

1 **ENROLLED**

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 [Passed April 13, 2013; in effect ninety days from passage.]  
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13  
14 AN ACT to amend and reenact §25-1-15 of the Code of West Virginia,  
15 1931, as amended; to amend and reenact §28-5-27 of said code;  
16 to amend said code by adding thereto two new sections,  
17 designated §31-20-5g and §31-20-5h; to amend and reenact  
18 §61-7-6 of said code; to amend and reenact §62-11A-1a of said  
19 code; to amend and reenact §62-11B-9 of said code; to amend  
20 and reenact §62-11C-2, §62-11C-3 and §62-11C-6 of said code;  
21 to amend said code by adding thereto a new section, designated  
22 §62-11C-10; to amend and reenact §62-12-6, §62-12-7, §62-12-9,  
23 §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and  
24 §62-12-19 of said code; to amend said code by adding thereto

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

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

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

1 eligibility requirements for accelerated parole program;  
2 providing that parole applications may be considered by the  
3 Parole Board without prior submission a home plan; requiring  
4 that Division of Corrections' policies and procedures for  
5 developing a rehabilitation treatment plan include the use of  
6 substance abuse assessment tools and prioritize treatment  
7 resources based on the risk and needs assessment and substance  
8 abuse assessment results; providing for rebuttable presumption  
9 that parole is appropriate for inmates completing the  
10 accelerated parole program and a rehabilitation treatment  
11 program; providing standards and limitations for Parole Board;  
12 outlining duties of the Division of Corrections to supervise,  
13 treat and provide support services for persons released on  
14 mandatory supervised release; removing temporal standard for  
15 requirement that the Parole Board have access to a copy of an  
16 inmate's physical, mental or psychiatric examination;  
17 clarifying the Parole Board's duty to notify prosecuting  
18 attorneys of an offender's release on parole; authorizing  
19 Division of Corrections to employ directors of housing and  
20 employment for released inmates with duties relating to the  
21 reduction of parole release delays and finding employment;  
22 requiring parole officers to update the standardized risk and  
23 needs assessment for each person for whom an assessment has  
24 not been conducted for parole and to supervise each person

1 according to the assessment and the commissioner's supervision  
2 standards; authorizing the Commissioner of Corrections to  
3 issue a certificate authorizing an eligible parole officer to  
4 carry firearms or concealed weapons; providing standards and  
5 limitations under which the Division of Corrections may order  
6 substance abuse treatment or impose a term of reporting to a  
7 day report center or other community corrections program as a  
8 condition or modification of parole; authorizing the  
9 Commissioner of Corrections to enter into a master agreement  
10 with the Division of Justice and Community Services to  
11 reimburse counties for use of the community corrections  
12 programs; clarifying that parolee participation in community  
13 corrections is at program director's discretion; providing for  
14 graduated sanctions in response to violations of the  
15 conditions of release on parole other than absconding, certain  
16 new criminal conduct or violating a special condition of  
17 parole; providing a parolee with the right to a hearing, upon  
18 request, regarding whether he or she violated the conditions  
19 of his or her release on parole; providing the authority for  
20 the Parole Board to depart from graduated sanction; providing  
21 that graduated sanctions incarceration for parolees be paid  
22 for by Division of Corrections; providing for a Community  
23 Supervision Committee to be appointed by the Administrative  
24 Director of the Supreme Court of Appeals of West Virginia to

1 coordinate the sharing of information for community  
2 supervision and requiring an annual report; revising  
3 definitions for Drug Offender Accountability and Treatment  
4 Act; requiring all judicial circuits to participate in a drug  
5 court or regional drug court program by July 1, 2016;  
6 providing standards and limitations under which judges may  
7 order treatment supervision for drug offenders; providing that  
8 a judge may order a period of confinement to encourage  
9 compliance with treatment supervision to be paid by the  
10 Division of Corrections for up to thirty days for each  
11 instance; requiring the Division of Justice and Community  
12 Services to use appropriated funds to implement substance  
13 abuse treatment to serve those under treatment supervision in  
14 each judicial circuit; providing that the Division of Justice  
15 and Community Services in consultation with the Governor's  
16 Advisory Committee on Substance Abuse is responsible for  
17 developing standards relating to quality and delivery of  
18 substance abuse services; requiring certain education and  
19 training; paying for drug abuse assessments and certified drug  
20 treatment from appropriated funds; requiring submittal of an  
21 annual report and specifying an effective date; outlining  
22 duties of treatment supervision service providers; providing  
23 effective dates for provisions related to treatment  
24 supervision; providing for state payment of drug court

1 participants' incarceration under certain circumstances;  
2 defining terms; and making technical changes.

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

4 That §25-1-15 of the Code of West Virginia, 1931, as amended,  
5 be amended and reenacted; that §28-5-27 of said code be amended and  
6 reenacted; that said code be amended by adding thereto two new  
7 sections, designated §31-20-5g and §31-20-5h; that §61-7-6 of said  
8 code be amended and reenacted; that §62-11A-1a of said code be  
9 amended and reenacted; that §62-11B-9 of said code be amended and  
10 reenacted; that §62-11C-2, §62-11C-3 and §62-11C-6 of said code be  
11 amended and reenacted; that said code be amended by adding thereto  
12 a new section, designated §62-11C-10; that §62-12-6, §62-12-7,  
13 §62-12-9, §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17  
14 and §62-12-19 of said code be amended and reenacted; that said code  
15 be amended by adding thereto a new section, designated §62-12-29;  
16 that §62-15-2 and §62-15-4 of said code be amended and reenacted;  
17 and that said code be amended by adding thereto two new sections,  
18 designated §62-15-6a and §62-15-6b, all to read as follows:

19 **CHAPTER 25. DIVISION OF CORRECTIONS.**

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

21 **§25-1-15. Diagnostic and classification divisions.**

22 (a) The Commissioner of Corrections may establish diagnostic  
23 and classification divisions.

24 (b) Notwithstanding any provision of this code to the

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

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

17 **ARTICLE 5. THE PENITENTIARY.**

18 **§28-5-27. Deduction from sentence for good conduct; mandatory**  
19 **supervision.**

20 (a) All current and future adult inmates in the custody of the  
21 Commissioner of Corrections, except those committed pursuant to  
22 article four, chapter twenty-five of this code, shall be granted  
23 commutation from their sentences for good conduct in accordance  
24 with this section.

1 (b) The commutation of sentence, known as "good time", shall  
2 be deducted from the maximum term of indeterminate sentences or  
3 from the fixed term of determinate sentences.

4 (c) Each inmate committed to the custody of the Commissioner  
5 of Corrections and incarcerated in a correctional facility pursuant  
6 to that commitment shall be granted one day good time for each day  
7 he or she is incarcerated, including any and all days in jail  
8 awaiting sentence which are credited by the sentencing court to his  
9 or her sentence pursuant to section twenty-four, article eleven,  
10 chapter sixty-one of this code or for any other reason relating to  
11 the commitment. An inmate may not be granted any good time for  
12 time served either on parole or bond or in any other status when he  
13 or she is not physically incarcerated.

14 (d) An inmate sentenced to serve a life sentence is not  
15 eligible to earn or receive any good time pursuant to this section.

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

20 (f) The Commissioner of Corrections shall promulgate  
21 disciplinary rules. The rules shall describe acts that inmates are  
22 prohibited from committing, procedures for charging individual  
23 inmates for violation of the rules and for determining the guilt or  
24 innocence of inmates charged with the violations and the sanctions

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

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

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

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

24 (j) In order to ensure equitable good time for all current and

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

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

19 (l) Prior to the calculated discharge date of an inmate  
20 serving a sentence for a felony crime of violence against the  
21 person, a felony offense where the victim was a minor child or a  
22 felony offense involving the use of a firearm, one year shall be  
23 deducted from the inmate's accumulated good time to provide for one  
24 year of mandatory post-release supervision following the first

1 instance in which the inmate reaches his or her calculated  
2 discharge date. All inmates released pursuant to this subsection  
3 shall be subject to electronic or GPS monitoring for the entire  
4 period of supervision. The provisions of this subsection are  
5 applicable to offenses committed on or after July 1, 2013.

6 (m) Upon sentencing of an inmate for an offense not referenced  
7 in subsection (l) of this section, the court may order that one  
8 hundred eighty days of the sentence, or some lesser period, be  
9 served through post-release mandatory supervision if the court  
10 determines supervision is appropriate and in the best interest of  
11 justice, rehabilitation and public safety. All inmates released  
12 pursuant to this subsection shall be subject to electronic or GPS  
13 monitoring for the entire period of supervision. The provisions of  
14 this subsection are applicable to offenses committed on or after  
15 July 1, 2013.

16 (n) The Commissioner of Corrections shall adopt policies and  
17 procedures to implement the mandatory supervision provided for in  
18 subsections (l) and (m) of this section, which may include terms,  
19 conditions and procedures for supervision, modification and  
20 violation applicable to persons on parole.

21 (o) As used in this section, "felony crime of violence against  
22 the person" means felony offenses set forth in article two,  
23 three-e, eight-b or eight-d, chapter sixty-one of this code, and  
24 the felony offenses of arson and burglary of a residence where an

1 individual is physically located at the time of the offense as set  
2 forth in article three, chapter sixty-one of this code.

3 (p) As used in this section, "felony offense where the victim  
4 was a minor child" means any felony crime of violence against the  
5 person and any felony offense set forth in article eight, eight-a,  
6 eight-c or eight-d, chapter sixty-one of this code.

7 **CHAPTER 31. CORPORATIONS.**

8 **ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY**  
9 **AUTHORITY.**

10 **§31-20-5g. Pretrial risk assessment.**

11 (a) Within three calender days of the arrest and placement of  
12 any person in a regional jail, the authority shall conduct a  
13 pretrial risk assessment using a standardized risk assessment  
14 instrument approved and adopted by the Supreme Court of Appeals of  
15 West Virginia. The results of all standardized risk and needs  
16 assessments are confidential and shall only be provided to the  
17 court, court personnel, the prosecuting attorney, defense counsel  
18 and the person who is the subject of the pretrial risk assessment.  
19 Upon completion of the assessment, the authority shall provide it  
20 to the magistrate and circuit clerks for delivery to the  
21 appropriate circuit judge or magistrate.

22 (b) The pretrial risk assessment and all oral or written  
23 statements made by an individual during risk assessment shall be  
24 inadmissable evidence at any criminal or civil trial.

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 **handguns; exemptions from licensing fees.**

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

19 (1) Any person:

20 (A) Carrying a deadly weapon upon his or her own premises;

21 (B) Carrying a firearm, unloaded, from the place of purchase  
22 to his or her home, residence or place of business or to a place of  
23 repair and back to his or her home, residence or place of business;  
24 or

1 (C) Possessing a firearm while hunting in a lawful manner or  
2 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 weapon at a place of target  
13 practice in training and improving his or her skill in the use of  
14 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 eleven-c,  
20 article one, chapter twenty-five of this code while the employee is  
21 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 resident of another state who holds a valid permit or

1 license to possess or carry a handgun issued by a state or a  
2 political subdivision subject to the provisions and limitations set  
3 forth in section six-a of this article;

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

7 (8) Any Hatfield-McCoy Regional Recreation Authority Ranger  
8 while the ranger is on duty; and

9 (9) Any parole officer appointed pursuant to section fourteen,  
10 article twelve, chapter sixty-two of this code in the performance  
11 of their duties.

12 (b) On and after July 1, 2013, the following judicial officers  
13 and prosecutors and staff shall be exempted from paying any  
14 application fees or licensure fees required under this article.  
15 However, on and after that same date, they shall be required to  
16 make application and satisfy all licensure and handgun safety and  
17 training requirements set forth in section four of this article  
18 before carrying a concealed handgun in this state:

19 (1) Any justice of the Supreme Court of Appeals of West  
20 Virginia;

21 (2) Any circuit judge;

22 (3) Any retired justice or retired circuit judge designated  
23 senior status by the Supreme Court of Appeals of West Virginia;

24 (4) Any family court judge;

- 1 (5) Any magistrate;  
2 (6) Any prosecuting attorney;  
3 (7) Any assistant prosecuting attorney; or  
4 (8) Any duly appointed investigator employed by a prosecuting  
5 attorney.

6 **CHAPTER 62. CRIMINAL PROCEDURE.**

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

8 **§62-11A-1a. Other sentencing alternatives.**

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

17 (1) The weekend jail program under which a person would be  
18 required to spend weekends or other days normally off from work in  
19 jail;

20 (2) The work program under which a sentenced person would be  
21 required to spend the first two or more days of his or her sentence  
22 in jail and then, in the discretion of the court, would be assigned  
23 to a county agency to perform labor within the jail, or in and upon  
24 the buildings, grounds, institutions, bridges and roads, including

1 orphaned roads used by the general public and public works within  
2 the county. Eight hours of labor are to be credited as one day of  
3 the sentence imposed. A person sentenced under this program may be  
4 required to provide his or her own transportation to and from the  
5 work site, lunch and work clothes; or

6 (3) The community service program under which a sentenced  
7 person would spend no time in jail, but would be sentenced to a  
8 number of hours or days of community service work with government  
9 entities or charitable or nonprofit entities approved by the  
10 circuit court. Regarding any portion of the sentence designated as  
11 confinement, eight hours of community service work is to be  
12 credited as one day of the sentence imposed. Regarding any portion  
13 of the sentence designated as a fine, the fine is to be credited at  
14 an hourly rate equal to the prevailing federal minimum wage at the  
15 time the sentence was imposed. In the discretion of the court, the  
16 sentence credits may run concurrently or consecutively. A person  
17 sentenced under this program may be required to provide his or her  
18 own transportation to and from the work site, lunch and work  
19 clothes.

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

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

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

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

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

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

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

17           (d) A person sentenced by the circuit court under the  
18 provisions of this article remains under the administrative custody  
19 and supervision of the court's probation officers or the county  
20 sheriff. A person sentenced by a magistrate remains under the  
21 administrative custody and supervision of the county sheriff.

22           (e) A person sentenced under the provisions of this section  
23 may be required to pay the costs of his or her incarceration,  
24 including meal costs: *Provided*, That the judge or magistrate

1 considers the person's ability to pay the costs.

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

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

1 standardized risk and needs assessment, upon making specific  
2 written findings of fact as to the reason for departing from the  
3 requirements of this section.

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

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

14 **§62-11B-9. Violation of order of home incarceration procedures;**  
15 **penalties.**

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

22 (b) If, at any time during the period of home incarceration,  
23 there is reasonable cause to believe that a participant sentenced  
24 to home incarceration by the circuit court has violated the terms

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

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

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

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

10 **§62-11C-2. Community Corrections Subcommittee.**

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

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

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

12 **§62-11C-3. Duties of the Governor's committee and the community**  
13 **corrections subcommittee.**

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

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

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

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

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

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

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

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

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

15 (3) Provide funding for approved community corrections  
16 programs, as available.

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

24 (d) The subcommittee shall review the implementation of

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

16 **§62-11C-6. Community criminal justice boards.**

17 (a) Each county or combination of counties or a county or  
18 counties and a Class I or II municipality that seek to establish  
19 community-based corrections services shall establish a community  
20 criminal justice board: *Provided*, That if a county has not  
21 established a community criminal justice board by July 1, 2002, the  
22 chief probation officer of that county, with the approval of the  
23 chief judge of the circuit, may apply for and receive approval and  
24 funding from the Governor's committee for any programs as

1 authorized by the provisions of section five of this article. Any  
2 county which chooses to operate without a community criminal  
3 justice board is subject to the regulations and requirements  
4 established by the community corrections subcommittee and the  
5 Governor's committee.

6 (b) A community criminal justice board shall consist of no  
7 more than fifteen voting members.

8 (c) All members of a community criminal justice board shall be  
9 residents of the county or counties represented.

10 (d) A community criminal justice board shall consist of the  
11 following members:

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

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

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

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

1 represented;

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

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

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

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

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

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

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

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

22 (f) Community criminal justice boards may:

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

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

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

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

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

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

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

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

1 The Division of Justice and Community Services shall:

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

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

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

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

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

19 (6) Annually report to the Community Corrections Subcommittee  
20 on the results of duties required by this section.

21 **ARTICLE 12. PROBATION AND PAROLE.**

22 **§62-12-6. Powers and duties of probation officers.**

23 (a) Each probation officer shall:

24 (1) Investigate all cases which the court refers to the

1 officer for investigation and shall report in writing on each case;

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 Supreme Court of Appeals of West Virginia;

15       (5) Stay informed concerning the conduct and condition of each  
16 probationer under the officer's supervision and report on the  
17 conduct and condition of each probationer in writing as often as  
18 the court requires;

19       (6) Use all practicable and suitable methods to aid and  
20 encourage the probationer to improve his or her conduct and  
21 condition;

22       (7) Perform random drug and alcohol testing on probationers  
23 under his or her supervision as directed by the circuit court;

24       (8) Maintain detailed work records; and

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

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

9           (c) Notwithstanding any provision of this code to the  
10 contrary:

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

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

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

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

9 **§62-12-7. Pretrial and preliminary investigation; report on**  
10 **prospective probationers.**

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

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

1 conditions of his or her release on probation. A person convicted  
2 of a felony or of any offense described in article eight-b or  
3 eight-d, chapter sixty-one of this code against a minor child may  
4 not be released on probation until this report has been presented  
5 to and considered by the court. The court may request a report  
6 concerning any person convicted of a misdemeanor. The presentence  
7 report of any person convicted of an offense, described in said  
8 articles or section twelve, article eight of said chapter, may  
9 include a statement from a therapist, psychologist or physician who  
10 is providing treatment to the child. A copy of all reports shall  
11 be filed with the Parole Board.

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

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

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

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

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

23 (4) That in every case in which the probationer has been  
24 convicted of an offense defined in section twelve, article eight,

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

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

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

24 (b) In addition, the court may impose, subject to modification

1 at any time, any other conditions which it may determine advisable,  
2 including, but not limited to, any of the following:

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

10 (2) That the probationer pays any fine assessed and the costs  
11 of the proceeding in installments directed by the court: *Provided*,  
12 That the court conducts a hearing prior to imposition of probation  
13 and makes a determination on the record that the offender is able  
14 to pay the costs without undue hardship;

15 (3) That the probationer makes contributions from his or her  
16 earnings, in sums directed by the court, for the support of his or  
17 her dependents; and

18 (4) That the probationer, in the discretion of the court, is  
19 required to serve a period of confinement in jail of the county in  
20 which he or she was convicted for a period not to exceed one third  
21 of the minimum sentence established by law or one third of the  
22 least possible period of confinement in an indeterminate sentence,  
23 but in no case may the period of confinement exceed six consecutive  
24 months. The court may sentence the defendant within the six-month

1 period to intermittent periods of confinement including, but not  
2 limited to, weekends or holidays and may grant to the defendant  
3 intermittent periods of release in order that he or she may work at  
4 his or her employment or for other reasons or purposes as the court  
5 may determine appropriate: *Provided*, That the provisions of article  
6 eleven-a of this chapter do not apply to intermittent periods of  
7 confinement and release except to the extent directed by the court.  
8 If a period of confinement is required as a condition of probation,  
9 the court shall make special findings that other conditions of  
10 probation are inadequate and that a period of confinement is  
11 necessary.

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

14 (1) To be eligible, the probationer must be identified as  
15 moderate to high risk of reoffending and moderate to high  
16 criminogenic need, as determined by the standardized risk and needs  
17 assessment adopted by the Supreme Court of Appeals of West Virginia  
18 under subsection (d), section six of this article, and applied by  
19 a probation officer or day report staff. In eligible cases,  
20 circuit courts may impose a term of up to one year: *Provided*, That  
21 notwithstanding the results of the standardized risk and needs  
22 assessment, a judge may impose, as a term of probation,  
23 participation in a day report center program upon making specific  
24 written findings of fact as to the reason for departing from the

1 requirements of this subdivision.

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

6 (d) For the purposes of this article, "day report center"  
7 means a court-operated or court-approved facility where persons  
8 ordered to serve a sentence in this type of facility are required  
9 to report under the terms and conditions set by the court for  
10 purposes which include, but are not limited to, counseling,  
11 employment training, alcohol or drug testing or other medical  
12 testing.

13 **§62-12-10. Violation of probation.**

14 (a) If at any time during the period of probation there shall  
15 be reasonable cause to believe that the probationer has violated  
16 any of the conditions of his or her probation, the probation  
17 officer may arrest him or her with or without an order or warrant,  
18 or the court which placed him or her on probation, or the judge  
19 thereof in vacation, may issue an order for his or her arrest,  
20 whereupon he or she shall be brought before the court, or the judge  
21 thereof in vacation, for a prompt and summary hearing.

22 (1) If the court or judge finds reasonable cause exists to  
23 believe that the probationer:

24 (A) Absconded supervision;

1 (B) Engaged in new criminal conduct other than a minor traffic  
2 violation or simple possession of a controlled substance; or

3 (C) Violated a special condition of probation designed either  
4 to protect the public or a victim;

5 the court or judge may revoke the suspension of imposition or  
6 execution of sentence, impose sentence if none has been imposed and  
7 order that sentence be executed.

8 (2) If the judge finds that reasonable cause exists to believe  
9 that the probationer violated any condition of supervision other  
10 than the conditions of probation set forth in subdivision (1) of  
11 this subsection then, for the first violation, the judge shall  
12 impose a period of confinement up to sixty days or, for the second  
13 violation, a period of confinement up to one hundred twenty days.  
14 For the third violation, the judge may revoke the suspension of  
15 imposition or execution of sentence, impose sentence if none has  
16 been imposed and order that sentence be executed, with credit for  
17 time spent in confinement under this section.

18 (3) In computing the period for which the offender is to be  
19 confined, the time between his or her release on probation and his  
20 or her arrest may not be taken to be any part of the term of his or  
21 her sentence.

22 (b) A probationer confined for a first or second violation  
23 pursuant to subdivision (2), subsection (a) of this section may be  
24 confined in jail, and the costs of confining felony probationers

1 shall be paid out of funds appropriated for the Division of  
2 Corrections. Whenever the court orders the incarceration of a  
3 probationer pursuant to the provisions of subdivision (2),  
4 subsection (a) of this section, a circuit clerk shall provide a  
5 copy of the order of confinement within five days to the  
6 Commissioner of Corrections.

7 (c) If, despite a violation of the conditions of probation,  
8 the court or judge is of the opinion that the interests of justice  
9 do not require that the probationer serve his or her sentence or a  
10 period of confinement, the judge may, except when the violation was  
11 the commission of a felony, again release him or her on probation:  
12 *Provided*, That a judge may otherwise depart from the sentence  
13 limitations set forth in subdivision (2), subsection (a) of this  
14 section upon making specific written findings of fact supporting  
15 the basis for the departure.

16 **§62-12-13. Powers and duties of board; eligibility for parole;**  
17 **procedure for granting parole.**

18 (a) The Parole Board, whenever it is of the opinion that the  
19 best interests of the state and of the inmate will be served, and  
20 subject to the limitations provided in this section, shall release  
21 any inmate on parole for terms and upon conditions provided by this  
22 article.

23 (b) Any inmate of a state correctional institution is eligible  
24 for parole if he or she:

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

4 (B) He or she:

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

7 (ii) Does not have a prior criminal conviction for a felony  
8 crime of violence against the person, a felony offense involving  
9 the use of a firearm or a felony offense where the victim was a  
10 minor child.

11 (iii) Is not serving a sentence for a crime of violence  
12 against the person, or more than one felony for a controlled  
13 substance offense for which the inmate is serving a consecutive  
14 sentence, a felony offense involving the use of a firearm or a  
15 felony offense where the victim was a minor child; and

16 (iv) Has successfully completed a rehabilitation treatment  
17 program created with the assistance of a standardized risk and  
18 needs assessment.

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

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

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

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

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

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

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

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

23           (E) As used in this section, "felony crime of violence against  
24 the person" means felony offenses set forth in article two,

1 three-e, eight-b or eight-d, chapter sixty-one of this code; and

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

6 (G) For the purpose of this section, the term "firearm" means  
7 any instrument which will, or is designed to, or may readily be  
8 converted to expel a projectile by the action of an explosive,  
9 gunpowder or any other similar means.

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

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

15 (4) Has prepared and submitted to the Parole Board a written  
16 parole release plan setting forth proposed plans for his or her  
17 place of residence, employment and, if appropriate, his or her  
18 plans regarding education and post-release counseling and  
19 treatment: *Provided*, That an inmate's application for parole may be  
20 considered by the board without the prior submission of a home  
21 plan, but the inmate shall have a home plan approved by the board  
22 prior to his or her release on parole. The Commissioner of  
23 Corrections or his or her designee shall review and investigate the  
24 plan and provide recommendations to the board as to the suitability

1 of the plan: *Provided*, That in cases in which there is a mandatory  
2 thirty-day notification period required prior to the release of the  
3 inmate, pursuant to section twenty-three of this article, the board  
4 may conduct an initial interview and deny parole without requiring  
5 the development of a plan. In the event the board believes parole  
6 should be granted, it may defer a final decision pending completion  
7 of an investigation and receipt of recommendations. Upon receipt  
8 of the plan together with the investigation and recommendation, the  
9 board, through a panel, shall make a final decision regarding the  
10 granting or denial of parole; and

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

13 (c) Except in the case of an inmate serving a life sentence,  
14 a person who has been previously twice convicted of a felony may  
15 not be released on parole until he or she has served the minimum  
16 term provided by law for the crime for which he or she was  
17 convicted. An inmate sentenced for life may not be paroled until  
18 he or she has served ten years, and an inmate sentenced for life  
19 who has been previously twice convicted of a felony may not be  
20 paroled until he or she has served fifteen years: *Provided*, That an  
21 inmate convicted of first degree murder for an offense committed on  
22 or after June 10, 1994, is not eligible for parole until he or she  
23 has served fifteen years.

24 (d) In the case of an inmate sentenced to any state

1 correctional institution, the Parole Board, as soon as that inmate  
2 becomes eligible, shall consider the advisability of his or her  
3 release on parole.

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

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

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

1 clemency.

2           (h) (1) The Division of Corrections shall promulgate policies  
3 and procedures for developing a rehabilitation treatment plan  
4 created with the assistance of a standardized risk and needs  
5 assessment. The policies and procedures shall provide for, at a  
6 minimum, screening and selecting inmates for rehabilitation  
7 treatment and development, using standardized risk and needs  
8 assessment and substance abuse assessment tools, and prioritizing  
9 the use of residential substance abuse treatment resources based on  
10 the results of the standardized risk and needs assessment and a  
11 substance abuse assessment. The results of all standardized risk  
12 and needs assessments and substance abuse assessments are  
13 confidential.

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

1 subsection (b) of this section or in this subsection may be  
2 construed to create a right to parole.

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

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

20 (k) (1) The Division of Corrections shall supervise all  
21 probationers and parolees whose supervision may have been  
22 undertaken by this state by reason of any interstate compact  
23 entered into pursuant to the Uniform Act for Out-of-State Parolee  
24 Supervision.

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

5           (1)(1) When considering an inmate of a state correctional  
6 center for release on parole, the Parole Board panel considering  
7 the parole shall have before it an authentic copy of or report on  
8 the inmate's current criminal record as provided through the West  
9 Virginia State Police, the United States Department of Justice or  
10 any other reliable criminal information sources and written reports  
11 of the warden or superintendent of the state correctional  
12 institution to which the inmate is sentenced:

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

17           (B) On improvement or other changes noted in the inmate's  
18 mental and moral condition while in custody, including a statement  
19 expressive of the inmate's current attitude toward society in  
20 general, toward the judge who sentenced him or her, toward the  
21 prosecuting attorney who prosecuted him or her, toward the  
22 policeman or other officer who arrested the inmate and toward the  
23 crime for which he or she is under sentence and his or her previous  
24 criminal record;

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

8 (D) On any physical, mental, psychological or psychiatric  
9 examinations of the inmate.

10 (2) The Parole Board panel considering the parole may waive  
11 the requirement of any report when not available or not applicable  
12 as to any inmate considered for parole but, in every case, shall  
13 enter in its record its reason for the waiver: *Provided*, That in  
14 the case of an inmate who is incarcerated because the inmate has  
15 been found guilty of, or has pleaded guilty to, a felony under the  
16 provisions of section twelve, article eight, chapter sixty-one of  
17 this code or under the provisions of article eight-b or eight-c of  
18 said chapter, the Parole Board panel may not waive the report  
19 required by this subsection. The report shall include a study and  
20 diagnosis of the inmate, including an on-going treatment plan  
21 requiring active participation in sexual abuse counseling at an  
22 approved mental health facility or through some other approved  
23 program: *Provided, however*, That nothing disclosed by the inmate  
24 during the study or diagnosis may be made available to any

1 law-enforcement agency, or other party without that inmate's  
2 consent, or admissible in any court of this state, unless the  
3 information disclosed indicates the intention or plans of the  
4 parolee to do harm to any person, animal, institution or to  
5 property. Progress reports of outpatient treatment are to be made  
6 at least every six months to the parole officer supervising the  
7 parolee. In addition, in such cases, the Parole Board shall inform  
8 the prosecuting attorney of the county in which the person was  
9 convicted of the parole hearing and shall request that the  
10 prosecuting attorney inform the Parole Board of the circumstances  
11 surrounding a conviction or plea of guilty, plea bargaining and  
12 other background information that might be useful in its  
13 deliberations.

14 (m) Before releasing any inmate on parole, the Parole  
15 Board shall arrange for the inmate to appear in person before a  
16 Parole Board panel and the panel may examine and interrogate him or  
17 her on any matters pertaining to his or her parole, including  
18 reports before the Parole Board made pursuant to the provisions of  
19 this section: *Provided*, That an inmate may appear by video  
20 teleconference if the members of the Parole Board panel conducting  
21 the examination are able to contemporaneously see the inmate and  
22 hear all of his or her remarks and if the inmate is able to  
23 contemporaneously see each of the members of the panel conducting  
24 the examination and hear all of the members' remarks. The panel

1 shall reach its own written conclusions as to the desirability of  
2 releasing the inmate on parole and the majority of the panel  
3 considering the release must concur in the decision. The warden or  
4 superintendent shall furnish all necessary assistance and cooperate  
5 to the fullest extent with the Parole Board. All information,  
6 records and reports received by the Parole Board shall be kept on  
7 permanent file.

8 (n) The Parole Board and its designated agents are at all  
9 times to have access to inmates imprisoned in any state  
10 correctional institution or in any jail in this state and may  
11 obtain any information or aid necessary to the performance of its  
12 duties from other departments and agencies of the state or from any  
13 political subdivision of the state.

14 (o) The Parole board shall, if requested by the Governor,  
15 investigate and consider all applications for pardon, reprieve or  
16 commutation and shall make recommendation on the applications to  
17 the Governor.

18 (p) (1) Prior to making a recommendation for pardon, reprieve  
19 or commutation, the board shall notify the sentencing judge and  
20 prosecuting attorney at least ten days before the recommendation.

21 (2) Notwithstanding any other provision of law to the  
22 contrary, if the board grants a person parole, the board shall  
23 provide written notice to the prosecuting attorney and circuit  
24 judge of the county in which the inmate was prosecuted, that parole

1 has been granted. The notice shall be sent by certified mail,  
2 return receipt requested, and include the anticipated date of  
3 release and the person's anticipated future residence. A written  
4 statement of reasons for releasing the person, prepared pursuant to  
5 subsection (b) of this section, shall be provided upon request.

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

11 **§62-12-14a. Director of employment; director of housing; released**  
12 **inmates; duties.**

13 The Commissioner of Corrections may employ or contract for a  
14 director of employment and a director of housing for released  
15 inmates. The director of employment shall work with federal, state,  
16 county and local government and private entities to negotiate  
17 agreements which facilitate employment opportunities for released  
18 inmates. The director of housing shall work with federal, state,  
19 county and local government and private entities to negotiate  
20 agreements which facilitate housing opportunities for released  
21 inmates. The director of employment shall investigate job  
22 opportunities and give every possible assistance in helping released  
23 inmates find employment. The director of housing shall work in  
24 conjunction with the parole division and the Parole Board to reduce

1 release delays due to lack of a home plan, develop community housing  
2 resources and provide short-term loans to released inmates for costs  
3 related to reentry into the community.

4 **§62-12-15. Powers and duties of state parole officers.**

5 (a) Each state parole officer shall:

6 (1) Investigate all cases referred to him or her for  
7 investigation by the Commissioner of Corrections and report in  
8 writing on the investigation;

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

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

15 (4) Furnish to each parolee under his or her supervision a  
16 written statement of the conditions of his or her parole together  
17 with a copy of the rules prescribed by the Commissioner of  
18 Corrections for the supervision of parolees;

19 (5) Keep informed concerning the conduct and condition of each  
20 parolee under his or her supervision and report on the conduct and  
21 condition of each parolee in writing as often as required by the  
22 Commissioner of Corrections;

23 (6) Use all practicable and suitable methods to aid and  
24 encourage a parolee and to bring about improvement in his or her

1 conduct and condition;

2 (7) Keep detailed records of his or her work;

3 (8) Keep accurate and complete accounts of and give receipts  
4 for all money collected from parolees under his or her supervision  
5 and pay over the money to persons designated by a circuit court or  
6 the Commissioner of Corrections ;

7 (9) Give bond with good security, to be approved by the  
8 Commissioner of Corrections, in a penalty of not less than \$1,000  
9 nor more than \$3,000, as determined by the Commissioner of  
10 Corrections; and

11 (10) Perform any other duties required by the Commissioner of  
12 Corrections.

13 (b) Each state parole officer may, with or without an order or  
14 warrant, arrest or order confinement of any parolee. He or she has  
15 all the powers of a notary public, with authority to act anywhere  
16 within the state.

17 (c) The Commissioner of Corrections may issue a certificate  
18 authorizing any state parole officer who has successfully completed  
19 the Division of Corrections' training program for firearms  
20 certification, which is the equivalent of that required of deputy  
21 sheriffs, to carry firearms or concealed weapons. Any parole  
22 officer authorized by the Commissioner of Corrections may, without  
23 a state license, carry firearms and concealed weapons. Each state  
24 parole officer, authorized by the Commissioner of Corrections, shall

1 carry with him or her a certificate authorizing him or her to carry  
2 a firearm or concealed weapon bearing the official signature of the  
3 Commissioner of Corrections.

4 **§62-12-17. Conditions of release on probation and parole.**

5 (a) Release and supervision on parole of any person, including  
6 the supervision by the Division of Corrections of any person paroled  
7 by any other state or by the federal government, shall be upon the  
8 following conditions:

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

12 (2) That the parolee may not, during the period of his or her  
13 parole, leave the state without the consent of the Division of  
14 Corrections;

15 (3) That the parolee complies with the rules prescribed by the  
16 Division of Corrections for his or her supervision by the parole  
17 officer;

18 (4) That in every case in which the parolee for a conviction  
19 is seeking parole from an offense against a child, defined in  
20 section twelve, article eight, chapter sixty-one of this code, or  
21 article eight-b or eight-d of said chapter, or similar convictions  
22 from other jurisdictions where the parolee is returning or  
23 attempting to return to this state pursuant to the provisions of  
24 article six, chapter twenty-eight of this code, the parolee may not

1 live in the same residence as any minor child nor exercise  
2 visitation with any minor child nor may he or she have any contact  
3 with the victim of the offense; and

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

8 (b) The Commissioner of Corrections shall keep a record of all  
9 actions taken and account for moneys received. All moneys shall be  
10 deposited in a special account in the State Treasury to be known as  
11 the Parolee's Supervision Fee Fund. Expenditures from the fund  
12 shall be for the purposes of providing the parole supervision  
13 required by the provisions of this code and are not authorized from  
14 collections, but are to be made only in accordance with  
15 appropriation by the Legislature and in accordance with the  
16 provisions of article three, chapter twelve of this code and upon  
17 the fulfillment of the provisions set forth in article two, chapter  
18 five-a of this code. Amounts collected which are found, from time  
19 to time, to exceed the funds needed for purposes set forth in this  
20 article may be transferred to other accounts or funds and  
21 redesignated for other purposes by appropriation of the Legislature.

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

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

3 (2) Liquid assets of the parolee or probationer, assets of the  
4 parolee or probationer that may provide collateral to obtain funds  
5 and assets of the parolee or probationer that may be liquidated to  
6 provide funds to pay the fee;

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

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

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

13 (d) In addition, the Division of Corrections may impose,  
14 subject to modification at any time, any other conditions which the  
15 division considers advisable.

16 (e) The Division of Corrections may order substance abuse  
17 treatment as a condition or as a modification of parole, only if the  
18 standardized risk and needs assessment indicates the offender has  
19 a high risk for reoffending and a need for substance abuse  
20 treatment.

21 (f) The Division of Corrections may impose, as an initial  
22 condition of parole, a term of reporting to a day report center or  
23 other community corrections program only if the standardized risk  
24 and needs assessment indicates a moderate to high risk of

1 reoffending and moderate to high criminogenic need. Any parolee  
2 required to report to a day report center or other community  
3 corrections program is subject to all the rules and regulations of  
4 the center or program and may be removed at the discretion of the  
5 center's or program's director. The Commissioner of Corrections  
6 shall enter into a master agreement with the Division of Justice and  
7 Community Services to provide reimbursement to counties for the use  
8 of community corrections programs by eligible parolees. Any  
9 placement by the Division of Corrections of a parolee in a day  
10 report center or other community corrections program may only be  
11 done with the center or program director's consent and the parolee  
12 is subject to all of the rules and regulations of the center or  
13 program and may be removed by the director.

14 **§62-12-19. Violation of parole.**

15 (a) If at any time during the period of parole there is  
16 reasonable cause to believe that the parolee has violated any of the  
17 conditions of his or her release on parole, the parole officer may  
18 arrest him or her with or without an order or warrant, or the  
19 Commissioner of Corrections may issue a written order or warrant for  
20 his or her arrest. The written order or warrant is sufficient for  
21 his or her arrest by any officer charged with the duty of executing  
22 an ordinary criminal process. The commissioner's written order or  
23 warrant delivered to the sheriff against the parolee shall be a  
24 command to keep custody of the parolee for the jurisdiction of the

1 Division of Corrections. During the period of custody, the parolee  
2 may be admitted to bail by the court before which the parolee was  
3 sentenced. If the parolee is not released on a bond, the costs of  
4 confining the paroled prisoner shall be paid out of the funds  
5 appropriated for the Division of Corrections.

6 (1) If reasonable cause is found to exist that a parolee has  
7 violated a term or terms of his or her release on parole that does  
8 not constitute:

9 (A) Absconding supervision;

10 (B) New criminal conduct other than a minor traffic violation  
11 or simple possession of a controlled substance; or

12 (C) Violation of a special condition of parole designed either  
13 to protect the public or a victim;

14 the parole officer may, after consultation with and written approval  
15 by the director of parole services, for the first violation, require  
16 the parolee to serve a period of confinement up to sixty days or,  
17 for the second violation, a period of confinement up to one hundred  
18 twenty days: *Provided*, That the Division of Corrections shall notify  
19 the Parole Board when a parolee is serving such a term of  
20 confinement and the Parole Board may deny further confinement. A  
21 parolee serving a term of confinement in the first or second  
22 instance may be confined in jail or any other facility designated  
23 by the commissioner, but shall be committed to the custody of the  
24 Commissioner of Corrections, and the costs of confining the parolee

1 shall be paid out of funds appropriated for the Division of  
2 Corrections: *Provided, however,* That upon written request, the  
3 parolee shall be afforded the right to a hearing within forty-five  
4 days before the Parole Board regarding whether he or she violated  
5 the conditions of his or her release on parole.

6 (2) When a parolee is in custody for a violation of the  
7 conditions of his or her parole, he or she shall be given a prompt  
8 and summary hearing before a Parole Board panel upon his or her  
9 written request, at which the parolee and his or her counsel shall  
10 be given an opportunity to attend.

11 (A) If at the hearing it is determined that reasonable cause  
12 exists to believe that the parolee has:

13 (i) Absconded supervision;

14 (ii) Committed new criminal conduct other than a minor traffic  
15 violation or simple possession of a controlled substance; or

16 (iii) Violated a special condition of parole design to protect  
17 either the public or a victim;

18 the panel may revoke his or her parole and may require him or her  
19 to serve in a state correctional institution the remainder or any  
20 portion of his or her maximum sentence for which, at the time of his  
21 or her release, he or she was subject to imprisonment.

22 (B) If the Parole Board panel finds that reasonable cause  
23 exists to believe that the parolee has violated a condition of  
24 release or supervision other than the conditions of parole set forth

1 in subparagraph (A), subdivision (2) of this subsection, the panel  
2 shall require the parolee to serve, for the first violation, a  
3 period of confinement up to sixty days or, for the second violation,  
4 a period of confinement up to one hundred twenty days unless the  
5 Parole Board makes specific written findings of fact that a  
6 departure from the specific limitations of this paragraph is  
7 warranted: *Provided*, That if the violation of the conditions of  
8 parole or rules for his or her supervision is not a felony as set  
9 out in section eighteen of this article, the panel may, if in its  
10 judgment the best interests of justice do not require a period of  
11 confinement, reinstate him or her on parole. The Division of  
12 Corrections shall effect release from custody upon approval of a  
13 home plan.

14 (b) Notwithstanding any provision of this code to the contrary,  
15 when reasonable cause has been found to believe that a parolee has  
16 violated the conditions of his or her parole but the violation does  
17 not constitute felonious conduct, the commissioner may, with the  
18 written consent of the parolee, allow the parolee to remain on  
19 parole with additional conditions or restrictions. The additional  
20 conditions or restrictions may include, but are not limited to,  
21 participation in any program described in subsection (d), section  
22 five, article eleven-c of this chapter. If the parolee complies  
23 with the conditions of parole the commissioner may not revoke his  
24 or her parole for the conduct which constituted the violation. If

1 the parolee fails to comply with the conditions or restrictions and  
2 all other conditions of release, that failure is an additional  
3 violation of parole and the commissioner may proceed against the  
4 parolee under the provisions of this section for the original  
5 violation as well as any subsequent violations.

6 (c) When a parolee has violated the conditions of his or her  
7 release on parole by confession to, or being convicted of, any of  
8 the crimes set forth in section eighteen of this article, he or she  
9 shall be returned to the custody of the Division of Corrections to  
10 serve the remainder of his or her maximum sentence, during which  
11 remaining part of his or her sentence he or she is ineligible for  
12 further parole.

13 (d) Whenever a person's parole has been revoked, the  
14 commissioner shall, upon receipt of the panel's written order of  
15 revocation, convey and transport the paroled prisoner to a state  
16 correctional institution. A parolee whose parole has been revoked  
17 shall remain in custody until delivery to a corrections officer sent  
18 and duly authorized by the commissioner for the removal of the  
19 parolee to a state correctional institution. The cost of confining  
20 the parolee shall be paid out of the funds appropriated for the  
21 Division of Corrections.

22 (e) When a parolee is convicted of, or confesses to, any one  
23 of the crimes enumerated in section eighteen of this article, it is  
24 the duty of the Parole Board to cause him or her to be returned to

1 this state for a summary hearing as provided by this article.  
2 Whenever a parolee has absconded supervision, the commissioner shall  
3 issue a warrant for his or her apprehension and return to this state  
4 for the hearing provided in this article: *Provided*, That the panel  
5 considering revocation may, if it determines the best interests of  
6 justice do not require revocation, cause the parolee to be  
7 reinstated to parole.

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

11 (g) Whenever a parolee who has absconded supervision or has  
12 been transferred out of this state for supervision pursuant to  
13 section one, article six, chapter twenty-eight of this code is  
14 returned to West Virginia due to a violation of parole and costs are  
15 incurred by the Division of Corrections, the commissioner may assess  
16 reasonable costs from the parolee's inmate funds or the parolee as  
17 reimbursement to the Division of Corrections for the costs of  
18 returning him or her to West Virginia.

19 (h) Conviction of a felony for conduct occurring during the  
20 period of parole is proof of violation of the conditions of parole  
21 and the hearing procedures required by the provisions of this  
22 section are inapplicable.

23 (i) The Commissioner of Corrections may issue subpoenas for  
24 persons and records necessary to prove a violation of the terms and

1 conditions of a parolee's parole either at a preliminary hearing or  
2 at a final hearing before a Parole Board panel. The subpoenas shall  
3 be served in the same manner provided in the Supreme Court of  
4 Appeals of West Virginia Rules of Criminal Procedure. The subpoenas  
5 may be enforced by the commissioner through application or petition  
6 of the commissioner to the circuit court for contempt or other  
7 relief.

8 **§62-12-29. Shared information for community supervision.**

9 (a) The Administrative Director of the Supreme Court of Appeals  
10 of West Virginia is requested to assemble a community supervision  
11 committee, to include representatives of the judiciary, probation,  
12 parole, day report centers, magistrates, sheriffs, corrections and  
13 other members at the discretion of the director. The administrative  
14 director shall appoint a chair from among the members and attend the  
15 meeting ex officio.

16 (b) The committee shall:

17 (1) Design and deploy a method for probation officers, parole  
18 officers, day report centers and others providing community  
19 supervision to electronically share offender information and  
20 assessments;

21 (2) Coordinate information reporting and access across agencies  
22 continuing supervision;

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

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

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

6 (c) The committee shall annually submit a report on its  
7 activities during the previous year, on or before September 30, to  
8 the Governor, the Speaker of the House of Delegates, the President  
9 of the Senate and, upon request, to any individual member of the  
10 Legislature.

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

12 **§62-15-2. Definitions.**

13 For the purposes of this article:

14 (1) "Assessment" means a diagnostic evaluation to determine  
15 whether and to what extent a person is a drug offender under this  
16 article and would benefit from its provisions. The assessment shall  
17 be conducted in accordance with the standardized risk and needs  
18 assessment and risk cut-off scores adopted by the West Virginia  
19 Supreme Court of Appeals. The results of all standardized risk and  
20 needs assessments and risk cut-off scores are confidential.

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

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

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

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

9 (6) "Drug court team" shall consist of the following members  
10 who are assigned to the drug court:

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

13 (B) The prosecutor;

14 (C) The public defender or a member of the criminal defense  
15 bar;

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

18 (E) A law-enforcement officer;

19 (F) The drug court coordinator;

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

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

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

24 (7) "Drug offender" means an adult person charged with a

1 drug-related offense or an offense in which substance abuse is  
2 determined from the evidence to have been a factor in the commission  
3 of the offense.

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

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

8 (A) A drug court circuit judge, who shall serve as chair;

9 (B) Drug court magistrates;

10 (C) The prosecutor;

11 (D) A public defender;

12 (E) The drug court coordinator;

13 (F) A member of the criminal defense bar;

14 (G) The circuit clerk;

15 (H) A day report center director;

16 (I) A circuit court probation officer, parole officer or both;

17 (J) Law enforcement;

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

19 (L) A corrections representative; and

20 (M) Any such other person or persons the chair considers  
21 appropriate.

22 (10) "Illegal drug" means a drug whose manufacture, sale, use  
23 or possession is forbidden by law.

24 (11) "Memorandum of understanding" means a written document

1 setting forth an agreed upon procedure.

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

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

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

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

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

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

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

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

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

23 (21) "Substance abuse" means the illegal or improper  
24 consumption of a substance.

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

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

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

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

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

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

24 (E) Abstinence is monitored by frequent alcohol and other drug

1 testing;

2 (F) A coordinated strategy governs drug court responses to  
3 participants' compliance;

4 (G) Ongoing judicial interaction with each drug court  
5 participant is essential;

6 (H) Monitoring and evaluation measure the achievement of  
7 program goals and gauge effectiveness;

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

10 (J) Forging partnerships among drug courts, public agencies and  
11 community-based organizations generates local support and enhances  
12 drug court effectiveness.

13 (24) "Treatment supervision" means a program under which an  
14 eligible felony drug offender, pursuant to section six-a of this  
15 article, is ordered to undergo treatment for substance abuse by a  
16 circuit court judge as a condition of drug court, a condition of  
17 probation or as a modification of probation.

18 **§62-15-4. Court authorization and structure.**

19 (a) Each judicial circuit or two or more adjoining judicial  
20 circuits may establish a drug court or regional drug court program  
21 under which drug offenders will be processed to address  
22 appropriately, the identified substance abuse problem as a condition  
23 of pretrial release, probation, incarceration, parole or other  
24 release from a correctional facility: *Provided*, That all judicial

1 circuits must be participating in a drug court or regional drug  
2 court program in accordance with the provisions of this article by  
3 July 1, 2016.

4 (b) The structure, method, and operation of each drug court  
5 program may differ and should be based upon the specific needs of  
6 and resources available to the judicial circuit or circuits where  
7 the drug court program is located.

8 (c) A drug court program may be preadjudication or post-  
9 adjudication for an adult offender.

10 (d) Participation in drug court, with the consent of the  
11 prosecution and the court, shall be pursuant to a written agreement.

12 (e) A drug court may grant reasonable incentives under the  
13 written agreement if it finds that the drug offender:

14 (1) Is performing satisfactorily in drug court;

15 (2) Is benefitting from education, treatment and  
16 rehabilitation;

17 (3) Has not engaged in criminal conduct; or

18 (4) Has not violated the terms and conditions of the agreement.

19 (f) A drug court may impose reasonable sanctions on the drug  
20 offender, including incarceration for the underlying offense or  
21 expulsion from the program, pursuant to the written agreement, if  
22 it finds that the drug offender:

23 (1) Is not performing satisfactorily in drug court;

24 (2) Is not benefitting from education, treatment or

1 rehabilitation;

2 (3) Has engaged in conduct rendering him or her unsuitable for  
3 the program;

4 (4) Has otherwise violated the terms and conditions of the  
5 agreement; or

6 (5) Is for any reason unable to participate.

7 (g) Upon successful completion of drug court, a drug offender's  
8 case shall be disposed of by the judge in the manner prescribed by  
9 the agreement and by the applicable policies and procedures adopted  
10 by the drug court. This may include, but is not limited to,  
11 withholding criminal charges, dismissal of charges, probation,  
12 deferred sentencing, suspended sentencing, split sentencing, or a  
13 reduced period of incarceration.

14 (h) Drug court shall include the Ten Key Components and the  
15 drug court team shall act to ensure compliance with them.

16 (i) Nothing contained in this article confers a right or an  
17 expectation of a right to participate in a drug court nor does it  
18 obligate a drug court to accept every drug offender.

19 (j) Neither the establishment of a drug court nor anything  
20 herein may be construed as limiting the discretion of the  
21 jurisdiction's prosecutor to act on any criminal case which he or  
22 she deems advisable to prosecute.

23 (k) Each drug court judge may establish rules and may make  
24 special orders as necessary that do not conflict with rules and

1 orders promulgated by the Supreme Court of Appeals which has  
2 administrative authority over the courts. The Supreme Court of  
3 Appeals shall provide uniform referral, procedure and order forms  
4 that shall be used in all drug courts in this state.

5 **§62-15-6a. Treatment supervision.**

6 (a) A felony drug offender is eligible for treatment  
7 supervision only if the offender would otherwise be sentenced to  
8 prison, and the standardized risk and needs assessment indicates the  
9 offender has a high risk for reoffending and a need for substance  
10 abuse treatment: *Provided*, That an inmate who is, or has been,  
11 convicted for a felony crime of violence against the person, a  
12 felony offense where the victim was a minor child or a felony  
13 offense involving the use of a firearm, as defined in subsections  
14 (o) and (p), section twenty-seven, article five, chapter twenty-  
15 eight of this code, shall not be eligible for treatment supervision.

16 (b) As a condition of drug court, a condition of probation or  
17 as a modification of probation, a circuit court judge may impose  
18 treatment supervision on an eligible drug offender convicted of a  
19 felony: *Provided*, That a judge may impose treatment supervision on  
20 an eligible drug offender convicted of a felony, notwithstanding the  
21 results of the risk assessment, upon making specific written  
22 findings of fact as to the reason for the departure.

23 (c) Whenever a circuit court judge determines that a treatment  
24 supervision participant has violated the conditions of his or her

1 treatment supervision involving the participant's use of alcohol or  
2 a controlled substance, the judge may order a period of  
3 incarceration to encourage compliance with program requirements.

4 (1) Upon written finding by the circuit court judge that the  
5 participant would otherwise be sentenced to the custody of the  
6 Commissioner of Corrections for service of the underlying sentence,  
7 the cost of the incarceration order under this subsection, not to  
8 exceed a period of thirty days in any one instance, shall be paid  
9 by the Division of Corrections.

10 (2) Whenever a circuit court judge orders the incarceration of  
11 a treatment supervision participant pursuant to this subsection, a  
12 copy of the order of confinement shall be provided by the clerk of  
13 the circuit court within five days to the Commissioner of  
14 Corrections.

15 (d) The Division of Justice and Community Services shall in  
16 consultation with the Governor's Advisory Council on Substance  
17 Abuse, created by Executive Order No. 5-11, use appropriated funds  
18 to develop proposed substance abuse treatment plans to serve those  
19 offenders under treatment supervision in each judicial circuit and  
20 on parole supervision.

21 (e) The Division of Justice and Community Services, in  
22 consultation with the Governor's Advisory Committee on Substance  
23 Abuse, shall develop:

24 (1) Qualifications for provider certification to deliver a

1 continuum of care to offenders;

2 (2) Fee reimbursement procedures; and

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

5 (f) The Division of Justice and Community Services shall  
6 require education and training for providers which shall include,  
7 but not be limited to, cognitive behavioral training. The duties  
8 of providers who provide services under this section may include:  
9 Notifying the probation department and the court of any offender  
10 failing to meet the conditions of probation or referrals to  
11 treatment; appearing at revocation hearings when required; and  
12 providing assistance with data reporting and treatment program  
13 quality evaluation.

14 (g) The cost for all drug abuse assessments and certified drug  
15 treatment under this section and subsection (e), section seventeen,  
16 article twelve of this chapter shall be paid by the Division of  
17 Justice and Community Services from funds appropriated for that  
18 purpose. The Division of Justice and Community Services shall  
19 contract for payment for the services provided to eligible  
20 offenders.

21 (h) The Division of Justice and Community Services, in  
22 consultation with the Governor's Advisory Council on Substance  
23 Abuse, shall submit an annual report on or before September 30 to  
24 the Governor, the Speaker of the House of Delegates, the President

1 of the Senate and, upon request, to any individual member of the  
2 Legislature containing:

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

5 (2) The number of people on treatment supervision who received  
6 services and whether their participation was the result of a direct  
7 sentence or in lieu of revocation;

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

12 (4) The type of services provided;

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

15 (6) The number of people under supervision receiving treatment  
16 under this section who were rearrested and confined within two years  
17 of being placed under supervision;

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

21 (8) Other appropriate measures used to measure the availability  
22 of treatment and the effectiveness of services.

23 (i) Subsections (a), (b), and (c) of this section shall take  
24 effect on January 1, 2014. The remaining provisions of this section

1 shall take effect on July 1, 2013.

2 **§62-15-6b. Intermediate incarceration sanctions for drug court**

3 **participants; responsibility for costs of**  
4 **incarceration.**

5 (a) Whenever a judge of a drug court determines that a  
6 participant who has pled to a felony offense has committed a  
7 violation of his or her conditions of participation which would, in  
8 the judge's opinion, warrant a period of incarceration to encourage  
9 compliance with program requirements, the cost of the incarceration,  
10 not to exceed a period of thirty days in any one instance, shall be  
11 paid by the Division of Corrections. The judge must make a written  
12 finding that the participant would otherwise be sentenced to the  
13 custody of the Commissioner of Corrections for service of the  
14 underlying sentence.

15 (b) Whenever a drug court judge incarcerates a participant  
16 pursuant to subsection (a) of this section, the clerk of the circuit  
17 court shall provide a copy of the order of confinement within five  
18 days to the Commissioner of Corrections.