

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

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

1 report center or other community corrections program as a
2 condition of probation; authorizing day reporting center
3 programs to provide services based on the results of a
4 person's standardized risk and needs assessment; providing for
5 graduated sanctions in response to violations of the
6 conditions of release on probation other than absconding or
7 committing a misdemeanor or felony; revising eligibility
8 requirements for accelerated parole program; requiring that
9 Division of Corrections' policies and procedures for
10 developing a rehabilitation treatment plan include the use of
11 substance abuse assessment tools and prioritize treatment
12 resources based on the risk and needs assessment and substance
13 abuse assessment results; providing for rebuttable presumption
14 that parole is appropriate for inmates completing the
15 accelerated parole program and a rehabilitation treatment
16 program; providing standards and limitations for Parole Board;
17 outlining duties of the Division of Corrections to supervise,
18 treat and provide support services for all people released on
19 mandatory supervised release; removing temporal standard for
20 requirement that the Parole Board have access to a copy of an
21 inmate's physical, mental or psychiatric examination;
22 authorizing employment of a director of housing for released

1 inmates with duties relating to the reduction of parole
2 release delays; 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; providing for graduated sanctions in
17 response to violations of the conditions of release on parole
18 other than absconding or committing a misdemeanor or felony;
19 providing a parolee with the right to a hearing, upon request,
20 regarding whether he or she violated the conditions of his or
21 her release on parole; providing for a Community Supervision
22 Committee to be appointed by the Administrative Director of

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

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

17 That §25-1-15 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted; that §28-5-27 of said code be amended and
19 reenacted; that said code be amended by adding thereto two new
20 sections, designated §31-20-5g and §31-20-5h; that §61-7-6 of said
21 code be amended and reenacted; that §62-11A-1a of said code be
22 amended and reenacted; that §62-11B-9 of said code be amended and

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

10 **CHAPTER 25. DIVISION OF CORRECTIONS.**

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

12 **§25-1-15. Diagnostic and classification divisions.**

13 (a) The Commissioner of Corrections may establish diagnostic
14 and classification divisions.

15 (b) Notwithstanding any provision of the code to the contrary,
16 all persons committed to the custody of the Commissioner of the
17 Division of Corrections for presentence diagnosis and
18 classification and all persons sentenced to the custody of the
19 Division of Corrections shall, upon transfer to the Division of
20 Corrections, undergo diagnosis and classification, which ~~may~~ shall
21 include: (1) Assessments of a person's criminogenic risk and need
22 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 by subsections (l) and (m), each inmate

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

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

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

16 (f) The Commissioner of Corrections shall promulgate separate
17 disciplinary rules for each institution under his or her control in
18 which adult felons are incarcerated, which rules shall describe
19 acts which inmates are prohibited from committing, procedures for
20 charging individual inmates for violation of such rules and for
21 determining the guilt or innocence of inmates charged with such
22 violations and the sanctions which may be imposed for such

1 violations. A copy of such rules shall be given to each inmate.
2 For each such violations, by an inmate so sanctioned, any part or
3 all of the good time which has been granted to such inmate pursuant
4 to this section may be forfeited and revoked by the warden or
5 superintendent of the institution in which the violation occurred.
6 The warden or superintendent, when appropriate and with approval of
7 the commissioner, may restore any good time so forfeited.

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

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

21 (i) The Commissioner of Corrections may, with the approval of
22 the Governor, allow extra good time for inmates who perform

1 exceptional work or service.

2 (j) In order to ensure equitable good time for all inmates now
3 in the custody of the Commissioner of Corrections or hereafter
4 committed to the custody of such commissioner, except as to those
5 persons committed pursuant to article four, chapter twenty-five of
6 this code, all good times shall be computed according to this
7 section and all previous computations of good time under prior
8 statutes or regulations are hereby voided. All inmates who have
9 previously forfeited good time are hereby restored to good time
10 computed according to this section and all inmates will receive a
11 new discharge date computed according to this section. All inmates
12 that have been awarded overtime good time or extra good time
13 pursuant to sections twenty-seven-a and twenty-seven-b of this
14 article which are repealed simultaneously with the amendment to
15 this section during the regular session of the Legislature in the
16 year 1984, shall receive such good time in addition to the good
17 time computed according to this section.

18 (k) There shall be no grants or accumulations of good time or
19 credit to any inmate now or hereafter serving a sentence in the
20 custody of the ~~Department~~ Division of Corrections except in the
21 manner provided in this section.

22 (l) For purposes of this section, a violent inmate is a person

1 who is serving a sentence for a crime of violence against the
2 person, a felony offense involving the use of a firearm, or a
3 felony offense where the victim was a minor child, as those terms
4 are defined in section thirteen, article twelve, chapter sixty-two
5 of this code. Within one hundred eighty days prior to the
6 calculated discharge date of a violent inmate who has not been
7 paroled, from the accumulated good conduct time for the violent
8 inmate, a maximum of one year shall be deducted to provide for a
9 maximum of one year of mandatory supervision. This subsection
10 applies to offenses committed on or after July 1, 2013.

11 (m) For purposes of this section, a nonviolent inmate is a
12 person who is not serving a sentence for a crime of violence
13 against the person, a felony offense involving the use of a
14 firearm, or a felony offence where the victim was a minor child, as
15 those terms are defined in section thirteen, article twelve,
16 chapter sixty-two of this code. A nonviolent inmate who has not
17 been paroled shall be released to mandatory supervision one hundred
18 eighty days prior to the calculated discharge date. This
19 subsection applies to offenses committed before, on or after July
20 1, 2013.

21 (n) The Commissioner of Corrections shall adopt policies for
22 setting conditions and responding to violations by inmates on

1 mandatory supervision under subsections (l) and (m).

2 **CHAPTER 31. CORPORATIONS.**

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

4 **AUTHORITY.**

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

6 For each defendant arrested and placed in regional jail, the
7 authority shall utilize a standardized pretrial risk screening
8 instrument, as adopted by the Supreme Court of Appeals of West
9 Virginia, to provide information to magistrates and circuit courts
10 within three calendar days of the placement of the defendant in
11 jail.

12 **§31-20-5h. Programs for inmates committed to prison.**

13 The authority shall develop and implement cognitive behavioral
14 programming to address the needs of inmates in regional jail but
15 committed to the custody of the Commissioner of Corrections. The
16 program shall be developed in consultation with and approved by the
17 Division of Corrections, may be offered by video teleconference or
18 webinar technology, and may be offered to any inmate of the
19 authority, but not to the exclusion of an inmate committed to the
20 custody of the Commissioner of Corrections. The costs of such
21 programming shall be paid out of funds appropriated for the
22 Division of Corrections. The programming shall be covered by the

1 rehabilitation plan policies and procedures adopted by the Division
2 of Corrections under subsection (h) of section thirteen, article
3 twelve, chapter sixty-two of this code.

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

5 **ARTICLE 7. DANGEROUS WEAPONS.**

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

8 The licensure provisions set forth in this article do not
9 apply to:

10 (1) Any person carrying a deadly weapon upon his or her own
11 premises; nor shall anything herein prevent a person from carrying
12 any firearm, unloaded, from the place of purchase to his or her
13 home, residence or place of business or to a place of repair and
14 back to his or her home, residence or place of business, nor shall
15 anything herein prohibit a person from possessing a firearm while
16 hunting in a lawful manner or while traveling from his or her home,
17 residence or place of business to a hunting site and returning to
18 his or her home, residence or place of business;

19 (2) Any person who is a member of a properly organized
20 target-shooting club authorized by law to obtain firearms by
21 purchase or requisition from this state or from the United States
22 for the purpose of target practice from carrying any pistol, as

1 defined in this article, unloaded, from his or her home, residence
2 or place of business to a place of target practice and from any
3 place of target practice back to his or her home, residence or
4 place of business, for using any such weapon at a place of target
5 practice in training and improving his or her skill in the use of
6 the weapons;

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

10 (4) Any employee of the West Virginia Division of Corrections
11 duly appointed pursuant to the provisions of section ~~five~~ eleven-c,
12 article ~~five~~ one, chapter ~~twenty-eight~~ twenty-five of this code
13 while the employee is on duty and any parole officer appointed
14 pursuant to section fourteen, article twelve, chapter sixty-two of
15 this code;

16 (5) Any member of the Armed Forces of the United States or the
17 militia of this state while the member is on duty;

18 (6) Any circuit judge, including any retired circuit judge
19 designated senior status by the Supreme Court of Appeals of West
20 Virginia, prosecuting attorney, assistant prosecuting attorney or
21 a duly appointed investigator employed by a prosecuting attorney;

22 (7) Any resident of another state who holds a valid license to

1 carry a concealed weapon by a state or a political subdivision
2 which has entered into a reciprocity agreement with this state,
3 subject to the provisions and limitations set forth in section
4 six-a of this article;

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

8 (9) Any Hatfield-McCoy regional recreation authority ranger
9 while the ranger is on duty.

10 **CHAPTER 62. CRIMINAL PROCEDURE.**

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

12 **§62-11A-1a. Other sentencing alternatives.**

13 (a) Any person who has been convicted in a circuit court or in
14 a magistrate court under any criminal provision of this code of a
15 misdemeanor or felony, which is punishable by imposition of a fine
16 or confinement in the regional jail or a state correctional
17 facility, or both fine and confinement, may, in the discretion of
18 the sentencing judge or magistrate, as an alternative to the
19 sentence imposed by statute for the crime, be sentenced under one
20 of the following programs:

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

1 jail;

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

12 (3) The community service program under which persons
13 sentenced would spend no time in jail but would be sentenced to a
14 number of hours or days of community service work with government
15 entities or charitable or nonprofit entities approved by the
16 circuit court. Regarding any portion of the sentence designated as
17 confinement, eight hours of community service work is to be
18 credited as one day of the sentence imposed. Regarding any portion
19 of the sentence designated as a fine, the fine is to be credited at
20 an hourly rate equal to the prevailing federal minimum wage at the
21 time the sentence was imposed. In the discretion of the court, the
22 sentence credits may run concurrently or consecutively. Persons

1 sentenced under this program may be required to provide their own
2 transportation to and from the work site, lunch and work clothes.

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

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

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

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

19 (2) In circuit court cases, that the person sentenced is not
20 a habitual criminal within the meaning of sections eighteen and
21 nineteen, article eleven, chapter sixty-one of this code;

22 (3) In circuit court cases, that the offense underlying the

1 sentence is not a felony offense for which violence or the threat
2 of violence to the person is an element of the offense;

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

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

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

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

20 (f) Persons sentenced under the provisions of this section
21 remain under the jurisdiction of the court. The court may withdraw
22 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 the person sentenced must be identified as
14 moderate to high risk of reoffending and moderate to high
15 criminogenic need, as defined by the standardized risk and needs
16 assessment adopted by the Supreme Court of Appeals of West Virginia
17 under subsection (d), section six, article twelve of this chapter,
18 and applied by a probation officer or day report staff: *Provided*,
19 That a judge may impose a period of supervision or participation in
20 a community corrections program, notwithstanding the results of the
21 standardized risk and needs assessment, upon making specific
22 written findings of fact as to the reason for departing from the

1 requirements of this section.

2 (h) Magistrates may only use a period of supervision or
3 participation in a community corrections program with the periodic
4 consent from the supervising judge or chief judge of the judicial
5 circuit in which he or she presides, defining the number of people
6 the magistrate may place, and any constraints on their
7 characteristics or the programs they may attend.

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

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

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

17 (b) If at any time during the period of home incarceration
18 there is reasonable cause to believe that a participant sentenced
19 to home incarceration by the circuit court has violated the terms
20 and conditions of the court's order of home incarceration and said
21 participant's participation was imposed as an alternative sentence
22 to another form of incarceration, said participant shall be subject

1 to the same procedures involving confinement and revocation as
2 would a probationer charged with a violation of the order of home
3 incarceration. Any participant under an order of home
4 incarceration shall be subject to the same penalty or penalties,
5 upon the circuit court's finding of a violation of the order of
6 home incarceration, as he or she could have received at the initial
7 disposition hearing: *Provided*, That the participant shall receive
8 credit towards any sentence imposed after a finding of violation
9 for the time spent in home incarceration.

10 (c) If at any time during the period of home incarceration
11 there is reasonable cause to believe that a participant sentenced
12 to home incarceration by a magistrate has violated the terms and
13 conditions of the magistrate's order of home incarceration as an
14 alternative sentence to incarceration in jail, the supervising
15 authority may arrest the participant upon the obtaining of an order
16 or warrant and take the offender before a magistrate within the
17 county of the offense. The magistrate shall then conduct a prompt
18 and summary hearing on whether the participant's home incarceration
19 should be revoked. If it appears to the satisfaction of the
20 magistrate that any condition of home incarceration has been
21 violated, the magistrate may revoke the home incarceration and
22 order that the sentence of incarceration in jail be executed. Any

1 participant under an order of home incarceration shall be subject
2 to the same penalty or penalties, upon the magistrate's finding of
3 a violation of the order of home incarceration, as the participant
4 could have received at the initial disposition hearing: *Provided,*
5 That the participant shall receive credit towards any sentence
6 imposed after a finding of violation for the time spent in home
7 incarceration.

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

9 **§62-11C-2. Community Corrections Subcommittee.**

10 (a) A Community Corrections Subcommittee of the Governor's
11 Committee on Crime, Delinquency and Correction is hereby created
12 and assigned responsibility for screening community corrections
13 programs submitted by community criminal justice boards or from
14 other entities authorized by the provisions of this article to do
15 so for approval for funding by the Governor's Committee and for
16 making recommendations as to the disbursement of funds for approved
17 community corrections programs. The subcommittee is to be
18 comprised of fifteen members of the Governor's Committee including:
19 A representative of the Division of Corrections, a representative
20 of the Regional Jail and Correctional Facility Authority, a
21 representative of the Bureau for Behavioral Health and Health
22 Facilities, a person representing the interests of victims of

1 crime, an attorney employed by a public defender corporation, an
2 attorney who practices criminal law, a prosecutor and a
3 representative of the West Virginia Coalition Against Domestic
4 Violence. At the discretion of the West Virginia Supreme Court of
5 Appeals, the Administrator of the Supreme Court of Appeals, a
6 probation officer and a circuit judge may serve on the subcommittee
7 as ex officio, nonvoting members.

8 (b) The subcommittee shall elect a chairperson and a vice
9 chairperson. The subcommittee shall meet quarterly. Special
10 meetings may be held upon the call of the chairperson, vice
11 chairperson or a majority of the members of the subcommittee. A
12 majority of the members of the subcommittee constitute a quorum.

13 **§62-11C-3. Duties of the Governor's Committee and the Community**
14 **Corrections Subcommittee.**

15 (a) Upon recommendation of the Community Corrections
16 Subcommittee, the Governor's Committee shall propose for
17 legislative promulgation in accordance with the provisions of
18 article three, chapter twenty-nine-a of this code, emergency and
19 legislative rules to:

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

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

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

6 (4) Establish reporting requirements for community corrections
7 programs; and

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

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

11 (1) Maintain records of community corrections programs
12 including the corresponding community criminal justice board or
13 other entity contact information and annual program evaluations,
14 when available;

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

18 (3) Provide funding for approved community corrections
19 programs, as available.

20 (c) The Governor's Committee shall submit, on or before
21 September 30 of each year, to the Governor, the Speaker of the
22 House of Delegates, the President of the Senate and, upon request,

1 to any individual member of the Legislature a report on its
2 activities during the previous year and an accounting of funds paid
3 into and disbursed from the special revenue account established
4 pursuant to section four of this article.

5 (d) The subcommittee shall review the implementation of
6 evidence-based practices and conduct regular assessments for
7 quality assurance of all community-based criminal justice services,
8 including day report centers, probation, parole and home
9 confinement. In consultation with the affected operational
10 agencies, the subcommittee shall establish a process for reviewing
11 performance. The process shall include review of agency
12 performance measures and identification of new measures by the
13 subcommittee if necessary for measuring the implementation of
14 evidence-based practices or for quality assurance. After providing
15 an opportunity for the affected operational agencies to comment,
16 the subcommittee shall submit, on or before September 30 of each
17 year, to the Governor, the Speaker of the House of Delegates, the
18 President of the Senate and, upon request, to any individual member
19 of the Legislature a report on its activities and results from
20 assessment of performance during the previous year.

21 **§62-11C-6. Community criminal justice boards.**

22 (a) Each county or combination of counties or a county or

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

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

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

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

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

22 (2) The prosecutor or, if the board represents more than one

1 county, at least one prosecutor from the counties represented;

2 (3) If a public defender corporation exists in the county or
3 counties represented, at least one attorney employed by any public
4 defender corporation existing in the counties represented or, if no
5 public defender office exists, one criminal defense attorney from
6 the counties represented;

7 (4) One member to be appointed by the local board of education
8 or, if the board represents more than one county, at least one
9 member appointed by a board of education of the counties
10 represented;

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

14 (6) Two members who can represent organizations or programs
15 advocating for the rights of victims of crimes with preference
16 given to organizations or programs advocating for the rights of
17 victims of the crimes of domestic violence or driving under the
18 influence; ~~and~~

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

22 ~~(7)~~ (8) Three at-large members to be appointed by the

1 commission or commissions of the county or counties represented by
2 the board.

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

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

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

8 (3) A probation officer from the county or counties
9 represented.

10 (f) Community criminal justice boards may:

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

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

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

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

20 (g) If a community criminal justice board represents more than
21 one county, the appointed membership of the board, excluding any ex
22 officio members, shall include an equal number of members from each

1 county, unless the county commission of each county agrees in
2 writing otherwise.

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

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

13 **§62-11C-10. Standardized risk and needs assessment; annual**
14 **reviews; and day report services.**

15 The Division of Justice and Community Services shall:

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

20 (b) Annually conduct a validation study of inter-rater
21 reliability and risk cut-off scores by population to ensure that
22 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;

1 (3) Supervise the probationer and enforce probation according
2 to assessment and supervision standards adopted by the Supreme
3 Court of Appeals of West Virginia;

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

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

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

17 (7) 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

1 supervised release has violated a condition of release. A person
2 on supervised release so arrested shall be brought before the court
3 for a prompt and summary hearing.

4 ~~(b)~~ (c) Notwithstanding any provision of this code to the
5 contrary:

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

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

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

20 (d) The Supreme Court of Appeals of West Virginia is
21 authorized to adopt a standardized risk and needs assessment with
22 risk cut off scores for use by probation officers, taking into

1 consideration the assessment instrument adopted by the Division of
2 Corrections under subsection (h), section thirteen of this article.
3 The Supreme Court shall also take into consideration the
4 responsibility of the Division of Justice and Community Services to
5 evaluate the use of the standardized risk and needs assessment.

6 **§62-12-7. Pretrial and preliminary investigation; report on**
7 **prospective probationers.**

8 (a) The Supreme Court of Appeals of West Virginia is
9 authorized to adopt a pretrial screening instrument for use by the
10 Regional Jail Authority to assist magistrates and circuit courts in
11 making pretrial decisions under article one-c of this chapter based
12 on risk of nonappearance and reoffending.

13 (b) ~~When~~ Unless otherwise directed by the court, the probation
14 officer shall, in the form adopted by the Supreme Court of Appeals
15 of West Virginia, make a careful investigation of, and a written
16 report with recommendations concerning, any prospective
17 probationer. Insofar as practicable this report shall include
18 information concerning the offender's court and criminal record,
19 occupation, family background, education, habits and associations,
20 mental and physical condition, the names, relationship, ages and
21 condition of those dependent upon him or her for support and such
22 other facts as may aid the court in determining the propriety and

1 conditions of his or her release on probation. No person convicted
2 of a felony or of any offense described in article eight-b or
3 eight-d, chapter sixty-one of this code against a minor child may
4 be released on probation until this report shall have been
5 presented to and considered by the court. The court may in its
6 discretion request such a report concerning any person convicted of
7 a misdemeanor. The presentence report of any person convicted of
8 an offense, described in said articles or section twelve, article
9 eight of said chapter, may include a statement from a therapist,
10 psychologist or physician who is providing treatment to the child.
11 A copy of all reports shall be filed with the board of probation
12 and parole.

13 **§62-12-9. Conditions of release on probation.**

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

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

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

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

1 (4) That in every case wherein the probationer has been
2 convicted of an offense defined in section twelve, article eight,
3 chapter sixty-one of this code or article eight-b or eight-d of
4 said chapter, against a child, the probationer may not live in the
5 same residence as any minor child, nor exercise visitation with any
6 minor child and has no contact with the victim of the offense:
7 *Provided*, That the probationer may petition the court of the
8 circuit wherein he or she was convicted for a modification of this
9 term and condition of his or her probation and the burden rests
10 upon the probationer to demonstrate that a modification is in the
11 best interest of the child;

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

21 (6) That the probationer is required to pay the fee described
22 in section four, article eleven-c of this chapter: *Provided*, That

1 the court conducts a hearing prior to imposition of probation and
2 makes a determination on the record that the offender is able to
3 pay the fee without undue hardship.

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

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

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

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

21 (4) That he or she, in the discretion of the court, be
22 required to serve a period of confinement in jail of the county in

1 which he or she was convicted for a period not to exceed one third
2 of the minimum sentence established by law or one third of the
3 least possible period of confinement in an indeterminate sentence,
4 but in no case may the period of confinement exceed six consecutive
5 months. The court has the authority to sentence the defendant
6 within the six-month period to intermittent periods of confinement
7 including, but not limited to, weekends or holidays and may grant
8 to the defendant intermittent periods of release in order that he
9 or she may work at his or her employment or for other reasons or
10 purposes as the court may deem appropriate: *Provided*, That the
11 provisions of article eleven-a of this chapter do not apply to
12 intermittent periods of confinement and release except to the
13 extent that the court may direct. If a period of confinement is
14 required as a condition of probation, the court shall make special
15 findings that other conditions of probation are inadequate and that
16 a period of confinement is necessary.

17 (c) Circuit courts may impose a term of reporting to a day
18 report center or other community corrections program as a condition
19 of probation under this section.

20 (1) To be eligible, the probationer must be identified as
21 moderate to high risk of reoffending and moderate to high
22 criminogenic need, as defined by the standardized risk and needs

1 assessment adopted by the Supreme Court of Appeals of West Virginia
2 under subsection (d), section six of this article, and applied by
3 a probation officer or day report staff. In eligible cases,
4 circuit courts may impose a term of up to one year: *Provided, That*
5 a judge may impose a term of reporting to a day report center or
6 other community corrections program under this section,
7 notwithstanding the results of the standardized risk and needs
8 assessment, upon making specific written findings of fact as to the
9 reason for departing from the requirements of this section.

10 (2) The day reporting center programs shall determine which
11 services a person receives based on the results of the standardized
12 risk and needs assessment and taking into consideration the other
13 conditions of probation set by the court. For the purposes of this
14 article, "day report center" means a court-operated or
15 court-approved facility where persons ordered to serve a sentence
16 in this type of facility are required to report under the terms and
17 conditions set by the court for purposes which include, but are not
18 limited to, counseling, employment training, alcohol or drug
19 testing or other medical testing.

20 **§62-12-10. Violation of probation.**

21 (a) If at any time during the period of probation there shall
22 be is reasonable cause to believe that the probationer has violated

1 any of the conditions of his or her probation, the probation
2 officer may arrest him or her with or without an order or warrant,
3 or the court which placed him or her on probation, or the judge
4 thereof in vacation, may issue an order for his or her arrest,
5 whereupon he or she shall be brought before the court, or the judge
6 thereof in vacation, for a prompt and summary hearing.

7 (1) If it ~~shall then~~ appears to the satisfaction of the court
8 or judge that ~~any condition of probation has been violated~~ the
9 probationer absconded supervision or committed a misdemeanor or
10 felony, the court or judge may revoke the suspension of imposition
11 or execution of sentence, impose sentence if none has been imposed,
12 and order that sentence be executed. In computing the period for
13 which the offender is to be ~~imprisoned~~ confined, the time between
14 his or her release on probation and his or her arrest ~~shall may~~ not
15 be taken to be any part of the term of his or her sentence.

16 (2) If it ~~sha~~ instead appears to the satisfaction of the court
17 or judge that the probationer violated any condition of supervision
18 other than absconding or committing a misdemeanor or felony, then,
19 for the first violation, the court or judge may impose a period of
20 confinement up to sixty days, or, for the second violation, a
21 period of confinement up to one hundred twenty days. For the third
22 violation, the court or judge may revoke the suspension of

1 imposition or execution of sentence, impose sentence if none has
2 been imposed, and order that sentence be executed, with credit for
3 time spent in confinement under this section. If the time
4 remaining on the probationer's maximum imposed sentence is less
5 than the maximum period of confinement, then the term of
6 confinement is for the remaining period of the sentence. In
7 computing the period for which the offender is to be confined, the
8 time between his or her release on probation and his or her arrest
9 ~~shall~~ may not be taken to be any part of the term of his or her
10 sentence.

11 (b) A probationer confined in the first or second instance in
12 which it ~~shall~~ appears to the satisfaction of the court or judge
13 that the probationer violated any condition of supervision other
14 than absconding or committing a misdemeanor or felony, may be
15 confined in jail, and the costs of confining felony probationers
16 shall be paid out of funds appropriated for the Division of
17 Corrections.

18 (c) If, despite a violation of the conditions of probation,
19 the court or judge ~~shall be~~ is of the opinion that the interests of
20 justice do not require that the probationer serve his or her
21 sentence or a period of confinement, the court or judge may, except
22 when the violation was the commission of a felony, again release

1 him or her on probation: Provided, That a judge may otherwise
2 depart from the requirements of subdivisions (1) and (2) of
3 subsection (a) of this section upon making specific written
4 findings of fact supporting the departure in this instance.

5 **§62-12-13. Powers and duties of board; eligibility for parole;**
6 **procedure for granting parole.**

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

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

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

17 (B) He or she:

18 (i) Has applied for and been accepted by the Commissioner of
19 Corrections into an accelerated parole program;

20 (ii) Does not have a prior criminal conviction for a felony
21 crime of violence against the person, a felony offense involving
22 the use of a firearm, or a felony offense where the victim was a

1 minor child;

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

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

10 ~~(v)~~ (iv) Has successfully completed a rehabilitation treatment
11 program created with the assistance of a standardized risk and
12 needs assessment;

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

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

20 (C) Notwithstanding any provision of this code to the
21 contrary, any person who committed, or attempted to commit a felony
22 with the use, presentment or brandishing of a firearm, is not

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

1 presentment upon which the matter is being tried; and

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

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

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

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

14 (4) Has prepared and submitted to the board a written parole
15 release plan setting forth proposed plans for his or her place of
16 residence, employment and, if appropriate, his or her plans
17 regarding education and post-release counseling and treatment. The
18 Commissioner of Corrections or his or her designee shall review the
19 plan to be reviewed and investigated and provide recommendations to
20 the board as to the suitability of the plan: *Provided*, That in
21 cases in which there is a mandatory thirty-day notification period
22 required prior to the release of the inmate, pursuant to section

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

1 correctional center, it is the duty of the board, as soon as a
2 person becomes eligible, to consider the advisability of his or her
3 release on parole.

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

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

18 (g) The board shall, with the approval of the Governor, adopt
19 rules governing the procedure in the granting of parole. No
20 provision of this article and none of the rules adopted hereunder
21 are intended or may be construed to contravene, limit or otherwise
22 interfere with or affect the authority of the Governor to grant

1 pardons and reprieves, commute sentences, remit fines or otherwise
2 exercise his or her constitutional powers of executive clemency.

3 (h) (1) The Division of Corrections shall promulgate policies
4 and procedures for developing a rehabilitation treatment plan
5 created with the assistance of a standardized risk and needs
6 assessment. The policies and procedures shall ~~include, but not be~~
7 ~~limited to, policy and procedures for~~ provide for, at a minimum,
8 screening and selecting inmates for rehabilitation treatment and
9 development, ~~and use of~~ using standardized risk and needs
10 assessment and substance abuse assessment tools, and prioritizing
11 the use of residential substance abuse treatment resources based on
12 the results of the risk and needs assessment and a substance abuse
13 assessment. The parole board may review and comment upon the
14 policies and procedures.

15 (2) An inmate shall not be paroled under paragraph (B),
16 subdivision (1), subsection (b) of this section solely due to
17 having successfully completed a rehabilitation treatment plan but
18 completion of all the requirements of a rehabilitation ~~parole~~
19 treatment plan along with compliance with the requirements of
20 subsection (b) of this section ~~shall~~ creates a rebuttable
21 presumption that parole is appropriate. The presumption created by
22 this subsection may be rebutted by a parole board finding that,

1 according to the risk assessment, at the time parole release is
2 sought the inmate still constitutes a reasonable risk to the safety
3 or property of other persons if released. Nothing in subsection
4 (b) of this section or in this subsection may be construed to
5 create a right to parole.

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

14 (j) Where an inmate is otherwise eligible for parole pursuant
15 to subsection (b) of this section and has completed the
16 rehabilitation treatment program required under subsection (h) of
17 this section, ~~but~~ the parole board ~~determines~~ may not require that
18 the inmate should participate in an additional program, ~~or~~ but may
19 determine that the inmate must complete an assigned task or tasks
20 prior to actual release on parole, such as the development of a
21 home plan, and, in this event, the board may grant parole
22 contingently, effective upon successful completion of the ~~program~~

1 or assigned task or tasks, without the need for a further hearing.
2 ~~The Commissioner of Corrections shall provide notice to the Parole~~
3 ~~Board of the imminent release of a contingently paroled inmate to~~
4 ~~effectuate appropriate supervision.~~

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

10 (2) The Division of Corrections is charged with the duties of
11 supervision, treatment and support services for all people released
12 to mandatory supervision under section twenty-seven, article five,
13 chapter twenty-eight of this code.

14 (1)(1) When considering an inmate of a state correctional
15 center for release on parole, the parole board panel considering
16 the parole is to have before it an authentic copy of or report on
17 the inmate's current criminal record as provided through the West
18 Virginia State Police, the United States Department of Justice or
19 other reliable criminal information sources and written reports of
20 the warden or superintendent of the state correctional center to
21 which the inmate is sentenced:

22 (A) On the inmate's conduct record while in custody, including

1 a detailed statement showing any and all infractions of
2 disciplinary rules by the inmate and the nature and extent of
3 discipline administered therefor;

4 (B) On improvement or other changes noted in the inmate's
5 mental and moral condition while in custody, including a statement
6 expressive of the inmate's current attitude toward society in
7 general, toward the judge who sentenced him or her, toward the
8 prosecuting attorney who prosecuted him or her, toward the
9 policeman or other officer who arrested the inmate and toward the
10 crime for which he or she is under sentence and his or her previous
11 criminal record;

12 (C) On the inmate's industrial record while in custody which
13 shall include: The nature of his or her work, occupation or
14 education, the average number of hours per day he or she has been
15 employed or in class while in custody and a recommendation as to
16 the nature and kinds of employment which he or she is best fitted
17 to perform and in which the inmate is most likely to succeed when
18 he or she leaves prison;

19 (D) On any physical, mental, and psychological or psychiatric
20 examinations of the inmate. conducted, insofar as practicable,
21 within the two months next preceding parole consideration by the
22 board.

1 (2) The board panel considering the parole may waive the
2 requirement of any report when not available or not applicable as
3 to any inmate considered for parole but, in every such case, shall
4 enter in the record thereof its reason for the waiver: *Provided,*
5 That in the case of an inmate who is incarcerated because the
6 inmate has been found guilty of, or has pleaded guilty to a felony
7 under the provisions of section twelve, article eight, chapter
8 sixty-one of this code or under the provisions of article eight-b
9 or eight-c of said chapter, the board panel may not waive the
10 report required by this subsection and the report is to include a
11 study and diagnosis including an on-going treatment plan requiring
12 active participation in sexual abuse counseling at an approved
13 mental health facility or through some other approved program:
14 *Provided, however,* That nothing disclosed by the person during the
15 study or diagnosis may be made available to any law-enforcement
16 agency, or other party without that person's consent, or admissible
17 in any court of this state, unless the information disclosed
18 indicates the intention or plans of the parolee to do harm to any
19 person, animal, institution or to property. Progress reports of
20 outpatient treatment are to be made at least every six months to
21 the parole officer supervising the person. In addition, in such
22 cases, the parole board shall inform the prosecuting attorney of

1 the county in which the person was convicted of the parole hearing
2 and shall request that the prosecuting attorney inform the parole
3 board of the circumstances surrounding a conviction or plea of
4 guilty, plea bargaining and other background information that might
5 be useful in its deliberations.

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

1 (n) The board and its designated agents are at all times to
2 have access to inmates imprisoned in any state correctional center
3 or in any jail in this state and may obtain any information or aid
4 necessary to the performance of its duties from other departments
5 and agencies of the state or from any political subdivision
6 thereof.

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

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

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

18 (r) Except for the amendments to this section contained in
19 subdivision (4), subsection (b) and subsection (i) of this section
20 the amendments to this section enacted during the 2010 regular
21 session of the Legislature shall become effective on January 1,
22 2011.

1 **§62-12-14a. Director of employment released inmates.**

2 The ~~board~~ director shall ~~have authority to~~ may employ or
3 contract for a director of employment and a director of housing for
4 ~~paroled or pardoned prisoners~~ released inmates. ~~It shall be the~~
5 ~~duty of~~ The director of employment ~~to~~ shall investigate job
6 opportunities and to give every possible assistance in helping
7 ~~prisoners, eligible to be paroled or who have been granted parole~~
8 ~~under this article~~ released inmates to find employment. The
9 director of housing shall work in conjunction with the parole
10 division and the parole board to reduce release delays due to lack
11 of a home plan, develop community housing resources, and provide
12 short-term loans to released inmates for costs related to reentry.

13 **§62-12-15. Powers and duties of state parole officers.**

14 (a) Each state parole officer shall:

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

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

22 (3) Supervise each person according to the assessment and

1 supervision standards determined by the commissioner;

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

7 (5) Keep informed concerning the conduct and condition of each
8 person under his or her supervision and ~~shall~~ report thereon in
9 writing as often as the Commissioner of Corrections may require;
10 ~~He or she or she shall use~~

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

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

15 (8) Keep accurate and complete accounts of and give receipts
16 for all money collected from persons under his or her supervision
17 and ~~shall~~ pay over the money to those persons a circuit court or the
18 Commissioner of Corrections may designate; ~~He or she or she shall~~
19 ~~give~~

20 (9) Give bond with good security, to be approved by the
21 Commissioner of Corrections, in a penalty of not less than \$1,000
22 nor more than \$3,000, as the Commissioner of Corrections may

1 determine; and ~~also perform~~

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

3 (b) ~~He or she~~ Each state parole officer has authority ~~may~~, with
4 or without an order or warrant, ~~to~~ arrest any parolee. He or she
5 has all the powers of a notary public, with authority to act
6 anywhere within the state.

7 (c) The commissioner may issue a certificate authorizing any
8 parole officer who has successfully completed the division's
9 training program for firearms certification, which is the
10 equivalent of that required of deputy sheriffs, to carry firearms
11 or concealed weapons. Any parole officer authorized by the
12 commissioner has the right, without a state license, to carry
13 firearms and concealed weapons. Each parole officer, authorized by
14 the commissioner, shall carry with him or her a certificate
15 authorizing him or her to carry a firearm or concealed weapon
16 bearing the official signature of the commissioner.

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

18 (a) Release and supervision on parole of any person, including
19 the supervision by the Division of Corrections of any person paroled
20 by any other state or by the federal government, shall be upon the
21 following conditions:

22 (1) That the parolee may not, during the period of his or her

1 parole, violate any criminal law of this or any other state or of
2 the United States;

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

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

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

17 (5) That the parolee, and all federal or foreign state
18 probationers and parolees whose supervision may have been undertaken
19 by this state, is required to pay a fee, based on his or her ability
20 to pay, not to exceed \$40 per month to defray costs of supervision.

21 (b) The commissioner shall keep a record of all actions taken
22 and account for moneys received. No provision of this section

1 prohibits the division from collecting the fees and conducting the
2 checks upon the effective date of this section. All moneys shall
3 be deposited in a special account in the State Treasury to be known
4 as the "Parolee's Supervision Fee Fund". Expenditures from the fund
5 shall be for the purposes of providing parole supervision required
6 by the provisions of this code and are not authorized from
7 collections but are to be made only in accordance with appropriation
8 by the Legislature and in accordance with the provisions of article
9 three, chapter twelve of this code and upon the fulfillment of the
10 provisions set forth in article two, chapter five-a of this code.
11 Amounts collected which are found, from time to time, to exceed the
12 funds needed for purposes set forth in this article may be
13 transferred to other accounts or funds and redesignated for other
14 purposes by appropriation of the Legislature.

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

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

20 (2) Liquid assets of the parolee or probationer, assets of the
21 parolee or probationer that may provide collateral to obtain funds
22 and assets of the parolee or probationer that may be liquidated to

1 provide funds to pay the fee;

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

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

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

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

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

15 (f) The division may impose as a condition or as a modification
16 of parole a term of reporting to a day report center or other
17 community corrections program only if the standardized risk and
18 needs assessment indicates a moderate to high risk of reoffending
19 and moderate to high criminogenic need. The Commissioner of
20 Corrections shall enter into a master agreement with the Division
21 of Justice and Community Services to provide reimbursement to
22 counties for the use of community corrections programs by eligible

1 releasees.

2 **§62-12-19. Violation of parole.**

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

18 (1) In response to a violation of the conditions of release
19 other than a reasonable cause to believe the parolee committed a
20 misdemeanor, or a felony, or absconded supervision, the parole
21 officer may, after consultation with and written approval by the
22 director of parole services, for the first violation, require the

1 parolee to serve a period of confinement up to sixty days, or, for
2 the second violation, a period of confinement up to one hundred
3 twenty days: Provided, That the Division of Corrections shall
4 notify the parole board when a parolee is serving such a term of
5 confinement and the parole board may deny further confinement. A
6 parolee serving a term of confinement in the first or second
7 instance may be confined in jail, but shall be committed to the
8 custody of the Commissioner of Corrections, and the costs of
9 confining the parolee shall be paid out of funds appropriated for
10 the Division of Corrections: Provided, however, That upon request,
11 the parolee shall be afforded the right to a hearing within forty-
12 five days before the parole board regarding whether he or she
13 violated the conditions of his or her release on parole.

14 ~~(b)~~ (2) When a parolee is under arrest for committing a
15 misdemeanor, or a felony, or absconding supervision as a violation
16 of the conditions of his or her parole, or a violation of the
17 conditions of release other than a reasonable cause to believe the
18 parolee committed a misdemeanor, or a felony, or absconded
19 supervision in the second or subsequent instance, he or she shall
20 be given a prompt and summary hearing before a panel of the board,
21 at which the parolee and his or her counsel are given an opportunity
22 to attend.

1 (A) If at the hearing it appears to the satisfaction of the
2 panel that the parolee has ~~violated any condition of his or her~~
3 ~~release on parole, or any rules or conditions of his or her~~
4 ~~supervision~~ committed a misdemeanor, or a felony, or absconded
5 supervision, the panel may revoke his or her parole and may require
6 him or her to serve in prison the remainder or any portion of his
7 or her maximum sentence for which, at the time of his or her
8 release, he or she was subject to imprisonment.

9 (B) If at the hearing it instead appears to the satisfaction
10 of the panel that the parolee has violated any condition of release
11 or supervision other than committing a misdemeanor, or a felony, or
12 absconding supervision, the panel may require the parolee to serve,
13 for the first violation, a period of confinement up to sixty days,
14 or, for the second violation, a period of confinement up to one
15 hundred twenty days: *Provided,* That if the violation of the
16 conditions of parole or rules for his or her supervision is not a
17 felony as set out in section eighteen of this article, the panel
18 may, if in its judgment the best interests of justice do not require
19 ~~revocation~~ a period of confinement, reinstate him or her on parole.
20 The Division of Corrections shall effect release from custody upon
21 approval of a home plan.

22 (b) Notwithstanding any provision of this code to the contrary,

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

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

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

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

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

1 (g) Whenever a parolee who has absconded supervision or has
2 been transferred out of this state for supervision pursuant to
3 section one, article six, chapter twenty-eight of this code is
4 returned to West Virginia due to a violation of parole and costs are
5 incurred by the Division of Corrections, the commissioner may assess
6 reasonable costs from the parolee's inmate funds or the parolee as
7 reimbursement to the Division of Corrections for the costs of
8 returning him or her to West Virginia.

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

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

21 **§62-12-29. Shared information for community supervision.**

22 (a) The administrative director of the Supreme Court of Appeals

1 of West Virginia shall appoint a Community Supervision Committee,
2 to include representatives of the judiciary, probation, parole, day
3 report centers, magistrates, sheriffs, corrections, and other
4 members at the discretion of the director. The director shall
5 appoint a chair from among the members, and attend the meeting ex
6 officio.

7 (b) The committee shall:

8 (1) Design and deploy a method for probation officers, parole
9 officers, day report centers and others providing community
10 supervision to share electronic offender information and
11 assessments;

12 (2) Coordinate information reporting and access across agencies
13 carrying out community supervision;

14 (3) Collect and share information about assessed and collected
15 restitution among supervision agencies;

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

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

21 (c) Any rules necessary to carry out the work of the committee
22 shall be prescribed by the West Virginia Supreme Court of Appeals.

1 (d) The committee shall submit, on or before September 30 of
2 each year, to the Governor, the Speaker of the House of Delegates,
3 the President of the Senate and, upon request, to any individual
4 member of the Legislature a report on its activities during the
5 previous year.

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

7 **§62-15-2. Definitions.**

8 For the purposes of this article:

9 (1) "Assessment" means a diagnostic evaluation to determine
10 whether and to what extent a person is a drug offender under this
11 article and would benefit from its provisions. The assessment shall
12 be conducted in accordance with the ~~standards, procedures, and~~
13 ~~diagnostic criteria designed to provide effective and~~
14 ~~cost-beneficial use of available resources~~ standardized risk and
15 needs assessment and risk cut-off scores adopted by the West
16 Virginia Supreme Court of Appeals.

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

21 (3) "Controlled substance" means a drug or other substance for
22 which a medical prescription or other legal authorization is

1 required for purchase or possession.

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

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

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

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

11 (B) The prosecutor;

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

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

15 (E) A law-enforcement officer;

16 (F) The drug court coordinator;

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

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

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

21 (7) "Drug offender" means an adult person charged with a
22 drug-related offense or an offense in which substance abuse is

1 determined from the evidence to have been a factor in the commission
2 of the offense.

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

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

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

8 (B) Drug court magistrate(s);

9 (C) Prosecutor;

10 (D) Public defender;

11 (E) Drug court coordinator;

12 (F) Criminal defense bar;

13 (G) Circuit clerk;

14 (H) Day report center director;

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

16 (J) Law enforcement;

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

18 (L) Corrections representative; and

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

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

22 (11) "Memorandum of Understanding" means a written document

1 setting forth an agreed upon procedure.

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

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

6 (14) "Preadjudication" means a court order requiring a drug
7 offender to participate in drug court before charges are filed or
8 before conviction.

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

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

15 (17) "Relapse" means a return to substance use after a period
16 of abstinence.

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

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

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

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

3 (22) "Substance abuse treatment" means ~~a program designed to~~
4 ~~provide prevention, education, and therapy directed toward ending~~
5 ~~substance abuse and preventing a return to substance usage a~~
6 continuum of care, including cooccurring substance use and mental
7 health services, outpatient, intensive outpatient, residential, peer
8 support, relapse prevention and cognitive behavioral programming,
9 based on research about effective treatment models for the offender
10 population.

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

17 (A) Drug courts integrate alcohol and other drug treatment
18 services with justice system case processing;

19 (B) Using a nonadversarial approach, prosecution and defense
20 counsel promote public safety while protecting participants' due
21 process rights;

22 (C) Eligible participants are identified early and promptly

1 placed in the drug court program;

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

4 (E) Abstinence is monitored by frequent alcohol and other drug
5 testing;

6 (F) A coordinated strategy governs drug court responses to
7 participants' compliance;

8 (G) Ongoing judicial interaction with each drug court
9 participant is essential;

10 (H) Monitoring and evaluation measure the achievement of
11 program goals and gauge effectiveness;

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

14 (J) Forging partnerships among drug courts, public agencies and
15 community-based organizations generates local support and enhances
16 drug court effectiveness.

17 **§62-15-6a. Treatment supervision.**

18 (a) A drug offender is eligible for treatment supervision only
19 if the offender would otherwise be sentenced to prison, and the risk
20 assessment indicates the offender has a high risk for reoffending
21 and a need for substance abuse treatment. As a condition of a term
22 of probation or as a modification of probation, treatment

1 supervision may be imposed on an eligible drug offender convicted
2 of a felony, with or without participation in a drug court:
3 *Provided*, That a judge may impose treatment supervision on a drug
4 offender convicted of a felony, notwithstanding the results of the
5 risk assessment, upon making specific written findings of fact as
6 to the reason for departing from the requirements of this
7 subsection. This subsection takes effect January 1, 2014.

8 (b) The Division of Justice and Community Services shall use
9 appropriated funds to implement substance abuse treatment to serve
10 those under treatment supervision in each judicial circuit and on
11 parole supervision, in consultation with the Governor's Advisory
12 Committee on Substance Abuse, created by Executive Order No. 5-11.

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

16 (1) Qualifications for provider certification to deliver a
17 continuum of care to offenders;

18 (2) Fee reimbursement procedures; and

19 (3) Other matters related to the quality and delivery of
20 services.

21 (d) The Division of Justice and Community Services shall
22 require education and training which shall include, but not be

1 limited to, cognitive behavior training. The duties of providers
2 who provide services under this program may include notifying the
3 probation department and the court of any offender failing to meet
4 the conditions of probation or referrals to treatment, appearing at
5 revocation hearings as may be required, and providing assistance
6 data reporting and program evaluation.

7 (e) The cost for all drug abuse assessments and certified drug
8 treatment under this section and subsection (e), section seventeen,
9 article twelve of this chapter shall be paid by the Division of
10 Justice and Community Services from funds appropriated for such
11 purpose. The Division of Justice and Community Services shall
12 contract for payment for such services provided to eligible
13 offenders.

14 (f) The Division of Justice and Community Services, in
15 consultation with the Governor's Advisory Committee on Substance
16 Abuse, shall submit on or before September 30 of each year, to the
17 Governor, the Speaker of the House of Delegates, the President of
18 the Senate and, upon request, to any individual member of the
19 Legislature a report on:

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

22 (2) The number of people on treatment supervision who received

1 services and whether they were the result of a direct sentence or
2 in lieu of revocation;

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

7 (4) The type of services provided;

8 (5) The rate of revocations and successful completions for
9 people who received services;

10 (6) The number of people under supervision receiving treatment
11 under this section who are rearrested within two years of being
12 placed under supervision;

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

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

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

NOTE: The purpose of this bill is to reform aspects of the
criminal justice system to improve public safety and address the
growing prison overcrowding and substance abuse problems in this
state.

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

§31-20-5g, §31-20-5h, §62-11C-10, §62-12-29 and §62-15-6a are new; therefore, strike-throughs and underscoring have been omitted.