

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 342**

4 (By Senators Foster, Browning, Fanning, Minard, Tucker, Wills,
5 Barnes, K. Facemyer, Kessler (Mr. President), Klempa, Plymale,
6 Williams and Nohe)

7
8 [Originating in the Committee on the Judiciary;
9 reported February 21, 2012.]
10

11 A BILL to amend and reenact §25-1-1a of the Code of West Virginia,
12 1931, as amended; to amend said code by adding thereto a new
13 section, designated §25-1-23; to amend and reenact §28-5-27 of
14 said code; to amend said code by adding thereto a new section,
15 designated §51-1-24; to amend said code by adding thereto a
16 new section, designated §60A-1-102; to amend and reenact §60A-
17 4-401 and §60A-4-407 of said code; to amend and reenact §62-1-
18 5a of said code; to amend and reenact §62-1C-3 of said code;
19 to amend said code by adding thereto a new section, designated
20 §62-11C-3a; to amend said code by adding thereto four new
21 sections, designated §62-12-1a, §62-12-5a, §62-12-29 and §62-
22 12-30; to amend and reenact §62-12-18 of said code; and to
23 amend said code by adding thereto a new section, designated
24 §62-13-1, all relating to the criminal justice system

1 generally; identifying the primary objective for both the
2 Division of Corrections and sentencing policy as maintaining
3 public safety, holding offenders accountable and maintaining
4 the lowest possible recidivism rate; creating an intensive
5 secured substance abuse recovery program; providing additional
6 good-time credit for successful completion of education or
7 treatment programs; providing additional good-time credit for
8 exceptionally meritorious service; amending the Uniform
9 Controlled Substances Act; permitting deferred prosecution
10 sentence in circuit courts for first- and second-time simple
11 possession offenders; requiring a law-enforcement officer to
12 issue a citation instead of making an arrest for misdemeanor
13 offenses with certain exceptions; prohibiting bail amounts for
14 misdemeanors to exceed the fines and fees of the highest
15 offense charged and exception thereto; requesting courts and
16 requiring corrections authorities incorporate risk and needs
17 assessment information into the decision-making process;
18 requiring state expenditures on supervision and intervention
19 programs for pretrial defendants, inmates and those on parole
20 and probation to be spent on programs that are evidence based;
21 requiring offenders to be supervised using practices proven to
22 reduce or otherwise maintain low recidivism rates; requiring
23 the use of administrative caseloads for low-risk offenders;
24 requiring six months of mandatory supervision for offenders

1 who would otherwise be discharged without supervision at the
2 end of their sentences at the instance of the Commissioner of
3 Corrections; authorizing the Division of Corrections to allow
4 offenders to complete required programming in the community
5 and be monitored; increasing accountability for probation and
6 parole violations by authorizing imposition of administrative,
7 graduated sanctions for parole and probation violators; and
8 creating two pilot projects that require frequent drug testing
9 with immediate sanctions for positive drug tests or other
10 violations and referral to treatment if necessary.

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

12 That §25-1-1a of the Code of West Virginia, 1931, as amended,
13 be amended and reenacted; that said code be amended by adding
14 thereto a new section, designated §25-1-23; that §28-5-27 of said
15 code be amended and reenacted; that said code be amended by adding
16 thereto a new section, designated §51-1-24; that said code be
17 amended by adding thereto a new section, designated §60A-1-102;
18 that §60A-4-401 and §60A-4-407 of said code be amended and
19 reenacted; that §62-1-5a of said code be amended and reenacted;
20 that §62-1C-3 of said code be amended and reenacted; that said code
21 be amended by adding thereto a new section, designated §62-11C-3a;
22 that said code be amended by adding thereto four new sections,
23 designated §62-12-1a, §62-12-5a, §62-12-29 and §62-12-30; that §62-
24 12-18 of said code be amended and reenacted; and that said code be

1 amended by adding thereto a new section, designated §62-13-1, all
2 to read as follows:

3 **CHAPTER 25. DIVISION OF CORRECTIONS.**

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

5 **§25-1-1a. Purpose and legislative intent.**

6 (a) The primary purpose of the division of corrections is to
7 enhance public safety and hold offenders accountable while reducing
8 recidivism or otherwise maintaining low recidivism rates and
9 criminal behavior and improving outcomes for offenders under its
10 supervision by providing for the incarceration and care of
11 convicted offenders who have been sentenced by circuit courts of
12 proper jurisdiction to serve terms of incarceration. It is the
13 intent of the Legislature:

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

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

21 (3) To establish a just, humane and efficient corrections
22 program; ~~and~~

23 (4) To avoid duplication and waste of effort and money on the
24 part of public and private agencies; and,

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

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

4 **§25-1-23. Intensive secured substance abuse recovery program.**

5 (a) The Division of Corrections shall develop an intensive
6 secured substance abuse recovery program, within any of its
7 facilities or by contract, to house and care for persons suffering
8 from substance abuse who have not been convicted of a felony crime
9 of violence against the person or a felony offense where the victim
10 was a minor. For purposes of this section a "felony crime of
11 violence against the person" means those felony offenses set forth
12 in articles two, three-e, eight-b, eight-d, chapter sixty-one of
13 this code. And "felony offenses where the victim was a minor" means
14 felony violation of articles eight, eight-a, eight-c and eight d,
15 where the victim was under eighteen years of age.

16 (b) The Commissioner shall develop policy establishing
17 criteria for inmates to be received into this program.

18 (c) In the case of an inmate meeting the criteria established
19 by the program, the Division of Corrections shall notify the
20 sentencing court of the eligibility and if the court concurs with
21 such determination then the inmate may be placed into the program
22 for a period of not more than three hundred sixty-five days.

23 (d) Upon successful completion of the program, the Division of
24 Corrections shall notify the sentencing court of such completion.

1 The circuit court may then suspend the offender's sentence and
2 place the offender upon probation or such other community based
3 sentencing alternatives as are available.

4 (e) In the event that the offender refuses or fails to
5 participate in the program or otherwise acts in a disruptive manner
6 or engages in disruptive conduct or commits acts adversely
7 impacting the security or orderly operation of the program, which
8 is found by a correctional hearing officer through an
9 administrative hearing, the offender may be removed from the
10 program. Upon removal from the program, the offender will continue
11 to serve his or her sentence with credit for all time spent in the
12 program.

13 (f) The program shall be capable of concurrently housing no
14 fewer than two hundred persons in one or more facilities as
15 determined by the Commissioner. The division has regulatory
16 authority, when the program is at or near capacity, to prioritize
17 admissions to the program.

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

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

24 **ARTICLE 5. THE PENITENTIARY.**

1 **§28-5-27. Deduction from sentence for good conduct.**

2 (a) All adult inmates now in the custody of the Commissioner
3 of the Division of Corrections, or hereafter committed to the
4 custody of the Commissioner of the Division of Corrections, except
5 those committed pursuant to article four, chapter twenty-five of
6 this code, shall be granted commutation from their sentences for
7 good conduct in accordance with this section.

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

11 (c) Each inmate committed to the custody of the Commissioner
12 of the Division of Corrections and incarcerated in a penal facility
13 pursuant to such commitment shall:

14 (1) Be granted one day good time for each day he or she is
15 incarcerated, including any and all days in jail awaiting sentence
16 and which is credited by the ~~sentencing~~ circuit court to his or her
17 sentence pursuant to section twenty-four, article eleven, chapter
18 sixty-one of this code or for any other reason relating to such
19 commitment. No inmate may be granted any good time for time served
20 either on parole or bond or in any other status whereby he or she
21 is not physically incarcerated;

22 (2) Successfully receiving a general equivalency diploma or a
23 high school diploma, a two- or four-year college degree, a two-year
24 or four-year certification in applied sciences or a technical

1 education diploma as provided and defined by the Commissioner in
2 the amount of ninety days per diploma, degree or certification
3 received;

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

8 (1) Acts of exceptional service during times of emergency,
9 awarded at the discretion of the commissioner in an amount not to
10 exceed seven days per month.

11 (2) The amendments to this subsection enacted during the 2012
12 regular session of the Legislature are only applicable to inmates
13 serving a sentence with a maximum of not less than three years.

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

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

19 ~~(f)~~ (g) The Commissioner of the Division of Corrections shall
20 promulgate ~~separate~~ disciplinary rules for each institution under
21 his control in which adult felons are incarcerated, which rules
22 shall describe acts which inmates are prohibited from committing,
23 procedures for charging individual inmates for violation of such
24 rules and for determining the guilt or innocence of inmates charged

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

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

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

23 ~~(i) The Commissioner of Corrections may, with the approval of~~
24 ~~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~~ the Commissioner, except as to
5 those persons committed pursuant to article ~~4~~ four, chapter twenty-
6 five of this code, all good times shall be computed according to
7 this 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 one thousand nine hundred eighty-four, shall receive such good
17 time in addition to the good time computed according to this
18 section.

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

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

24 **ARTICLE 1. WEST VIRGINIA SUPREME COURT OF APPEALS. §51-1-24.**

1 ~~Authorization of Probation and Enforcement Hawaii (HOPE) model.~~

2
3 (a) In an effort to improve public safety and reduce failure
4 rates of individuals on probation, the Supreme Court of Appeals may
5 choose two judicial circuits of sufficient size to implement a
6 twelve-month pilot project similar to the Hawaii Opportunity
7 Probation and Enforcement (HOPE) model to establish a program that:

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

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

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

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

22 (5) Monitors probationers for violations of other rules and
23 probation terms, including failure to pay court-ordered financial
24

1 obligations such as child support or victim restitution;

2 (6) Responds to violations of such rules with immediate arrest
3 of the violating probationer, and swift and certain modification of
4 the conditions of probation, including imposition of short jail
5 stays (which may gradually become longer with each additional
6 violation and modification);

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

10 (8) Provides rewards to probationers who comply with such
11 rules;

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

14 (10) Establishes procedures to terminate program participation
15 by, and initiates revocation to a term of incarceration for,
16 probationers who habitually fail to abide by program rules and pose
17 a threat to public safety;

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

21 (12) Reduces violation behavior and new crimes, and reduces
22 revocations to prison.

23 (b) If a pilot project is implemented by the Supreme Court of
24 Appeals, and two judicial circuits, these entities may, if

1 requested by the Governor, the Speaker of the House of Delegates or
2 the President of the Senate, submit a report on the results of the
3 pilot project to the Interim Joint Committee on Judiciary one year
4 after implementation of the pilot project. The results shall
5 include at a minimum:

6 (1) Key process measures, including the number of individuals
7 enrolled in the program, the frequency of drug testing of such
8 individuals, the certainty of sanctions for a violation of the
9 terms of probation, the average period of time from detection of a
10 violation to issuance of a sanction for such violation and sanction
11 severity;

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

18 (3) The amount of cost savings, if any, resulting from the
19 reduced incarceration achieved through the pilot project.

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

21 **ARTICLE 1. DEFINITION. §60A-1-102. Legislative findings and**
22 **declaration.**

23 The Legislature hereby finds, determines and declares that:

24 (1) The regulation of controlled substances in this state is

1 important and necessary for the preservation of public safety and
2 public health; and

3 (2) Successful, community-based treatment can be used as an
4 effective tool in the effort to reduce criminal risk factors.
5 Therapeutic intervention and ongoing individualized treatment plans
6 prepared through the use of meaningful and validated research-based
7 assessment tools and professional evaluations offer a potential
8 alternative to incarceration in appropriate circumstances and shall
9 be used accordingly.

10 (3) The provisions of this act shall only apply to cases
11 adjudicated in circuit court.

12 **ARTICLE 4. OFFENSES AND PENALTIES.**

13 **§60A-4-401. Prohibited acts A; penalties.**

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

17 Any person who violates this subsection with respect to:

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

23 (ii) Any other controlled substance classified in Schedule I,
24 II or III is guilty of a felony and, upon conviction, may be

1 imprisoned in the state correctional facility for not less than one
2 year nor more than five years, or fined not more than \$15,000, or
3 both;

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

8 (iv) A substance classified in Schedule V is guilty of a
9 misdemeanor and, upon conviction, may be confined in jail for not
10 less than six months nor more than one year, or fined not more than
11 five thousand dollars, or both: *Provided*, That for offenses
12 relating to any substance classified as Schedule V in article ten
13 of this chapter, the penalties established in said article apply.

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

17 Any person who violates this subsection with respect to:

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

23 (ii) Any other counterfeit substance classified in Schedule I,
24 II or III is guilty of a felony and, upon conviction, may be

1 imprisoned in the state correctional facility for not less than one
2 year nor more than five years, or fined not more than \$15,000, or
3 both;

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

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

14 (c) It is unlawful for any person knowingly or intentionally
15 to possess a controlled substance unless the substance was obtained
16 directly from, or pursuant to, a valid prescription or order of a
17 practitioner while acting in the course of his professional
18 practice, or except as otherwise authorized by this act. Any
19 person who violates this subsection is guilty of a misdemeanor and,
20 disposition may be made under section four hundred seven of this
21 article, subject to the limitations specified in said section, or
22 upon conviction, such person may be confined in jail not less than
23 ninety days nor more than six months, or fined not more than
24 \$1,000, or both: *Provided*, That notwithstanding any other

1 provision of this act to the contrary, any first or second offense
2 for possession of Synthetic Cannabinoids as defined by subdivision
3 (32) subsection, (d), section 101, article 1 of this chapter; 3,4-
4 methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone
5 and/or mephedrone as defined in subsection (f), section 101,
6 article 1 of this chapter; or less than 15 grams of marijuana,
7 shall be disposed of under said section: Provided, however, That a
8 person who has twice received the benefit of the provisions of
9 section four hundred seven of this article who is convicted of a
10 subsequent violation of this subsection may be confined in jail for
11 not less than six months nor more than one year.

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

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

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

22 (3) Any person who violates this subsection is guilty of a
23 misdemeanor and, upon conviction, may be imprisoned in jail for not
24 less than six months nor more than one year, or fined not more than

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

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

10 **§60A-4-407. Deferred prosecution.**

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

15 (1) The defendant requests deferred prosecution in writing and
16 the prosecutor agrees;

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

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

1 (4) The maximum length of participation in the program shall
2 be two (2) years.

3 (b) A prosecutor may refuse or a circuit judge may deny a
4 defendant's request to enter a deferred prosecution.

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

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

19 (e) If the circuit court finds that the defendant violated the
20 conditions of the program, the circuit court may:

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

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

24 (3) Order the defendant removed from the program and proceed

1 with ordinary prosecution for the offense charged.

2 (f) Notwithstanding any provision of this code to the
3 contrary, any person prosecuted pursuant to the provisions of this
4 article whose case is disposed of pursuant to the provisions of
5 this section shall be liable for any court costs assessable against
6 a person convicted of a violation of section 401(c) of this
7 article. Payment of such costs may be made a condition of
8 probation.

9 (g) The costs assessed pursuant to this section, whether as a
10 term of probation or not, shall be distributed as other court costs
11 in accordance with section two, article three, chapter fifty,
12 section four, article two-a, chapter fourteen, section four,
13 article twenty-nine, chapter thirty and sections two, seven and
14 ten, article five, chapter sixty-two of this code.

15 **CHAPTER 62. CRIMINAL PROCEDURE.**

16 **ARTICLE 1. PRELIMINARY PROCEDURE.**

17 **§62-1-5a. Citation in lieu of arrest; failure to appear.**

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

23 (1) Any misdemeanor, not involving injury to the person,
24 committed in a law-enforcement officer's presence: *Provided, That*

1 the officer may arrest the person if he has reasonable grounds to
2 believe that the person is likely to cause serious harm to himself
3 or others; and

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

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

11 (1) Involves the use of a firearm or other deadly weapon; or

12 (2) The defendant poses a risk of danger to himself, herself
13 or another person.

14 (c) A law-enforcement officer shall make an arrest for
15 violations of protective orders issued pursuant to article twenty-
16 seven, chapter forty-eight of this code.

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

19 (e) If the defendant fails to appear in response to the
20 citation or if there are reasonable grounds to believe that he will
21 not appear, a complaint may be made and a warrant shall issue.
22 When a physical arrest is made and a citation is issued in relation
23 to the same offense the officer shall mark on the citation, in the
24 place specified for court appearance date, the word "arrested" in

1 lieu of the date of court appearance.

2 **ARTICLE 1C. BAIL.**

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

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

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

18 (c) The provisions of subsection (b) of this section may not
19 be applied to a defendant who is found by the court to present a
20 flight risk or to be a danger to self or to others.

21 (d) If a court determines that a defendant is not to be
22 released pursuant to subsection (d) of this section, the court
23 shall document the reasons for denying the release either on the
24 record or in a written order.

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

2 **§62-11C-3a. Evidence-based practices to be used in community**
3 **corrections programs -- Standards -- Funding restrictions.**

4 (a) As used in this article, "evidence-based practices" means
5 supervision policies, procedures, treatment and intervention
6 programs, and practices that are generally accepted in the criminal
7 justice nationwide community as reducing or otherwise maintaining
8 low recidivism among inmates and individuals on probation, parole,
9 or other form of post release supervision when implemented
10 competently.

11 (b) In order to increase the effectiveness of treatment and
12 intervention programs funded by the state and provided by the West
13 Virginia Community Corrections Fund, the Governor's Committee shall
14 require that such programs use evidence-based practices.

15 (c) The Governor's Committee shall measure the effectiveness
16 of each community corrections program and demonstrate that the
17 program has a documented evidence base and has been evaluated for
18 effectiveness in reducing or otherwise maintaining low recidivism.

19 (d) The Governor's Committee shall promulgate legislative
20 rules to provide, at a minimum:

21 (1) A process for reviewing the objective criteria for
22 evidence-based practices established by the community corrections
23 program;

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

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

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

5 (e) Beginning July 1, 2013, twenty-five percent (25%) of state
6 moneys expended on programs shall be for programs that are in
7 accordance with evidence-based practices. Beginning July 1, 2015,
8 fifty percent (50%) of state moneys expended on programs shall be
9 for programs that are in accordance with evidence-based practices.
10 Beginning July 1, 2016, and thereafter, seventy-five percent (75%)
11 of state moneys expended on programs shall be for programs that are
12 in accordance with evidence-based practices.

13 (f) By fiscal year 2016-2017, the Governor's Committee shall
14 eliminate supervision policies, procedures, programs and practices
15 intended to reduce recidivism that are generally accepted in the
16 criminal justice nationwide community as do not reducing
17 recidivism. However, the Governor's Committee may utilize a new
18 supervision policy, procedure, program or practice if the
19 Governor's Committee determines that the new supervision policy,
20 procedure, program or practice has the potential for qualifying as
21 an evidence-based practice after more research is conducted.

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

23 **§62-12-1a. Definitions.**

24 As used in this article:

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

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

5 (B) Matches the type and intensity of supervision and
6 treatment conditions to the individual's level of risk, criminal
7 risk factors and individual characteristics, such as gender,
8 culture, motivational stage, developmental stage and learning
9 style;

10 (C) Establishes a timetable for achieving specific behavioral
11 goals, including a schedule for payment of victim restitution,
12 child support and other financial obligations; and

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

15 (2) "Criminal risk factors" are characteristics and behaviors
16 that, when addressed or changed, affect a person's risk for
17 committing crimes. The characteristics may include, but are not
18 limited to, the following risk and criminogenic need factors:
19 antisocial behavior; antisocial personality; criminal thinking;
20 criminal associates; dysfunctional family; low levels of employment
21 or education; poor use of leisure and recreation; and substance
22 abuse.

23 (3) "Evidence-based practices" means policies, procedures,
24 programs and practices generally accepted in the criminal justice

1 nationwide community to produce reductions or otherwise maintain
2 low recidivism when implemented competently.

3 (4) "Graduated sanction" means any of a wide range of
4 accountability measures and programs for supervised individuals,
5 including, but not limited to, electronic monitoring; drug and
6 alcohol testing or monitoring; day or evening reporting centers;
7 restitution centers; disallowance of future earned compliance
8 credits; rehabilitative interventions such as substance abuse or
9 mental health treatment; reporting requirements to probation and
10 parole officers; community service or work crews; secure or
11 unsecure residential treatment facilities or halfway houses; and
12 short-term or intermittent incarceration.

13 (5) "Risk and needs assessment" or "validated risk and needs
14 assessment" means an actuarial tool generally accepted in the
15 criminal justice nationwide community to determine a person's risk
16 to reoffend and criminal risk factors, that when properly
17 addressed, can reduce that person's likelihood of committing future
18 criminal behavior.

19 (6) "Supervised individual" means an individual placed on
20 probation by a circuit court or serving a period of parole or post-
21 release supervision from prison.

22 (7) "Treatment" when used in a criminal justice context, means
23 targeted interventions that focus on criminal risk factors in order
24 to reduce the likelihood of criminal behavior. Treatment options

1 may include, but may not be limited to, community-based programs
2 that are consistent with evidence-based practices; cognitive-
3 behavioral programs; faith-based programs; inpatient and outpatient
4 substance abuse or mental health programs; and other available
5 prevention and intervention programs that have been generally
6 accepted in the criminal justice nationwide community to produce
7 reductions in recidivism when implemented competently. "Treatment"
8 does not include medical services.

9 **§62-12-5a. Evidence-based practices to be used in supervision and**
10 **intervention programs -- Standards -- Funding restrictions.**

11 (a) As used in this section, "evidence-based practices" means
12 intervention programs and supervision policies, procedures,
13 programs and practices generally accepted in the criminal justice
14 nationwide community as producing reductions in instances of a
15 defendant's failure to appear in court and criminal activity among
16 pretrial defendants when implemented competently.

17 (b) In order to increase the effectiveness of supervision and
18 intervention programs funded by the state and provided to pretrial
19 defendants, the Supreme Court of Appeals may require that a vendor
20 or contractor providing supervision and intervention programs for
21 adult criminal defendants use evidence-based practices.

22 (c) The Supreme Court of Appeals may measure the effectiveness
23 of supervision and intervention programs provided by vendors or
24 contractors and demonstrate that the programs have a documented

1 evidence base and have been evaluated for effectiveness in reducing
2 a defendant's failure to appear in court and criminal activity.

3 (d) The Supreme Court of Appeals may require the following:

4 (1) A process for reviewing the objective criteria for
5 evidence-based practices established by the vendor or contractor
6 providing the program;

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

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

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

12 **§62-12-18. Period of parole; Division of Corrections directed**
13 **mandatory reentry supervision; discharge.**

14 (a) The period of parole shall be the maximum of any sentence,
15 less deductions for good conduct and work as provided by law, for
16 which the paroled inmate, at the time of release, was subject to
17 imprisonment under his or her definite or indeterminate sentence,
18 as the case may be: Provided, That any time after a parolee has
19 been on parole for a period of one year from the date of his or her
20 release, a panel of the board may, when in its judgment the ends of
21 parole have been attained and the best interests of the state and
22 the parolee will be served thereby, release the parolee from
23 further supervision and discharge him or her from parole:
24 Provided, however, That no inmate sentenced to serve a life term of

1 imprisonment and released on parole shall be discharged from
2 supervision and parole in a period less than five years from the
3 date of his or her release on parole.

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

18 (c) The board shall order Division of Corrections directed
19 mandatory reentry supervision and the terms of supervision, which
20 may include electronic monitoring, for an inmate who has not been
21 granted discretionary parole six months prior to the inmate's
22 minimum expiration of sentence upon receiving a plan of supervision
23 from the Commissioner of Corrections.

24 (1) An inmate granted Division of Corrections directed

1 mandatory reentry supervision pursuant to this section may be
2 returned by the board to a correctional facility for violation of
3 the conditions of supervision and may not again be eligible for
4 Division of Corrections directed mandatory reentry supervision
5 during the same period of incarceration.

6 (2) An inmate released to Division of Corrections directed
7 mandatory reentry supervision shall be considered to be released on
8 parole.

9 (3) Division of Corrections directed mandatory reentry
10 supervision is not a commutation of sentence or any other form of
11 clemency.

12 (4) Subject to subdivision (1) of this subsection, the period
13 of mandatory reentry supervision shall conclude upon completion of
14 the individual's minimum expiration of sentence.

15 (d) The Commissioner shall develop policies for effective
16 implementation of subsection (c) of this section.

17 **§62-12-29. Graduated sanctions for parole violations -**

18 **Administrative rules.**

19 (a) The Division of Correction may adopt policy to develop a
20 system of graduated sanctions for responding to violations of
21 parole that otherwise do not involve the commission of new crimes.

22 (b) The policies shall create a system of graduated sanctions
23 with the following objectives:

24 (1) Responding quickly and consistently to violations of

1 parole, based on the nature of the violation and the risk level of
2 the supervised individual;

3 (2) Reducing the time and resources expended by the parole
4 officers to respond to violations; and

5 (3) Reducing the commission of new crimes and revocation
6 rates.

7 **§62-12-30. Administrative caseload supervision program for**
8 **supervised offenders; rules.**

9 (a) The Commissioner of the Division of Corrections shall
10 develop policies and the Supreme Court of Appeals may promulgate
11 rules in accordance with the provisions of this section to
12 establish an administrative caseload supervision program for
13 supervised individuals whose results from a risk and needs
14 assessment indicate that they are low-risk offenders.

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

19 (c) If a supervised individual on administrative caseload
20 ~~does not~~ ~~fails~~ ~~supervisor~~ ~~restoration~~ ~~or~~ ~~other~~ ~~financial~~ ~~obligations~~

21 to the court, he or she may be placed on a higher level of
22 supervision at the discretion of the supervising officer; or

23 (2) Engages in criminal activity, he or she may be prosecuted,
24 revoked, or placed on a higher level of supervision; or (3)

1 Exhibits signs or symptoms of a substance abuse disorder, he or she
2 may be assessed for consideration of admission into a drug court.

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

7 (e) A supervised individual on a higher level of supervision
8 shall presumptively be placed on administrative supervision if he
9 of (1) he completed twelve months of community supervision; (2) Not

10 violated the terms of his or her community supervision in the

Fulfilled previous twelve months, her financial obligations to the

11 and reduction in criminal risk factors upon reassessment;

13 and

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

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

19 (g) The Division of Correction and the Supreme Court of
20 Appeals each may establish, by policy or rule, conditions for
21 overriding presumptive administrative supervision

22 **ARTICLE 13. CORRECTIONS MANAGEMENT. §62-13-1. Sentencing Policy.**

23 It is the sentencing policy of the State that:

24 (1) The primary objective of sentencing shall be to maintain

1 public safety and hold offenders accountable while reducing or
2 otherwise maintaining low recidivism and criminal behavior and
3 improving outcomes for those offenders who are sentenced;

4 (2) Reduction or maintenance of low recidivism and criminal
5 behavior is a key measure of the performance of the criminal
6 justice system;

7 (3) Circuit judges shall consider:

8 (A) Beginning July 1, 2013, the results of a defendant's risk
9 and needs assessment if included in the pre-sentence investigation;
10 and

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

13 (4) All supervision and treatment programs provided for
14 defendants shall utilize evidence-based practices to reduce the
15 likelihood of future criminal behavior.