 identified as moderate to high risk of reoffending and moderate to
15 high criminogenic need, as defined by the standardized risk and
16 needs assessment adopted by the Supreme Court of Appeals of West
17 Virginia under subsection (d), section six, article twelve of this
18 chapter, and applied by a probation officer or day report staff:
19 *Provided*, That a judge may impose a period of supervision or
20 participation in a day report center, notwithstanding the results
21 of the standardized risk and needs assessment, upon making specific
22 written findings of fact as to the reason for departing from the
23 requirements of this section.

24 (h) Magistrates may only impose a period of participation in

1 a day report center with the consent by either general or case
2 specific order of the supervising judge or chief judge of the
3 judicial circuit in which he or she presides.

4 **ARTICLE 11B. HOME INCARCERATION ACT.**

5 **§62-11B-9. Violation of order of home incarceration procedures;**
6 **penalties.**

7 (a) If at any time during the period of home incarceration
8 there is reasonable cause to believe that a participant in a home
9 incarceration program has violated the terms and conditions of the
10 circuit court's home incarceration order, he or she shall be
11 subject to the procedures and penalties set forth in section ten,
12 article twelve of this chapter.

13 (b) If at any time during the period of home incarceration
14 there is reasonable cause to believe that a participant sentenced
15 to home incarceration by the circuit court has violated the terms
16 and conditions of the court's order of home incarceration and said
17 participant's participation was imposed as an alternative sentence
18 to another form of incarceration, said participant shall be subject
19 to the same procedures involving confinement and revocation as
20 would a probationer charged with a violation of the order of home
21 incarceration. Any participant under an order of home
22 incarceration shall be subject to the same penalty or penalties,
23 upon the circuit court's finding of a violation of the order of
24 home incarceration, as he or she could have received at the initial

1 disposition hearing: *Provided*, That the participant shall receive
2 credit towards any sentence imposed after a finding of violation
3 for the time spent in home incarceration.

4 (c) If at any time during the period of home incarceration
5 there is reasonable cause to believe that a participant sentenced
6 to home incarceration by a magistrate has violated the terms and
7 conditions of the magistrate's order of home incarceration as an
8 alternative sentence to incarceration in jail, the supervising
9 authority may arrest the participant upon the obtaining of an order
10 or warrant and take the offender before a magistrate within the
11 county of the offense. The magistrate shall then conduct a prompt
12 and summary hearing on whether the participant's home incarceration
13 should be revoked. If it appears to the satisfaction of the
14 magistrate that any condition of home incarceration has been
15 violated, the magistrate may revoke the home incarceration and
16 order that the sentence of incarceration in jail be executed. Any
17 participant under an order of home incarceration shall be subject
18 to the same penalty or penalties, upon the magistrate's finding of
19 a violation of the order of home incarceration, as the participant
20 could have received at the initial disposition hearing: *Provided*,
21 That the participant shall receive credit towards any sentence
22 imposed after a finding of violation for the time spent in home
23 incarceration.

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

1 **§62-11C-2. Community Corrections Subcommittee.**

2 (a) A Community Corrections Subcommittee of the Governor's
3 Committee on Crime, Delinquency and Correction is hereby created
4 and assigned responsibility for screening community corrections
5 programs submitted by community criminal justice boards or from
6 other entities authorized by the provisions of this article to do
7 so for approval for funding by the Governor's Committee and for
8 making recommendations as to the disbursement of funds for approved
9 community corrections programs. The subcommittee is to be
10 comprised of fifteen members of the Governor's Committee including:
11 A representative of the Division of Corrections, a representative
12 of the Regional Jail and Correctional Facility Authority, a
13 representative of the Bureau for Behavioral Health and Health
14 Facilities, a person representing the interests of victims of
15 crime, an attorney employed by a public defender corporation, an
16 attorney who practices criminal law, a prosecutor and a
17 representative of the West Virginia Coalition Against Domestic
18 Violence. At the discretion of the West Virginia Supreme Court of
19 Appeals, the Administrator of the Supreme Court of Appeals, a
20 probation officer and a circuit judge may serve on the subcommittee
21 as ex officio, nonvoting members.

22 (b) The subcommittee shall elect a chairperson and a vice
23 chairperson. The subcommittee shall meet quarterly. Special
24 meetings may be held upon the call of the chairperson, vice

1 chairperson or a majority of the members of the subcommittee. A
2 majority of the members of the subcommittee constitute a quorum.

3 **§62-11C-3. Duties of the Governor's Committee and the Community**
4 **Corrections Subcommittee.**

5 (a) Upon recommendation of the Community Corrections
6 Subcommittee, the Governor's Committee shall propose for
7 legislative promulgation in accordance with the provisions of
8 article three, chapter twenty-nine-a of this code, emergency and
9 legislative rules to:

10 (1) Establish standards for approval of community corrections
11 programs submitted by community criminal justice boards or other
12 entities authorized by the provisions of this article to do so;

13 (2) Establish minimum standards for community corrections
14 programs to be funded, including requiring annual program
15 evaluations;

16 (3) Make any necessary adjustments to the fees established in
17 section four of this article;

18 (4) Establish reporting requirements for community corrections
19 programs; and

20 (5) Carry out the purpose and intent of this article.

21 (b) Upon recommendation of the Community Corrections
22 Subcommittee, the Governor's Committee shall:

23 (1) Maintain records of community corrections programs
24 including the corresponding community criminal justice board or

1 other entity contact information and annual program evaluations,
2 when available;

3 (2) Seek funding for approved community corrections programs
4 from sources other than the fees collected pursuant to section four
5 of this article; and

6 (3) Provide funding for approved community corrections
7 programs, as available.

8 (c) The Governor's Committee shall submit, on or before
9 September 30 of each year, to the Governor, the Speaker of the
10 House of Delegates, the President of the Senate and, upon request,
11 to any individual member of the Legislature a report on its
12 activities during the previous year and an accounting of funds paid
13 into and disbursed from the special revenue account established
14 pursuant to section four of this article.

15 (d) The subcommittee shall review the implementation of
16 evidence-based practices and conduct regular assessments for
17 quality assurance of all community-based criminal justice services,
18 including day report centers, probation, parole and home
19 confinement. In consultation with the affected operational
20 agencies, the subcommittee shall establish a process for reviewing
21 performance. The process shall include review of agency
22 performance measures and identification of new measures by the
23 subcommittee if necessary for measuring the implementation of
24 evidence-based practices or for quality assurance. After providing

1 an opportunity for the affected operational agencies to comment,
2 the subcommittee shall submit, on or before September 30 of each
3 year, to the Governor, the Speaker of the House of Delegates, the
4 President of the Senate and, upon request, to any individual member
5 of the Legislature, a report on its activities and results from
6 assessment of performance during the previous year.

7 **§62-11C-6. Community criminal justice boards.**

8 (a) Each county or combination of counties or a county or
9 counties and a Class I or II municipality that seek to establish
10 community-based corrections services shall establish a community
11 criminal justice board: *Provided*, That if a county has not
12 established a community criminal justice board by July 1, 2002, the
13 Chief Probation Officer of such county, with the approval of the
14 chief judge of the circuit, may apply for and receive approval and
15 funding from the Governor's Committee for such programs as are
16 authorized by the provisions of section five of this article. Any
17 county which chooses to operate without a community criminal
18 justice board shall be subject to the regulations and requirements
19 established by the Community Corrections Subcommittee and the
20 Governor's Committee.

21 (b) The community criminal justice board is to consist of no
22 more than fifteen voting members.

23 (c) All members of the community criminal justice board are to
24 be residents of the county or counties represented.

1 (d) The community criminal justice board is to consist of the
2 following members:

3 (1) The sheriff or chief of police or, if the board represents
4 more than one county or municipality, at least one sheriff or chief
5 of police from the counties represented;

6 (2) The prosecutor or, if the board represents more than one
7 county, at least one prosecutor from the counties represented;

8 (3) If a public defender corporation exists in the county or
9 counties represented, at least one attorney employed by any public
10 defender corporation existing in the counties represented or, if no
11 public defender office exists, one criminal defense attorney from
12 the counties represented;

13 (4) One member to be appointed by the local board of education
14 or, if the board represents more than one county, at least one
15 member appointed by a board of education of the counties
16 represented;

17 (5) One member with a background in mental health care and
18 services to be appointed by the commission or commissions of the
19 county or counties represented by the board;

20 (6) Two members who can represent organizations or programs
21 advocating for the rights of victims of crimes with preference
22 given to organizations or programs advocating for the rights of
23 victims of the crimes of domestic violence or driving under the
24 influence; and

1 (7) One member with a background in substance abuse treatment
2 and services to be appointed by the commission or commissions of
3 the county or counties represented by the board; and

4 (7) (8) Three at-large members to be appointed by the
5 commission or commissions of the county or counties represented by
6 the board.

7 (e) At the discretion of the West Virginia Supreme Court of
8 Appeals, any or all of the following people may serve on a
9 community criminal justice board as ex officio, nonvoting members:

10 (1) A circuit judge from the county or counties represented;

11 (2) A magistrate from the county or counties represented; or

12 (3) A probation officer from the county or counties
13 represented.

14 (f) Community criminal justice boards may:

15 (1) Provide for the purchase, development and operation of
16 community corrections services;

17 (2) Coordinate with local probation departments in
18 establishing and modifying programs and services for offenders;

19 (3) Evaluate and monitor community corrections programs,
20 services and facilities to determine their impact on offenders; and

21 (4) Develop and apply for approval of community corrections
22 programs by the Governor's Committee on Crime, Delinquency and
23 Correction.

24 (g) If a community criminal justice board represents more than

1 one county, the appointed membership of the board, excluding any ex
2 officio members, shall include an equal number of members from each
3 county, unless the county commission of each county agrees in
4 writing otherwise.

5 (h) If a community criminal justice board represents more than
6 one county, the board shall, in consultation with the county
7 commission of each county represented, designate one county
8 commission as the fiscal agent of the board.

9 (i) Any political subdivision of this state operating a
10 community corrections program shall, regardless of whether or not
11 the program has been approved by the Governor's Committee on Crime,
12 Delinquency and Correction, provide to the Governor's Committee
13 required information regarding the program's operations as required
14 by legislative rule.

15 **§62-11C-10. Standardized risk and needs assessment; annual**
16 **reviews; and day report services.**

17 The Division of Justice and Community Services shall:

18 (a) Require that staff of day reporting centers and other
19 community corrections programs are trained in and use in each case
20 a standardized risk and needs assessment as adopted by the Supreme
21 Court of Appeals of West Virginia;

22 (b) Annually conduct a validation study of inter-rater
23 reliability and risk cut-off scores by population to ensure that
24 the standardized risk and needs assessment is sufficiently

1 predictive of the risk of reoffending;

2 (c) Annually review the membership of all community criminal
3 justice boards to ensure appropriate membership;

4 (d) Evaluate the services, sanctions and programs provided by
5 each community corrections program to ensure that they address
6 criminogenic needs and are evidence-based;

7 (e) Encourage community criminal justice boards to develop
8 programs in addition to or in lieu of day report centers, through
9 grants and more focused use of day report services; and

10 (f) Annually report to the Community Corrections Subcommittee
11 on the results of duties required by this section.

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

13 **§62-12-6. Powers and duties of probation officers.**

14 (a) Each probation officer shall:

15 (1) Investigate all cases which the court refers to the
16 officer for investigation and shall report in writing on each case;
17 The probation officer shall furnish

18 (2) Conduct a standardized risk and needs assessment using the
19 instrument adopted by the Supreme Court of Appeals of West Virginia
20 for any probationer for whom an assessment has not been conducted
21 either prior to placement on probation or by a specialized
22 assessment officer;

23 (3) Supervise the probationer and enforce probation according
24 to assessment and supervision standards adopted by the Supreme

1 Court of Appeals of West Virginia;

2 (4) Furnish to each person released on probation under the
3 officer's supervision a written statement of the probationer's
4 conditions of probation together with a copy of the rules
5 prescribed by the court for the supervision of probationers. The
6 probation officer shall stay Supreme Court of Appeals of West
7 Virginia;

8 (5) Stay informed concerning the conduct and condition of each
9 probationer under the officer's supervision and shall report on the
10 conduct and condition of each probationer in writing as often as
11 the court requires; The probation officer shall use

12 (6) Use all practicable and suitable methods to aid and
13 encourage the probationer to improve his or her conduct and
14 condition; The probation officer shall maintain

15 (7) Perform random drug and alcohol testing of persons under
16 their supervision as directed by the circuit court.

17 (8) Maintain detailed work records and shall perform any other
18 duties the court requires.

19 (b) The probation officer has authority, with or without an
20 order or warrant, to arrest any probationer as provided in section
21 ten of this article, and to arrest any person on supervised release
22 when there is reasonable cause to believe that the person on
23 supervised release has violated a condition of release. A person
24 on supervised release so arrested shall be brought before the court

1 for a prompt and summary hearing.

2 (b) (c) Notwithstanding any provision of this code to the
3 contrary:

4 (1) Any probation officer appointed on or after July 1, 2002,
5 may carry handguns in the course of the officer's official duties
6 after meeting specialized qualifications established by the
7 Governor's Committee on Crime, Delinquency and Correction, which
8 qualifications shall include the successful completion of handgun
9 training, including a minimum of four hours' training in handgun
10 safety and comparable to the handgun training provided to
11 law-enforcement officers by the West Virginia State Police.

12 (2) Probation officers may only carry handguns in the course
13 of their official duties after meeting the specialized
14 qualifications set forth in subdivision (1) of this subsection.

15 (3) Nothing in this subsection includes probation officers
16 within the meaning of law-enforcement officers as defined in
17 section one, article twenty-nine, chapter thirty of this code.

18 (d) The Supreme Court of Appeals of West Virginia may adopt a
19 standardized risk and needs assessment with risk cut off scores for
20 use by probation officers, taking into consideration the assessment
21 instrument adopted by the Division of Corrections under subsection
22 (h), section thirteen of this article and the responsibility of the
23 Division of Justice and Community Services to evaluate the use of
24 the standardized risk and needs assessment.

1 **§62-12-7. Pretrial and preliminary investigation; report on**
2 **prospective probationers.**

3 (a) The Supreme Court of Appeals of West Virginia may adopt a
4 standardized pretrial risk assessment for use by the Regional Jail
5 Authority to assist magistrates and circuit courts in making
6 pretrial decisions under article one-c of this chapter.

7 (b) When Unless otherwise directed by the court, the probation
8 officer shall, in the form adopted by the Supreme Court of Appeals
9 of West Virginia, make a careful investigation of, and a written
10 report with recommendations concerning, any prospective
11 probationer. Insofar as practicable this report shall include
12 information concerning the offender's court and criminal record,
13 occupation, family background, education, habits and associations,
14 mental and physical condition, the names, relationship, ages and
15 condition of those dependent upon him or her for support and such
16 other facts as may aid the court in determining the propriety and
17 conditions of his or her release on probation. No person convicted
18 of a felony or of any offense described in article eight-b or
19 eight-d, chapter sixty-one of this code against a minor child may
20 be released on probation until this report shall have been
21 presented to and considered by the court. The court may in its
22 discretion request such a report concerning any person convicted of
23 a misdemeanor. The presentence report of any person convicted of
24 an offense, described in said articles or section twelve, article

1 eight of said chapter, may include a statement from a therapist,
2 psychologist or physician who is providing treatment to the child.
3 A copy of all reports shall be filed with the board of probation
4 and parole.

5 **§62-12-9. Conditions of release on probation.**

6 (a) Release on probation is conditioned upon the following:

7 (1) That the probationer may not, during the term of his or
8 her probation, violate any criminal law of this or any other state
9 or of the United States;

10 (2) That he or she may not, during the term of his or her
11 probation, leave the state without the consent of the court which
12 placed him or her on probation;

13 (3) That he or she complies with the conditions prescribed by
14 the court for his or her supervision by the probation officer;

15 (4) That in every case wherein the probationer has been
16 convicted of an offense defined in section twelve, article eight,
17 chapter sixty-one of this code or article eight-b or eight-d of
18 said chapter, against a child, the probationer may not live in the
19 same residence as any minor child, nor exercise visitation with any
20 minor child and has no contact with the victim of the offense:

21 *Provided*, That the probationer may petition the court of the
22 circuit wherein he or she was convicted for a modification of this
23 term and condition of his or her probation and the burden rests
24 upon the probationer to demonstrate that a modification is in the

1 best interest of the child;

2 (5) That the probationer be required to pay a fee, not to
3 exceed \$20 per month to defray costs of supervision: *Provided,*
4 That the court conducts a hearing prior to imposition of probation
5 and makes a determination on the record that the offender is able
6 to pay the fee without undue hardship. All moneys collected as
7 fees from probationers pursuant to this subdivision are to be
8 deposited with the circuit clerk who shall, on a monthly basis,
9 remit the moneys collected to the State Treasurer for deposit in
10 the state General Revenue Fund; and

11 (6) That the probationer is required to pay the fee described
12 in section four, article eleven-c of this chapter: *Provided,* That
13 the court conducts a hearing prior to imposition of probation and
14 makes a determination on the record that the offender is able to
15 pay the fee without undue hardship.

16 (b) In addition the court may impose, subject to modification
17 at any time, any other conditions which it may deem advisable,
18 including, but not limited to, any of the following:

19 (1) That he or she make restitution or reparation, in whole or
20 in part, immediately or within the period of probation, to any
21 party injured by the crime for which he or she has been convicted:
22 *Provided,* That the court conducts a hearing prior to imposition of
23 probation and makes a determination on the record that the offender
24 is able to pay restitution without undue hardship;

1 (2) That he or she pay any fine assessed and the costs of the
2 proceeding in installments as the court may direct: *Provided*, That
3 the court conducts a hearing prior to imposition of probation and
4 makes a determination on the record that the offender is able to
5 pay the costs without undue hardship;

6 (3) That he or she make contribution from his or her earnings,
7 in sums as the court may direct, for the support of his or her
8 dependents; and

9 (4) That he or she, in the discretion of the court, be
10 required to serve a period of confinement in jail of the county in
11 which he or she was convicted for a period not to exceed one third
12 of the minimum sentence established by law or one third of the
13 least possible period of confinement in an indeterminate sentence,
14 but in no case may the period of confinement exceed six consecutive
15 months. The court has the authority to sentence the defendant
16 within the six-month period to intermittent periods of confinement
17 including, but not limited to, weekends or holidays and may grant
18 to the defendant intermittent periods of release in order that he
19 or she may work at his or her employment or for other reasons or
20 purposes as the court may deem appropriate: *Provided*, That the
21 provisions of article eleven-a of this chapter do not apply to
22 intermittent periods of confinement and release except to the
23 extent that the court may direct. If a period of confinement is
24 required as a condition of probation, the court shall make special

1 findings that other conditions of probation are inadequate and that
2 a period of confinement is necessary.

3 (c) Circuit courts may impose, as a condition of probation,
4 participation in a day report center.

5 (1) To be eligible, the probationer must be identified as
6 moderate to high risk of reoffending and moderate to high
7 criminogenic need, as defined by the standardized risk and needs
8 assessment adopted by the Supreme Court of Appeals of West Virginia
9 under subsection (d), section six of this article, and applied by
10 a probation officer or day report staff. In eligible cases,
11 circuit courts may impose a term of up to one year: *Provided*, That
12 a judge may impose, as a term of probation, participation in a day
13 report center program notwithstanding the results of the
14 standardized risk and needs assessment, upon making specific
15 written findings of fact as to the reason for departing from the
16 requirements of this section.

17 (2) The day report center staff shall determine which services
18 a person receives based on the results of the standardized risk and
19 needs assessment and taking into consideration the other conditions
20 of probation set by the court.

21 (d) For the purposes of this article, "day report center"
22 means a court-operated or court-approved facility where persons
23 ordered to serve a sentence in this type of facility are required
24 to report under the terms and conditions set by the court for

1 purposes which include, but are not limited to, counseling,
2 employment training, alcohol or drug testing or other medical
3 testing.

4 **§62-12-10. Violation of probation.**

5 (a) If at any time during the period of probation there shall
6 be is reasonable cause to believe that the probationer has violated
7 any of the conditions of his or her probation, the probation
8 officer may arrest him or her with or without an order or warrant,
9 or the court which placed him or her on probation, or the judge
10 thereof in vacation, may issue an order for his or her arrest,
11 whereupon he or she shall be brought before the court, or the judge
12 thereof in vacation, for a prompt and summary hearing.

13 (1) If it shall then appears to the satisfaction of the court
14 or judge finds reasonable cause exists to believe that any
15 condition of probation has been violated the probationer absconded
16 supervision or engaged in new criminal conduct other than a minor
17 traffic violation or simple possession of a controlled substance,
18 the court or judge may revoke the suspension of imposition or
19 execution of sentence, impose sentence if none has been imposed,
20 and order that sentence be executed. In computing the period for
21 which the offender is to be imprisoned confined, the time between
22 his or her release on probation and his or her arrest shall may not
23 be taken to be any part of the term of his or her sentence.

24 (2) If the court finds that reasonable cause exists to believe

1 that the probationer violated any condition of supervision other
2 than absconding supervision or new criminal conduct other than a
3 minor traffic violation or simple possession of a controlled
4 substance, then, for the first violation, the judge shall impose a
5 period of confinement up to sixty days, or, for the second
6 violation, a period of confinement up to one hundred twenty days.
7 For the third violation, the judge may revoke the suspension of
8 imposition or execution of sentence, impose sentence if none has
9 been imposed, and order that sentence be executed, with credit for
10 time spent in confinement under this section. If the time
11 remaining on the probationer's maximum imposed sentence is less
12 than the maximum period of confinement, then the term of
13 confinement is for the remaining period of the sentence. In
14 computing the period for which the offender is to be confined, the
15 time between his or her release on probation and his or her arrest
16 may not be taken to be any part of the term of his or her sentence.
17 Whenever the court incarcerates a probationer pursuant to the
18 provisions of this subdivision, a circuit clerk shall provide a
19 copy of the order of confinement within five days to the
20 Commissioner of Corrections.

21 (b) A probationer confined for a first or second violation
22 pursuant to subdivision (2), subsection (a) of this section, may be
23 confined in jail, and the costs of confining felony probationers
24 shall be paid out of funds appropriated for the Division of

1 Corrections.

2 (c) If, despite a violation of the conditions of probation,
3 the court or judge shall be is of the opinion that the interests of
4 justice do not require that the probationer serve his or her
5 sentence or a period of confinement, the court or judge may, except
6 when the violation was the commission of a felony, again release
7 him or her on probation: *Provided*, That a judge may otherwise
8 depart from the sentence limitations set forth in subdivision (2),
9 subsection (a) of this section upon making specific written
10 findings of fact supporting the basis for the departure.

11 **§62-12-13. Powers and duties of board; eligibility for parole;**
12 **procedure for granting parole.**

13 (a) The board of parole, whenever it is of the opinion that
14 the best interests of the state and of the inmate will be served,
15 and subject to the limitations hereinafter provided, shall release
16 any inmate on parole for terms and upon conditions as are provided
17 by this article.

18 (b) Any inmate of a state correctional center is eligible for
19 parole if he or she:

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

23 (B) He or she:

24 (i) Has applied for and been accepted by the Commissioner of

1 Corrections into an accelerated parole program;

2 (ii) Does not have a prior criminal conviction for a felony
3 crime of violence against the person, a felony offense involving
4 the use of a firearm, or a felony offense where the victim was a
5 minor child;

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

9 (iv) (iii) Is not serving a sentence for a crime of violence
10 against the person, or more than one felony for a controlled
11 substance offense for which the inmate is serving a consecutive
12 sentence, a felony offense involving the use of a firearm, or a
13 felony offence where the victim was a minor child; and

14 (v) (iv) Has successfully completed a rehabilitation treatment
15 program created with the assistance of a standardized risk and
16 needs assessment;

17 (I) As used in this section "felony crime of violence against
18 the person" means felony offenses set forth in articles two,
19 three-e, eight-b or eight-d of chapter sixty-one of this code; and

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

24 (C) Notwithstanding any provision of this code to the

1 contrary, any person who committed, or attempted to commit a felony
2 with the use, presentment or brandishing of a firearm, is not
3 eligible for parole prior to serving a minimum of three years of
4 his or her sentence or the maximum sentence imposed by the court,
5 whichever is less: *Provided*, That any person who committed, or
6 attempted to commit, any violation of section twelve, article two,
7 chapter sixty-one of this code, with the use, presentment or
8 brandishing of a firearm, is not eligible for parole prior to
9 serving a minimum of five years of his or her sentence or one third
10 of his or her definite term sentence, whichever is greater.
11 Nothing in this paragraph applies to an accessory before the fact
12 or a principal in the second degree who has been convicted as if he
13 or she were a principal in the first degree if, in the commission
14 of or in the attempted commission of the felony, only the principal
15 in the first degree used, presented or brandished a firearm. A
16 person is not ineligible for parole under the provisions of this
17 paragraph because of the commission or attempted commission of a
18 felony with the use, presentment or brandishing of a firearm unless
19 that fact is clearly stated and included in the indictment or
20 presentment by which the person was charged and was either: (i)
21 Found by the court at the time of trial upon a plea of guilty or
22 nolo contendere; (ii) found by the jury, upon submitting to the
23 jury a special interrogatory for such purpose if the matter was
24 tried before a jury; or (iii) found by the court, if the matter was

1 tried by the court without a jury.

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

6 (D) The amendments to this subsection adopted in the year
7 1981:

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

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

13 (iii) Apply with respect to the submission of a special
14 interrogatory to the jury and the finding to be made thereon in any
15 case submitted to the jury on or after August 1 of that year or to
16 the requisite findings of the court upon a plea of guilty or in any
17 case tried without a jury: *Provided*, That the state gives notice
18 in writing of its intent to seek such finding by the jury or court,
19 as the case may be, which notice shall state with particularity the
20 grounds upon which the finding will be sought as fully as such
21 grounds are otherwise required to be stated in an indictment,
22 unless the grounds therefor are alleged in the indictment or
23 presentment upon which the matter is being tried; and

24 (iv) Does not apply with respect to cases not affected by the

1 amendments and in such cases the prior provisions of this section
2 apply and are construed without reference to the amendments.

3 (1) (v) Insofar as the amendments relate to mandatory
4 sentences restricting the eligibility for parole, all matters
5 requiring a mandatory sentence shall be proved beyond a reasonable
6 doubt in all cases tried by the jury or the court;

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

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

12 (4) Has prepared and submitted to the board a written parole
13 release plan setting forth proposed plans for his or her place of
14 residence, employment and, if appropriate, his or her plans
15 regarding education and post-release counseling and treatment
16 *Provided, That* an inmate's application for parole may be considered
17 by the board without the prior submission of a written parole plan,
18 but an inmate shall have a home plan approved by the board prior to
19 the inmate's release on parole. The Commissioner of Corrections or
20 his or her designee shall review the plan to be reviewed and
21 investigated and provide recommendations to the board as to the
22 suitability of the plan: *Provided, That* in cases in which there is
23 a mandatory thirty-day notification period required prior to the
24 release of the inmate, pursuant to section twenty-three of this

1 article, the board may conduct an initial interview and deny parole
2 without requiring the development of a plan. In the event the
3 board does not believe parole should be denied, it may defer a
4 final decision pending completion of an investigation and receipt
5 of recommendations. Upon receipt of the plan together with the
6 investigation and recommendation, the board, through a panel, shall
7 make a final decision regarding the granting or denial of parole;
8 and

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

11 (c) Except in the case of a person serving a life sentence, no
12 person who has been previously twice convicted of a felony may be
13 released on parole until he or she has served the minimum term
14 provided by law for the crime for which he or she was convicted.
15 A person sentenced for life may not be paroled until he or she has
16 served ten years, and a person sentenced for life who has been
17 previously twice convicted of a felony may not be paroled until he
18 or she has served fifteen years: *Provided*, That a person convicted
19 of first degree murder for an offense committed on or after June
20 10, 1994, is not eligible for parole until he or she has served
21 fifteen years.

22 (d) In the case of a person sentenced to any state
23 correctional center, it is the duty of the board, as soon as a
24 person becomes eligible, to consider the advisability of his or her

1 release on parole.

2 (e) If, upon consideration, parole is denied, the board shall
3 promptly notify the inmate of the denial. The board shall, at the
4 time of denial, notify the inmate of the month and year he or she
5 may apply for reconsideration and review. The board shall at least
6 once a year reconsider and review the case of every inmate who was
7 denied parole and is still eligible: *Provided*, That the board may
8 reconsider and review parole eligibility anytime within three years
9 following the denial of parole of an inmate serving a life sentence
10 with the possibility of parole.

11 (f) Any person serving a sentence on a felony conviction who
12 becomes eligible for parole consideration prior to being
13 transferred to a state correctional center may make written
14 application for parole. The terms and conditions for parole
15 consideration established by this article apply to such inmates.

16 (g) The board shall, with the approval of the Governor, adopt
17 rules governing the procedure in the granting of parole. No
18 provision of this article and none of the rules adopted hereunder
19 are intended or may be construed to contravene, limit or otherwise
20 interfere with or affect the authority of the Governor to grant
21 pardons and reprieves, commute sentences, remit fines or otherwise
22 exercise his or her constitutional powers of executive clemency.

23 (h) (1) The Division of Corrections shall promulgate policies
24 and procedures for developing a rehabilitation treatment plan

1 created with the assistance of a standardized risk and needs
2 assessment. The policies and procedures shall include, but not be
3 limited to, policy and procedures for provide for, at a minimum,
4 screening and selecting inmates for rehabilitation treatment and
5 development, and use of using standardized risk and needs
6 assessment and substance abuse assessment tools, and prioritizing
7 the use of residential substance abuse treatment resources based on
8 the results of the risk and needs assessment and a substance abuse
9 assessment.

10 (2) An inmate shall not be paroled under paragraph (B),
11 subdivision (1), subsection (b) of this section solely due to
12 having successfully completed a rehabilitation treatment plan but
13 completion of all the requirements of a rehabilitation parole
14 treatment plan along with compliance with the requirements of
15 subsection (b) of this section shall creates a rebuttable
16 presumption that parole is appropriate. The presumption created by
17 this subsection may be rebutted by a parole board finding that,
18 according to the risk assessment, at the time parole release is
19 sought the inmate still constitutes a reasonable risk to the safety
20 or property of other persons if released. Nothing in subsection
21 (b) of this section or in this subsection may be construed to
22 create a right to parole.

23 (i) Notwithstanding the provisions of subsection (b) of this
24 section, the parole board may, in its discretion, grant or deny

1 parole to an inmate against whom a detainer is lodged by a
2 jurisdiction other than West Virginia for service of a sentence of
3 incarceration, upon a written request for parole from the inmate.
4 A denial of parole under this subsection shall preclude
5 consideration for a period of one year or until the provisions of
6 subsection (b) of this section are applicable.

7 (j) Where an inmate is otherwise eligible for parole pursuant
8 to subsection (b) of this section and has completed the
9 rehabilitation treatment program required under subsection (h) of
10 this section, but the parole board determines may not require that
11 the inmate should participate in an additional program, or but may
12 determine that the inmate must complete an assigned task or tasks
13 prior to actual release on parole, the board may grant parole
14 contingently, effective upon successful completion of the program
15 or assigned task or tasks, without the need for a further hearing.
16 The Commissioner of Corrections shall provide notice to the Parole
17 Board of the imminent release of a contingently paroled inmate to
18 effectuate appropriate supervision.

19 (k) (1) The Division of Corrections is charged with the duty
20 of supervising all probationers and parolees whose supervision may
21 have been undertaken by this state by reason of any interstate
22 compact entered into pursuant to the uniform act for out-of-state
23 parolee supervision.

24 (2) The Division of Corrections is charged with the duties of

1 supervision, treatment and support services for all persons
2 released to mandatory supervision under section twenty-seven,
3 article five, chapter twenty-eight of this code.

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;

24 (C) On the inmate's industrial record while in custody which

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

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

11 (2) The board panel considering the parole may waive the
12 requirement of any report when not available or not applicable as
13 to any inmate considered for parole but, in every such case, shall
14 enter in the record thereof its reason for the waiver: *Provided,*
15 That in the case of an inmate who is incarcerated because the
16 inmate has been found guilty of, or has pleaded guilty to a felony
17 under the provisions of section twelve, article eight, chapter
18 sixty-one of this code or under the provisions of article eight-b
19 or eight-c of said chapter, the board panel may not waive the
20 report required by this subsection and the report is to include a
21 study and diagnosis including an on-going treatment plan requiring
22 active participation in sexual abuse counseling at an approved
23 mental health facility or through some other approved program:
24 *Provided, however,* That nothing disclosed by the person during the

1 study or diagnosis may be made available to any law-enforcement
2 agency, or other party without that person's consent, or admissible
3 in any court of this state, unless the information disclosed
4 indicates the intention or plans of the parolee to do harm to any
5 person, animal, institution or to property. Progress reports of
6 outpatient treatment are to be made at least every six months to
7 the parole officer supervising the person. In addition, in such
8 cases, the parole board shall inform the prosecuting attorney of
9 the county in which the person was convicted of the parole hearing
10 and shall request that the prosecuting attorney inform the parole
11 board of the circumstances surrounding a conviction or plea of
12 guilty, plea bargaining and other background information that might
13 be useful in its deliberations.

14 (m) Before releasing any inmate on parole, the board of parole
15 shall arrange for the inmate to appear in person before a parole
16 board panel and the panel may examine and interrogate him or her on
17 any matters pertaining to his or her parole, including reports
18 before the board made pursuant to the provisions hereof: *Provided,*
19 That an inmate may appear by video teleconference if the members of
20 the panel conducting the examination are able to contemporaneously
21 see the inmate and hear all of his or her remarks and if the inmate
22 is able to contemporaneously see each of the members of the panel
23 conducting the examination and hear all of the members' remarks.
24 The panel shall reach its own written conclusions as to the

1 desirability of releasing the inmate on parole and the majority of
2 the panel considering the release shall concur in the decision.
3 The warden or superintendent shall furnish all necessary assistance
4 and cooperate to the fullest extent with the parole board. All
5 information, records and reports received by the board are to be
6 kept on permanent file.

7 (n) The board and its designated agents are at all times to
8 have access to inmates imprisoned in any state correctional center
9 or in any jail in this state and may obtain any information or aid
10 necessary to the performance of its duties from other departments
11 and agencies of the state or from any political subdivision
12 thereof.

13 (o) The board shall, if so requested by the Governor,
14 investigate and consider all applications for pardon, reprieve or
15 commutation and shall make recommendation thereon to the Governor.

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

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

24 (r) Except for the amendments to this section contained in

1 subdivision (4), subsection (b) and subsection (i) of this section
2 the amendments to this section enacted during the 2010 regular
3 session of the Legislature shall become effective on January 1,
4 2011.

5 **§62-12-14a. Director of employment; Director of housing; released**
6 **inmates; duties.**

7 The board Commissioner of Corrections shall have authority to
8 may employ or contract for a director of employment and a director
9 of housing for paroled or pardoned prisoners released inmates. The
10 director of employment shall work with federal, state, county and
11 local government and private entities to negotiate agreements which
12 facilitate employment opportunities for released inmates. The
13 director of housing shall work with federal, state, county and local
14 government and private entities to negotiate agreements which
15 facilitate housing opportunities for released inmates. It shall be
16 the duty of The director of employment to shall investigate job
17 opportunities and to give every possible assistance in helping
18 prisoners, eligible to be paroled or who have been granted parole
19 under this article released inmates to find employment. The
20 director of housing shall work in conjunction with the parole
21 division and the board of parole to reduce release delays due to
22 lack of a home plan, develop community housing resources, and
23 provide short-term loans to released inmates for costs related to
24 reentry.

1 **§62-12-15. Powers and duties of state parole officers.**

2 (a) Each state parole officer shall:

3 (1) Investigate all cases referred to him or her for
4 investigation by the Commissioner of Corrections and shall report
5 in writing thereon; He or she or she shall furnish

6 (2) Update the standardized risk and needs assessment adopted
7 by the Division of Corrections under subsection (h), section
8 thirteen of this article for each person for whom an assessment has
9 not been conducted for parole by a specialized assessment officer;

10 (3) Supervise each person according to the assessment and
11 supervision standards determined by the commissioner;

12 (4) Furnish to each person released on parole under his or her
13 supervision a written statement of the conditions of his or her
14 parole together with a copy of the rules prescribed by the board,
15 as the case may be Commissioner of Corrections for the supervision
16 of parolees; He or she or she shall keep

17 (5) Keep informed concerning the conduct and condition of each
18 person under his or her supervision and shall report thereon in
19 writing as often as the Commissioner of Corrections may require;
20 He or she or she shall use

21 (6) Use all practicable and suitable methods to aid and
22 encourage persons on parole and to bring about improvement in their
23 conduct and condition; He or she or she shall keep

24 (7) Keep detailed records of his or her work; shall keep

1 (8) Keep accurate and complete accounts of and give receipts
2 for all money collected from persons under his or her supervision
3 and shall pay over the money to those persons a circuit court or the
4 Commissioner of Corrections may designate; He or she or she shall
5 give

6 (9) Give bond with good security, to be approved by the
7 Commissioner of Corrections, in a penalty of not less than \$1,000
8 nor more than \$3,000, as the Commissioner of Corrections may
9 determine; and also perform

10 (10) Perform any other duties the commissioner may require.

11 (b) He or she Each state parole officer has authority may, with
12 or without an order or warrant, to arrest or order confinement of
13 any parolee. He or she has all the powers of a notary public, with
14 authority to act anywhere within the state.

15 (c) The commissioner may issue a certificate authorizing any
16 parole officer who has successfully completed the division's
17 training program for firearms certification, which is the
18 equivalent of that required of deputy sheriffs, to carry firearms
19 or concealed weapons. Any parole officer authorized by the
20 commissioner has the right, without a state license, to carry
21 firearms and concealed weapons. Each parole officer, authorized by
22 the commissioner, shall carry with him or her a certificate
23 authorizing him or her to carry a firearm or concealed weapon
24 bearing the official signature of the commissioner.

1 **§62-12-17. Conditions of release on parole.**

2 (a) Release and supervision on parole of any person, including
3 the supervision by the Division of Corrections of any person paroled
4 by any other state or by the federal government, shall be upon the
5 following conditions:

6 (1) That the parolee may not, during the period of his or her
7 parole, violate any criminal law of this or any other state or of
8 the United States;

9 (2) That he or she may not, during the period of his or her
10 parole, leave the state without the consent of the division;

11 (3) That he or she shall comply with the rules prescribed by
12 the division for his or her supervision by the parole officer;

13 (4) That in every case in which the parolee for a conviction
14 is seeking parole from an offense against a child, defined in
15 section twelve, article eight, chapter sixty-one of this code; or
16 article eight-b or eight-d of said chapter, or similar convictions
17 from other jurisdictions where the parolee is returning or
18 attempting to return to this state pursuant to the provisions of
19 article six, chapter twenty-eight of this code, the parolee may not
20 live in the same residence as any minor child nor exercise
21 visitation with any minor child nor may he or she have any contact
22 with the victim of the offense; and

23 (5) That the parolee, and all federal or foreign state
24 probationers and parolees whose supervision may have been undertaken

1 by this state, is required to pay a fee, based on his or her ability
2 to pay, not to exceed \$40 per month to defray costs of supervision.

3 (b) The commissioner shall keep a record of all actions taken
4 and account for moneys received. No provision of this section
5 prohibits the division from collecting the fees and conducting the
6 checks upon the effective date of this section. All moneys shall
7 be deposited in a special account in the State Treasury to be known
8 as the "Parolee's Supervision Fee Fund". Expenditures from the fund
9 shall be for the purposes of providing parole supervision required
10 by the provisions of this code and are not authorized from
11 collections but are to be made only in accordance with appropriation
12 by the Legislature and in accordance with the provisions of article
13 three, chapter twelve of this code and upon the fulfillment of the
14 provisions set forth in article two, chapter five-a of this code.
15 Amounts collected which are found, from time to time, to exceed the
16 funds needed for purposes set forth in this article may be
17 transferred to other accounts or funds and redesignated for other
18 purposes by appropriation of the Legislature.

19 (c) The division shall consider the following factors in
20 determining whether a parolee or probationer is financially able to
21 pay the fee:

22 (1) Current income prospects for the parolee or probationer,
23 taking into account seasonal variations in income;

24 (2) Liquid assets of the parolee or probationer, assets of the

1 parolee or probationer that may provide collateral to obtain funds
2 and assets of the parolee or probationer that may be liquidated to
3 provide funds to pay the fee;

4 (3) Fixed debts and obligations of the parolee or probationer,
5 including federal, state and local taxes and medical expenses;

6 (4) Child care, transportation and other reasonably necessary
7 expenses of the parolee or probationer related to employment; and

8 (5) The reasonably foreseeable consequences for the parolee or
9 probationer if a waiver of, or reduction in, the fee is denied.

10 (d) In addition, the division may impose, subject to
11 modification at any time, any other conditions which the division
12 considers advisable.

13 (e) The division may order substance abuse treatment as a
14 condition or as a modification of parole only if the standardized
15 risk and needs assessment indicates the offender has a high risk for
16 reoffending and a need for substance abuse treatment.

17 (f) The division may impose as an initial condition of parole
18 a term of reporting to a day report center or other community
19 corrections program only if the standardized risk and needs
20 assessment indicates a moderate to high risk of reoffending and
21 moderate to high criminogenic need. Any parolee so placed shall be
22 subject to all the rules and regulations of the program and may be
23 removed at the discretion of the program director. The Commissioner
24 of Corrections shall enter into a master agreement with the Division

1 of Justice and Community Services to provide reimbursement to
2 counties for the use of community corrections programs by eligible
3 releasees. Any placement by the division of an offender in a day
4 report center or other community corrections program may only be
5 done with the program director's consent and any offender so placed
6 shall be subject to all of the rules and regulations of the program
7 and may be removed at the director's discretion.

8 **§62-12-19. Violation of parole.**

9 (a) If at any time during the period of parole there is
10 reasonable cause to believe that the parolee has violated any of the
11 conditions of his or her release on parole, the parole officer may
12 arrest him or her with or without an order or warrant, or the
13 Commissioner of Corrections may issue a written order or warrant for
14 his or her arrest, which written order or warrant is sufficient for
15 his or her arrest by any officer charged with the duty of executing
16 an ordinary criminal process. The commissioner's written order or
17 warrant delivered to the sheriff against the paroled prisoner shall
18 be a command to keep custody of the parolee for the jurisdiction of
19 the Division of Corrections and during the period of custody, the
20 parolee may be admitted to bail by the court before which the
21 parolee was sentenced. If the parolee is not released on a bond,
22 the costs of confining the paroled prisoner shall be paid out of the
23 funds appropriated for the Division of Corrections.

24 (1) If reasonable cause is found to exist that a parolee has

1 violated a term or terms of his or her release that does not
2 constitute absconding supervision or new criminal conduct other than
3 a minor traffic violation or simple possession of a controlled
4 substance, the parole officer may, after consultation with and
5 written approval by the director of parole services, for the first
6 violation, require the parolee to serve a period of confinement up
7 to sixty days, or, for the second violation, a period of confinement
8 up to one hundred twenty days: *Provided*, That the Division of
9 Corrections shall notify the parole board when a parolee is serving
10 such a term of confinement and the parole board may deny further
11 confinement. A parolee serving a term of confinement in the first
12 or second instance may be confined in jail or other facility
13 designated by the Commissioner, but shall be committed to the
14 custody of the Commissioner of Corrections, and the costs of
15 confining the parolee shall be paid out of funds appropriated for
16 the Division of Corrections: *Provided*, however, That upon written
17 request, the parolee shall be afforded the right to a hearing within
18 forty-five days before the parole board regarding whether he or she
19 violated the conditions of his or her release on parole.

20 (b) (2) When a parolee is under arrest in custody for a
21 violation of the conditions of his or her parole, he or she shall
22 be given a prompt and summary hearing before a panel of the board
23 upon his or her written request, at which the parolee and his or her
24 counsel are given an opportunity to attend.

1 (A) If at the hearing it ~~appears to the satisfaction of the~~
2 ~~panel~~ is determined that reasonable cause exists to believe that the
3 ~~parolee has violated any condition of his or her release on parole,~~
4 ~~or any rules or conditions of his or her supervision~~ absconded
5 supervision or committed new criminal conduct other than a minor
6 traffic violation or simple possession of a controlled substance,
7 the panel may revoke his or her parole and may require him or her
8 to serve in prison the remainder or any portion of his or her
9 maximum sentence for which, at the time of his or her release, he
10 or she was subject to imprisonment.

11 (B) If the hearing panel finds that reasonable cause exists to
12 believe that the parolee has violated a condition of release or
13 supervision or committed new criminal conduct consisting of a minor
14 traffic violation or simple possession of a controlled substance,
15 the panel shall require the parolee to serve, for the first
16 violation, a period of confinement up to sixty days, or, for the
17 second violation, a period of confinement up to one hundred twenty
18 days: *Provided,* That if the violation of the conditions of parole
19 or rules for his or her supervision is not a felony as set out in
20 section eighteen of this article, the panel may, if in its judgment
21 the best interests of justice do not require ~~revocation~~ a period of
22 confinement, reinstate him or her on parole. The Division of
23 Corrections shall effect release from custody upon approval of a
24 home plan.

1 (b) Notwithstanding any provision of this code to the contrary,
2 when reasonable cause has been found to believe that a parolee has
3 violated the conditions of his or her parole but the violation does
4 not constitute felonious conduct, the commissioner may, in his or
5 her discretion and with the written consent of the parolee, allow
6 the parolee to remain on parole with additional conditions or
7 restrictions. The additional conditions or restrictions may
8 include, but are not limited to, participation in any program
9 described in subsection (d), section five, article eleven-c of this
10 chapter. Compliance by the parolee with the conditions of parole
11 precludes revocation of parole for the conduct which constituted the
12 violation. Failure of the parolee to comply with the conditions or
13 restrictions and all other conditions of release is an additional
14 violation of parole and the parolee may be proceeded against under
15 the provisions of this section for the original violation as well
16 as any subsequent violations.

17 (c) When a parolee has violated the conditions of his or her
18 release on parole by confession to, or being convicted of, any of
19 the crimes set forth in section eighteen of this article, he or she
20 shall be returned to the custody of the Division of Corrections to
21 serve the remainder of his or her maximum sentence, during which
22 remaining part of his or her sentence he or she is ineligible for
23 further parole.

24 (d) Whenever the parole of a paroled prisoner has been revoked,

1 the commissioner shall, upon receipt of the panel's written order
2 of revocation, convey and transport the paroled prisoner to a state
3 correctional institution. A paroled prisoner whose parole has been
4 revoked shall remain in custody of the sheriff until delivery to a
5 corrections officer sent and duly authorized by the commissioner for
6 the removal of the paroled prisoner to a state penal institution;
7 the cost of confining the paroled prisoner shall be paid out of the
8 funds appropriated for the Division of Corrections.

9 (e) When a paroled prisoner is convicted of, or confesses to,
10 any one of the crimes enumerated in section eighteen of this
11 article, it is the duty of the board to cause him or her to be
12 returned to this state for a summary hearing as provided by this
13 article. Whenever a parolee has absconded supervision, the
14 commissioner shall issue a warrant for his or her apprehension and
15 return to this state for the hearing provided ~~for~~ in this article:
16 *Provided*, That the panel considering revocation may, if it
17 determines the best interests of justice do not require revocation,
18 cause the paroled absconder to be reinstated to parole.

19 (f) A warrant filed by the commissioner shall stay the running
20 of his or her sentence until the parolee is returned to the custody
21 of the Division of Corrections and physically in West Virginia.

22 (g) Whenever a parolee who has absconded supervision or has
23 been transferred out of this state for supervision pursuant to
24 section one, article six, chapter twenty-eight of this code is

1 returned to West Virginia due to a violation of parole and costs are
2 incurred by the Division of Corrections, the commissioner may assess
3 reasonable costs from the parolee's inmate funds or the parolee as
4 reimbursement to the Division of Corrections for the costs of
5 returning him or her to West Virginia.

6 (h) Conviction of a felony for conduct occurring during the
7 period of parole is proof of violation of the conditions of parole
8 and the hearing procedures required by the provisions of this
9 section are inapplicable.

10 (i) The Commissioner of the Division of Corrections may issue
11 subpoenas for persons and records necessary to prove a violation of
12 the terms and conditions of a parolee's parole either at a
13 preliminary hearing or at a final hearing before a panel of the
14 parole board. The subpoenas shall be served in the same manner
15 provided in the Rules of Criminal Procedure. The subpoenas may be
16 enforced by the commissioner through application or petition of the
17 commissioner to the circuit court for contempt or other relief.

18 **§62-12-29. Shared information for community supervision.**

19 (a) The administrative director of the Supreme Court of Appeals
20 of West Virginia is requested to assemble a Community Supervision
21 Committee, to include representatives of the judiciary, probation,
22 parole, day report centers, magistrates, sheriffs, corrections, and
23 other members at the discretion of the director. The director shall
24 appoint a chair from among the members, and attend the meeting ex

1 officio.

2 (b) The committee shall:

3 (1) Design and deploy a method for probation officers, parole
4 officers, day report centers and others providing community
5 supervision to share electronically offender information and
6 assessments;

7 (2) Coordinate information reporting and access across agencies
8 carrying out community supervision;

9 (3) Collect and share information about assessed and collected
10 restitution among supervision agencies;

11 (4) Collect sentencing-level data to enable study of sentencing
12 practices across the state; and

13 (5) Coordinate with the community corrections subcommittee of
14 the Governor's Committee on Crime, Delinquency and Correction in the
15 discharge of these duties.

16 (c) The committee shall submit, on or before September 30 of
17 each year, to the Governor, the Speaker of the House of Delegates,
18 the President of the Senate and, upon request, to any individual
19 member of the Legislature a report on its activities during the
20 previous year.

21 **ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.**

22 **§62-15-2. Definitions.**

23 For the purposes of this article:

24 (1) "Assessment" means a diagnostic evaluation to determine

1 whether and to what extent a person is a drug offender under this
2 article and would benefit from its provisions. The assessment shall
3 be conducted in accordance with the ~~standards, procedures, and~~
4 ~~diagnostic criteria designed to provide effective and~~
5 ~~cost-beneficial use of available resources~~ standardized risk and
6 needs assessment and risk cut-off scores adopted by the West
7 Virginia Supreme Court of Appeals.

8 (2) "Continuum of care" means a seamless and coordinated course
9 of substance abuse education and treatment designed to meet the
10 needs of drug offenders as they move through the criminal justice
11 system and beyond, maximizing self-sufficiency.

12 (3) "Controlled substance" means a drug or other substance for
13 which a medical prescription or other legal authorization is
14 required for purchase or possession.

15 (4) "Drug" means a controlled substance, an illegal drug, or
16 other harmful substance.

17 (5) "Drug court" means a judicial intervention process that
18 incorporates the Ten Key Components and may include preadjudication
19 or post-adjudication participation.

20 (6) "Drug court team" ~~may~~ shall consist of the following
21 members who are assigned to the drug court:

22 (A) The drug court judge, which may include a magistrate,
23 Mental Hygiene Commissioner, or other hearing officer;

24 (B) The prosecutor;

1 (C) The public defender or member of the criminal defense bar;

2 (D) A representative from the day report center or community
3 corrections program, if operating in the jurisdiction;

4 (E) A law-enforcement officer;

5 (F) The drug court coordinator;

6 (G) A representative from a circuit court probation office or
7 the division of parole supervision or both;

8 (H) One or more substance abuse treatment providers; and

9 (I) Any other persons selected by the drug court team.

10 (7) "Drug offender" means an adult person charged with a
11 drug-related offense or an offense in which substance abuse is
12 determined from the evidence to have been a factor in the commission
13 of the offense.

14 (8) "Dual Diagnosis" means a substance abuse and cooccurring
15 mental health disorder.

16 (9) "Local advisory committee" may consist of the following
17 members or their designees:

18 (A) Drug court circuit judge, who shall serve as chair;

19 (B) Drug court magistrate(s);

20 (C) Prosecutor;

21 (D) Public defender;

22 (E) Drug court coordinator;

23 (F) Criminal defense bar;

24 (G) Circuit clerk;

1 (H) Day report center director;

2 (I) Circuit court probation officer, parole officer or both;

3 (J) Law enforcement;

4 (K) One or more substance abuse treatment providers;

5 (L) Corrections representative; and

6 (M) Such other person or persons the chair deems appropriate.

7 (10) "Illegal drug" means a drug whose manufacture, sale, use
8 or possession is forbidden by law;

9 (11) "Memorandum of Understanding" means a written document
10 setting forth an agreed upon procedure.

11 (12) "Offender" means an adult charged with a criminal offense
12 punishable by incarceration.

13 (13) "Other harmful substance" means a misused substance
14 otherwise legal to possess, including alcohol.

15 (14) "Preadjudication" means a court order requiring a drug
16 offender to participate in drug court before charges are filed or
17 before conviction.

18 (15) "Post-adjudication" means a court order requiring a drug
19 offender to participate in drug court after having entered a plea
20 of guilty or *nolo contendere* or having been found guilty.

21 (16) "Recidivism" means any subsequent arrest for a serious
22 offense (carrying a sentence of at least one year) resulting in the
23 filing of a charge.

24 (17) "Relapse" means a return to substance use after a period

1 of abstinence.

2 (18) "Split sentencing" means a sentence which includes a
3 period of incarceration followed by a period of supervision.

4 (19) "Staffing" means the meeting before a drug offender's
5 appearance in drug court in which the drug court team discusses a
6 coordinated response to the drug offender's behavior.

7 (20) "Substance" means drug or alcohol.

8 (21) "Substance abuse" means the illegal or improper
9 consumption of a ~~drug~~ substance.

10 (22) "Substance abuse treatment" means a program designed to
11 provide prevention, education, and therapy directed toward ending
12 substance abuse and preventing a return to substance usage, a
13 continuum of care, including treatment of co-occurring substance
14 abuse and mental health issues, outpatient, intensive outpatient,
15 residential, peer support, relapse prevention and cognitive
16 behavioral programming, based on research about effective treatment
17 models for the offender population.

18 (23) "Ten Key Components" means the following benchmarks
19 intended to describe the very best practices, designs, and
20 operations of drug courts. These benchmarks are meant to serve as
21 a practical, yet flexible framework for developing effective drug
22 courts in vastly different jurisdictions and to provide a structure
23 for conducting research and evaluation for program accountability:

24 (A) Drug courts integrate alcohol and other drug treatment

1 services with justice system case processing;

2 (B) Using a nonadversarial approach, prosecution and defense
3 counsel promote public safety while protecting participants' due
4 process rights;

5 (C) Eligible participants are identified early and promptly
6 placed in the drug court program;

7 (D) Drug courts provide access to a continuum of alcohol, drug,
8 and other related treatment and rehabilitation services;

9 (E) Abstinence is monitored by frequent alcohol and other drug
10 testing;

11 (F) A coordinated strategy governs drug court responses to
12 participants' compliance;

13 (G) Ongoing judicial interaction with each drug court
14 participant is essential;

15 (H) Monitoring and evaluation measure the achievement of
16 program goals and gauge effectiveness;

17 (I) Continuing interdisciplinary education promotes effective
18 drug court planning, implementation, and operations; and

19 (J) Forging partnerships among drug courts, public agencies and
20 community-based organizations generates local support and enhances
21 drug court effectiveness.

22 (24) "Treatment supervision" means a program in which a
23 participant is ordered in lieu of a sentence of incarceration which
24 includes treatment for substance abuse.

1 **§62-15-6a. Treatment supervision.**

2 (a) A felony drug offender is eligible for treatment
3 supervision only if the offender would otherwise be sentenced to
4 prison, and the risk assessment indicates the offender has a high
5 risk for reoffending and a need for substance abuse treatment. As
6 a condition of drug court or as a term of probation or as a
7 modification of probation, treatment supervision may be imposed on
8 an eligible drug offender convicted of a felony. Whenever a circuit
9 judge determines that a participant has committed a violation of
10 his or her conditions of treatment involving the participant's use
11 of alcohol or a controlled substance which would, in the judge's
12 opinion, warrant a period of incarceration to encourage compliance
13 with program requirements, the cost of said incarceration, not to
14 exceed a period of thirty days in any one instance, shall be paid
15 by the Division of Corrections upon written finding by the judge
16 that the participant would otherwise be sentenced to the custody of
17 the Commissioner of Corrections for service of the underlying
18 sentence. Whenever a circuit judge incarcerates a participant
19 pursuant to this section a copy of the order of confinement shall
20 be provided by the clerk of the circuit court within five days to
21 the Commissioner of Corrections: *Provided*, That a judge may impose
22 treatment supervision on a drug offender convicted of a felony,
23 notwithstanding the results of the risk assessment, upon making
24 specific written findings of fact as to the reason for departing

1 from the requirements of this subsection. This subsection takes
2 effect January 1, 2014.

3 (b) The Division of Justice and Community Services shall use
4 appropriated funds to develop proposed substance abuse treatment
5 plans to serve those under treatment supervision in each judicial
6 circuit and on parole supervision, in consultation with the
7 Governor's Advisory Council on Substance Abuse, created by Executive
8 Order No. 5-11.

9 (c) The Division of Justice and Community Services, in
10 consultation with the Governor's Advisory Committee on Substance
11 Abuse, shall develop:

12 (1) Qualifications for provider certification to deliver a
13 continuum of care to offenders;

14 (2) Fee reimbursement procedures; and

15 (3) Other matters related to the quality and delivery of
16 services.

17 (d) The Division of Justice and Community Services shall
18 require education and training which shall include, but not be
19 limited to, cognitive behavior training. The duties of providers
20 who provide services under this program may include notifying the
21 probation department and the court of any offender failing to meet
22 the conditions of probation or referrals to treatment, appearing at
23 revocation hearings as may be required, and providing assistance
24 data reporting and program evaluation.

1 (e) The cost for all drug abuse assessments and certified drug
2 treatment under this section and subsection (e), section seventeen,
3 article twelve of this chapter shall be paid by the Division of
4 Justice and Community Services from funds appropriated for such
5 purpose. The Division of Justice and Community Services shall
6 contract for payment for such services provided to eligible
7 offenders.

8 (f) The Division of Justice and Community Services, in
9 consultation with the Governor's Advisory Council on Substance
10 Abuse, shall submit on or before September 30 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 on:

14 (1) The dollar amount and purpose of funds provided for the
15 fiscal year;

16 (2) The number of people on treatment supervision who received
17 services and whether they were the result of a direct sentence or
18 in lieu of revocation;

19 (3) The number of people on treatment supervision who received
20 services despite the risk assessment indicating less than high risk
21 for reoffending and a need for substance abuse treatment, pursuant
22 to a judge's specific written findings of fact;

23 (4) The type of services provided;

24 (5) The rate of revocations and successful completions for

1 people who received services;

2 (6) The number of people under supervision receiving treatment
3 under this section who are rearrested and confined within two years
4 of being placed under supervision;

5 (7) The dollar amount needed to provide services in the
6 upcoming year to meet demand and the projected impact of reductions
7 in program funding on cost and public safety measures; and

8 (8) Other measures as appropriate to measure the availability
9 of treatment and the effectiveness of services.

10

11 (g) With the exception of subsection (a), the provisions of this
12 section shall take effect on July 1, 2013.

13 **§62-15-6b. Intermediate incarceration sanctions for drug court**

14 **participants; responsibility for costs of**
15 **incarceration.**

16 (a) Whenever a judge of a drug court determines that a
17 participant who has pled to a felony offense is determined by the
18 judge to have committed a violation of his or her conditions of
19 participation which would, in the judge's opinion, warrant a period
20 of incarceration to encourage compliance with program requirements,
21 the cost of said incarceration, not to exceed a period of thirty
22 days in any one instance, shall be paid by the Division of
23 Corrections upon a written finding by the judge that the participant
24 would otherwise be sentenced to the custody of the Commissioner of

1 Corrections for service of the underlying sentence.

2 (b) Whenever a drug court incarcerates a participant pursuant
3 to subsection (a) of this section the clerk of the circuit court a
4 copy of confinement shall be provided within five days to the
5 Commissioner of Corrections.