

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 371**

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

8 By Request of the Executive)

9 _____
10 [Originating in the Committee on Finance;
11 reported March 19, 2013.]

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

1 §62-12-19 of said code; to amend said code by adding thereto
2 a new section, designated §62-12-29; to amend and reenact
3 §62-15-2 of said code; and to amend said code by adding
4 thereto two new sections, designated §62-15-6a and §62-15-6b,
5 all relating to public safety; requiring the Division of
6 Corrections to perform graduated methods of mental health
7 screens, appraisals and evaluations on persons committed to
8 its custody; eliminating requirement for separate disciplinary
9 rules at each institution mandating one year of supervised
10 release for violent inmates and deducting one year of their
11 good time; mandating one hundred eighty days of supervised
12 release for nonviolent inmates; setting an effective date for
13 supervised release provisions; requiring the Commissioner of
14 Corrections to adopt policies regarding mandatory supervised
15 release; requiring the West Virginia Regional Jail and
16 Correctional Facility Authority to use a standardized pretrial
17 risk-screening instrument adopted by the Supreme Court of
18 Appeals of West Virginia to screen persons arrested and placed
19 in a regional jail; requiring the Division of Corrections to
20 develop and implement a cognitive behavioral program for
21 inmates in regional jails committed to the custody of the
22 Commissioner of Corrections and requiring the Division of
23 Corrections to pay its cost; exempting parole officers from
24 prohibitions against carrying concealed weapons; moving

1 definition of "day report center" to section relating to
2 conditions of release on probation; providing standards and
3 limitations under which judges and magistrates may impose a
4 period of supervision or participation in day report program;
5 clarifying language regarding confinement and revocation for
6 violations of the conditions of home incarceration; adding
7 representative of the Bureau for Behavioral Health and Health
8 Facilities to the community corrections subcommittee of the
9 Governor's Committee on Crime, Delinquency and Correction;
10 requiring that the community corrections subcommittee review,
11 assess and report on the implementation of evidence-based
12 practices in the criminal justice system; adding member with
13 a background in substance abuse treatment and services to the
14 community criminal justice boards to be appointed by the
15 Commission or Commissions of the county or counties
16 represented by the board; providing oversight responsibility
17 to Division of Justice and Community Services to implement
18 standardized risk and needs assessment, evaluate effectiveness
19 of other modifications to community corrections programs and
20 provide annual report; requiring probation officers to conduct
21 a standardized risk and needs assessment for individuals
22 placed on probation and to supervise probationer and enforce
23 probation according to assessment and supervision standards
24 adopted by the West Virginia Supreme Court of Appeals;

1 requiring probation officers to perform random drug and
2 alcohol tests of persons under their supervision; authorizing
3 the Supreme Court of Appeals of West Virginia to adopt a
4 standardized risk and needs assessment for use by probation
5 officers; authorizing the Supreme Court of Appeals of West
6 Virginia to adopt a standardized pretrial screening instrument
7 for use by the Regional Jail Authority; providing standards
8 and limitations under which judges may impose a term of
9 reporting to a day report center as a condition of probation;
10 authorizing day report center programs to provide services
11 based on the results of a person's standardized risk and needs
12 assessment; providing for graduated sanctions in response to
13 violations of the conditions of release on probation other
14 than absconding or committing certain new criminal conduct;
15 creating exceptions to new criminal conduct provisions; making
16 standardized risk and needs assessments confidential court
17 documents; requiring copies of graduated sanctions confinement
18 orders be supplied to the Commissioner of Corrections;
19 providing that graduated sanctions confinement be paid by the
20 Division of Corrections; revising eligibility requirements for
21 accelerated parole program; requiring that Division of
22 Corrections' policies and procedures for developing a
23 rehabilitation treatment plan include the use of substance
24 abuse assessment tools and prioritize treatment resources

1 based on the risk and needs assessment and substance abuse
2 assessment results; providing for rebuttable presumption that
3 parole is appropriate for inmates completing the accelerated
4 parole program and a rehabilitation treatment program;
5 providing standards and limitations for Parole Board;
6 outlining duties of the Division of Corrections to supervise,
7 treat and provide support services for persons released on
8 mandatory supervised release; removing temporal standard for
9 requirement that the Parole Board have access to a copy of an
10 inmate's physical, mental or psychiatric examination;
11 authorizing Division of Corrections to employ directors of
12 housing and employment for released inmates with duties
13 relating to the reduction of parole release delays and finding
14 employment; requiring parole officers to update the
15 standardized risk and needs assessment for each person for
16 whom an assessment has not been conducted for parole and to
17 supervise each person according to the assessment and the
18 commissioner's supervision standards; authorizing the
19 Commissioner of Corrections to issue a certificate authorizing
20 an eligible parole officer to carry firearms or concealed
21 weapons; providing standards and limitations under which the
22 Division of Corrections may order substance abuse treatment or
23 impose a term of reporting to a day report center or other
24 community corrections program as a condition or modification

1 of parole; authorizing the Commissioner of Corrections to
2 enter into a master agreement with the Division of Justice and
3 Community Services to reimburse counties for use of the
4 community corrections programs; clarifying that parolee
5 participation in community corrections is at program
6 director's discretion; providing for graduated sanctions in
7 response to violations of the conditions of release on parole
8 other than absconding or certain new criminal conduct;
9 providing a parolee with the right to a hearing, upon request,
10 regarding whether he or she violated the conditions of his or
11 her release on parole; providing that graduated sanctions
12 incarceration for parolees be paid for by Division of
13 Corrections; providing for a Community Supervision Committee
14 to be appointed by the Administrative Director of the Supreme
15 Court of Appeals of West Virginia to coordinate the sharing of
16 information for community supervision and requiring submittal
17 of an annual report; revising definitions for Drug Offender
18 Accountability and Treatment Act; providing standards and
19 limitations under which judges may order treatment supervision
20 for drug offenders; requiring the Division of Justice and
21 Community Services to use appropriated funds to implement
22 substance abuse treatment to serve those under treatment
23 supervision in each judicial circuit; providing an effective
24 date regarding standards and limitations; providing that the

1 Division of Justice and Community Services in consultation
2 with the Governor's Advisory Committee on Substance Abuse is
3 responsible for developing standards relating to quality and
4 delivery of substance abuse services; requiring certain
5 education and training; paying for drug abuse assessments and
6 certified drug treatment from appropriated funds; requiring
7 submittal of an annual report and specifying an effective
8 date; outlining duties of treatment supervision service
9 providers; providing for state payment of drug court
10 participants' incarceration under certain circumstances;
11 defining terms; and making technical changes.

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

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

1 that §62-15-2 of said code be amended and reenacted; and that said
2 code be amended by adding thereto two new sections, designated
3 §62-15-6a and §62-15-6b, all to read as follows:

4 **CHAPTER 25. DIVISION OF CORRECTIONS.**

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

6 **§25-1-15. Diagnostic and classification divisions.**

7 (a) The Commissioner of Corrections may establish diagnostic
8 and classification divisions.

9 (b) Notwithstanding any provision of the this code to the
10 contrary, all persons committed to the custody of the Commissioner
11 of the Division of Corrections for presentence diagnosis and
12 classification and all persons sentenced to the custody of the
13 Division of Corrections shall, upon transfer to the Division of
14 Corrections, undergo diagnosis and classification, which may shall
15 include: (1) Assessments of a person's criminogenic risk and need
16 factors that are reliable, validated and normed for a specific
17 population and responsive to cultural and gender-specific needs as
18 well as individual learning styles and temperament; (2) application
19 of a mental health preliminary screen; and (3) if the mental health
20 preliminary screen suggests the need for further assessment, a full
21 psychological evaluation. The Division of Corrections shall
22 perform mental health preliminary screens, appraisals and
23 evaluations according to standards provided by the American
24 Correctional Association.

1 (d) No An inmate sentenced to serve a life sentence shall be
2 is not eligible to earn or receive any good time pursuant to this
3 section.

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

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

23 (g) Each inmate, upon his or her commitment to and being
24 ~~received~~ placed into the custody of the Commissioner of ~~the~~

1 ~~Department of~~ Corrections, or upon his or her return to custody as
2 the result of violation of parole pursuant to section nineteen,
3 article twelve, chapter sixty-two of this code, shall be given a
4 statement setting forth the term or length of his or her sentence
5 or sentences and the time of his or her minimum discharge computed
6 according to this section.

7 (h) Each inmate shall be given a revision of the statement
8 described in subsection (g) of this section if and when any part or
9 all of the good time has been forfeited and revoked or restored
10 pursuant to subsection (f) ~~whereby~~ of this section, by which the
11 time of his or her earliest discharge is changed.

12 (i) The Commissioner of Corrections may, with the approval of
13 the Governor, allow extra good time for inmates who perform
14 exceptional work or service.

15 (j) In order to ensure equitable good time for all current and
16 future inmates ~~now~~ in the custody of the Commissioner of
17 Corrections ~~or hereafter committed to the custody of such~~
18 ~~commissioner~~, except as to those persons committed pursuant to
19 article four, chapter twenty-five of this code, all good times
20 shall be computed according to this section and all previous
21 computations of good time under prior statutes or ~~regulations~~ rules
22 are ~~hereby voided~~ void. All inmates who have previously forfeited
23 good time are hereby restored to good time computed according to
24 this section and all inmates will receive a new discharge date

1 computed according to this section. All inmates that have been
2 awarded overtime good time or extra good time pursuant to sections
3 twenty-seven-a and twenty-seven-b of this article which ~~are~~ were
4 repealed simultaneously with the amendment to this section during
5 the regular session of the Legislature in the year 1984 shall
6 receive ~~such~~ that good time in addition to the good time computed
7 according to this section.

8 (k) There shall be no grants or accumulations of good time or
9 credit to any current or future inmate ~~now or hereafter~~ serving a
10 sentence in the custody of the ~~Department~~ Division of Corrections
11 except in the manner provided in this section.

12 (1) Prior to the calculated discharge date of an inmate serving
13 a sentence for a felony crime of violence against the person, a
14 felony offense where the victim was a minor child or a felony
15 offense involving the use of a firearm, one year shall be deducted
16 from the inmate's accumulated good time to provide for one year of
17 mandatory post-release supervision following the first instance in
18 which the inmate reaches his or her calculated discharge date. As
19 used in this subsection, a "felony crime of violence against the
20 person" and a "felony crime where the victim was a minor child"
21 have the same meaning set forth in section thirteen, article
22 twelve, chapter sixty-two of this code. The provisions of this
23 subsection are applicable to offenses committed on or after July 1,
24 2013.

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

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

13 **CHAPTER 31. CORPORATIONS.**

14 **ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY**
15 **AUTHORITY.**

16 **§31-20-5g. Pretrial risk assessment.**

17 Within three calender days of the arrest and placement of any
18 person in a regional jail, the authority shall conduct a pretrial
19 risk assessment using a standardized risk assessment instrument
20 approved and adopted by the Supreme Court of Appeals of West
21 Virginia. The results of all standardized risk and needs
22 assessments are confidential. Upon completion of the assessment,
23 the authority shall provide it to the magistrate and circuit clerks
24 for delivery to the appropriate circuit judge or magistrate.

1 **§31-20-5h. Programs for inmates committed to prison.**

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

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

14 **ARTICLE 7. DANGEROUS WEAPONS.**

15 **§61-7-6. Exceptions as to prohibitions against carrying concealed**
16 **deadly weapons.**

17 The licensure provisions set forth in this article do not
18 apply to:

19 (1) Any person carrying a deadly weapon upon his or her own
20 premises; nor shall anything ~~herein~~ in this article prevent a
21 person from carrying any firearm, unloaded, from the place of
22 purchase to his or her home, residence or place of business or to
23 a place of repair and back to his or her home, residence or place
24 of business; nor shall anything ~~herein~~ in this article prohibit a

1 person from possessing a firearm while hunting in a lawful manner
2 or while traveling from his or her home, residence or place of
3 business to a hunting site and returning to his or her home,
4 residence or place of business;

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

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

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

22 (5) Any member of the armed forces of the United States or the
23 militia of this state while the member is on duty;

24 (6) Any circuit judge, including any retired circuit judge

1 designated senior status by the Supreme Court of Appeals of West
2 Virginia, prosecuting attorney, assistant prosecuting attorney or
3 a duly appointed investigator employed by a prosecuting attorney;

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

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

12 (9) Any Hatfield-McCoy Regional Recreation Authority ranger
13 while the ranger is on duty; and

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

16 **CHAPTER 62. CRIMINAL PROCEDURE.**

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

18 **§62-11A-1a. Other sentencing alternatives.**

19 (a) Any person who has been convicted in a circuit court or in
20 a magistrate court under any criminal provision of this code of a
21 misdemeanor or felony, which is punishable by imposition of a fine
22 or confinement in ~~the~~ a regional jail or a state correctional
23 ~~facility~~ institution, or both fine and confinement, may, in the
24 discretion of the sentencing judge or magistrate, as an alternative

1 to the sentence imposed by statute for the crime, be sentenced
2 under one of the following programs:

3 (1) The weekend jail program under which ~~persons~~ a person
4 would be required to spend weekends or other days normally off from
5 work in jail;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (f) ~~Persons~~ A person sentenced under the provisions of this
24 section ~~remain~~ remains under the jurisdiction of the court. The

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

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

1 (h) Magistrates may only impose a period of participation in
2 a day report center with the consent by general administrative
3 order of the supervising judge or chief judge of the judicial
4 circuit in which he or she presides. The day report center staff
5 shall determine which services a person receives based on the
6 results of the standardized risk and needs assessment adopted by
7 the Supreme Court of Appeals of West Virginia under subsection (d),
8 section six, article twelve of this chapter, along with any other
9 conditions of supervision set by the court.

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

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

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

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

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

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

1 finding of a violation of the order of home incarceration, as the
2 participant could have received at the initial disposition hearing:
3 *Provided*, That the participant shall receive credit towards any
4 sentence imposed after a finding of violation for the time spent in
5 home incarceration.

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

7 **§62-11C-2. Community Corrections Subcommittee.**

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

1 Court of Appeals, the Administrator of the Supreme Court of
2 Appeals, a probation officer and a circuit judge may serve on the
3 subcommittee as ex officio, nonvoting members.

4 (b) The subcommittee shall elect a chairperson and a vice
5 chairperson. The subcommittee shall meet quarterly. Special
6 meetings may be held upon the call of the chairperson, vice
7 chairperson or a majority of the members of the subcommittee. A
8 majority of the members of the subcommittee ~~constitute~~ constitutes
9 a quorum.

10 **§62-11C-3. Duties of the Governor's committee and the community**
11 **corrections subcommittee.**

12 (a) Upon recommendation of the community corrections
13 subcommittee, the Governor's committee shall propose for
14 legislative promulgation in accordance with the provisions of
15 article three, chapter twenty-nine-a of this code, emergency and
16 legislative rules to:

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

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

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

1 (4) Establish reporting requirements for community corrections
2 programs; and

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

4 (b) Upon recommendation of the community corrections
5 subcommittee, the Governor's committee shall:

6 (1) Maintain records of community corrections programs
7 including the corresponding community criminal justice board or
8 other entity contact information and annual program evaluations,
9 when available;

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

13 (3) Provide funding for approved community corrections
14 programs, as available.

15 (c) The Governor's committee shall submit, on or before
16 September 30 of each year, to the Governor, the Speaker of the
17 House of Delegates, the President of the Senate and, upon request,
18 to any individual member of the Legislature, a report on its
19 activities during the previous year and an accounting of funds paid
20 into and disbursed from the special revenue account established
21 pursuant to section four of this article.

22 (d) The subcommittee shall review the implementation of
23 evidence-based practices and conduct regular assessments for
24 quality assurance of all community-based criminal justice services,

1 including day report centers, probation, parole and home
2 confinement. In consultation with the affected agencies, the
3 subcommittee shall establish a process for reviewing performance.
4 The process shall include review of agency performance measures and
5 identification of new measures by the subcommittee, if necessary,
6 for measuring the implementation of evidence-based practices or for
7 quality assurance. After providing an opportunity for the affected
8 agencies to comment, the subcommittee shall submit, on or before
9 September 30 of each year, to the Governor, the Speaker of the
10 House of Delegates, the President of the Senate and, upon request,
11 to any individual member of the Legislature, a report on its
12 activities and results from assessments of performance during the
13 previous year.

14 **§62-11C-6. Community criminal justice boards.**

15 (a) Each county or combination of counties or a county or
16 counties and a Class I or II municipality that seek to establish
17 community-based corrections services shall establish a community
18 criminal justice board: *Provided,* That if a county has not
19 established a community criminal justice board by July 1, 2002, the
20 chief probation officer of ~~such~~ that county, with the approval of
21 the chief judge of the circuit, may apply for and receive approval
22 and funding from the Governor's committee for ~~such~~ any programs as
23 authorized by the provisions of section five of this article. Any
24 county which chooses to operate without a community criminal

1 justice board ~~shall be~~ is subject to the regulations and
2 requirements established by the community corrections subcommittee
3 and the Governor's committee.

4 (b) ~~The A~~ community criminal justice board ~~is to~~ shall consist
5 of no more than fifteen voting members.

6 (c) All members of ~~the a~~ community criminal justice board ~~are~~
7 to shall be residents of the county or counties represented.

8 (d) ~~The A~~ community criminal justice board ~~is to~~ shall consist
9 of the following members:

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

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

15 (3) If a public defender corporation exists in the county or
16 counties represented, at least one attorney employed by any public
17 defender corporation existing in the counties represented or, if no
18 public defender office exists, one criminal defense attorney from
19 the counties represented;

20 (4) One member to be appointed by the local board of education
21 or, if the board represents more than one county, at least one
22 member appointed by a board of education of the counties
23 represented;

24 (5) One member with a background in mental health care and

1 services to be appointed by the commission or commissions of the
2 county or counties represented by the board;

3 (6) Two members who can represent organizations or programs
4 advocating for the rights of victims of crimes with preference
5 given to organizations or programs advocating for the rights of
6 victims of the crimes of domestic violence or driving under the
7 influence; ~~and~~

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

11 ~~(7)~~ (8) Three at-large members to be appointed by the
12 commission or commissions of the county or counties represented by
13 the board.

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

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

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

19 (3) A probation officer from the county or counties
20 represented.

21 (f) Community criminal justice boards may:

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

24 (2) Coordinate with local probation departments in

1 establishing and modifying programs and services for offenders;

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

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

7 (g) If a community criminal justice board represents more than
8 one county, the appointed membership of the board, excluding any ex
9 officio members, shall include an equal number of members from each
10 county, unless the county commission of each county agrees in
11 writing otherwise.

12 (h) If a community criminal justice board represents more than
13 one county, the board shall, in consultation with the county
14 commission of each county represented, designate one county
15 commission as the fiscal agent of the board.

16 (i) Any political subdivision of this state operating a
17 community corrections program shall, regardless of whether or not
18 the program has been approved by the Governor's Committee on Crime,
19 Delinquency and Correction, provide to the Governor's committee
20 required information regarding the program's operations as required
21 by legislative rule.

22 **§62-11C-10. Standardized risk and needs assessment; annual**
23 **reviews; day report services.**

24 The Division of Justice and Community Services shall:

1 (a) Require that staff of day reporting centers and other
2 community corrections programs be trained in and use in each case
3 a standardized risk and needs assessment as adopted by the Supreme
4 Court of Appeals of West Virginia. The results of all standardized
5 risk and needs assessments are confidential;

6 (b) Annually conduct a validation study of inter-rater
7 reliability and risk cut-off scores by population to ensure that
8 the standardized risk and needs assessment is sufficiently
9 predictive of the risk of reoffending;

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

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

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

18 (f) Annually report to the community corrections subcommittee
19 on the results of duties required by this section.

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

21 **§62-12-6. Powers and duties of probation officers.**

22 (a) Each probation officer shall:

23 (1) Investigate all cases which the court refers to the
24 officer for investigation and shall report in writing on each case;

1 ~~The probation officer shall furnish~~

2 (2) Conduct a standardized risk and needs assessment, using
3 the instrument adopted by the Supreme Court of Appeals of West
4 Virginia, for any probationer for whom an assessment has not been
5 conducted either prior to placement on probation or by a
6 specialized assessment officer. The results of all standardized
7 risk and needs assessments are confidential;

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

11 (4) Furnish to each person released on probation under the
12 officer's supervision a written statement of the probationer's
13 conditions of probation together with a copy of the rules
14 prescribed by the ~~court for the supervision of probationers.~~ The
15 ~~probation officer shall stay~~ Supreme Court of Appeals of West
16 Virginia;

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

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

24 (7) Perform random drug and alcohol testing on probationers

1 under his or her supervision as directed by the circuit court;

2 (8) Maintain detailed work records; and ~~shall Perform any~~
3 ~~other duties the court requires.~~

4 (9) Perform any other duties the court requires.

5 (b) The probation officer ~~has authority~~ may, with or without
6 an order or warrant, ~~to~~ arrest any probationer as provided in
7 section ten of this article, and ~~to~~ arrest any person on supervised
8 release when there is reasonable cause to believe that the person
9 on supervised release has violated a condition of release. A
10 person on supervised release ~~so~~ who is arrested shall be brought
11 before the court for a prompt and summary hearing.

12 ~~(b)~~ (c) Notwithstanding any provision of this code to the
13 contrary:

14 (1) Any probation officer appointed on or after July 1, 2002,
15 may carry handguns in the course of the officer's official duties
16 after meeting specialized qualifications established by the
17 Governor's Committee on Crime, Delinquency and Correction. ~~which~~
18 The qualifications shall include the successful completion of
19 handgun training, ~~including~~ which is comparable to the handgun
20 training provided to law-enforcement officers by the West Virginia
21 State Police and includes a minimum of four hours' training in
22 handgun safety and ~~comparable to the handgun training provided to~~
23 ~~law-enforcement officers by the West Virginia State Police.~~

24 (2) Probation officers may only carry handguns in the course

1 of their official duties after meeting the specialized
2 qualifications set forth in subdivision (1) of this subsection.

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

6 (d) The Supreme Court of Appeals of West Virginia may adopt a
7 standardized risk and needs assessment with risk cut-off scores for
8 use by probation officers, taking into consideration the assessment
9 instrument adopted by the Division of Corrections under subsection
10 (h), section thirteen of this article and the responsibility of the
11 Division of Justice and Community Services to evaluate the use of
12 the standardized risk and needs assessment. The results of any
13 standardized risk and needs assessment are confidential.

14 **§62-12-7. Pretrial and preliminary investigation; report on**
15 **prospective probationers.**

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

20 (b) ~~When~~ Unless otherwise directed by the court, the probation
21 officer shall, in the form adopted by the Supreme Court of Appeals
22 of West Virginia, make a careful investigation of, and a written
23 report with recommendations concerning, any prospective
24 probationer. Insofar as practicable, this report shall include

1 information concerning the offender's court and criminal record,
2 occupation, family background, education, habits and associations,
3 mental and physical condition, the names, relationship, ages and
4 condition of those dependent upon him or her for support and ~~such~~
5 any other facts ~~as~~ that may aid the court in determining the
6 propriety and conditions of his or her release on probation. ~~No~~ A
7 person convicted of a felony or of any offense described in article
8 eight-b or eight-d, chapter sixty-one of this code against a minor
9 child may not be released on probation until this report ~~shall have~~
10 has been presented to and considered by the court. The court may
11 ~~in its discretion~~ request ~~such~~ a report concerning any person
12 convicted of a misdemeanor. The presentence report of any person
13 convicted of an offense, described in said articles or section
14 twelve, article eight of said chapter, may include a statement from
15 a therapist, psychologist or physician who is providing treatment
16 to the child. A copy of all reports shall be filed with the Parole
17 Board ~~of probation and parole~~.

18 **§62-12-9. Conditions of release on probation.**

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

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

23 (2) That ~~he or she~~ the probationer may not, during the term of
24 his or her probation, leave the state without the consent of the

1 court which placed him or her on probation;

2 (3) That ~~he or she~~ the probationer complies with the
3 conditions prescribed by the court for his or her supervision by
4 the probation officer;

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

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

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

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

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

16 (2) That ~~he or she pay~~ the probationer pays any fine assessed
17 and the costs of the proceeding in installments ~~as~~ directed by the
18 court ~~may direct~~: *Provided*, That the court conducts a hearing
19 prior to imposition of probation and makes a determination on the
20 record that the offender is able to pay the costs without undue
21 hardship;

22 (3) That ~~he or she make contribution~~ the probationer makes
23 contributions from his or her earnings, in sums ~~as~~ directed by the
24 court ~~may direct~~, for the support of his or her dependents; and

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

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

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

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

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

14 (d) For the purposes of this article, "day report center"
15 means a court-operated or court-approved facility where persons
16 ordered to serve a sentence in this type of facility are required
17 to report under the terms and conditions set by the court for
18 purposes which include, but are not limited to, counseling,
19 employment training, alcohol or drug testing or other medical
20 testing.

21 **§62-12-10. Violation of probation.**

22 (a) If at any time during the period of probation there shall
23 be reasonable cause to believe that the probationer has violated
24 any of the conditions of his or her probation, the probation

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

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

17 (2) If the judge finds that reasonable cause exists to believe
18 that the probationer violated any condition of supervision other
19 than absconding supervision or new criminal conduct other than a
20 minor traffic violation or simple possession of a controlled
21 substance, then, for the first violation, the judge shall impose a
22 period of confinement up to sixty days, or, for the second
23 violation, a period of confinement up to one hundred twenty days.
24 For the third violation, the judge may revoke the suspension of

1 imposition or execution of sentence, impose sentence if none has
2 been imposed and order that sentence be executed, with credit for
3 time spent in confinement under this section. If the time
4 remaining on the probationer's maximum imposed sentence is less
5 than the maximum period of confinement, then the term of
6 confinement is for the remaining period of the sentence. In
7 computing the period for which the offender is to be confined, the
8 time between his or her release on probation and his or her arrest
9 may not be taken to be any part of the term of his or her sentence.
10 Whenever the court incarcerates a probationer pursuant to the
11 provisions of this subdivision, a circuit clerk shall provide a
12 copy of the order of confinement within five days to the
13 Commissioner of Corrections.

14 (b) A probationer confined for a first or second violation
15 pursuant to subdivision (2), subsection (a) of this section may be
16 confined in jail, and the costs of confining felony probationers
17 shall be paid out of funds appropriated for the Division of
18 Corrections.

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

1 depart from the sentence limitations set forth in subdivision (2),
2 subsection (a) of this section upon making specific written
3 findings of fact supporting the basis for the departure.

4 **§62-12-13. Powers and duties of board; eligibility for parole;**
5 **procedure for granting parole.**

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

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

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

16 (B) He or she:

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

19 (ii) Does not have a prior criminal conviction for a felony
20 crime of violence against the person, a felony offense involving
21 the use of a firearm or a felony offense where the victim was a
22 minor child. As used in this subsection, a "felony crime of
23 violence against the person" and a "felony crime where the victim
24 was a minor child" have the same meaning set forth in section

1 thirteen, article twelve, chapter sixty-two of this section;

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

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

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

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

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

20 (C) Notwithstanding any provision of this code to the
21 contrary, any ~~person~~ inmate who committed, or attempted to commit,
22 a felony with the use, presentment or brandishing of a firearm, is
23 not eligible for parole prior to serving a minimum of three years
24 of his or her sentence or the maximum sentence imposed by the

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

23 For the purpose of this section, the term "firearm" means any
24 instrument which will, or is designed to, or may readily be

1 converted to, expel a projectile by the action of an explosive,
2 gunpowder or any other similar means.

3 (D) The amendments to this subsection adopted in the year
4 1981:

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

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

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

22 (iv) Does not apply with respect to cases not affected by the
23 amendments and in ~~such~~ those cases the prior provisions of this
24 section apply and are construed without reference to the

1 amendments.

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

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

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

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

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

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

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

21 (d) In the case of ~~a person~~ an inmate sentenced to any state
22 correctional ~~center~~, ~~it is the duty of the board~~ institution, the
23 Parole Board, as soon as ~~a person~~ that inmate becomes eligible, ~~to~~
24 shall consider the advisability of his or her release on parole.

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

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

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

24 (h) (1) The Division of Corrections shall promulgate policies

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

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

1 in this subsection may be construed to create a right to parole.

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

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

22 (k) (1) The Division of Corrections ~~is charged with the duty~~
23 ~~of supervising~~ shall supervise all probationers and parolees whose
24 supervision may have been undertaken by this state by reason of any

1 interstate compact entered into pursuant to the Uniform Act For
2 Out-of-State Parolee Supervision.

3 (2) The Division of Corrections shall provide supervision,
4 treatment and support services for all persons released to
5 mandatory supervision under section twenty-seven, article five,
6 chapter twenty-eight of this code.

7 (1)(1) When considering an inmate of a state correctional
8 center for release on parole, the Parole Board panel considering
9 the parole ~~is to~~ shall have before it an authentic copy of or
10 report on the inmate's current criminal record as provided through
11 the West Virginia State Police, the United States Department of
12 Justice or any other reliable criminal information sources and
13 written reports of the warden or superintendent of the state
14 correctional ~~center~~ institution to which the inmate is sentenced:

15 (A) On the inmate's conduct record while in custody, including
16 a detailed statement showing any and all infractions of
17 disciplinary rules by the inmate and the nature and extent of
18 discipline administered ~~therefor~~ for the infractions;

19 (B) On improvement or other changes noted in the inmate's
20 mental and moral condition while in custody, including a statement
21 expressive of the inmate's current attitude toward society in
22 general, toward the judge who sentenced him or her, toward the
23 prosecuting attorney who prosecuted him or her, toward the
24 policeman or other officer who arrested the inmate and toward the

1 crime for which he or she is under sentence and his or her previous
2 criminal record;

3 (C) On the inmate's industrial record while in custody which
4 shall include: The nature of his or her work, occupation or
5 education, the average number of hours per day he or she has been
6 employed or in class while in custody and a recommendation as to
7 the nature and kinds of employment which he or she is best fitted
8 to perform and in which the inmate is most likely to succeed when
9 he or she leaves ~~prison~~ the state correctional institution; and

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

14 (2) The Parole Board panel considering the parole may waive
15 the requirement of any report when not available or not applicable
16 as to any inmate considered for parole but, in every ~~such~~ case,
17 shall enter in ~~the~~ its record ~~thereof~~ its reason for the waiver:
18 *Provided*, That in the case of an inmate who is incarcerated because
19 the inmate has been found guilty of, or has pleaded guilty to, a
20 felony under the provisions of section twelve, article eight,
21 chapter sixty-one of this code or under the provisions of article
22 eight-b or eight-c of said chapter, the Parole Board panel may not
23 waive the report required by this subsection. ~~and~~ The report ~~is to~~
24 shall include a study and diagnosis of the inmate, including an

1 on-going treatment plan requiring active participation in sexual
2 abuse counseling at an approved mental health facility or through
3 some other approved program: *Provided, however,* That nothing
4 disclosed by the ~~person~~ inmate during the study or diagnosis may be
5 made available to any law-enforcement agency, or other party
6 without that ~~person's~~ inmate's consent, or admissible in any court
7 of this state, unless the information disclosed indicates the
8 intention or plans of the parolee to do harm to any person, animal,
9 institution or to property. Progress reports of outpatient
10 treatment are to be made at least every six months to the parole
11 officer supervising the ~~person~~ parolee. In addition, in such
12 cases, the Parole Board shall inform the prosecuting attorney of
13 the county in which the person was convicted of the parole hearing
14 and shall request that the prosecuting attorney inform the Parole
15 Board of the circumstances surrounding a conviction or plea of
16 guilty, plea bargaining and other background information that might
17 be useful in its deliberations.

18 (m) Before releasing any inmate on parole, the ~~board of parole~~
19 Parole Board shall arrange for the inmate to appear in person
20 before a Parole Board panel and the panel may examine and
21 interrogate him or her on any matters pertaining to his or her
22 parole, including reports before the Parole Board made pursuant to
23 the provisions ~~hereof~~ of this section: *Provided,* That an inmate
24 may appear by video teleconference if the members of the Parole

1 Board panel conducting the examination are able to
2 contemporaneously see the inmate and hear all of his or her remarks
3 and if the inmate is able to contemporaneously see each of the
4 members of the panel conducting the examination and hear all of the
5 members' remarks. The panel shall reach its own written
6 conclusions as to the desirability of releasing the inmate on
7 parole and the majority of the panel considering the release ~~shall~~
8 must concur in the decision. The warden or superintendent shall
9 furnish all necessary assistance and cooperate to the fullest
10 extent with the Parole Board. All information, records and reports
11 received by the Parole Board ~~are to~~ shall be kept on permanent
12 file.

13 (n) The Parole Board and its designated agents are at all
14 times to have access to inmates imprisoned in any state
15 correctional ~~center~~ institution or in any jail in this state and
16 may obtain any information or aid necessary to the performance of
17 its duties from other departments and agencies of the state or from
18 any political subdivision ~~thereof~~ of the state.

19 (o) The Parole board shall, if ~~so~~ requested by the Governor,
20 investigate and consider all applications for pardon, reprieve or
21 commutation and shall make recommendation ~~thereon~~ on the
22 applications to the Governor.

23 (p) Prior to making a recommendation for pardon, reprieve or
24 commutation and prior to releasing any inmate on parole, the Parole

1 Board shall notify the sentencing judge and prosecuting attorney at
2 least ten days before the recommendation or parole.

3 (q) ~~Any person released on parole~~ A parolee shall participate
4 as a condition of parole in the litter control program of the
5 county to which he or she is released to the extent directed by the
6 Parole Board, unless the board specifically finds that this
7 alternative service would be inappropriate.

8 ~~(r) Except for the amendments to this section contained in~~
9 ~~subdivision (4), subsection (b) and subsection (i) of this section~~
10 ~~the amendments to this section enacted during the 2010 regular~~
11 ~~session of the Legislature shall become effective on January 1,~~
12 ~~2011.~~

13 **§62-12-14a. Director of employment; director of housing; released**
14 **inmates; duties.**

15 The ~~board~~ Commissioner of Corrections shall have authority to
16 may employ or contract for a director of employment and a director
17 of housing for ~~paroled or pardoned prisoners~~ released inmates. The
18 director of employment shall work with federal, state, county and
19 local government and private entities to negotiate agreements which
20 facilitate employment opportunities for released inmates. The
21 director of housing shall work with federal, state, county and local
22 government and private entities to negotiate agreements which
23 facilitate housing opportunities for released inmates. ~~It shall be~~
24 ~~the duty of~~ The director of employment ~~to~~ shall investigate job

1 opportunities and to give every possible assistance in helping
2 ~~prisoners, eligible to be paroled or who have been granted parole~~
3 ~~under this article to~~ released inmates find employment. The
4 director of housing shall work in conjunction with the parole
5 division and the Parole Board to reduce release delays due to lack
6 of a home plan, develop community housing resources and provide
7 short-term loans to released inmates for costs related to reentry
8 into the community.

9 **§62-12-15. Powers and duties of state parole officers.**

10 (a) Each state parole officer shall:

11 (1) Investigate all cases referred to him or her for
12 investigation by the Commissioner of Corrections and ~~shall~~ report
13 in writing ~~thereon~~ on the investigation; ~~He or she or she shall~~
14 ~~furnish~~

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

19 (3) Supervise each parolee according to the assessment and
20 supervision standards determined by the Commissioner of Corrections;

21 (4) Furnish to each ~~person released on parole~~ parolee under his
22 or her supervision a written statement of the conditions of his or
23 her parole together with a copy of the rules prescribed by the
24 ~~board, as the case may be~~ Commissioner of Corrections for the

1 supervision of parolees; ~~He or she or she shall keep~~

2 (5) Keep informed concerning the conduct and condition of each
3 ~~person parolee~~ under his or her supervision and ~~shall report thereon~~
4 on the conduct and condition of each parolee in writing as often as
5 required by the Commissioner of Corrections ~~may require; He or she~~
6 ~~or she shall use;~~

7 (6) Use all practicable and suitable methods to aid and
8 encourage ~~persons on parole~~ a parolee and to bring about improvement
9 in ~~their~~ his or her conduct and condition; ~~He or she or she shall~~
10 ~~keep~~

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

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

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

21 (10) Perform any other duties required by the Commissioner ~~may~~
22 ~~require~~ of Corrections.

23 (b) ~~He or she~~ Each state parole officer ~~has authority~~ may, with
24 or without an order or warrant, ~~to~~ arrest or order confinement of

1 any parolee. He or she has all the powers of a notary public, with
2 authority to act anywhere within the state.

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

14 **§62-12-17. Conditions of release on probation and parole.**

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

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

22 (2) That ~~he or she~~ the parolee may not, during the period of
23 his or her parole, leave the state without the consent of the
24 Division of Corrections;

1 (3) That ~~he or she shall comply~~ the parolee complies with the
2 rules prescribed by the Division of Corrections for his or her
3 supervision by the parole officer;

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

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

19 (b) The Commissioner of Corrections shall keep a record of all
20 actions taken and account for moneys received. ~~No provision of this~~
21 ~~section prohibits the division from collecting the fees and~~
22 ~~conducting the checks upon the effective date of this section.~~ All
23 moneys shall be deposited in a special account in the State Treasury
24 to be known as the Parolee's Supervision Fee Fund. Expenditures

1 from the fund shall be for the purposes of providing the parole
2 supervision required by the provisions of this code and are not
3 authorized from collections, but are to be made only in accordance
4 with appropriation by the Legislature and in accordance with the
5 provisions of article three, chapter twelve of this code and upon
6 the fulfillment of the provisions set forth in article two, chapter
7 five-a of this code. Amounts collected which are found, from time
8 to time, to exceed the funds needed for purposes set forth in this
9 article may be transferred to other accounts or funds and
10 redesignated for other purposes by appropriation of the Legislature.

11 (c) The Division of Corrections shall consider the following
12 factors in determining whether a parolee or probationer is
13 financially able to pay the fee:

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

16 (2) Liquid assets of the parolee or probationer, assets of the
17 parolee or probationer that may provide collateral to obtain funds
18 and assets of the parolee or probationer that may be liquidated to
19 provide funds to pay the fee;

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

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

24 (5) The reasonably foreseeable consequences for the parolee or

1 probationer if a waiver of, or reduction in, the fee is denied.

2 (d) In addition, the Division of Corrections may impose,
3 subject to modification at any time, any other conditions which the
4 Division considers advisable.

5 (e) The Division of Corrections may order substance abuse
6 treatment as a condition or as a modification of parole, only if the
7 standardized risk and needs assessment indicates the offender has
8 a high risk for reoffending and a need for substance abuse
9 treatment.

10 (f) The Division of Corrections may impose, as an initial
11 condition of parole, a term of reporting to a day report center or
12 other community corrections program only if the standardized risk
13 and needs assessment indicates a moderate to high risk of
14 reoffending and moderate to high criminogenic need. Any parolee
15 required to report to a day report center or other community
16 corrections program is subject to all the rules and regulations of
17 the center or program and may be removed at the discretion of the
18 center's or program's director. The Commissioner of Corrections
19 shall enter into a master agreement with the Division of Justice and
20 Community Services to provide reimbursement to counties for the use
21 of community corrections programs by eligible parolees. Any
22 placement by the Division of Corrections of a parolee in a day
23 report center or other community corrections program may only be
24 done with the center's or program's director's consent and the

1 parolee is subject to all of the rules and regulations of the center
2 or program and may be removed by the director.

3 **§62-12-19. Violation of parole.**

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

20 (1) If reasonable cause is found to exist that a parolee has
21 violated a term or terms of his or her release on parole that does
22 not constitute absconding supervision or new criminal conduct other
23 than a minor traffic violation or simple possession of a controlled
24 substance, the parole officer may, after consultation with and

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

16 ~~(b)~~ (2) When a parolee is ~~under arrest~~ in custody for a
17 violation of the conditions of his or her parole, he or she shall
18 be given a prompt and summary hearing before a Parole Board panel
19 ~~of the Board~~ upon his or her written request, at which the parolee
20 and his or her counsel ~~are~~ shall be given an opportunity to attend.

21 (A) If at the hearing it ~~appears to the satisfaction of the~~
22 ~~panel~~ is determined that reasonable cause exists to believe that the
23 ~~parolee has violated any condition of his or her release on parole,~~
24 ~~or any rules or conditions of his or her supervision~~ absconded

1 supervision or committed new criminal conduct other than a minor
2 traffic violation or simple possession of a controlled substance,
3 the panel may revoke his or her parole and may require him or her
4 to serve in ~~prison~~ a state correctional institution the remainder
5 or any portion of his or her maximum sentence for which, at the time
6 of his or her release, he or she was subject to imprisonment.

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

21 (b) Notwithstanding any provision of this code to the contrary,
22 when reasonable cause has been found to believe that a parolee has
23 violated the conditions of his or her parole but the violation does
24 not constitute felonious conduct, the commissioner may, ~~in his or~~

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

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

22 (d) Whenever ~~the~~ a person's parole ~~of a paroled prisoner~~ has
23 been revoked, the commissioner shall, upon receipt of the panel's
24 written order of revocation, convey and transport the paroled

1 prisoner to a state correctional institution. A ~~paroled prisoner~~
2 parolee whose parole has been revoked shall remain in custody of the
3 ~~sheriff~~ until delivery to a corrections officer sent and duly
4 authorized by the commissioner for the removal of the ~~paroled~~
5 ~~prisoner~~ parolee to a state ~~penal~~ correctional institution. The
6 cost of confining the ~~paroled prisoner~~ parolee shall be paid out of
7 the funds appropriated for the Division of Corrections.

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

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

21 (g) Whenever a parolee who has absconded supervision or has
22 been transferred out of this state for supervision pursuant to
23 section one, article six, chapter twenty-eight of this code is
24 returned to West Virginia due to a violation of parole and costs are

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

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

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

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

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

1 the meeting ex officio.

2 (b) The committee shall:

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

7 (2) Coordinate information reporting and access across agencies
8 continuing supervision;

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

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

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

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

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

22 **§62-15-2. Definitions.**

23 For the purposes of this article:

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

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

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

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

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

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

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

23 (A) The drug court judge, which may include a magistrate,
24 mental hygiene commissioner or other hearing officer;

- 1 (B) The prosecutor;
- 2 (C) The public defender or a member of the criminal defense
3 bar;
- 4 (D) A representative from the day report center or community
5 corrections program, if operating in the jurisdiction;
- 6 (E) A law-enforcement officer;
- 7 (F) The drug court coordinator;
- 8 (G) A representative from a circuit court probation office or
9 the division of parole supervision or both;
- 10 (H) One or more substance abuse treatment providers; and
- 11 (I) Any other persons selected by the drug court team.
- 12 (7) "Drug offender" means an adult person charged with a
13 drug-related offense or an offense in which substance abuse is
14 determined from the evidence to have been a factor in the commission
15 of the offense.
- 16 (8) "Dual Diagnosis" means a substance abuse and cooccurring
17 mental health disorder.
- 18 (9) "Local advisory committee" may consist of the following
19 members or their designees:
- 20 (A) A drug court circuit judge, who shall serve as chair;
- 21 (B) Drug court ~~magistrate(s)~~ magistrates;
- 22 (C) The prosecutor;
- 23 (D) A public defender;
- 24 (E) The drug court coordinator;

1 (F) A member of the criminal defense bar;
2 (G) The circuit clerk;
3 (H) A day report center director;
4 (I) A circuit court probation officer, parole officer or both;
5 (J) Law enforcement;
6 (K) One or more substance abuse treatment providers;
7 (L) A corrections representative; and
8 (M) Any such other person or persons the chair ~~deems~~ considers
9 appropriate.

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

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

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

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

18 (14) "Preadjudication order" means a court order requiring a
19 drug offender to participate in drug court before charges are filed
20 or before conviction.

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

24 (16) "Recidivism" means any subsequent arrest for a serious

1 offense (carrying a sentence of at least one year) resulting in the
2 filing of a charge.

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

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

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

10 (20) "Substance" means ~~drug~~ drugs or alcohol.

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

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

21 (23) "Ten Key Components" means the following benchmarks
22 intended to describe the very best practices, designs, and
23 operations of drug courts. These benchmarks are meant to serve as
24 a practical, yet flexible framework for developing effective drug

1 courts in vastly different jurisdictions and to provide a structure
2 for conducting research and evaluation for program accountability:

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

5 (B) Using a nonadversarial approach, prosecution and defense
6 counsel promote public safety while protecting participants' due
7 process rights;

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

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

12 (E) Abstinence is monitored by frequent alcohol and other drug
13 testing;

14 (F) A coordinated strategy governs drug court responses to
15 participants' compliance;

16 (G) Ongoing judicial interaction with each drug court
17 participant is essential;

18 (H) Monitoring and evaluation measure the achievement of
19 program goals and gauge effectiveness;

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

22 (J) Forging partnerships among drug courts, public agencies and
23 community-based organizations generates local support and enhances
24 drug court effectiveness.

1 (24) "Treatment supervision" means a program to which a
2 participant is ordered in lieu of a sentence of incarceration, which
3 includes treatment for substance abuse.

4 **§62-15-6a. Treatment supervision.**

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

1 the Commissioner of Corrections: *Provided*, That a judge may impose
2 treatment supervision on a drug offender convicted of a felony,
3 notwithstanding the results of the risk assessment, upon making
4 specific written findings of fact as to the reason for departing
5 from the requirements of this subsection. This subsection takes
6 effect January 1, 2014.

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

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

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

19 (2) Fee reimbursement procedures; and

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

22 (d) The Division of Justice and Community Services shall
23 require education and training for providers which shall include,
24 but not be limited to, cognitive behavior training. The duties of

1 providers who provide services under this ~~program~~ section may
2 include: notifying the probation department and the court of any
3 offender failing to meet the conditions of probation or referrals
4 to treatment; appearing at revocation hearings ~~as may be~~ when
5 required; and providing assistance with data reporting and treatment
6 program quality evaluation.

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

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

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

22 (2) The number of people on treatment supervision who received
23 services and whether ~~they were~~ their participation was the result
24 of a direct sentence or in lieu of revocation;

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

6 (4) The type of services provided;

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

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

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

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

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

19 **§62-15-6b. Intermediate incarceration sanctions for drug court**
20 **participants; responsibility for costs of**
21 **incarceration.**

22 (a) Whenever a judge of a drug court determines that a
23 participant who has pled to a felony offense has committed a
24 violation of his or her conditions of participation which would, in

1 the judge's opinion, warrant a period of incarceration to encourage
2 compliance with program requirements, the cost of the incarceration,
3 not to exceed a period of thirty days in any one instance, shall be
4 paid by the Division of Corrections. The judge must make a written
5 finding that the participant would otherwise be sentenced to the
6 custody of the Commissioner of Corrections for service of the
7 underlying sentence.

8 (b) Whenever a drug court judge incarcerates a participant
9 pursuant to subsection (a) of this section, the clerk of the circuit
10 court shall provide a copy of the order of confinement within five
11 days to the Commissioner of Corrections.