

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 342

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

[Originating in the Committee on the Judiciary;
reported February 21, 2012.]

A BILL to amend and reenact §25-1-1a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §25-1-23; to amend and reenact §28-5-27 of said code; to amend said code by adding thereto a new section, designated §51-1-24; 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 and reenact §62-1-5a of said code; to amend and reenact §62-1C-3 of said code; to amend said code by adding

thereto a new section, designated §62-11C-3a; to amend said code by adding thereto four new sections, designated §62-12-1a, §62-12-5a, §62-12-29 and §62-12-30; to amend and reenact §62-12-18 of said code; and to amend said code by adding thereto a new section, designated §62-13-1, all relating to the criminal justice system generally; identifying 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; creating an intensive secured substance abuse recovery program; providing additional good-time credit for successful completion of education or treatment programs; providing additional good-time credit for exceptionally meritorious service; amending the Uniform Controlled Substances Act; permitting deferred prosecution sentence in circuit courts for first- and second-time simple possession offenders; requiring a law-enforcement officer to issue a citation instead of making an arrest for misdemeanor offenses with certain exceptions; prohibiting bail amounts for misdemeanors to exceed the fines and fees of the highest offense charged and exception thereto; requesting courts and requiring corrections authorities incorporate risk and needs assessment information into the

decision-making process; requiring 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; requiring offenders to be supervised using practices proven to reduce or otherwise maintain low recidivism rates; requiring the use of administrative caseloads for low-risk offenders; requiring six months of mandatory supervision for offenders who would otherwise be discharged without supervision at the end of their sentences at the instance of the Commissioner of Corrections; authorizing the Division of Corrections to allow offenders to complete required programming in the community and be monitored; increasing accountability for probation and parole violations by authorizing imposition of administrative, graduated sanctions for parole and probation violators; and creating two pilot projects that require frequent drug testing with immediate sanctions for positive drug tests or other violations and referral to treatment if necessary.

Be it enacted by the Legislature of West Virginia:

That §25-1-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §25-1-23; that §28-5-27 of said

code be amended and reenacted; that said code be amended by adding thereto a new section, designated §51-1-24; that said code be amended by adding thereto a new section, designated §60A-1-102; that §60A-4-401 and §60A-4-407 of said code be amended and reenacted; that §62-1-5a of said code be amended and reenacted; that §62-1C-3 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §62-11C-3a; that said code be amended by adding thereto four new sections, designated §62-12-1a, §62-12-5a, §62-12-29 and §62-12-30; that §62-12-18 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §62-13-1, all to read as follows:

CHAPTER 25. DIVISION OF CORRECTIONS.

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

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

- 1 (a) The primary purpose of the division of corrections is
- 2 to enhance public safety and hold offenders accountable
- 3 while reducing recidivism or otherwise maintaining low
- 4 recidivism rates and criminal behavior and improving
- 5 outcomes for offenders under its supervision by providing for
- 6 the incarceration and care of convicted offenders who have

7 been sentenced by circuit courts of proper jurisdiction to
8 serve terms of incarceration. It is the intent of the Legisla-
9 ture:

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

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

17 (3) To establish a just, humane and efficient corrections
18 program; ~~and~~

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

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

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

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

1 (a) The Division of Corrections shall develop an intensive
2 secured substance abuse recovery program, within any of its
3 facilities or by contract, to house and care for persons

4 suffering from substance abuse who have not been convicted
5 of a felony crime of violence against the person or a felony
6 offense where the victim was a minor. For purposes of this
7 section a “felony crime of violence against the person” means
8 those felony offenses set forth in articles two, three-e, eight-
9 b, eight-d, chapter sixty-one of this code. And “felony
10 offenses where the victim was a minor” means felony
11 violation of articles eight, eight-a, eight-c and eight d, where
12 the victim was under eighteen years of age.

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

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

21 (d) Upon successful completion of the program, the
22 Division of Corrections shall notify the sentencing court of
23 such completion. The circuit court may then suspend the
24 offender’s sentence and place the offender upon probation or

25 such other community based sentencing alternatives as are
26 available.

27 (e) In the event that the offender refuses or fails to
28 participate in the program or otherwise acts in a disruptive
29 manner or engages in disruptive conduct or commits acts
30 adversely impacting the security or orderly operation of the
31 program, which is found by a correctional hearing officer
32 through an administrative hearing, the offender may be
33 removed from the program. Upon removal from the program,
34 the offender will continue to serve his or her sentence with
35 credit for all time spent in the program.

36 (f) The program shall be capable of concurrently housing
37 no fewer than two hundred persons in one or more facilities
38 as determined by the Commissioner. The division has
39 regulatory authority, when the program is at or near capac-
40 ity, to prioritize admissions to the program.

41 (g) The program's recovery component shall be designed
42 to serve the committed person's substance abuse condition,
43 and to provide the person with the skills and training needed
44 to prevent the person from engaging in substance abuse upon
45 release from the program.

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

ARTICLE 5. THE PENITENTIARY.

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

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

8 (b) Such commutation of sentence, hereinafter called
9 “good time,” shall be deducted from the maximum term of
10 indeterminate sentences or from the fixed term of determi-
11 nate sentences.

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

15 (1) Be granted one day good time for each day he or she
16 is incarcerated, including any and all days in jail awaiting
17 sentence and which is credited by the ~~sentencing~~ circuit
18 court to his or her sentence pursuant to section twenty-four,

19 article eleven, chapter sixty-one of this code or for any other
20 reason relating to such commitment. No inmate may be
21 granted any good time for time served either on parole or
22 bond or in any other status whereby he or she is not physi-
23 cally incarcerated;

24 (2) Successfully receiving a general equivalency diploma
25 or a high school diploma, a two- or four-year college degree,
26 a two-year or four-year certification in applied sciences or a
27 technical education diploma as provided and defined by the
28 Commissioner in the amount of ninety days per diploma,
29 degree or certification received;

30 (d) An inmate committed to the custody of the Commis-
31 sioner of the Division of Corrections and incarcerated in a
32 penal facility pursuant to such commitment may receive
33 credit on his or her sentence for:

34 (1) Acts of exceptional service during times of emer-
35 gency, awarded at the discretion of the commissioner in an
36 amount not to exceed seven days per month.

37 (2) The amendments to this subsection enacted during
38 the 2012 regular session of the Legislature are only applica-
39 ble to inmates serving a sentence with a maximum of not less
40 than three years.

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

44 (e) (f) An inmate under two or more consecutive sen-
45 tences shall be allowed good time as if the several sentences,
46 when the maximum terms thereof are added together, were
47 all one sentence.

48 (f) (g) The Commissioner of the Division of Corrections
49 shall promulgate ~~separate~~ disciplinary rules for each institu-
50 tion under his control in which adult felons are incarcerated,
51 which rules shall describe acts which inmates are prohibited
52 from committing, procedures for charging individual inmates
53 for violation of such rules and for determining the guilt or
54 innocence of inmates charged with such violations and the
55 sanctions which may be imposed for such violations. A copy
56 of such rules shall be given to each inmate. For each such
57 violation, by an inmate so sanctioned, any part or all of the
58 good time which has been granted to such inmate pursuant
59 to this section may be forfeited and revoked by the warden
60 or superintendent of the institution in which the violation
61 occurred. The warden or superintendent, when appropriate

62 and with approval of the commissioner, may restore any
63 good time so forfeited.

64 ~~(g)~~ (h) Each inmate, upon his or her commitment to and
65 being received into the custody of the Commissioner of the
66 ~~department~~ Division of Corrections, or upon his return to
67 custody as the result of violation of parole pursuant to
68 section nineteen, article twelve, chapter sixty-two of this
69 code, shall be given a statement setting forth the term or
70 length of his or her sentence or sentences and the time of his
71 minimum discharge computed according to this section.

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

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

80 (j) In order to ensure equitable good time for all inmates
81 now in the custody of the commissioner of corrections or
82 hereafter committed to the custody of ~~such~~ the Commis-
83 sioner, except as to those persons committed pursuant to

84 article ~~4~~ four, chapter twenty-five of this code, all good times
85 shall be computed according to this section and all previous
86 computations of good time under prior statutes or regula-
87 tions are hereby voided. All inmates who have previously
88 forfeited good time are hereby restored to good time com-
89 puted according to this section and all inmates will receive
90 a new discharge date computed according to this section. All
91 inmates that have been awarded overtime good time or extra
92 good time pursuant to sections twenty-seven-a and twenty-
93 seven-b of this article which are repealed simultaneously
94 with the amendment to this section during the regular
95 session of the legislature in the year one thousand nine
96 hundred eighty-four, shall receive such good time in addition
97 to the good time computed according to this section.

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

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. WEST VIRGINIA SUPREME COURT OF APPEALS.

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

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

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

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

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

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

23 (5) Monitors probationers for violations of other rules
24 and probation terms, including failure to pay court-ordered
25 financial obligations such as child support or victim restitu-
26 tion;

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

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

35 (8) Provides rewards to probationers who comply with
36 such rules;

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

39 (10) Establishes procedures to terminate program
40 participation by, and initiates revocation to a term of
41 incarceration for, probationers who habitually fail to abide
42 by program rules and pose a threat to public safety;

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

46 (12) Reduces violation behavior and new crimes, and
47 reduces revocations to prison.

48 (b) If a pilot project is implemented by the Supreme
49 Court of Appeals, and two judicial circuits, these entities
50 may, if requested by the Governor, the Speaker of the House
51 of Delegates or the President of the Senate, submit a report
52 on the results of the pilot project to the Interim Joint
53 Committee on Judiciary one year after implementation of the
54 pilot project. The results shall include at a minimum:

55 (1) Key process measures, including the number of
56 individuals enrolled in the program, the frequency of drug
57 testing of such individuals, the certainty of sanctions for a
58 violation of the terms of probation, the average period of
59 time from detection of a violation to issuance of a sanction
60 for such violation and sanction severity;

61 (2) An unbiased comparison of the outcomes between
62 program participants and similarly situated probationers not
63 in the program, including the positive and negative drug test
64 rates, probation and substance abuse treatment appearance
65 rates, probation term modifications, revocations, arrests,
66 time spent in jail or prison and total correctional costs
67 incurred; and

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

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

ARTICLE 1. DEFINITION.

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

1 The Legislature hereby finds, determines and declares
2 that:

3 (1) The regulation of controlled substances in this state
4 is important and necessary for the preservation of public
5 safety and public health; and

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

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

ARTICLE 4. OFFENSES AND PENALTIES.

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

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

4 Any person who violates this subsection with respect to:

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

10 (ii) Any other controlled substance classified in Schedule
11 I, II or III is guilty of a felony and, upon conviction, may be
12 imprisoned in the state correctional facility for not less than
13 one year nor more than five years, or fined not more than
14 \$15,000, or both;

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

19 (iv) A substance classified in Schedule V is guilty of a
20 misdemeanor and, upon conviction, may be confined in jail
21 for not less than six months nor more than one year, or fined
22 not more than five thousand dollars, or both: *Provided*, That

23 for offenses relating to any substance classified as Schedule
24 V in article ten of this chapter, the penalties established in
25 said article apply.

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

29 Any person who violates this subsection with respect to:

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

35 (ii) Any other counterfeit substance classified in Sched-
36 ule I, II or III is guilty of a felony and, upon conviction, may
37 be imprisoned in the state correctional facility for not less
38 than one year nor more than five years, or fined not more
39 than \$15,000, or both;

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

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

52 (c) It is unlawful for any person knowingly or intention-
53 ally to possess a controlled substance unless the substance
54 was obtained directly from, or pursuant to, a valid prescrip-
55 tion or order of a practitioner while acting in the course of
56 his professional practice, or except as otherwise authorized
57 by this act. Any person who violates this subsection is guilty
58 of a misdemeanor and, disposition may be made under
59 section four hundred seven of this article, subject to the
60 limitations specified in said section, or upon conviction, such
61 person may be confined in jail not less than ninety days nor
62 more than six months, or fined not more than \$1,000, or both:
63 *Provided,* That notwithstanding any other provision of this
64 act to the contrary, any first or second offense for possession
65 of Synthetic Cannabinoids as defined by subdivision (32)
66 subsection, (d), section 101, article 1 of this chapter; 3,4-

67 methylenedioxypropylvalerone (MPVD) and 3,4-
68 methylenedioxypropylvalerone and/or mephedrone as defined
69 in subsection (f), section 101, article 1 of this chapter; or less
70 than 15 grams of marijuana, shall be disposed of under said
71 section: Provided, however, That a person who has twice
72 received the benefit of the provisions of section four hundred
73 seven of this article who is convicted of a subsequent
74 violation of this subsection may be confined in jail for not
75 less than six months nor more than one year.

76 (d) It is unlawful for any person knowingly or intention-
77 ally:

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

80 (2) To create, possess or sell or otherwise transfer any
81 equipment with the intent that such equipment shall be used
82 to apply a trademark, trade name, or other identifying mark,
83 imprint, number or device, or any likeness thereof, upon a
84 counterfeit substance, an imitation controlled substance, or
85 the container or label of a counterfeit substance or an
86 imitation controlled substance.

87 (3) Any person who violates this subsection is guilty of a
88 misdemeanor and, upon conviction, may be imprisoned in

89 jail for not less than six months nor more than one year, or
90 fined not more than \$5,000, or both. Any person being
91 eighteen years old or more who violates subdivision (1) of
92 this subsection and, in so doing, distributes or delivers an
93 imitation controlled substance to a minor child who is at
94 least three years younger than such person is guilty of a
95 felony and, upon conviction, may be imprisoned in the state
96 correctional facility for not less than one year nor more than
97 three years, or fined not more than \$10,000, or both.

98 (4) The provisions of subdivision (1) of this subsection
99 shall not apply to a practitioner who administers or dis-
100 penses a placebo.

§60A-4-407. Deferred prosecution.

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

5 (1) The defendant requests deferred prosecution in
6 writing and the prosecutor agrees;

7 (2) The defendant may not be required to plead guilty or
8 enter an Alford plea as a condition of applying for participa-
9 tion in the deferred prosecution program;

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

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

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

19 (c) If the defendant successfully completes the deferred
20 prosecution program, the charges against the defendant shall
21 be dismissed, and all records relating to the case, including
22 but not limited to arrest records and records relating to the
23 charges, shall be sealed. The offense shall be deemed never
24 to have occurred, except for the purposes of determining the
25 defendant's eligibility for deferred prosecution, and the
26 defendant may not be required to disclose the arrest or other
27 information relating to the charges or participation in the
28 program unless required to do so by state or federal law.

29 (d) If the defendant is charged with violating the condi-
30 tions of the program, the circuit court, upon motion of the
31 prosecuting attorney, shall hold a hearing to determine

32 whether the defendant violated the conditions of the pro-
33 gram.

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

36 (1) Continue the defendant's participation in the pro-
37 gram;

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

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

42 (f) Notwithstanding any provision of this code to the
43 contrary, any person prosecuted pursuant to the provisions
44 of this article whose case is disposed of pursuant to the
45 provisions of this section shall be liable for any court costs
46 assessable against a person convicted of a violation of section
47 401(c) of this article. Payment of such costs may be made a
48 condition of probation.

49 (g) The costs assessed pursuant to this section, whether
50 as a term of probation or not, shall be distributed as other
51 court costs in accordance with section two, article three,
52 chapter fifty, section four, article two-a, chapter fourteen,
53 section four, article twenty-nine, chapter thirty and sections

54 two, seven and ten, article five, chapter sixty-two of this
55 code.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1. PRELIMINARY PROCEDURE.

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

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

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

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

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

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

19 or

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

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

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

28 (e) If the defendant fails to appear in response to the
29 citation or if there are reasonable grounds to believe that he
30 will not appear, a complaint may be made and a warrant
31 shall issue. When a physical arrest is made and a citation is
32 issued in relation to the same offense the officer shall mark
33 on the citation, in the place specified for court appearance
34 date, the word “arrested” in lieu of the date of court appear-
35 ance.

ARTICLE 1C. BAIL.

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

1 (a) The amount of bail shall be fixed by the circuit court
2 with consideration given to the seriousness of the offense

3 charged, the previous criminal record of the defendant, his
4 or her financial ability, and the probability of his or her
5 appearance. When two or more charges are filed or are
6 pending against the same person at or about the same time,
7 the bail given may be made to include all offenses charged
8 against the defendant.

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

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

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

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

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

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

8 (b) In order to increase the effectiveness of treatment and
9 intervention programs funded by the state and provided by
10 the West Virginia Community Corrections Fund, the Gover-
11 nor’s Committee shall require that such programs use
12 evidence-based practices.

13 (c) The Governor’s Committee shall measure the effec-
14 tiveness of each community corrections program and demon-
15 strate that the program has a documented evidence base and
16 has been evaluated for effectiveness in reducing or otherwise
17 maintaining low recidivism.

18 (d) The Governor’s Committee shall promulgate legisla-
19 tive rules to provide, at a minimum:

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

23 (2) A process for auditing the effectiveness of the pro-
24 gram;

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

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

30 (e) Beginning July 1, 2013, twenty-five percent (25%) of
31 state moneys expended on programs shall be for programs
32 that are in accordance with evidence-based practices.
33 Beginning July 1, 2015, fifty percent (50%) of state moneys
34 expended on programs shall be for programs that are in
35 accordance with evidence-based practices. Beginning July 1,
36 2016, and thereafter, seventy-five percent (75%) of state
37 moneys expended on programs shall be for programs that are
38 in accordance with evidence-based practices.

39 (f) By fiscal year 2016-2017, the Governor's Committee
40 shall eliminate supervision policies, procedures, programs
41 and practices intended to reduce recidivism that are gener-

42 ally accepted in the criminal justice nationwide community
43 as do not reducing recidivism. However, the Governor's
44 Committee may utilize a new supervision policy, procedure,
45 program or practice if the Governor's Committee determines
46 that the new supervision policy, procedure, program or
47 practice has the potential for qualifying as an evidence-
48 based practice after more research is conducted.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-1a. Definitions.

1 As used in this article:

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

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

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

12 (C) Establishes a timetable for achieving specific behav-
13 ioral goals, including a schedule for payment of victim
14 restitution, child support and other financial obligations; and

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

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

25 (3) "Evidence-based practices" means policies, proce-
26 dures, programs and practices generally accepted in the
27 criminal justice nationwide community to produce reduc-
28 tions or otherwise maintain low recidivism when imple-
29 mented competently.

30 (4) "Graduated sanction" means any of a wide range of
31 accountability measures and programs for supervised
32 individuals, including, but not limited to, electronic monitor-
33 ing; drug and alcohol testing or monitoring; day or evening
34 reporting centers; restitution centers; disallowance of future
35 earned compliance credits; rehabilitative interventions such
36 as substance abuse or mental health treatment; reporting

37 requirements to probation and parole officers; community
38 service or work crews; secure or unsecure residential
39 treatment facilities or halfway houses; and short-term or
40 intermittent incarceration

41 (5) “Risk and needs assessment” or “validated risk and
42 needs assessment” means an actuarial tool generally ac-
43 cepted in the criminal justice nationwide community to
44 determine a person’s risk to reoffend and criminal risk
45 factors, that when properly addressed, can reduce that
46 person’s likelihood of committing future criminal behavior.

47 (6) “Supervised individual” means an individual placed
48 on probation by a circuit court or serving a period of parole
49 or post-release supervision from prison.

50 (7) “Treatment” when used in a criminal justice context,
51 means targeted interventions that focus on criminal risk
52 factors in order to reduce the likelihood of criminal behavior.
53 Treatment options may include, but may not be limited to,
54 community-based programs that are consistent with
55 evidence-based practices; cognitive-behavioral programs;
56 faith-based programs; inpatient and outpatient substance
57 abuse or mental health programs; and other available
58 prevention and intervention programs that have been

59 generally accepted in the criminal justice nationwide
60 community to produce reductions in recidivism when
61 implemented competently. “Treatment” does not include
62 medical services.

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

1 (a) As used in this section, “evidence-based practices”
2 means intervention programs and supervision policies,
3 procedures, programs and practices generally accepted in the
4 criminal justice nationwide community as producing reduc-
5 tions in instances of a defendant’s failure to appear in court
6 and criminal activity among pretrial defendants when
7 implemented competently.

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

14 (c) The Supreme Court of Appeals may measure the
15 effectiveness of supervision and intervention programs

16 provided by vendors or contractors and demonstrate that the
17 programs have a documented evidence base and have been
18 evaluated for effectiveness in reducing a defendant's failure
19 to appear in court and criminal activity.

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

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

25 (2) A process for auditing the effectiveness of the pro-
26 gram;

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

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

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

1 (a) The period of parole shall be the maximum of any
2 sentence, less deductions for good conduct and work as
3 provided by law, for which the paroled inmate, at the time of

4 release, was subject to imprisonment under his or her
5 definite or indeterminate sentence, as the case may be:
6 Provided, That any time after a parolee has been on parole
7 for a period of one year from the date of his or her release, a
8 panel of the board may, when in its judgment the ends of
9 parole have been attained and the best interests of the state
10 and the parolee will be served thereby, release the parolee
11 from further supervision and discharge him or her from
12 parole: Provided, however, That no inmate sentenced to serve
13 a life term of imprisonment and released on parole shall be
14 discharged from supervision and parole in a period less than
15 five years from the 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
18 any state of the United States, the District of Columbia or
19 the territorial possessions of the United States, the crime of
20 treason, murder, aggravated robbery, first degree sexual
21 assault, second degree sexual assault, a sexual offense
22 against a minor, incest or offenses with the same essential
23 elements if known by other terms in other jurisdictions shall
24 be discharged from parole. A parolee serving a sentence in
25 any correctional facility of another state or the United States

26 may, unless incarcerated for one of the above enumerated
27 crimes, be discharged from parole while so serving his or her
28 sentence in said correctional facility or be continued on
29 parole or returned to West Virginia as a parole violator, in
30 the discretion of the parole board.

31 (c) The board shall order Division of Corrections directed
32 mandatory reentry supervision and the terms of supervision,
33 which may include electronic monitoring, for an inmate who
34 has not been granted discretionary parole six months prior
35 to the inmate's minimum expiration of sentence upon
36 receiving a plan of supervision from the Commissioner of
37 Corrections.

38 (1) An inmate granted Division of Corrections directed
39 mandatory reentry supervision pursuant to this section may
40 be returned by the board to a correctional facility for
41 violation of the conditions of supervision and may not again
42 be eligible for Division of Corrections directed mandatory
43 reentry supervision during the same period of incarceration.

44 (2) An inmate released to Division of Corrections di-
45 rected mandatory reentry supervision shall be considered to
46 be released on parole.

47 (3) Division of Corrections directed mandatory reentry
48 supervision is not a commutation of sentence or any other
49 form of clemency.

50 (4) Subject to subdivision (1) of this subsection, the
51 period of mandatory reentry supervision shall conclude upon
52 completion of the individual's minimum expiration of
53 sentence.

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

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

Administrative rules.

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

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

7 (1) Responding quickly and consistently to violations of
8 parole, based on the nature of the violation and the risk level
9 of the supervised individual;

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

12 (3) Reducing the commission of new crimes and revoca-
13 tion rates.

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

1 (a) The Commissioner of the Division of Corrections shall
2 develop policies and the Supreme Court of Appeals may
3 promulgate rules in accordance with the provisions of this
4 section to establish an administrative caseload supervision
5 program for supervised individuals whose results from a risk
6 and needs assessment indicate that they are low-risk offend-
7 ers.

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

12 (c) If a supervised individual on administrative caseload
13 supervision:

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

18 (2) Engages in criminal activity, he or she may be
19 prosecuted, revoked, or placed on a higher level of supervi-
20 sion; or

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

24 (d) A supervised individual on a higher level of supervi-
25 sion who demonstrates a reduction in criminal risk factors
26 upon reassessment and who has achieved the goals estab-
27 lished in his or her case plan may be placed on administra-
28 tive caseload supervision.

29 (e) A supervised individual on a higher level of supervi-
30 sion shall presumptively be placed on administrative
31 supervision if he or she has:

32 (1) Completed twelve months of community supervision;

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

35 (3) Fulfilled all restitution and other financial obligations
36 to the court;

37 (4) Demonstrated a reduction in criminal risk factors
38 upon reassessment; and

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

40 (f) If the conditions or level of community supervision of
41 a probationer are modified under this section, the probation
42 officer shall file a copy of the modified conditions or level
43 with the sentencing court.

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

ARTICLE 13. CORRECTIONS MANAGEMENT.

§62-13-1. Sentencing Policy.

1 It is the sentencing policy of the State that:

2 (1) The primary objective of sentencing shall be to
3 maintain public safety and hold offenders accountable while
4 reducing or otherwise maintaining low recidivism and
5 criminal behavior and improving outcomes for those offend-
6 ers who are sentenced;

7 (2) Reduction or maintenance of low recidivism and
8 criminal behavior is a key measure of the performance of the
9 criminal justice system;

10 (3) Circuit judges shall consider:

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

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

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