

**Senate Bill No. 342**

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

**Interim  
Bill**

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

**FISCAL  
NOTE**

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

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

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

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

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

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

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

1 amended by adding thereto two new sections, designated §60A-4-414  
 2 and §60A-4-415; that §62-1-5a of said code be amended and  
 3 reenacted; that §62-1C-3 of said code be amended and reenacted;  
 4 that said code be amended by adding thereto a new section,  
 5 designated §62-11C-3a; that said code be amended by adding thereto  
 6 fifteen new sections, designated §62-12-1a, §62-12-5a, §62-12-29,  
 7 §62-12-30, §62-12-31, §62-12-32, §62-12-33, §62-12-34, §62-12-35,  
 8 §62-12-36, §62-12-37, §62-12-38, §62-12-39, §62-12-40 and  
 9 §62-12-41; that §62-12-13 and §62-12-18 of said code be amended and  
 10 reenacted; that said code be amended by adding thereto a new  
 11 section, designated §62-13-1; and that said code be amended by  
 12 adding thereto a new article, designated §62-16-1, §62-16-2,  
 13 §62-16-3, §62-16-4, §62-16-5, §62-16-6, §62-16-7, §62-16-8 and  
 14 §62-16-9, all to read as follows:

15 **CHAPTER 4. THE LEGISLATURE.**

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

21 **§4-1-24. Corrections Impact Statement; conditions requiring**  
 22 **preparation; contents of statement; calculation of**

1           **costs and savings of creation of new crime or**  
2           **revision of existing crime; statement of sponsor**  
3           **regarding source of funds for additional costs of**  
4           **legislation.**

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

1 (b) The Corrections Impact Statement shall contain the  
2 estimated costs, estimated savings and necessary appropriations  
3 based upon:

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

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

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

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

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

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

23 (7) Mandated treatment, education, and other programs which

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

7 (c) Insofar as possible, costs and savings for a change to an  
8 existing crime shall be calculated using:

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

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

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

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

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

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

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

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

1           (d) Insofar as possible, costs or savings for a new crime  
2 shall be calculated in the same manner as specified in subsection  
3 (c) of this section using data for similar crimes unless that is  
4 determined by the Governor's Committee on Crime, Delinquency and  
5 Correction's staff person to be impractical or impossible in which  
6 case the estimate for a new crime may be prepared using: (1) The  
7 maximum and minimum length of incarceration for the offense;

8           (2) An estimate of cost based on ten persons being charged  
9 with the offense, and based on one hundred persons being charged  
10 with the offense;

11           (3) An estimate of cost based on ten persons and one hundred  
12 persons being convicted of the offense and sent to jail if the  
13 offense is a misdemeanor using the criteria specified in subsection  
14 (e) of this section; and

15           (4) An estimate of cost based on ten persons and one hundred  
16 persons being convicted of a felony offense requiring imprisonment  
17 in a correctional facility.

18           (e) Costs or savings shall be based on the average costs  
19 actually paid by the Division of Corrections and the Regional Jail  
20 and Correctional Facilities Authority, during the previous fiscal  
21 year for incarceration of a person in a state correctional  
22 facility, the average cost for supervision of a person placed on  
23 probation without electronic monitoring, the average cost of a

1 person placed on probation with electronic monitoring, the average  
2 cost of parole supervision without electronic monitoring and the  
3 average cost of parole supervision with electronic monitoring.

4 **CHAPTER 15. PUBLIC SAFETY.**

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

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

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

16 (b) The Governor's Committee on Crime, Delinquency and  
17 Correction shall establish a baseline for measurement using the  
18 average number of inmates incarcerated at each of the correctional  
19 facilities administered by the Division of Corrections or Regional  
20 Jail and Correctional Facilities Authority in fiscal year  
21 2012-2013.

22 (c) The Governor's Committee on Crime, Delinquency and

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

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

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

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

22 (g) In submitting its budget request for the 2013-2014 fiscal  
23 year and each fiscal year thereafter, the Secretary of the

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

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

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

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

1 distributed as provided in this section.

2 (b) The Governor's Committee on Crime, Delinquency and  
3 Correction shall establish a baseline for measurement using the  
4 average number of inmates incarcerated at each of the correctional  
5 facilities administered by the Division of Corrections or Regional  
6 Jail and Correctional Facilities Authority in fiscal year  
7 2012-2013.

8 (c) The Governor's Committee on Crime, Delinquency and  
9 Correction shall determine the average cost of:

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

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

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

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

22 (1) The estimated average reduction of inmates due to  
23 mandatory reentry supervision as required by subsection (c),

1 section eighteen, article twelve, chapter sixty-two of the code,  
2 multiplied by the appropriate average cost as determined in  
3 subdivision (1), subsection (c) of this section;

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

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

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

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

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

1 and

2       (7) The estimated average reduction of probationers due to  
3 early termination of probation for good behavior as provided in  
4 section thirty-five, article twelve, chapter sixty-two of this  
5 code, multiplied by the average cost as determined in subdivision  
6 (3), subsection (c) of this section.

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

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

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

17       (A) Determine the estimated amount necessary for reinvestment  
18 in:

19       (i) Expanded treatment programs and expanded probation and  
20 parole services; and

21       (ii) Additional pretrial services and drug court personnel;

22 and

23       (B) Shall allocate and appropriate sufficient amounts to fully

1 fund these reinvestment programs.

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

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

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

15 **CHAPTER 25. DIVISION OF CORRECTIONS.**

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

17 **§25-1-1a. Purpose and legislative intent.**

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

1 jurisdiction to serve terms of incarceration. It is the intent of  
2 the Legislature:

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

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

10 (3) To establish a just, humane and efficient corrections  
11 program; ~~and~~

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

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

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

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

18 **§25-1-15. Diagnostic and classification divisions.**

19 (a) The Commissioner of Corrections may establish diagnostic  
20 and classification divisions.

21 (b) Notwithstanding any provision of the code to the contrary,  
22 all persons committed to the custody of the Commissioner of the  
23 Division of Corrections for presentence diagnosis and

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

8 **§25-1-23. Intensive secured substance abuse recovery program.**

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

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

17 (c) Persons may agree to be ordered into the program for a  
18 period of not less than ninety days and not more than three hundred  
19 sixty-five days.

20 (d) No person may be involuntarily ordered into the program.  
21 A commitment may not occur before the court has considered an  
22 evaluation of the defendant's treatment needs and conducted a  
23 hearing where the defendant may appear with counsel with an

1 opportunity to present evidence on his or her own behalf, and  
2 persons in the program may petition the court to review the  
3 program's determination as to the length of time the person is to  
4 remain in the program or to issue an order to leave the program,  
5 which the court shall grant upon request, at any time. However,  
6 that departure shall constitute a material breach of any agreement  
7 to hold the person's case in abeyance or of the person's pretrial  
8 diversion agreement.

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

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

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

22       (h) The program's recovery component shall be designed to  
23 serve the committed person's substance abuse condition, and to

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

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

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

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

23 (c) The division shall measure the effectiveness of each

1 treatment and intervention program and demonstrate that the program  
2 has a documented evidence base and has been evaluated for  
3 effectiveness in reducing recidivism or otherwise maintaining low  
4 recidivism rates.

5 (d) The division shall establish a policy to provide, at a  
6 minimum:

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

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

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

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

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

23 (f) By fiscal year 2015-2016, the division shall eliminate

1 supervision policies, procedures, programs, and practices intended  
2 to reduce recidivism that scientific research demonstrates do not  
3 reduce recidivism or otherwise maintain low recidivism rates.  
4 However, the division may utilize a new supervision policy,  
5 procedure, program, or practice if the division determines that the  
6 new supervision policy, procedure, program, or practice has the  
7 potential for qualifying as an evidence-based practice after more  
8 scientific research is conducted.

9 **§25-1-25. Annual report.**

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

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

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

18 (3) Numbers of prisoners paroled by type of offense and by  
19 length of time served;

20 (4) Numbers of prisoners serving their full sentence by type  
21 of offense;

22 (5) The percentage of felony offenders on parole or some form  
23 of parole who are participating or completing treatment consistent

1 with assessment results, in prison and in the community;

2 (6) The percentage of felony offenders whose reassessment  
3 results demonstrate reductions in criminal risk factors;

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

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

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

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

14 (C) Have housing upon release from incarceration;

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

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

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

21 (10) Any other data that provides information on state-funded  
22 crime reduction and recidivism reduction efforts, including,  
23 participation in treatment and intervention programming, public

1 safety outcomes, and cost effectiveness;

2 (11) Numbers and types of prison beds necessary to meet  
3 current population needs and six year projections of those needs;

4 (12) Current personnel needs of the Division of Corrections  
5 and five year projections of the needs; and

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

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

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

11 **ARTICLE 5. THE PENITENTIARY.**

12 **§28-5-27. Deduction from sentence for good conduct.**

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

1 pursuant to such commitment shall:

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

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

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

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

1 sentence for:

2 (1) Performing exceptionally meritorious service or performing  
3 duties of outstanding importance in connection with institutional  
4 operations and programs, awarded at the discretion of the  
5 commissioner in an amount not to exceed seven days per month; and

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

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

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

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

1 to such inmate pursuant to this section may be forfeited and  
2 revoked by the warden or superintendent of the institution in which  
3 the violation occurred. The warden or superintendent, when  
4 appropriate and with approval of the commissioner, may restore any  
5 good time so forfeited.

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

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

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

22 (j) In order to ensure equitable good time for all inmates now  
23 in the custody of the commissioner of corrections or hereafter

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

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

19

**CHAPTER 31. CORPORATIONS.**

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

21

**AUTHORITY.**

22 **§31-20-33. Annual report.**

23

(a) The Executive Director of the Regional Jail and

1 Correctional Facility Authority shall on December 1 of each year  
2 report to the Governor and the Legislature on:

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

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

6 (3) Numbers of prisoners by number and type of prior  
7 convictions;

8 (4) Numbers of prisoners paroled by type of offense and by  
9 length of time served;

10 (5) Numbers of prisoners serving their full sentence by type  
11 of offense;

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

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

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

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

1 (10) Any other data that provides information on state-funded  
2 crime reduction and recidivism reduction efforts, including  
3 caseload sizes by risk level, participation in treatment and  
4 intervention programming, public safety outcomes, and cost  
5 effectiveness;

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

8 (12) Current personnel needs of the authority and five year  
9 projections of the needs; and

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

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

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

14 **§51-1-22. Annual report on state-funded crime reduction and**  
15 **recidivism reduction efforts.**

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

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

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

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

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

7 (b) The provisions of this section are effective on November  
8 1, 2013.

9 **§51-1-23. Online system based on state statistics of offenders for**  
10 **use in plea negotiations and sentencing.**

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

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

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

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

23 (4) The costs for various sentencing options and costs for

1 various alternatives to incarceration; and

2 (5) The offender's likelihood of being reincarcerated within  
3 two years under the different sentencing options and alternatives,  
4 taking into account the offender's risk assessment rating.

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

6 **§51-1-24. Authorization of pilot-project on Hawaii Opportunity**  
7 **Probation and Enforcement (HOPE) model.**

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

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

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

1 defenders and defense attorneys, and sheriff or police  
2 administrators;

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

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

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

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

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

18 (8) Provides rewards to probationers who comply with such  
19 rules;

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

22 (10) Establishes procedures to terminate program participation  
23 by, and initiates revocation to a term of incarceration for,

1 probationers who habitually fail to abide by program rules and pose  
2 a threat to public safety;

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

6 (12) Reduces violation behavior and new crimes, and reduces  
7 revocations to prison.

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

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

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

1 prison and total correctional costs incurred; and

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

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

5 **ARTICLE 1. DEFINITIONS.**

6 **§60A-1-101. Definitions.**

7 As used in this act:

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

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

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

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

19 ~~(c)~~ (3) "Analogue" means a substance that, in relation to a  
20 controlled substance, has a substantially similar chemical  
21 structure.

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

1 agency.

2 (5) "Cocaine" means a substance containing any quantity of  
3 cocaine, its salts, optical and geometric isomers, and salts of  
4 isomers.

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

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

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

23 (8) "Criminal risk factors" means those characteristics and

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

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

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

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

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

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

23 (14) "Dosage unit" means a single pill, capsule, ampule,

1 liquid, or other form of administration available as a single unit.

2 ~~(m)~~ (15) "Drug" means: (1) (A) Substances recognized as drugs  
3 in the official "United States Pharmacopoeia, official Homeopathic  
4 Pharmacopoeia of the United States or official National Formulary",  
5 or any supplement to any of them; (2) (B) substances intended for  
6 use in the diagnosis, cure, mitigation, treatment or prevention of  
7 disease in man or animals; (3) (C) substances (other than food)  
8 intended to affect the structure or any function of the body of man  
9 or animals; and (4) (D) substances intended for use as a component  
10 of any article specified in ~~clause (1), (2) or (3)~~ paragraph (A),  
11 (B) or (C) of this subdivision. It does not include devices or  
12 their components, parts or accessories.

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

15 (17) "Imitation controlled substance" means:

16 (A) A controlled substance which is falsely represented to be  
17 a different controlled substance;

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

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

1 substance.

2 ~~(n)~~ (18) "Immediate derivative" means a substance which the  
3 "West Virginia Board of Pharmacy" has found to be and by rule  
4 designates as being the principal compound or any analogue of the  
5 parent compound manufactured from a known controlled substance  
6 primarily for use and which has equal or similar pharmacologic  
7 activity as the parent compound which is necessary to prevent,  
8 curtail or limit manufacture.

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

17 ~~(p)~~ (20) "Manufacture" means the production, preparation,  
18 propagation, compounding, conversion or processing of a controlled  
19 substance, either directly or indirectly or by extraction from  
20 substances of natural origin, or independently by means of chemical  
21 synthesis, or by a combination of extraction and chemical  
22 synthesis, and includes any packaging or repackaging of the  
23 substance or labeling or relabeling of its container, except that

1 this term does not include the preparation, compounding, packaging  
2 or labeling of a controlled substance:

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

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

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

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

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

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

7       ~~(3)~~ (C) Opium poppy and poppy straw; and

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

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

23       ~~(t)~~ (24) "Opium poppy" means the plant of the species "Papaver

1 somniferum L.", except its seeds.

2 ~~(u)~~ (25) "Person" means individual, corporation, government or  
3 governmental subdivision or agency, business trust, estate, trust,  
4 partnership or association, or any other legal entity.

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

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

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

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

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

21 (29) "Presumptive probation" means a sentence of probation not  
22 to exceed the maximum term specified for the offense, subject to  
23 conditions otherwise authorized by law, that is presumed to be the

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

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

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

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

22       ~~(z)~~ (33) "State", when applied to a part of the United States,  
23 includes any state, district, commonwealth, territory, insular

1 possession thereof and any area subject to the legal authority of  
2 the United States of America.

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

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

18 **§60A-1-102. Legislative findings and declaration.**

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

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

23 (2) Successful, community-based treatment can be used as an

1 effective tool in the effort to reduce criminal risk factors.  
2 Therapeutic intervention and ongoing individualized treatment plans  
3 prepared through the use of meaningful and validated research-based  
4 assessment tools and professional evaluations offer a potential  
5 alternative to incarceration in appropriate circumstances and shall  
6 be used accordingly.

7 **ARTICLE 4. OFFENSES AND PENALTIES.**

8 **§60A-4-401. Prohibited acts A; penalties.**

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

12 Any person who violates this subsection with respect to: ~~(i)~~

13 (1) (A) Four grams or more of cocaine; (B) two grams or more of  
14 heroin or methamphetamine; (C) ten or more dosage units of a  
15 controlled substance classified in Schedule I or II, which and is  
16 a narcotic drug; or (D) any quantity of lysergic acid diethylamide,  
17 phencyclidine, gamma hydroxybutyric acid (GHB), including its  
18 salts, isomers, salts of isomers and analogues or flunitrazepam,  
19 including its salts, isomers or salts of isomers is guilty of a  
20 felony and, upon conviction, may be ~~imprisoned in the state~~  
21 ~~correctional~~ confined in a correctional facility for not less than  
22 one year nor more than fifteen years, or fined not more than  
23 \$25,000, or both fined and confined;

1       (2) Any quantity of a controlled substance specified in  
2 subdivision (1) of this subsection in an amount less than the  
3 amounts specified, is guilty of a felony and, upon conviction, may  
4 be confined in a correctional facility for not less than one year  
5 nor more than five years, or fined not more than \$15,000, or both  
6 fined and confined;

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

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

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

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

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

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

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

19       Any person who violates this subsection with respect to:

20       ~~(i) (1)~~ (1) A counterfeit substance classified in Schedule I or  
21 II, which is a narcotic drug, is guilty of a felony and, upon  
22 conviction, may be ~~imprisoned in the state~~ confined in a  
23 correctional facility for not less than one year nor more than

1 fifteen years, or fined not more than \$25,000, or both fined and  
2 confined;

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

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

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

20       (c) It is unlawful for any person knowingly or intentionally  
21 to possess a controlled substance unless the substance was obtained  
22 directly from, or pursuant to, a valid prescription or order of a  
23 practitioner while acting in the course of his or her professional

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

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

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

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

1 label of a counterfeit substance or an imitation controlled  
2 substance.

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

15 (4) The provisions of subdivision (1) of this subsection shall  
16 not apply to a practitioner who administers or dispenses a placebo.  
17 **§60A-4-407. Deferred prosecution.**

18 ~~(a) Whenever any person who has not previously been convicted~~  
19 ~~of any offense under this chapter or under any statute of the~~  
20 ~~United States or of any state relating to narcotic drugs,~~  
21 ~~marihuana, or stimulant, depressant, or hallucinogenic drugs,~~  
22 ~~pleads guilty to or is found guilty of possession of a controlled~~  
23 ~~substance under section 401(c), the court, without entering a~~

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

~~22 (b) After a period of not less than six months which shall  
23 begin to run immediately upon the expiration of a term of probation~~

~~1 imposed upon any person under this chapter, the person may apply to  
2 the court for an order to expunge from all official records all  
3 recordations of his or her arrest, trial, and conviction, pursuant  
4 to this section. If the court determines after a hearing that the  
5 person during the period of his or her probation and during the  
6 period of time prior to his or her application to the court under  
7 this section has not been guilty of any serious or repeated  
8 violation of the conditions of his or her probation, it shall order  
9 the expungement.~~

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

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

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

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

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

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

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

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

23       (e) If the court finds that the defendant violated the

1 conditions of the program, the court may, with the approval of the  
2 prosecutor:

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

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

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

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

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

20 The costs assessed pursuant to this section, whether as a term  
21 of probation or not, shall be distributed as other court costs in  
22 accordance with section two, article three, chapter fifty, section  
23 four, article two-a, chapter fourteen, section four, article

1 twenty-nine, chapter thirty and sections two, seven and ten,  
2 article five, chapter sixty-two of this code.

3 **§60A-4-414. Presumptive Probation.**

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

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

14 (c) If a court determines that a defendant is not to be  
15 released pursuant to subsection (b) of this section, the court  
16 shall document the reasons for denying the release in a written  
17 order.

18 **§60A-4-415. Assessment and treatment program for first offenders**  
19 **of possession of controlled substance; rescission**  
20 **of treatment order; voiding of conviction; sealing**  
21 **of records.**

22 (a) A court may request a risk and needs assessment for any

1 person found guilty of possession of a controlled substance  
2 pursuant to this article. The risk and needs assessment shall  
3 include a recommendation to the court as to whether treatment is  
4 indicated by the assessment, and, if so, the most appropriate  
5 treatment or recovery program environment. If treatment is  
6 indicated for the person, the court may order him or her to the  
7 appropriate treatment or recovery program that will effectively  
8 respond to the person's level of risk, criminal risk factors, and  
9 individual characteristics, a program of treatment or recovery not  
10 to exceed one year in duration may be prescribed. The person  
11 ordered to the designated treatment or recovery program shall  
12 present himself or herself for registration and initiation of the  
13 treatment or recovery program within five days of the date of  
14 sentencing. If, without good cause, the person fails to appear at  
15 the designated treatment or recovery program within the specified  
16 time, or if at any time during the program of treatment or recovery  
17 prescribed, the authorized director of the treatment or recovery  
18 program finds that the person is unwilling to participate in his or  
19 her treatment, the director shall notify the sentencing court. Upon  
20 receipt of notification, the court shall cause the person to be  
21 brought before it and may continue the order of treatment, or may  
22 rescind the treatment order and impose a sentence for the  
23 possession offense. Upon discharge of the person from the treatment

1 or recovery program prior to the expiration of the one year period  
2 or upon satisfactory completion of one year of treatment, the  
3 person shall be deemed finally discharged from sentence.

4 (b) The Secretary of the Department of Health and Human  
5 Resources, or his or her designee, shall inform the Supreme Court  
6 of Appeals of the identity and location of treatment or recovery  
7 programs to which a person may sentenced.

8 (c) Transportation to an inpatient facility shall be provided  
9 by order of the court when the court finds the person unable to  
10 convey himself or herself to the facility within five days of  
11 sentencing by reason of physical infirmity or financial  
12 incapability.

13 (d) The sentencing court shall immediately notify the  
14 designated treatment or recovery program of the sentence and its  
15 effective date.

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

1 (f) Responsibility for payment for treatment services  
2 rendered to persons pursuant to this section shall be as under the  
3 statutes pertaining to payment of patients and others for services  
4 rendered by the Department of Health and Human Resources, unless  
5 the person and the treatment or recovery program shall arrange  
6 otherwise.

7 (g) None of the provisions of this section shall be deemed to  
8 preclude the court from exercising its usual discretion with regard  
9 to ordering probation or conditional discharge.

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

20 (i) If the court voids a conviction under this section, the  
21 court shall order the sealing of all records in the custody of the  
22 court and any records in the custody of any other agency or  
23 official, including law-enforcement records. Every agency with

1 records relating to the arrest, charge, or other matters arising  
2 out of the arrest or charge that is ordered to seal records, shall  
3 certify to the court within sixty days of the entry of the order  
4 that the required sealing action has been completed.

5 (j) After the sealing of the record, the proceedings in the  
6 matter may not be used against the defendant except for the  
7 purposes of determining the person's eligibility to have his or her  
8 conviction voided under subsection (h) of this section. The court  
9 and other agencies shall reply to any inquiry that no record exists  
10 on the matter. The person whose record has been sealed may not have  
11 to disclose the fact of the record or any matter relating thereto  
12 on an application for employment, credit, or other type of  
13 application.

14 (k) Inspection of the sealed records may thereafter be  
15 permitted by the court upon a motion by the person who is the  
16 subject of the records and only to those persons named in the  
17 motion or upon a motion of the prosecutor to verify a defendant's  
18 eligibility to have his or her conviction voided under subsection  
19 (h) of this section.

20 **CHAPTER 62. CRIMINAL PROCEDURE.**

21 **ARTICLE 1. PRELIMINARY PROCEDURE.**

22 **§62-1-5a. Citation in lieu of arrest; failure to appear.**

23 (a) Except as provided in subsections (b) and (c) of this

1 section, a law-enforcement officer ~~may~~ shall issue a citation  
2 instead of making an arrest for the following offenses, if there  
3 are reasonable grounds to believe that the person being cited will  
4 appear to answer the charge:

5 (1) Any misdemeanor, not involving injury to the person,  
6 committed in a law-enforcement officer's presence: Provided, That  
7 the officer may arrest the person if he or she has reasonable  
8 grounds to believe that the person is likely to cause serious harm  
9 to himself or others; and

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

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

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

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

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

23 (c) A law-enforcement officer shall make an arrest for

1 violations of protective orders issued pursuant to article  
2 twenty-seven, chapter forty-eight of this code.

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

5 (e) If the defendant fails to appear in response to the  
6 citation or if there are reasonable grounds to believe that he or  
7 she will not appear, a complaint may be made and a warrant shall  
8 issue. When a physical arrest is made and a citation is issued in  
9 relation to the same offense the officer shall mark on the  
10 citation, in the place specified for court appearance date, the  
11 word "arrested" in lieu of the date of court appearance.

12 **ARTICLE 1C. BAIL.**

13 **§62-1C-3. Fixing of amount; bail may cover two or more charges.**

14 (a) The amount of bail shall be fixed by the court or ~~justice~~  
15 magistrate with consideration given to the seriousness of the  
16 offense charged, the previous criminal record of the defendant, his  
17 or her financial ability, and the probability of his or her  
18 appearance. When two or more charges are filed or are pending  
19 against the same person at or about the same time, the bail given  
20 may be made to include all offenses charged against the defendant.

21 (b) When a person has been charged with one or more  
22 misdemeanors, the amount of the bail for all charges shall be  
23 encompassed by a single amount of bail that may not exceed the

1 amount of the fine and court costs for the one highest misdemeanor  
2 charged. This subsection shall apply only to misdemeanor offenses  
3 not involving physical injury or sexual contact.

4 (c) When a person has been convicted of a misdemeanor offense  
5 and a sentence of jail, probation, conditional discharge, or  
6 sentence other than a fine only has been imposed, the amount of  
7 bail for release on appeal may not exceed double the amount of the  
8 maximum fine that could have been imposed for the one highest  
9 misdemeanor offense for which the person was convicted. This  
10 subsection shall apply only to misdemeanors not involving physical  
11 injury or sexual contact.

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

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

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

19 **§62-11C-3a. Evidence-based practices to be used in community**  
20 **corrections programs; standards; funding**  
21 **restrictions.**

22 (a) As used in this section, "evidence-based practices" means  
23 supervision policies, procedures, treatment and intervention

1 programs, and practices that scientific research demonstrates  
2 reduce or otherwise maintaining low recidivism among inmates and  
3 individuals on probation, parole, or other form of post-release  
4 supervision when implemented competently.

5 (b) In order to increase the effectiveness of treatment and  
6 intervention programs funded by the state and provided by the West  
7 Virginia Community Corrections Fund, the Governor's committee shall  
8 require that such programs use evidence-based practices.

9 (c) The Governor's committee shall measure the effectiveness  
10 of each community corrections program and demonstrate that the  
11 program has a documented evidence base and has been evaluated for  
12 effectiveness in reducing or otherwise maintaining low recidivism.

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

15 (1) A process for reviewing the objective criteria for  
16 evidence-based practices established by the community corrections  
17 program;

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

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

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

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

1 moneys expended on programs shall be for programs that are in  
2 accordance with evidence-based practices. Beginning July 1, 2014,  
3 fifty percent of state moneys expended on programs shall be for  
4 programs that are in accordance with evidence-based practices.  
5 Beginning July 1, 2016 and thereafter, seventy-five percent of  
6 state moneys expended on programs shall be for programs that are in  
7 accordance with evidence-based practices.

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

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

18 **§62-12-1a. Definitions.**

19 As used in this article:

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

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

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

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

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

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

19 (3) "Evidence-based practices" means policies, procedures,  
20 programs and practices proven by scientific research to reliably  
21 produce reductions or otherwise maintain low recidivism when  
22 implemented competently.

23 (4) "Graduated sanction" means any of a wide range of

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

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

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

18 (7) "Treatment" when used in a criminal justice context, means  
19 targeted interventions that focus on criminal risk factors in order  
20 to reduce the likelihood of criminal behavior. Treatment options  
21 may include, but may not be limited to, community-based programs  
22 that are consistent with evidence-based practices;  
23 cognitive-behavioral programs; faith-based programs; inpatient and

1 outpatient substance abuse or mental health programs; and other  
2 available prevention and intervention programs that have been  
3 scientifically proven to produce reductions in recidivism when  
4 implemented competently. "Treatment" does not include medical  
5 services.

6 **§62-12-5a. Evidence-based practices to be used in supervision and**  
7 **intervention programs; standards; funding**  
8 **restrictions.**

9 (a) As used in this section, "evidence-based practices" means  
10 intervention programs and supervision policies, procedures,  
11 programs, and practices that scientific research demonstrate  
12 reductions in instances of a defendant's failure to appear in court  
13 and criminal activity among pretrial defendants when implemented  
14 competently.

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

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

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

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

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

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

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

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

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

1 **§62-12-13. Powers and duties of board; eligibility for parole;**  
2 **procedure for granting parole.**

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

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

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

13 (B) He or she:

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

16 (ii) Does not have a prior criminal conviction for a felony  
17 crime of violence against the person, a felony offense involving  
18 the use of a firearm, or a felony offense where the victim was a  
19 minor child;

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

23 (iv) Is not serving a sentence for a crime of violence against

1 the person, or more than one felony for a controlled substance  
2 offense for which the inmate is serving a consecutive sentence, a  
3 felony offense involving the use of a firearm, or a felony offence  
4 where the victim was a minor child; and

5 (v) Has successfully completed a rehabilitation treatment  
6 program created with the assistance of a standardized risk and  
7 needs assessment;

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

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

15 (C) Notwithstanding any provision of this code to the  
16 contrary, any person who committed, or attempted to commit a felony  
17 with the use, presentment or brandishing of a firearm, is not  
18 eligible for parole prior to serving a minimum of three years of  
19 his or her sentence or the maximum sentence imposed by the court,  
20 whichever is less: *Provided*, That any person who committed, or  
21 attempted to commit, any violation of section twelve, article two,  
22 chapter sixty-one of this code, with the use, presentment or  
23 brandishing of a firearm, is not eligible for parole prior to

1 serving a minimum of five years of his or her sentence or one third  
2 of his or her definite term sentence, whichever is greater.  
3 Nothing in this paragraph applies to an accessory before the fact  
4 or a principal in the second degree who has been convicted as if he  
5 or she were a principal in the first degree if, in the commission  
6 of or in the attempted commission of the felony, only the principal  
7 in the first degree used, presented or brandished a firearm. A  
8 person is not ineligible for parole under the provisions of this  
9 paragraph because of the commission or attempted commission of a  
10 felony with the use, presentment or brandishing of a firearm unless  
11 that fact is clearly stated and included in the indictment or  
12 presentment by which the person was charged and was either: (i)  
13 Found by the court at the time of trial upon a plea of guilty or  
14 nolo contendere; (ii) found by the jury, upon submitting to the  
15 jury a special interrogatory for such purpose if the matter was  
16 tried before a jury; or (iii) found by the court, if the matter was  
17 tried by the court without a jury.

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

22 (D) The amendments to this subsection adopted in the year  
23 1981:

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

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

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

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

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

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

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

6           (4) Has prepared and submitted to the board a written parole  
7 release plan setting forth proposed plans for his or her place of  
8 residence, employment and, if appropriate, his or her plans  
9 regarding education and post-release counseling and treatment. The  
10 Commissioner of Corrections or his or her designee shall review the  
11 plan to be reviewed and investigated and provide recommendations to  
12 the board as to the suitability of the plan: *Provided*, That in  
13 cases in which there is a mandatory thirty-day notification period  
14 required prior to the release of the inmate, pursuant to section  
15 twenty-three of this article, the board may conduct an initial  
16 interview and deny parole without requiring the development of a  
17 plan. In the event the board does not believe parole should be  
18 denied, it may defer a final decision pending completion of an  
19 investigation and receipt of recommendations. Upon receipt of the  
20 plan together with the investigation and recommendation, the board,  
21 through a panel, shall make a final decision regarding the granting  
22 or denial of parole; and

23           (5) Has satisfied the board that if released on parole he or

1 she will not constitute a danger to the community.

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

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

19 (e) If, upon consideration, parole is denied, the board shall  
20 promptly notify the inmate of the denial. The board shall, at the  
21 time of denial, notify the inmate of the month and year he or she  
22 may apply for reconsideration and review. The board shall at least  
23 once a year reconsider and review the case of every inmate who was

1 denied parole and is still eligible: *Provided*, That the board may  
2 reconsider and review parole eligibility anytime within three years  
3 following the denial of parole of an inmate serving a life sentence  
4 with the possibility of parole.

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

10 (g) The board shall, with the approval of the Governor, adopt  
11 rules governing the procedure in the granting of parole. No  
12 provision of this article and none of the rules adopted hereunder  
13 are intended or may be construed to contravene, limit or otherwise  
14 interfere with or affect the authority of the Governor to grant  
15 pardons and reprieves, commute sentences, remit fines or otherwise  
16 exercise his or her Constitutional powers of executive clemency.

17 (h) The Division of Corrections shall promulgate policies and  
18 procedures for developing a rehabilitation treatment plan created  
19 with the assistance of a standardized risk and needs assessment.  
20 The policies and procedures shall include, but not be limited to,  
21 policy and procedures for screening and selecting inmates for  
22 rehabilitation treatment and development and use of standardized  
23 risk and needs assessment tools. An inmate ~~shall~~ may not be

1 paroled solely due to having successfully completed a  
2 rehabilitation treatment plan but completion of all the  
3 requirements of a rehabilitation parole plan along with compliance  
4 with the requirements of subsection (b) of this section shall  
5 create a rebuttable presumption that parole is appropriate. The  
6 presumption created by this subsection may be rebutted by a parole  
7 board finding that at the time parole release is sought the inmate  
8 still constitutes a reasonable risk to the safety or property of  
9 other persons if released. Nothing in subsection (b) of this  
10 section or in this subsection may be construed to create a right to  
11 parole.

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

20 (j) Where an inmate is otherwise eligible for parole pursuant  
21 to subsection (b) of this section but the parole board determines  
22 that the inmate should participate in an additional program or  
23 complete an assigned task or tasks prior to actual release on

1 parole, the board may grant parole contingently, effective upon  
2 successful completion of the program or assigned task or tasks,  
3 without the need for a further hearing. The Commissioner of  
4 Corrections shall provide notice to the parole board of the  
5 imminent release of a contingently paroled inmate to effectuate  
6 appropriate supervision.

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

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

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

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

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

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

19 (E) On the results of an inmate's validated risk and needs and  
20 any other scientific means for personality analysis that may  
21 hereafter be developed, to define the terms and intensity of  
22 supervision before granting parole. The terms and intensity of  
23 supervision shall be based on an individual's level of risk to

1 public safety, criminal risk factors, and the need for treatment  
2 and other interventions.

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

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

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

23 **§62-12-18. Period of parole; mandatory reentry supervision;**

1                   **discharge**

2           (a) The period of parole shall be the maximum of any sentence,  
3 less deductions for good conduct and work as provided by law, for  
4 which the paroled inmate, at the time of release, was subject to  
5 imprisonment under his or her definite or indeterminate sentence,  
6 as the case may be: *Provided*, That any time after a parolee has  
7 been on parole for a period of one year from the date of his or her  
8 release, a panel of the board may, when in its judgment the ends of  
9 parole have been attained and the best interests of the state and  
10 the parolee will be served thereby, release the parolee from  
11 further supervision and discharge him or her from parole:  
12 *Provided, however*, That no inmate sentenced to serve a life term of  
13 imprisonment and released on parole shall be discharged from  
14 supervision and parole in a period less than five years from the  
15 date of his or her release on parole.

16          (b) No parolee who has violated the terms of his or her  
17 release on parole by confession to, or being convicted of, in any  
18 state of the United States, the District of Columbia or the  
19 territorial possessions of the United States, the crime of treason,  
20 murder, aggravated robbery, first degree sexual assault, second  
21 degree sexual assault, a sexual offense against a minor, incest or  
22 offenses with the same essential elements if known by other terms  
23 in other jurisdictions shall be discharged from parole. A parolee

1 serving a sentence in any correctional facility of another state or  
2 the United States may, unless incarcerated for one of the above  
3 enumerated crimes, be discharged from parole while so serving his  
4 or her sentence in said correctional facility or be continued on  
5 parole or returned to West Virginia as a parole violator, in the  
6 discretion of the parole board.

7 (c) The board shall order mandatory reentry supervision and  
8 the terms of supervision, which may include electronic monitoring,  
9 for an inmate who has not been granted discretionary parole six  
10 months prior to the inmate's minimum expiration of sentence.

11 (1) An inmate granted mandatory reentry supervision pursuant  
12 to this section may be returned by the board to a correctional  
13 facility for violation of the conditions of supervision and may not  
14 again be eligible for mandatory reentry supervision during the same  
15 period of incarceration.

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

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

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

23 (5) Subject to subdivision (1) of this subsection, the period

1 of mandatory reentry supervision shall conclude upon completion of  
2 the individual's minimum expiration of sentence.

3 **§62-12-29. Policies or rules requiring supervision and treatment**  
4 **in accordance with evidence-based practices.**

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

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

10 (1) The administration of a validated risk and needs  
11 assessment on all supervised individuals at regular intervals to  
12 determine their criminal risk factors and to identify intervention  
13 targets;

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

17 (3) Caseload size guidelines that are based on supervised  
18 individuals' risk levels and take into account resources and  
19 employee workload and prioritization of supervision and program  
20 resources for supervised individuals who are at higher risk to  
21 reoffend;

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

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

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

9 (7) Establishment of protocols and standards that assess the  
10 degree to which policies, procedures, programs, interventions, and  
11 practices relating to offender recidivism reduction, whether  
12 utilized by the department or contract or referral agencies, are  
13 evidence-based.

14 **§62-12-30. Training and professional development for personnel**  
15 **concerning implementation of evidence-based**  
16 **practices.**

17 (a) The Division of Corrections and the Supreme Court of  
18 Appeals shall each provide its probation and parole officers with  
19 intensive initial and on-going training and professional  
20 development services to support the implementation of  
21 evidence-based practices.

22 (b) The training and professional development services shall  
23 include assessment techniques, case planning, risk reduction and

1 intervention strategies, effective communication skills,  
2 cognitive-behavioral treatment, substance abuse, and other topics  
3 identified by the Division or the Supreme Court of Appeals.

4 **§62-12-31. Annual report on efforts to implement evidence-based**  
5 **practices to reduce recidivism.**

6 By December 1 of each year, beginning in 2012, the  
7 Commissioner of the Division of Corrections and the Chief Justice  
8 of the Supreme Court of Appeals shall each submit to the Governor  
9 and the Legislature, a comprehensive report on its efforts to  
10 implement evidence-based practices to reduce recidivism. The report  
11 shall include at a minimum:

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

14 (2) The percentage of state moneys expended by the Division of  
15 Corrections and the Supreme Court of Appeals for programs that are  
16 evidence based, and a list of all programs with identification of  
17 which are evidence based;

18 (3) Specification of supervision policies, procedures,  
19 programs, and practices that were created, modified or eliminated;  
20 and

21 (4) The commissioner's and the chief justice's recommendations  
22 for resource allocation, and any additional collaboration with  
23 other state, regional, or local public agencies, private entities,

1 or faith-based and community organizations.

2 **§62-12-32. Duties of Division of Corrections and Supreme Court of**  
3 **Appeals concerning risk and needs assessment**  
4 **instrument.**

5 The Division of Corrections and the Supreme Court of Appeals  
6 each shall:

7 (1) Conduct an initial administration of a validated risk and  
8 needs assessment instrument on supervised individuals upon intake  
9 to community supervision, unless an initial assessment has been  
10 previously conducted within a reasonable time period as specified  
11 in rules promulgated by the Division of Corrections or the Supreme  
12 Court of Appeals;

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

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

18 (A) Establish an appropriate level of supervision;

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

21 (C) Respond to compliant and noncompliant behavior; and

22 (4) Promulgate policies or rules to determine appropriate  
23 levels of supervision, guidelines for case planning, and guidelines

1 for responses to specified behavior by supervised individuals.

2 **§62-12-33. Compliance credits for parolees.**

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

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

7 (2) Has no new arrests; and

8 (3) Makes scheduled monthly payments for restitution.

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

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

14 (a) The Supreme Court of Appeals shall promulgate rules to  
15 develop a system of graduated sanctions for responding to  
16 violations of probation that otherwise do not involve the  
17 commission of new crimes.

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

20 (1) Responding quickly and consistently to violations of  
21 probation, based on the nature of the violation and the risk level  
22 of the supervised individual;

23 (2) Reducing the time and resources expended by the probation

1 officers and the courts to respond to violations; and

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

4 **§62-12-35. Early termination of probation; rules.**

5 (a) The Supreme Court of Appeals shall promulgate rules to  
6 establish procedures to:

7 (1) Recommend to the court the early termination of probation  
8 for a supervised individual who has:

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

10 (B) No new arrests;

11 (C) Demonstrated a reduction in criminal risk factors upon  
12 reassessment; and

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

15 (2) Review the compliance of the individual on probation with  
16 the requirements in subdivision (1) of this subsection. This review  
17 for compliance shall occur at the same time as the regular  
18 reassessment pursuant to sections twenty-nine and thirty-two of  
19 this article.

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

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

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

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

5 **§62-12-36. Administrative caseload supervision program for**  
6 **supervised offenders; rules.**

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

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

17 (c) If a supervised individual on administrative caseload  
18 supervision:

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

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

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

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

8           (e) A supervised individual on a higher level of supervision  
9 shall presumptively be placed on administrative supervision if he  
10 or she has:

11           (1) Completed twelve months of community supervision;

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

14           (3) Fulfilled all restitution and other financial obligations  
15 to the court;

16           (4) Demonstrated a reduction in criminal risk factors upon  
17 reassessment; and

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

19           (f) If the conditions or level of community supervision of a  
20 probationer are modified under this section, the probation officer  
21 shall file a copy of the modified conditions or level with the  
22 sentencing court.

23           (g) The Division of Correction and the Supreme Court of

1 Appeals each may establish, by policy or rule, conditions for  
2 overriding presumptive administrative supervision.

3 **§62-12-37. Supervised individuals; sanctions.**

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

5 (1) Violation revocation proceedings and possible  
6 incarceration for failure to comply with the conditions of  
7 supervision when such failure constitutes a significant risk to  
8 prior victims of the supervised individual or the community at  
9 large and cannot be appropriately managed in the community; or

10 (2) Sanctions other than revocation and incarceration as  
11 appropriate to the severity of the violation behavior, the risk of  
12 future criminal behavior by the offender, and the need for, and  
13 availability of, interventions which may assist the offender to  
14 remain compliant and crime-free in the community.

15 **§62-12-38. System of graduated sanctions for violations of**  
16 **conditions of community supervision; rules.**

17 (a) The Division of Corrections and the Supreme Court of  
18 Appeals each shall, by January 1, 2013, adopt a system of graduated  
19 sanctions for violations of conditions of community supervision.  
20 Notwithstanding sections ten and nineteen of this article, the  
21 system shall set forth a menu of presumptive sanctions for the most  
22 common types of supervision violations, including, but not limited  
23 to, failure to report; failure to pay fines, fees, and victim

1 restitution; failure to participate in a required program or  
2 service; failure to complete community service; violation of a  
3 protective or no contact order; and failure to refrain from the use  
4 of alcohol or controlled substances. The system of sanctions shall  
5 take into account factors such as the severity of the current  
6 violation, the supervised individual's previous criminal record,  
7 the number and severity of any previous supervision violations, the  
8 supervised individual's assessed risk level, and the extent to  
9 which graduated sanctions were imposed for previous violations. The  
10 system also shall define positive reinforcements that supervised  
11 individuals may receive for compliance with conditions of  
12 supervision.

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

17 (c) The Division of Corrections shall establish a policy to  
18 review graduated sanctions contested by supervised individuals  
19 under this section.

20 **§62-12-39. Modification of conditions of community supervision;  
21 imposition of graduated sanctions.**

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

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

3           (2) Place a supervised individual who violates the conditions  
4 of community supervision in a state or local correctional or  
5 detention facility or residential center for a period of not more  
6 than ten days consecutively, and not more than thirty days in any  
7 one calendar year. The Division of Corrections shall reimburse the  
8 local correctional or detention facility or residential center for  
9 the costs of incarcerating a parolee confined under this  
10 subdivision at the rate authorized by section ten-a, article  
11 twenty, chapter thirty-one of this code.

12          (b) A probation and parole officer intending to modify the  
13 conditions of community supervision by imposing a graduated  
14 sanction shall issue to the supervised individual a notice of the  
15 intended sanction. The notice shall inform the supervised  
16 individual of the violation or violations alleged, the date or  
17 dates of the violation or violations, and the graduated sanction to  
18 be imposed.

19          (c) The imposition of a graduated sanction or sanctions by a  
20 probation and parole officer shall comport with the system of  
21 graduated sanctions adopted by the Division of Corrections and the  
22 Supreme Court of Appeals section thirty-eight of this article. Upon  
23 receipt of the notice, the supervised individual shall immediately

1 accept or object to the sanction or sanctions proposed by the  
2 officer. The failure of the supervised individual to comply with a  
3 sanction shall constitute a violation of community supervision.

4 (d) If the supervised individual objects to the imposition of  
5 the sanction or sanctions, then the parole or probation officer  
6 shall present the violations to the court or parole board  
7 respectively, for formal adjudication.

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

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

22 (g) Upon successful completion of a graduated sanction or  
23 sanctions, a court or the board of parole may not revoke the term

1 of community supervision or impose additional sanctions for the  
2 same violation: *Provided*, That nothing herein shall prohibit such  
3 graduated sanction from being considered as an aggravating factor  
4 for a sanction for any subsequent violation of terms and conditions  
5 of parole or probation.

6 (h) If a probation and parole officer modifies the conditions  
7 of community supervision by imposing a graduated sanction, the  
8 officer shall:

9 (1) Deliver a copy of the modified conditions to the  
10 supervised individual;

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

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

15 **§62-12-40. Judicial determination of conditions of community**  
16 **supervision.**

17 For supervised individuals on probation, the court having  
18 jurisdiction of the case shall determine the conditions of  
19 community supervision and may impose as a condition of community  
20 supervision that the probation officer supervising the individual  
21 shall, in accordance with section thirty-eight of this article,  
22 impose graduated sanctions for violations of the conditions of  
23 community supervision.

1 **§62-12-41. Quarterly review of recommended confinement sanctions.**

2       The Director of Parole Services of the Division of Corrections  
3 and the Director of Probation for the Supreme Court of Appeals  
4 shall review confinement sanctions recommended by probation and  
5 parole officers on a quarterly basis to assess any disparities that  
6 may exist among officers, evaluate the effectiveness of the  
7 sanction as measured by the supervised individuals' subsequent  
8 conduct, and monitor the impact on the number and type of  
9 revocations for violations of the conditions of supervision.

10 **ARTICLE 13. CORRECTIONS MANAGEMENT.**

11 **§62-13-1. Sentencing policy.**

12       It is the sentencing policy of the state that:

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

17       (2) Reduction or maintenance of low recidivism and criminal  
18 behavior is a key measure of the performance of the criminal  
19 justice system;

20       (3) Sentencing judges shall consider:

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

23       (B) The likely impact of a potential sentence on the reduction

1 of the defendant's potential future criminal behavior;

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

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

8 **ARTICLE 16. INTERMEDIATE PUNISHMENT.**

9 **§62-16-1. Short Title.**

10 This article may be known and cited as the "Intermediate  
11 Punishment Act."

12 **§62-16-2. Findings and purpose.**

13 The Legislature finds that:

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

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

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

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

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

4           (6) The purpose of this article is to create a program that  
5 punishes persons who commit crimes, but also provides treatment  
6 that offers the opportunity for those persons to address their drug  
7 or alcohol addiction or abuse and thereby reduce the incidents of  
8 recidivism and enhance public safety.

9 **§62-16-3. Definitions.**

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

13           (1) "Community-based therapeutic community" means a long-term  
14 residential addiction treatment program licensed by the Department  
15 of Health to provide addiction treatment services using a  
16 therapeutic community model and determined by the Division of  
17 Corrections to be qualified to provide addiction treatment to  
18 eligible offenders.

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

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

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

1           (5) "Drug offender treatment program" means an individualized  
2 treatment program established by the Division of Corrections  
3 consisting primarily of drug and alcohol addiction treatment that  
4 satisfies the terms and conditions contained in section five of  
5 this article.

6           (6) "Drug-related offense" means a criminal offense for which  
7 a defendant is convicted and that the court determines was  
8 motivated by the defendant's consumption of or addiction to alcohol  
9 or a controlled substance, counterfeit substance, drug, immediate  
10 precursor or marijuana, as those terms are defined in the chapter  
11 sixty-a of this code.

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

15           (A) Has undergone an assessment performed by the Division of  
16 Corrections, which assessment has concluded that the defendant is  
17 in need of drug and alcohol addiction treatment and would benefit  
18 from commitment to a drug offender treatment program and that  
19 placement in a drug offender treatment program would be  
20 appropriate.

21           (B) Does not demonstrate a history of present or past violent  
22 behavior.

23           (C) Would be placed in the custody of the division if not

1 sentenced to an intermediate punishment.

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

5 The term does not include a defendant who committed, or  
6 attempted to commit a felony with the use, presentment or  
7 brandishing of a firearm, as defined pursuant to section thirteen,  
8 article twelve, of this chapter, or who has been convicted of  
9 violating of a felony or of any offense described in section  
10 twelve, article eight, chapter sixty-one of this code, or in  
11 article eight-a, eight-b, eight-c, or eight-d, chapter sixty-one of  
12 this code against a child.

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

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

18 (10) "Individualized drug offender treatment plan" means an  
19 individualized addiction treatment plan within the framework of the  
20 drug offender treatment program.

21 (11) "Institutional therapeutic community" means a residential  
22 drug treatment program in a State correctional facility, accredited  
23 as a therapeutic community for treatment of drug and alcohol abuse

1 and addiction by the American Correctional Association or other  
2 nationally recognized accreditation organization for therapeutic  
3 community drug and alcohol addiction treatment.

4 (12) "Outpatient addiction treatment facility" means an  
5 addiction treatment facility licensed by the Department of Health  
6 and designated by the Department of Corrections as qualified to  
7 provide addiction treatment to criminal justice offenders.

8 (13) "Participant" means an eligible offender sentenced to  
9 intermediate punishment pursuant to this article.

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

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

15 **§62-16-4. Referral to program.**

16 (a) *Referral for evaluation.* --

17 (1) Prior to imposing a sentence, the court may, upon motion  
18 of the prosecuting attorney and agreement of the defendant, commit  
19 a defendant to the custody of the division for the purpose of  
20 evaluating whether the defendant would benefit from a drug offender  
21 treatment program and whether placement in the drug offender  
22 treatment program is appropriate.

23 (2) Upon committing a defendant to the division, the court

1 shall forward to the division:

2 (A) A summary of the offense for which the defendant has been  
3 convicted.

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

8 (C) Information relating to the defendant's history of drug or  
9 alcohol abuse or addiction, when available.

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

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

13 (b) *Assessment of addiction.* --

14 (1) The division shall conduct an assessment of the addiction  
15 and other treatment needs of a defendant and determine whether the  
16 defendant would benefit from a drug offender treatment program. The  
17 assessment shall be conducted using a nationally recognized  
18 assessment instrument or an instrument that has been normed and  
19 validated on the division's inmate population by a recognized  
20 expert in such matters. The assessment instrument shall be  
21 administered by persons skilled in the treatment of drug and  
22 alcohol addiction and trained to conduct assessments. The  
23 assessments shall be reviewed and approved by a supervisor with at

1 least three years of experience providing drug and alcohol  
2 counseling services.

3 (2) The division shall conduct risk and other assessments it  
4 deems appropriate and shall provide a report of its assessments to  
5 the court, the defendant and the prosecuting attorney within *sixty*  
6 days of the court's commitment of the defendant to the custody of  
7 the division.

8 (c) *Proposed drug offender treatment program.* -- If the  
9 division in its discretion believes a defendant would benefit from  
10 a drug offender treatment program and placement in the drug  
11 offender treatment program is appropriate, the division shall  
12 provide the court, the defendant and the prosecuting attorney with  
13 a proposed drug offender treatment program detailing the type of  
14 treatment proposed.

15 (d) *Prerequisites for commitment.* -- Upon receipt of a  
16 recommendation for placement in a drug offender treatment program  
17 from the division and the agreement of the prosecuting attorney and  
18 the defendant, the court may sentence an eligible offender to a  
19 period of twenty-four months of intermediate punishment if the  
20 court finds that:

21 (1) The eligible offender is likely to benefit from  
22 intermediate punishment.

23 (2) Public safety would be enhanced by the eligible offender's

1 participation in intermediate punishment.

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

4 (e) *Resentencing*. -- The division may make a written request  
5 to the sentencing court that an offender who is otherwise eligible  
6 but has not been referred for evaluation or originally sentenced to  
7 intermediate punishment, be sentenced to intermediate punishment.  
8 The court may resentence the offender to intermediate punishment if  
9 all of the following apply:

10 (1) The division has recommended placement in a drug offender  
11 treatment program;

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

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

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

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

23 (f) *Consecutive probation*. -- Nothing in this article shall

1 prohibit the court from sentencing an eligible offender to a  
2 consecutive period of probation. The total duration of the sentence  
3 may not exceed the maximum term for which the eligible offender  
4 could otherwise be sentenced.

5 (g) *Applicability and program limitations.* -- The court may  
6 not modify or alter the terms of the division's proposed  
7 individualized drug offender treatment plan without the agreement  
8 of the division and the prosecuting attorney.

9 **§62-16-5. Drug offender treatment program.**

10 (a) *Establishment.* -- The division shall establish and  
11 administer a drug offender treatment program as an intermediate  
12 punishment. The program shall be designed to address the  
13 individually assessed drug and alcohol abuse and addiction needs of  
14 a participant and shall address other issues essential to the  
15 participant's successful reintegration into the community,  
16 including, but not limited to, educational and employment issues.

17 (b) *Duration and components.* -- Notwithstanding any credit to  
18 which the defendant may be entitled under section twenty-four,  
19 article eleven, chapter sixty-one of this code, the duration of the  
20 drug offender treatment program shall be twenty-four months and  
21 shall include the following:

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

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

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

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

8 (3) A period of at least six-months' treatment through an  
9 outpatient addiction treatment facility. During the outpatient  
10 addiction treatment period of the drug offender treatment program,  
11 the participant may be housed in a work-release center or group  
12 home or placed in an approved transitional residence. The  
13 participant must comply with any conditions established by the  
14 division regardless of where the participant resides during the  
15 outpatient addiction treatment portion of the drug offender  
16 treatment program; and

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

21 (c) *Program management.* --

22 (1) Consistent with the minimum time requirements set forth in  
23 subsection (b) of this section, the division may transfer, at its

1 discretion, a participant between a correctional facility, an  
2 institutional therapeutic community, a community-based therapeutic  
3 community, an outpatient addiction treatment program and an  
4 approved transitional residence. The division may also transfer a  
5 participant back and forth between less restrictive and more  
6 restrictive settings based upon the participant's progress or  
7 regression in treatment or for medical, disciplinary or other  
8 administrative reasons.

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

12       (d) *Right of refusal to admit.* -- The administrator of a  
13 community-based therapeutic community or outpatient addiction  
14 treatment facility may refuse to accept a participant whom the  
15 administrator deems to be inappropriate for admission and may  
16 immediately discharge to the custody of the division any  
17 participant who fails to comply with facility rules and treatment  
18 expectations or refuses to constructively engage in the treatment  
19 process.

20       (e) *Notice to court of completion of program.* -- When the  
21 division determines that a participant has successfully completed  
22 the drug offender treatment program, it shall notify the sentencing  
23 court and the prosecuting attorney.

1 (f) *Expulsion from program.* --

2 (1) A participant may be expelled from the drug offender  
3 treatment program at any time in accordance with guidelines  
4 established by the division, including failure to comply with  
5 administrative or disciplinary procedures or requirements set forth  
6 by the division.

7 (2) The division shall promptly notify the court, the  
8 defendant and the prosecuting attorney of the expulsion of a  
9 participant from the drug offender treatment program and the reason  
10 for such expulsion. The participant shall be housed in a  
11 correctional facility or regional jail pending action by the court.

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

14 **§62-16-6. Guidelines and legislative rules.**

15 (a) The division shall develop written guidelines for  
16 participant selection criteria and the establishment of drug  
17 offender treatment program and shall address suspensions and  
18 expulsions from the drug offender treatment program. The guidelines  
19 are not subject to chapter twenty-nine-a of this code and shall be  
20 effective for a period of two years upon publication in the State  
21 Register.

22 (b) The guidelines developed pursuant to subsection (a) of  
23 this section shall be replaced by legislative rules proposed by the

1 division and promulgated pursuant to the provision of chapter  
2 twenty-nine-a, within the two-year period during which the  
3 guidelines are effective as provided in that subsection (a). The  
4 legislative rules shall include a requirement that community-based  
5 therapeutic communities utilized in the drug offender treatment  
6 program be accredited as a therapeutic community for treatment of  
7 drug and alcohol abuse and addiction by the Commission on  
8 Accreditation of Rehabilitation Facilities or other nationally  
9 recognized accreditation organization for community-based  
10 therapeutic communities for drug and alcohol addiction treatment.

11 **§62-16-7. Reports.**

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

15 (b) *Evaluation and report to Legislature.* -- The division  
16 shall monitor and evaluate the drug offender treatment program to  
17 ensure that the programmatic objectives are met. Beginning in 2014,  
18 the division shall submit, before February 1 of each year, to the  
19 Governor, the Speaker of the House of Delegates, the President of  
20 the Senate and, upon request, to any individual member of the  
21 Legislature a report of its evaluation and on its activities during  
22 the previous year. The report shall include:

23 (1) The number of offenders evaluated for the drug offender

1 treatment program;

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

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

7 (4) The number of offenders successfully completing the drug  
8 offender treatment program;

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

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

15 **§62-16-8. Revocation of intermediate punishment.**

16 (a) *Generally.* -- The court may at any time terminate a  
17 sentence of intermediate punishment.

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

21 (c) *Proceedings upon revocation.* -- Upon revocation of a  
22 intermediate punishment sentence, the sentencing alternatives  
23 available to the court shall be the same as the alternatives

1 available at the time of initial sentencing.

2 **§62-16-9. Construction of article.**

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

5 (1) Confer any legal right upon any individual, including an  
6 individual participating in the drug offender treatment program,  
7 to:

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

9 (B) Continue participation in a drug offender treatment  
10 program;

11 (C) Modify the contents of the drug offender treatment  
12 program; or

13 (D) File any cause of action in any court challenging the  
14 division's determination that a participant is to be suspended or  
15 expelled from or that a participant has successfully completed or  
16 failed to successfully complete treatment to be provided during any  
17 portion of a drug offender treatment program; or

18 (2) Enlarge or limit the right of a participant to appeal the  
19 participant's sentence.

NOTE: The purpose of this bill is to enact the Public Safety and Offender Accountability Act. The bill requires completion of a Corrections Impact Statement to determine the fiscal impact for any bill that proposes to increase, decrease or otherwise impact

incarceration. The bill establishes baselines for performance and comparisons to national averages to measure and document possible cost savings from the Public Safety and Offender Accountability Act. The bill reinvestment and distribution of savings. The bill identifies the primary objective for both the Division of Corrections and sentencing policy as maintaining public safety, holding offenders accountable and maintaining the lowest possible recidivism rate. The bill requires the Division of Corrections administer validated risk and needs assessments for inmates eligible for parole. The bill creates of an intensive secured substance abuse recovery program. The bill requires evidence-based practice to be used in treatment and intervention programs. The bill requiring the Division of Corrections to make an annual report to Governor and Legislature. The bill provides additional good time credit for successful completion of education or treatment programs. The bill provides additional good time credit for exceptionally meritorious service. The bill requires the Regional Jail and Correctional Facility Authority to make an annual report to the Governor and Legislature. The bill requires the Supreme Court of Appeals to make an annual report to Governor and Legislature. The bill amends the Uniform Controlled Substances Act. The bill requires the Supreme Court of Appeals to develop an online system that provides courts, attorneys, probation and parole officers, and victims with information about sentencing. The bill distinguishes between serious drug trafficking by maintaining severe penalties for serious drug traffickers. The bill establishes a proportionate scale of penalties and reduces sentence for small quantities of certain controlled substances for a first offense. The bill permits deferred prosecution or a presumptive probation sentence for first and second time possession offenders. The bill requires a law-enforcement officer to issue a citation instead of making an arrest for many misdemeanor offenses with certain exceptions, such as when the offender poses a risk of danger to himself or others. The bill prohibits bail amounts for misdemeanors to exceed the fines and fees of the offenses charged. The bill requires courts and corrections authorities incorporate risk and needs assessment information into the decision-making process. The bill requires state expenditures on supervision and intervention programs for pretrial defendants, inmates and those on parole and probation to be spent on programs that are evidence-based. The bill requires offenders to be supervised using practices proven to reduce or otherwise maintain low recidivism rates. The bill requires parole board to hear cases at least sixty days prior to the offender's parole eligibility date allows parole. The bill requires the use of administrative

caseloads for low-risk offenders. The bill authorizes compliance credits for parolees and early termination for probationers who successfully comply with supervision conditions. The bill requires six months of supervision for offenders who would otherwise be discharged without supervision at the end of their sentences. The bill authorizes the Division of Corrections to allow offenders to complete required programming in the community and be monitored. The bill increases accountability for probation and parole violations by authorizing imposition of administrative, graduated sanctions for parole and probation violators. The bill creates two pilot projects that require frequent drug testing with immediate sanctions for positive drug tests or other violations and referral to treatment if necessary. The bill creates an intermediate punishment program that provides substance abuse treatment for offenders sentenced to a state correctional facility.

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

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

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