

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 371

(By Senators Kessler (Mr. President) and M. Hall,
By Request of the Executive)

[Originating in the Committee on Finance;
reported March 19, 2013.]

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

§62-12-7, §62-12-9, §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and §62-12-19 of said code; to amend said code by adding thereto a new section, designated §62-12-29; to amend and reenact §62-15-2 of said code; and to amend said code by adding thereto two new sections, designated §62-15-6a and §62-15-6b, all relating to public safety; requiring the Division of Corrections to perform graduated methods of mental health screens, appraisals and evaluations on persons committed to its custody; eliminating requirement for separate disciplinary rules at each institution mandating one year of supervised release for violent inmates and deducting one year of their good time; mandating one hundred eighty days of supervised release for nonviolent inmates; setting an effective date for supervised release provisions; requiring the Commissioner of Corrections to adopt policies regarding mandatory supervised release; requiring the West Virginia Regional Jail Authority and Correctional Facility to use a standardized pretrial risk-screening instrument adopted by the Supreme Court of Appeals of West Virginia to screen

persons arrested and placed in a regional jail; requiring the Division of Corrections to develop and implement a cognitive behavioral program for inmates in regional jails committed to the custody of the Commissioner of Corrections and requiring the Division of Corrections to pay its cost; exempting parole officers from prohibitions against carrying concealed weapons; moving definition of “day report center” to section relating to conditions of release on probation; providing standards and limitations under which judges and magistrates may impose a period of supervision or participation in day report program; clarifying language regarding confinement and revocation for violations of the conditions of home incarceration; adding representative of the Bureau for Behavioral Health and Health Facilities to the community corrections subcommittee of the Governor’s Committee on Crime, Delinquency and Correction; requiring that the community corrections subcommittee review, assess and report on the implementation of evidence-based practices in the criminal justice system; adding member with a background in substance abuse treatment and services to the

community criminal justice boards to be appointed by the Commission or Commissions of the county or counties represented by the board; providing oversight responsibility to Division of Justice and Community Services to implement standardized risk and needs assessment, evaluate effectiveness of other modifications to community corrections programs and provide annual report; requiring probation officers to conduct a standardized risk and needs assessment for individuals placed on probation and to supervise probationer and enforce probation according to assessment and supervision standards adopted by the West Virginia Supreme Court of Appeals; requiring probation officers to perform random drug and alcohol tests of persons under their supervision; authorizing the Supreme Court of Appeals of West Virginia to adopt a standardized risk and needs assessment for use by probation officers; authorizing the Supreme Court of Appeals of West Virginia to adopt a standardized pretrial screening instrument for use by the Regional Jail Authority; providing standards and limitations under which judges may impose a term of reporting

to a day report center as a condition of probation; authorizing day report center programs to provide services based on the results of a person's standardized risk and needs assessment; providing for graduated sanctions in response to violations of the conditions of release on probation other than absconding or committing certain new criminal conduct; creating exceptions to new criminal conduct provisions; requiring copies of graduated sanctions confinement orders be supplied to the Commissioner of Corrections; providing that graduated sanctions confinement be paid by the Division of Corrections; revising eligibility requirements for accelerated parole program; requiring that Division of Corrections' policies and procedures for developing a rehabilitation treatment plan include the use of substance abuse assessment tools and prioritize treatment resources based on the risk and needs assessment and substance abuse assessment results; providing for rebuttable presumption that parole is appropriate for inmates completing the accelerated parole program and a rehabilitation treatment program; providing standards and

limitations for Parole Board; outlining duties of the Division of Corrections to supervise, treat and provide support services for persons released on mandatory supervised release; removing temporal standard for requirement that the Parole Board have access to a copy of an inmate's physical, mental or psychiatric examination; authorizing Division of Corrections to employ directors of housing and employment for released inmates with duties relating to the reduction of parole release delays and finding employment; requiring parole officers to update the standardized risk and needs assessment for each person for whom an assessment has not been conducted for parole and to supervise each person according to the assessment and the commissioner's supervision standards; authorizing the Commissioner of Corrections to issue a certificate authorizing an eligible parole officer to carry firearms or concealed weapons; providing standards and limitations under which the Division of Corrections may order substance abuse treatment or impose a term of reporting to a day report center or other community corrections program as a condition or modification

of parole; authorizing the Commissioner of Corrections to enter into a master agreement with the Division of Justice and Community Services to reimburse counties for use of the community corrections programs; clarifying that parolee participation in community corrections is at program director's discretion; providing for graduated sanctions in response to violations of the conditions of release on parole other than absconding or certain new criminal conduct; providing a parolee with the right to a hearing, upon request, regarding whether he or she violated the conditions of his or her release on parole; providing that graduated sanctions incarceration for parolees be paid for by Division of Corrections; providing for a Community Supervision Committee to be appointed by the Administrative Director of the Supreme Court of Appeals of West Virginia to coordinate the sharing of information for community supervision and requiring submittal of an annual report; revising definitions for Drug Offender Accountability and Treatment Act; providing standards and limitations under which judges may order treatment supervision for drug

offenders; requiring the Division of Justice and Community Services to use appropriated funds to implement substance abuse treatment to serve those under treatment supervision in each judicial circuit; providing an effective date regarding standards and limitations; providing that the Division of Justice and Community Services in consultation with the Governor's Advisory Committee on Substance Abuse is responsible for developing standards relating to quality and delivery of substance abuse services, requiring certain education and training, paying for drug abuse assessments and certified drug treatment from appropriated funds, requiring submittal of an annual report and specifying an effective date; outlining duties of treatment supervision service providers; providing for state payment of drug court participants' incarceration under certain circumstances; defining terms; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §25-1-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §28-5-27 of said code be amended and reenacted; that said code be amended by adding thereto two new

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

CHAPTER 25. DIVISION OF CORRECTIONS.

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

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

- 1 (a) The Commissioner of Corrections may establish
- 2 diagnostic and classification divisions.

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

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

ARTICLE 5. THE PENITENTIARY.**§28-5-27. Deduction from sentence for good conduct;
mandatory supervision.**

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

8 (b) ~~Such~~ The commutation of sentence, ~~hereinafter called~~
9 known as “good time”, shall be deducted from the maximum
10 term of indeterminate sentences or from the fixed term of
11 determinate sentences.

12 (c) Each inmate committed to the custody of the
13 Commissioner of Corrections and incarcerated in a
14 correctional facility pursuant to ~~such~~ that commitment shall
15 be granted one day good time for each day he or she is
16 incarcerated, including any and all days in jail awaiting

17 sentence ~~and~~ which is are credited by the sentencing court to
18 his or her sentence pursuant to section twenty-four, article
19 eleven, chapter sixty-one of this code or for any other reason
20 relating to ~~such~~ the commitment. ~~No~~ An inmate may not be
21 granted any good time for time served either on parole or
22 bond or in any other status when he or she is not physically
23 incarcerated.

24 (d) ~~No~~ An inmate sentenced to serve a life sentence ~~shall~~
25 ~~be~~ is not eligible to earn or receive any good time pursuant to
26 this section.

27 (e) An inmate under two or more consecutive sentences
28 shall be allowed good time as if the several sentences, when
29 the maximum terms ~~thereof~~ of the consecutive sentences are
30 added together, were all one sentence.

31 (f) The Commissioner of Corrections shall promulgate
32 ~~separate disciplinary rules for each institution under his~~
33 ~~control in which adult felons are incarcerated, which rules.~~
34 The rules shall describe acts ~~which~~ that inmates are
35 prohibited from committing, procedures for charging

13

[Com. Sub. for Com. Sub. for S. B. No. 371

36 individual inmates for violation of ~~such~~ the rules and for
37 determining the guilt or innocence of inmates charged with
38 ~~such~~ the violations and the sanctions which may be imposed
39 for ~~such~~ the violations. A copy of ~~such~~ the rules shall be
40 given to each inmate. For each ~~such~~ violations violation, by
41 ~~an~~ a sanctioned inmate ~~so sanctioned~~, any part or all of the
42 good time which has been granted to ~~such~~ the inmate
43 pursuant to this section may be forfeited and revoked by the
44 warden or superintendent of the institution in which the
45 violation occurred. The warden or superintendent, when
46 appropriate and with approval of the commissioner, may
47 restore any forfeited good time ~~so forfeited~~.

48 (g) Each inmate, upon his or her commitment to and
49 being ~~received~~ placed into the custody of the Commissioner
50 of ~~the Department of~~ Corrections, or upon his or her return to
51 custody as the result of violation of parole pursuant to section
52 nineteen, article twelve, chapter sixty-two of this code, shall
53 be given a statement setting forth the term or length of his or

54 her sentence or sentences and the time of his or her minimum
55 discharge computed according to this section.

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

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

64 (j) In order to ensure equitable good time for all current
65 and future inmates ~~now~~ in the custody of the Commissioner
66 of Corrections ~~or hereafter committed to the custody of such~~
67 ~~commissioner~~, except as to those persons committed pursuant
68 to article four, chapter twenty-five of this code, all good
69 times shall be computed according to this section and all
70 previous computations of good time under prior statutes or
71 ~~regulations~~ rules are ~~hereby voided~~ void. All inmates who
72 have previously forfeited good time are hereby restored to

15 [Com. Sub. for Com. Sub. for S. B. No. 371
73 good time computed according to this section and all inmates
74 will receive a new discharge date computed according to this
75 section. All inmates that have been awarded overtime good
76 time or extra good time pursuant to sections twenty-seven-a
77 and twenty-seven-b of this article which ~~are~~ were repealed
78 simultaneously with the amendment to this section during the
79 regular session of the Legislature in the year 1984 shall
80 receive ~~such~~ that good time in addition to the good time
81 computed according to this section.

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

86 (l) Prior to the calculated discharge date of an inmate
87 serving a sentence for a felony crime of violence against the
88 person, a felony offense where the victim was a minor child
89 or a felony offense involving the use of a firearm, one year
90 shall be deducted from the inmate's accumulated good time
91 to provide for one year of mandatory post-release supervision

92 following the first instance in which the inmate reaches his or
93 her calculated discharge date. As used in this subsection, a
94 “felony crime of violence against the person” and a “felony
95 crime where the victim was a minor child” have the same
96 meaning set forth in section thirteen, article twelve, chapter
97 sixty-two of this code. The provisions of this subsection are
98 applicable to offenses committed on or after July 1, 2013.

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

106 (n) The Commissioner of Corrections shall adopt policies
107 and procedures to implement the mandatory supervision
108 provided for in subsections (l) and (m) of this section, which
109 may include terms, conditions and procedures for

17 [Com. Sub. for Com. Sub. for S. B. No. 371
110 supervision, modification and violation applicable to persons
111 on parole.

CHAPTER 31. CORPORATIONS.

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

§31-20-5g. Pretrial risk assessment.

1 Within three calender days of the arrest and placement of
2 any person in a regional jail, the authority shall conduct a
3 pretrial risk assessment using a standardized risk assessment
4 instrument approved and adopted by the Supreme Court of
5 Appeals of West Virginia. Upon completion of the
6 assessment, the authority shall provide it to the magistrate
7 and circuit clerks for delivery to the appropriate circuit judge
8 or magistrate.

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

1 The Division of Corrections may develop and implement
2 a cognitive behavioral program to address the needs of
3 inmates detained in a regional jail, but committed to the
4 custody of the Commissioner of Corrections. The program

5 shall be developed in consultation with the Regional Jail
6 Authority, and may be offered by video teleconference or
7 webinar technology. The costs of the program shall be paid
8 out of funds appropriated to the Division of Corrections. The
9 program shall be covered by the rehabilitation plan policies
10 and procedures adopted by the Division of Corrections under
11 subsection (h), section thirteen, article twelve, chapter
12 sixty-two of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

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

1 The licensure provisions set forth in this article do not
2 apply to:

3 (1) Any person carrying a deadly weapon upon his or her
4 own premises; nor shall anything ~~herein~~ in this article prevent
5 a person from carrying any firearm, unloaded, from the place
6 of purchase to his or her home, residence or place of business
7 or to a place of repair and back to his or her home, residence

19 [Com. Sub. for Com. Sub. for S. B. No. 371

8 or place of business; nor shall anything ~~herein~~ in this article
9 prohibit a person from possessing a firearm while hunting in
10 a lawful manner or while traveling from his or her home,
11 residence or place of business to a hunting site and returning
12 to his or her home, residence or place of business;

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

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

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

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

32 (6) Any circuit judge, including any retired circuit judge
33 designated senior status by the Supreme Court of Appeals of
34 West Virginia, prosecuting attorney, assistant prosecuting
35 attorney or a duly appointed investigator employed by a
36 prosecuting attorney;

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

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

21 [Com. Sub. for Com. Sub. for S. B. No. 371

45 (9) Any Hatfield-McCoy Regional Recreation Authority

46 ranger while the ranger is on duty; and

47 (10) Any parole officer appointed pursuant to section

48 fourteen, article twelve, chapter sixty-two of this code.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

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

1 (a) Any person who has been convicted in a circuit court
2 or in a magistrate court under any criminal provision of this
3 code of a misdemeanor or felony, which is punishable by
4 imposition of a fine or confinement in ~~the a~~ regional jail or a
5 state correctional ~~facility~~ institution, or both fine and
6 confinement, may, in the discretion of the sentencing judge
7 or magistrate, as an alternative to the sentence imposed by
8 statute for the crime, be sentenced under one of the following
9 programs:

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

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

25 (3) The community service program under which ~~persons~~
26 ~~sentenced~~ a sentenced person would spend no time in jail, but
27 would be sentenced to a number of hours or days of
28 community service work with government entities or
29 charitable or nonprofit entities approved by the circuit court.
30 Regarding any portion of the sentence designated as
31 confinement, eight hours of community service work is to be

23

[Com. Sub. for Com. Sub. for S. B. No. 371

32 credited as one day of the sentence imposed. Regarding any
33 portion of the sentence designated as a fine, the fine is to be
34 credited at an hourly rate equal to the prevailing federal
35 minimum wage at the time the sentence was imposed. In the
36 discretion of the court, the sentence credits may run
37 concurrently or consecutively. ~~Persons~~ A person sentenced
38 under this program may be required to provide ~~their~~ his or
39 her own transportation to and from the work site, lunch and
40 work clothes.

41 ~~(4) A day-reporting center program if the program has~~
42 ~~been implemented in the sentencing court's jurisdiction or in~~
43 ~~the area where the offender resides. For purposes of this~~
44 ~~subdivision "day-reporting center" means a court-operated or~~
45 ~~court-approved facility where persons ordered to serve a~~
46 ~~sentence in this type of facility are required to report under~~
47 ~~the terms and conditions set by the court for purposes which~~
48 ~~include, but are not limited to, counseling, employment~~
49 ~~training, alcohol or drug testing or other medical testing.~~

50 (b) In no event may the duration of the alternate sentence
51 exceed the maximum period of incarceration otherwise
52 allowed.

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

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

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

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

65 (4) In circuit court cases, that adequate facilities for the
66 administration and supervision of alternative sentencing
67 programs are available through the court's probation officers
68 or the county sheriff or, in magistrate court cases, that

25

[Com. Sub. for Com. Sub. for S. B. No. 371

69 adequate facilities for the administration and supervision of
70 alternative sentencing programs are available through the
71 county sheriff; and

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

74 (d) ~~Persons~~ A person sentenced by the circuit court under
75 the provisions of this article ~~remain~~ remains under the
76 administrative custody and supervision of the court's
77 probation officers or the county sheriff. ~~Persons~~ A person
78 sentenced by a magistrate ~~remain~~ remains under the
79 administrative custody and supervision of the county sheriff.

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

85 (f) ~~Persons~~ A person sentenced under the provisions of
86 this section ~~remain~~ remains under the jurisdiction of the
87 court. The court may withdraw any alternative sentence at

88 any time by order entered with or without notice and require
89 that the remainder of the sentence be served in the county
90 jail, a regional jail or a state correctional facility: *Provided*,
91 That no alternative sentence directed by the sentencing judge
92 or magistrate or administered under the supervision of the
93 sheriff, his or her deputies, a jailer or a guard may require the
94 convicted person to perform duties which would be
95 considered detrimental to the convicted person's health as
96 attested to by a physician.

97 (g) No provision of this section may be construed to limit
98 a circuit ~~judge or magistrate's~~ judge's ability to impose a
99 period of supervision or participation in a community
100 corrections program created pursuant to article eleven-c,
101 chapter sixty-two of this code, except that a person sentenced
102 to a day report center must be identified as moderate to high
103 risk of reoffending and moderate to high criminogenic need,
104 as defined by the standardized risk and needs assessment
105 adopted by the Supreme Court of Appeals of West Virginia
106 under subsection (d), section six, article twelve of this

27

[Com. Sub. for Com. Sub. for S. B. No. 371

107 chapter, and applied by a probation officer or day report
108 staff: *Provided*, That a judge may impose a period of
109 supervision or participation in a day report center,
110 notwithstanding the results of the standardized risk and needs
111 assessment, upon making specific written findings of fact as
112 to the reason for departing from the requirements of this
113 section.

114 (h) A magistrate may only impose a period of
115 participation in a day report center if the person to be
116 sentenced has been identified as moderate to high risk of
117 reoffending and moderate to high criminogenic need, as
118 determined by the standardized risk and needs assessment
119 adopted by the Supreme Court of Appeals of West Virginia
120 under subsection (d), section six, article twelve of this
121 chapter, and applied by day report center staff. The day
122 report center staff shall determine which services a person
123 receives based on the results of the standardized risk and
124 needs assessment and taking into consideration the other
125 conditions of supervision set by the court.

ARTICLE 11B. HOME INCARCERATION ACT.

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

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

8 (b) If, at any time during the period of home
9 incarceration, there is reasonable cause to believe that a
10 participant sentenced to home incarceration by the circuit
11 court has violated the terms and conditions of the court's
12 order of home incarceration and ~~said~~ the participant's
13 participation was imposed as an alternative sentence to
14 another form of incarceration, ~~said~~ the participant ~~shall be~~ is
15 subject to the same procedures involving confinement and
16 revocation as would a probationer charged with a violation of

29

[Com. Sub. for Com. Sub. for S. B. No. 371

17 the order of home incarceration. Any participant under an
18 order of home incarceration ~~shall be~~ is subject to the same
19 penalty or penalties, upon the circuit court's finding of a
20 violation of the order of home incarceration, as he or she
21 could have received at the initial disposition hearing:
22 *Provided*, That the participant shall receive credit towards
23 any sentence imposed after a finding of violation for the time
24 spent in home incarceration.

25 (c) If, at any time during the period of home
26 incarceration, there is reasonable cause to believe that a
27 participant sentenced to home incarceration by a magistrate
28 has violated the terms and conditions of the magistrate's
29 order of home incarceration as an alternative sentence to
30 incarceration in jail, the supervising authority may arrest the
31 participant upon the obtaining of an order or warrant and take
32 the offender before a magistrate within the county of the
33 offense. The magistrate shall then conduct a prompt and
34 summary hearing on whether the participant's home

35 incarceration should be revoked. If it appears to the
36 satisfaction of the magistrate that any condition of home
37 incarceration has been violated, the magistrate may revoke
38 the home incarceration and order that the sentence of
39 incarceration in jail be executed. Any participant under an
40 order of home incarceration ~~shall be~~ is subject to the same
41 penalty or penalties, upon the magistrate's finding of a
42 violation of the order of home incarceration, as the
43 participant could have received at the initial disposition
44 hearing: *Provided*, That the participant shall receive credit
45 towards any sentence imposed after a finding of violation for
46 the time spent in home incarceration.

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

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

- 1 (a) A Community Corrections Subcommittee of the
- 2 Governor's Committee on Crime, Delinquency and
- 3 Correction is ~~hereby created~~ continued and continues to be

31

[Com. Sub. for Com. Sub. for S. B. No. 371

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

22 officer and a circuit judge may serve on the subcommittee as
23 ex officio, nonvoting members.

24 (b) The subcommittee shall elect a chairperson and a vice
25 chairperson. The subcommittee shall meet quarterly. Special
26 meetings may be held upon the call of the chairperson, vice
27 chairperson or a majority of the members of the
28 subcommittee. A majority of the members of the
29 subcommittee ~~constitute~~ constitutes a quorum.

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

1 (a) Upon recommendation of the community corrections
2 subcommittee, the Governor's committee shall propose for
3 legislative promulgation in accordance with the provisions of
4 article three, chapter twenty-nine-a of this code, emergency
5 and legislative rules to:

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

33

[Com. Sub. for Com. Sub. for S. B. No. 371

10 (2) Establish minimum standards for community
11 corrections programs to be funded, including requiring
12 annual program evaluations;

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

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

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

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

20 (1) Maintain records of community corrections programs
21 including the corresponding community criminal justice
22 board or other entity contact information and annual program
23 evaluations, when available;

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

27 (3) Provide funding for approved community corrections
28 programs, as available.

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

36 (d) The subcommittee shall review the implementation of
37 evidence-based practices and conduct regular assessments for
38 quality assurance of all community-based criminal justice
39 services, including day report centers, probation, parole and
40 home confinement. In consultation with the affected
41 agencies, the subcommittee shall establish a process for
42 reviewing performance. The process shall include review of
43 agency performance measures and identification of new
44 measures by the subcommittee, if necessary, for measuring
45 the implementation of evidence-based practices or for quality
46 assurance. After providing an opportunity for the affected
47 agencies to comment, the subcommittee shall submit, on or

35 [Com. Sub. for Com. Sub. for S. B. No. 371
48 before September 30 of each year, to the Governor, the
49 Speaker of the House of Delegates, the President of the
50 Senate and, upon request, to any individual member of the
51 Legislature, a report on its activities and results from
52 assessments of performance during the previous year.

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

1 (a) Each county or combination of counties or a county
2 or counties and a Class I or II municipality that seek to
3 establish community-based corrections services shall
4 establish a community criminal justice board: *Provided*, That
5 if a county has not established a community criminal justice
6 board by July 1, 2002, the chief probation officer of ~~such~~ that
7 county, with the approval of the chief judge of the circuit,
8 may apply for and receive approval and funding from the
9 Governor's committee for ~~such~~ any programs as authorized
10 by the provisions of section five of this article. Any county
11 which chooses to operate without a community criminal
12 justice board ~~shall be~~ is subject to the regulations and

13 requirements established by the community corrections
14 subcommittee and the Governor's committee.

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

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

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

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

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

28 (3) If a public defender corporation exists in the county
29 or counties represented, at least one attorney employed by
30 any public defender corporation existing in the counties

37 [Com. Sub. for Com. Sub. for S. B. No. 371

31 represented or, if no public defender office exists, one
32 criminal defense attorney from the counties represented;

33 (4) One member to be appointed by the local board of
34 education or, if the board represents more than one county,
35 at least one member appointed by a board of education of the
36 counties represented;

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

41 (6) Two members who can represent organizations or
42 programs advocating for the rights of victims of crimes with
43 preference given to organizations or programs advocating for
44 the rights of victims of the crimes of domestic violence or
45 driving under the influence; ~~and~~

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

50 ~~(7)~~ (8) Three at-large members to be appointed by the
51 commission or commissions of the county or counties
52 represented by the board.

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

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

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

61 (3) A probation officer from the county or counties
62 represented.

63 (f) Community criminal justice boards may:

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

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

39

[Com. Sub. for Com. Sub. for S. B. No. 371

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

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

75 (g) If a community criminal justice board represents more
76 than one county, the appointed membership of the board,
77 excluding any ex officio members, shall include an equal
78 number of members from each county, unless the county
79 commission of each county agrees in writing otherwise.

80 (h) If a community criminal justice board represents more
81 than one county, the board shall, in consultation with the
82 county commission of each county represented, designate
83 one county commission as the fiscal agent of the board.

84 (i) Any political subdivision of this state operating a
85 community corrections program shall, regardless of whether
86 or not the program has been approved by the Governor's
87 Committee on Crime, Delinquency and Correction, provide

88 to the Governor's committee required information regarding

89 the program's operations as required by legislative rule.

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

1 The Division of Justice and Community Services shall:

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

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

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

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

41

[Com. Sub. for Com. Sub. for S. B. No. 371

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

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

ARTICLE 12. PROBATION AND PAROLE.

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

1 (a) Each probation officer shall:

2 (1) Investigate all cases which the court refers to the
3 officer for investigation and shall report in writing on each
4 case; ~~The probation officer shall furnish~~

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

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

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

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

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

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

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

43

[Com. Sub. for Com. Sub. for S. B. No. 371

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

33 (b) The probation officer ~~has authority~~ may, with or
34 without an order or warrant, ~~to~~ arrest any probationer as
35 provided in section ten of this article, and ~~to~~ arrest any person
36 on supervised release when there is reasonable cause to
37 believe that the person on supervised release has violated a
38 condition of release. A person on supervised release ~~so~~ who
39 is arrested shall be brought before the court for a prompt and
40 summary hearing.

41 ~~(b)~~ (c) Notwithstanding any provision of this code to the
42 contrary:

43 (1) Any probation officer appointed on or after July 1,
44 2002, may carry handguns in the course of the officer's
45 official duties after meeting specialized qualifications
46 established by the Governor's Committee on Crime,
47 Delinquency and Correction. ~~which~~ The qualifications shall
48 include the successful completion of handgun training,
49 ~~including~~ which is comparable to the handgun training
50 provided to law-enforcement officers by the West Virginia

51 State Police and includes a minimum of four hours' training
52 in handgun safety ~~and comparable to the handgun training~~
53 ~~provided to law-enforcement officers by the West Virginia~~
54 ~~State Police.~~

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

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

61 (d) The Supreme Court of Appeals of West Virginia may
62 adopt a standardized risk and needs assessment with risk cut-
63 off scores for use by probation officers, taking into
64 consideration the assessment instrument adopted by the
65 Division of Corrections under subsection (h), section thirteen
66 of this article and the responsibility of the Division of Justice
67 and Community Services to evaluate the use of the
68 standardized risk and needs assessment.

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

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

6 (b) When Unless otherwise directed by the court, the
7 probation officer shall, in the form adopted by the Supreme
8 Court of Appeals of West Virginia, make a careful
9 investigation of, and a written report with recommendations
10 concerning, any prospective probationer. Insofar as
11 practicable, this report shall include information concerning
12 the offender's court and criminal record, occupation, family
13 background, education, habits and associations, mental and
14 physical condition, the names, relationship, ages and
15 condition of those dependent upon him or her for support and
16 ~~such~~ any other facts as that may aid the court in determining

17 the propriety and conditions of his or her release on
18 probation. ~~No~~ A person convicted of a felony or of any
19 offense described in article eight-b or eight-d, chapter
20 sixty-one of this code against a minor child may not be
21 released on probation until this report ~~shall have~~ has been
22 presented to and considered by the court. The court may ~~in~~
23 ~~its discretion~~ request ~~such~~ a report concerning any person
24 convicted of a misdemeanor. The presentence report of any
25 person convicted of an offense, described in said articles or
26 section twelve, article eight of said chapter, may include a
27 statement from a therapist, psychologist or physician who is
28 providing treatment to the child. A copy of all reports shall
29 be filed with the Parole Board ~~of probation and parole~~.

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

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

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

47

[Com. Sub. for Com. Sub. for S. B. No. 371

6 (2) That ~~he or she~~ the probationer may not, during the
7 term of his or her probation, leave the state without the
8 consent of the court which placed him or her on probation;

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

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

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

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

40 (b) In addition, the court may impose, subject to
41 modification at any time, any other conditions which it may

49

[Com. Sub. for Com. Sub. for S. B. No. 371

42 ~~deem~~ determine advisable, including, but not limited to, any
43 of the following:

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

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

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

61 (4) That ~~he or she~~ the probationer, in the discretion of the
62 court, ~~be~~ is required to serve a period of confinement in jail
63 of the county in which he or she was convicted for a period
64 not to exceed one third of the minimum sentence established
65 by law or one third of the least possible period of
66 confinement in an indeterminate sentence, but in no case may
67 the period of confinement exceed six consecutive months.
68 The court ~~has the authority to~~ may sentence the defendant
69 within the six-month period to intermittent periods of
70 confinement including, but not limited to, weekends or
71 holidays and may grant to the defendant intermittent periods
72 of release in order that he or she may work at his or her
73 employment or for other reasons or purposes as the court may
74 ~~deem~~ determine appropriate: *Provided*, That the provisions
75 of article eleven-a of this chapter do not apply to intermittent
76 periods of confinement and release except to the extent ~~that~~
77 directed by the court ~~may direct~~. If a period of confinement
78 is required as a condition of probation, the court shall make

51

[Com. Sub. for Com. Sub. for S. B. No. 371

79 special findings that other conditions of probation are
80 inadequate and that a period of confinement is necessary.

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

83 (1) To be eligible, the probationer must be identified as
84 moderate to high risk of reoffending and moderate to high
85 criminogenic need, as determined by the standardized risk
86 and needs assessment adopted by the Supreme Court of
87 Appeals of West Virginia under subsection (d), section six of
88 this article, and applied by a probation officer or day report
89 staff. In eligible cases, circuit courts may impose a term of
90 up to one year: *Provided*, That notwithstanding the results of
91 the standardized risk and needs assessment, a judge may
92 impose, as a term of probation, participation in a day report
93 center program upon making specific written findings of fact
94 as to the reason for departing from the requirements of this
95 subdivision.

96 (2) The day report center staff shall determine which
97 services a person receives based on the results of the

98 standardized risk and needs assessment and taking into
99 consideration the other conditions of probation set by the
100 court.

101 (d) For the purposes of this article, “day report center”
102 means a court-operated or court-approved facility where
103 persons ordered to serve a sentence in this type of facility are
104 required to report under the terms and conditions set by the
105 court for purposes which include, but are not limited to,
106 counseling, employment training, alcohol or drug testing or
107 other medical testing.

§62-12-10. Violation of probation.

1 (a) If at any time during the period of probation there
2 shall be reasonable cause to believe that the probationer has
3 violated any of the conditions of his or her probation, the
4 probation officer may arrest him or her with or without an
5 order or warrant, or the court which placed him or her on
6 probation, or the judge thereof in vacation, may issue an
7 order for his or her arrest, whereupon he or she shall be

53

[Com. Sub. for Com. Sub. for S. B. No. 371

8 brought before the court, or the judge thereof in vacation, for
9 a prompt and summary hearing.

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

22 (2) If the judge finds that reasonable cause exists to
23 believe that the probationer violated any condition of
24 supervision other than absconding supervision or new
25 criminal conduct other than a minor traffic violation or
26 simple possession of a controlled substance, then, for the first

27 violation, the judge shall impose a period of confinement up
28 to sixty days, or, for the second violation, a period of
29 confinement up to one hundred twenty days. For the third
30 violation, the judge may revoke the suspension of imposition
31 or execution of sentence, impose sentence if none has been
32 imposed and order that sentence be executed, with credit for
33 time spent in confinement under this section. If the time
34 remaining on the probationer's maximum imposed sentence
35 is less than the maximum period of confinement, then the
36 term of confinement is for the remaining period of the
37 sentence. In computing the period for which the offender is
38 to be confined, the time between his or her release on
39 probation and his or her arrest may not be taken to be any
40 part of the term of his or her sentence. Whenever the court
41 incarcerates a probationer pursuant to the provisions of this
42 subdivision, a circuit clerk shall provide a copy of the order
43 of confinement within five days to the Commissioner of
44 Corrections.

55 [Com. Sub. for Com. Sub. for S. B. No. 371

45 (b) A probationer confined for a first or second violation
46 pursuant to subdivision (2), subsection (a) of this section may
47 be confined in jail, and the costs of confining felony
48 probationers shall be paid out of funds appropriated for the
49 Division of Corrections.

50 (c) If, despite a violation of the conditions of probation,
51 the court or judge shall be is of the opinion that the interests
52 of justice do not require that the probationer serve his or her
53 sentence or a period of confinement, the court or judge may,
54 except when the violation was the commission of a felony,
55 again release him or her on probation: *Provided, That a*
56 judge may otherwise depart from the sentence limitations set
57 forth in subdivision (2), subsection (a) of this section upon
58 making specific written findings of fact supporting the basis
59 for the departure.

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

1 (a) The ~~board of parole~~ Parole Board, whenever it is of
2 the opinion that the best interests of the state and of the

3 inmate will be served, and subject to the limitations
4 ~~hereinafter~~ provided in this section, shall release any inmate
5 on parole for terms and upon conditions ~~as are~~ provided by
6 this article.

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

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

12 (B) He or she:

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

16 (ii) Does not have a prior criminal conviction for a felony
17 crime of violence against the person, a felony offense
18 involving the use of a firearm or a felony offense where the
19 victim was a minor child. As used in this subsection, a
20 “felony crime of violence against the person” and a “felony
21 crime where the victim was a minor child” have the same

57

[Com. Sub. for Com. Sub. for S. B. No. 371

22 meaning set forth in section thirteen, article twelve, chapter

23 sixty-two of this section;

24 ~~(iii) Has no record of institutional disciplinary rule~~

25 ~~violations for a period of one hundred twenty days prior to~~

26 ~~parole consideration unless the requirement is waived by the~~

27 ~~commissioner;~~

28 ~~(iv)~~ (iii) Is not serving a sentence for a crime of violence

29 against the person, or more than one felony for a controlled

30 substance offense for which the inmate is serving a

31 consecutive sentence, a felony offense involving the use of

32 a firearm or a felony ~~offence~~ offense where the victim was a

33 minor child; and

34 ~~(v)~~ (iv) Has successfully completed a rehabilitation

35 treatment program created with the assistance of a

36 standardized risk and needs assessment.

37 ~~(f) As used in this section “felony crime of violence~~

38 ~~against the person” means felony offenses set forth in articles~~

39 ~~two, three-e, eight-b or eight-d of chapter sixty-one of this~~

40 ~~code; and~~

41 ~~(H) As used in this section “felony offense where the~~
42 ~~victim was a minor child” means any felony crime of~~
43 ~~violence against the person and any felony violation set forth~~
44 ~~in article eight, eight-a, eight-c or eight-d of chapter~~
45 ~~sixty-one of this code.~~

46 (C) Notwithstanding any provision of this code to the
47 contrary, any person inmate who committed, or attempted to
48 commit, a felony with the use, presentment or brandishing of
49 a firearm, is not eligible for parole prior to serving a
50 minimum of three years of his or her sentence or the
51 maximum sentence imposed by the court, whichever is less:
52 *Provided*, That any person inmate who committed, or
53 attempted to commit, any violation of section twelve, article
54 two, chapter sixty-one of this code, with the use, presentment
55 or brandishing of a firearm, is not eligible for parole prior to
56 serving a minimum of five years of his or her sentence or one
57 third of his or her definite term sentence, whichever is
58 greater. Nothing in this paragraph applies to an accessory
59 before the fact or a principal in the second degree who has

59

[Com. Sub. for Com. Sub. for S. B. No. 371

60 been convicted as if he or she were a principal in the first
61 degree if, in the commission of or in the attempted
62 commission of the felony, only the principal in the first
63 degree used, presented or brandished a firearm. ~~A person~~ An
64 inmate is not ineligible for parole under the provisions of this
65 paragraph because of the commission or attempted
66 commission of a felony with the use, presentment or
67 brandishing of a firearm unless that fact is clearly stated and
68 included in the indictment or presentment by which the
69 person was charged and was either: (i) Found guilty by the
70 court at the time of trial upon a plea of guilty or nolo
71 contendere; (ii) found guilty by the jury, upon submitting to
72 the jury a special interrogatory for such purpose if the matter
73 was tried before a jury; or (iii) found guilty by the court, if
74 the matter was tried by the court without a jury.

75 For the purpose of this section, the term “firearm” means
76 any instrument which will, or is designed to, or may readily
77 be converted to, expel a projectile by the action of an
78 explosive, gunpowder or any other similar means.

79 (D) The amendments to this subsection adopted in the
80 year 1981:

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

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

86 (iii) Apply with respect to the submission of a special
87 interrogatory to the jury and the finding to be made thereon
88 in any case submitted to the jury on or after August 1 of that
89 year or to the requisite findings of the court upon a plea of
90 guilty or in any case tried without a jury: *Provided*, That the
91 state gives notice in writing of its intent to seek such finding
92 by the jury or court, as the case may be. ~~which~~ The notice
93 shall state with particularity the grounds upon which the
94 finding will be sought as fully as ~~such~~ the grounds are
95 otherwise required to be stated in an indictment, unless the
96 grounds ~~therefor~~ upon which the finding will be sought are

61 [Com. Sub. for Com. Sub. for S. B. No. 371

97 alleged in the indictment or presentment upon which the

98 matter is being tried; and

99 (iv) Does not apply with respect to cases not affected by

100 the amendments and in ~~such~~ those cases the prior provisions

101 of this section apply and are construed without reference to

102 the amendments.

103 (†) (v) Insofar as the amendments relate to mandatory

104 sentences restricting the eligibility for parole, all matters

105 requiring a mandatory sentence shall be proved beyond a

106 reasonable doubt in all cases tried by the jury or the court;

107 (2) Is not in punitive segregation or administrative

108 segregation as a result of disciplinary action;

109 (3) Has maintained a record of good conduct in prison for

110 a period of at least three months immediately preceding the

111 date of his or her release on parole;

112 (4) Has prepared and submitted to the ~~board~~ Parole Board

113 a written parole release plan setting forth proposed plans for

114 his or her place of residence, employment and, if appropriate,

115 his or her plans regarding education and post-release
116 counseling and treatment: Provided, That an inmate's
117 application for parole may be considered by the board
118 without the prior submission of a home plan, but the inmate
119 shall have a home plan approved by the board prior to his or
120 her release on parole. The Commissioner of Corrections or
121 his or her designee shall review and investigate the plan ~~to be~~
122 ~~reviewed and investigated~~ and provide recommendations to
123 the board as to the suitability of the plan: *Provided, That in*
124 cases in which there is a mandatory thirty-day notification
125 period required prior to the release of the inmate, pursuant to
126 section twenty-three of this article, the board may conduct an
127 initial interview and deny parole without requiring the
128 development of a plan. In the event the board ~~does not~~
129 ~~believe parole should be denied~~ believes parole should be
130 granted, it may defer a final decision pending completion of
131 an investigation and receipt of recommendations. Upon
132 receipt of the plan together with the investigation and

63

[Com. Sub. for Com. Sub. for S. B. No. 371

133 recommendation, the board, through a panel, shall make a
134 final decision regarding the granting or denial of parole; and

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

137 (c) Except in the case of ~~a person~~ an inmate serving a life
138 sentence, ~~no~~ a person who has been previously twice
139 convicted of a felony may not be released on parole until he
140 or she has served the minimum term provided by law for the
141 crime for which he or she was convicted. ~~A person~~ An
142 inmate sentenced for life may not be paroled until he or she
143 has served ten years, and ~~a person~~ an inmate sentenced for
144 life who has been previously twice convicted of a felony may
145 not be paroled until he or she has served fifteen years:
146 *Provided, That* ~~a person~~ an inmate convicted of first degree
147 murder for an offense committed on or after June 10, 1994,
148 is not eligible for parole until he or she has served fifteen
149 years.

150 (d) In the case of ~~a person~~ an inmate sentenced to any
151 state correctional center, ~~it is the duty of the board~~ institution,

152 the Parole Board, as soon as ~~a person~~ that inmate becomes
153 eligible, ~~to~~ shall consider the advisability of his or her release
154 on parole.

155 (e) If, upon consideration, parole is denied, the board
156 shall promptly notify the inmate of the denial. The board
157 shall, at the time of denial, notify the inmate of the month and
158 year he or she may apply for reconsideration and review.
159 The board shall at least once a year reconsider and review the
160 case of every inmate who was denied parole and who is still
161 eligible: *Provided*, That the board may reconsider and
162 review parole eligibility anytime within three years following
163 the denial of parole of an inmate serving a life sentence with
164 the possibility of parole.

165 (f) Any ~~person~~ inmate serving a sentence on a felony
166 conviction who becomes eligible for parole consideration
167 prior to being transferred to a state correctional ~~center~~
168 institution may make written application for parole. The
169 terms and conditions for parole consideration established by
170 this article apply to ~~such inmates~~ that inmate.

65 [Com. Sub. for Com. Sub. for S. B. No. 371

171 (g) The board shall, with the approval of the Governor,
172 adopt rules governing the procedure in the granting of parole.
173 No provision of this article and none of the rules adopted
174 ~~hereunder~~ under this article are intended or may be construed
175 to contravene, limit or otherwise interfere with or affect the
176 authority of the Governor to grant pardons and reprieves,
177 commute sentences, remit fines or otherwise exercise his or
178 her constitutional powers of executive clemency.

179 (h) (1) The Division of Corrections shall promulgate
180 policies and procedures for developing a rehabilitation
181 treatment plan created with the assistance of a standardized
182 risk and needs assessment. The policies and procedures shall
183 ~~include, but not be limited to, policy and procedures for~~
184 provide for, at a minimum, screening and selecting inmates
185 for rehabilitation treatment and development, ~~and use of~~
186 using standardized risk and needs assessment and substance
187 abuse assessment tools, and prioritizing the use of residential
188 substance abuse treatment resources based on the results of

189 the standardized risk and needs assessment and a substance
190 abuse assessment.

191 (2) An inmate shall not be paroled under paragraph (B),
192 subdivision (1), subsection (b) of this section solely due to
193 having successfully completed a rehabilitation treatment
194 plan, but completion of all the requirements of a
195 rehabilitation ~~parole~~ treatment plan along with compliance
196 with the requirements of subsection (b) of this section ~~shall~~
197 creates a rebuttable presumption that parole is appropriate.
198 The presumption created by this ~~subsection~~ subdivision may
199 be rebutted by a Parole Board finding that, according to the
200 standardized risk and needs assessment, at the time parole
201 release is sought the inmate still constitutes a reasonable risk
202 to the safety or property of other persons if released. Nothing
203 in subsection (b) of this section or in this subsection may be
204 construed to create a right to parole.

205 (i) Notwithstanding the provisions of subsection (b) of
206 this section, the Parole Board may, ~~in its discretion~~, grant or
207 deny parole to an inmate against whom a detainer is lodged

67

[Com. Sub. for Com. Sub. for S. B. No. 371

208 by a jurisdiction other than West Virginia for service of a
209 sentence of incarceration, upon a written request for parole
210 from the inmate. A denial of parole under this subsection
211 ~~shall preclude~~ precludes consideration for parole for a period
212 of one year or until the provisions of subsection (b) of this
213 section are applicable.

214 (j) ~~Where~~ If an inmate is otherwise eligible for parole
215 pursuant to subsection (b) of this section and has completed
216 the rehabilitation treatment program required under
217 subsection (h) of this section, ~~but~~ the Parole Board
218 ~~determines that~~ may not require the inmate ~~should to~~
219 participate in an additional program, ~~or~~ but may determine
220 that the inmate must complete an assigned task or tasks prior
221 to actual release on parole. The board may grant parole
222 contingently, effective upon successful completion of the
223 ~~program or~~ assigned task or tasks, without the need for a
224 further hearing. ~~The Commissioner of Corrections shall~~
225 ~~provide notice to the Parole Board of the imminent release of~~

226 ~~a contingently paroled inmate to effectuate appropriate~~
227 ~~supervision.~~

228 (k) ~~(1) The Division of Corrections is charged with the~~
229 ~~duty of supervising~~ shall supervise all probationers and
230 parolees whose supervision may have been undertaken by
231 this state by reason of any interstate compact entered into
232 pursuant to the Uniform Act For Out-of-State Parolee
233 Supervision.

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

238 (l)(1) When considering an inmate of a state correctional
239 center for release on parole, the Parole Board panel
240 considering the parole ~~is to~~ shall have before it an authentic
241 copy of or report on the inmate's current criminal record as
242 provided through the West Virginia State Police, the United
243 States Department of Justice or any other reliable criminal
244 information sources and written reports of the warden or

69

[Com. Sub. for Com. Sub. for S. B. No. 371

245 superintendent of the state correctional ~~center~~ institution to
246 which the inmate is sentenced:

247 (A) On the inmate's conduct record while in custody,
248 including a detailed statement showing any and all
249 infractions of disciplinary rules by the inmate and the nature
250 and extent of discipline administered ~~therefor~~ for the
251 infractions;

252 (B) On improvement or other changes noted in the
253 inmate's mental and moral condition while in custody,
254 including a statement expressive of the inmate's current
255 attitude toward society in general, toward the judge who
256 sentenced him or her, toward the prosecuting attorney who
257 prosecuted him or her, toward the policeman or other officer
258 who arrested the inmate and toward the crime for which he
259 or she is under sentence and his or her previous criminal
260 record;

261 (C) On the inmate's industrial record while in custody
262 which shall include: The nature of his or her work,
263 occupation or education, the average number of hours per

264 day he or she has been employed or in class while in custody
265 and a recommendation as to the nature and kinds of
266 employment which he or she is best fitted to perform and in
267 which the inmate is most likely to succeed when he or she
268 leaves ~~prison~~ the state correctional institution; and

269 (D) On any physical, mental, ~~and~~ psychological or
270 psychiatric examinations of the inmate. ~~conducted, insofar as~~
271 ~~practicable, within the two months next preceding parole~~
272 ~~consideration by the board.~~

273 (2) The Parole Board panel considering the parole may
274 waive the requirement of any report when not available or
275 not applicable as to any inmate considered for parole but, in
276 every ~~such~~ case, shall enter in ~~the~~ its record ~~thereof~~ its reason
277 for the waiver: *Provided*, That in the case of an inmate who
278 is incarcerated because the inmate has been found guilty of,
279 or has pleaded guilty to, a felony under the provisions of
280 section twelve, article eight, chapter sixty-one of this code or
281 under the provisions of article eight-b or eight-c of said
282 chapter, the Parole Board panel may not waive the report

71 [Com. Sub. for Com. Sub. for S. B. No. 371
283 required by this subsection. ~~and~~ The report ~~is to~~ shall include
284 a study and diagnosis of the inmate, including an on-going
285 treatment plan requiring active participation in sexual abuse
286 counseling at an approved mental health facility or through
287 some other approved program: *Provided, however,* That
288 nothing disclosed by the ~~person~~ inmate during the study or
289 diagnosis may be made available to any law-enforcement
290 agency, or other party without that ~~person's~~ inmate's consent,
291 or admissible in any court of this state, unless the information
292 disclosed indicates the intention or plans of the parolee to do
293 harm to any person, animal, institution or to property.
294 Progress reports of outpatient treatment are to be made at
295 least every six months to the parole officer supervising the
296 ~~person~~ parolee. In addition, in such cases, the Parole Board
297 shall inform the prosecuting attorney of the county in which
298 the person was convicted of the parole hearing and shall
299 request that the prosecuting attorney inform the Parole Board
300 of the circumstances surrounding a conviction or plea of

301 guilty, plea bargaining and other background information that
302 might be useful in its deliberations.

303 (m) Before releasing any inmate on parole, the ~~board of~~
304 ~~parole~~ Parole Board shall arrange for the inmate to appear in
305 person before a Parole Board panel and the panel may
306 examine and interrogate him or her on any matters pertaining
307 to his or her parole, including reports before the Parole Board
308 made pursuant to the provisions ~~hereof~~ of this section:

309 *Provided*, That an inmate may appear by video
310 teleconference if the members of the Parole Board panel
311 conducting the examination are able to contemporaneously
312 see the inmate and hear all of his or her remarks and if the
313 inmate is able to contemporaneously see each of the members
314 of the panel conducting the examination and hear all of the
315 members' remarks. The panel shall reach its own written
316 conclusions as to the desirability of releasing the inmate on
317 parole and the majority of the panel considering the release
318 ~~shall~~ must concur in the decision. The warden or
319 superintendent shall furnish all necessary assistance and

73 [Com. Sub. for Com. Sub. for S. B. No. 371
320 cooperate to the fullest extent with the Parole Board. All
321 information, records and reports received by the Parole Board
322 ~~are to~~ shall be kept on permanent file.

323 (n) The Parole Board and its designated agents are at all
324 times to have access to inmates imprisoned in any state
325 correctional ~~center~~ institution or in any jail in this state and
326 may obtain any information or aid necessary to the
327 performance of its duties from other departments and
328 agencies of the state or from any political subdivision ~~thereof~~
329 of the state.

330 (o) The Parole board shall, if ~~so~~ requested by the
331 Governor, investigate and consider all applications for
332 pardon, reprieve or commutation and shall make
333 recommendation ~~thereon~~ on the applications to the Governor.

334 (p) Prior to making a recommendation for pardon,
335 reprieve or commutation and prior to releasing any inmate on
336 parole, the Parole Board shall notify the sentencing judge and
337 prosecuting attorney at least ten days before the
338 recommendation or parole.

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

345 ~~(r) Except for the amendments to this section contained~~
346 ~~in subdivision (4), subsection (b) and subsection (i) of this~~
347 ~~section the amendments to this section enacted during the~~
348 ~~2010 regular session of the Legislature shall become effective~~
349 ~~on January 1, 2011.~~

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

1 The ~~board~~ Commissioner of Corrections ~~shall have~~
2 ~~authority to~~ may employ or contract for a director of
3 employment and a director of housing for ~~paroled or~~
4 ~~pardoned prisoners~~ released inmates. The director of
5 employment shall work with federal, state, county and local
6 government and private entities to negotiate agreements

75 [Com. Sub. for Com. Sub. for S. B. No. 371
7 which facilitate employment opportunities for released
8 inmates. The director of housing shall work with federal,
9 state, county and local government and private entities to
10 negotiate agreements which facilitate housing opportunities
11 for released inmates. It shall be the duty of The director of
12 employment to shall investigate job opportunities and to
13 give every possible assistance in helping prisoners, eligible
14 to be paroled or who have been granted parole under this
15 article to released inmates find employment. The director of
16 housing shall work in conjunction with the parole division
17 and the Parole Board to reduce release delays due to lack of
18 a home plan, develop community housing resources and
19 provide short-term loans to released inmates for costs related
20 to reentry into the community.

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

- 1 (a) Each state parole officer shall:
- 2 (1) Investigate all cases referred to him or her for
3 investigation by the Commissioner of Corrections and shall

4 report in writing ~~thereon~~ on the investigation; ~~He or she or~~
5 ~~she shall furnish~~

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

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

14 (4) Furnish to each ~~person released on parole~~ parolee
15 under his or her supervision a written statement of the
16 conditions of his or her parole together with a copy of the
17 rules prescribed by the ~~board, as the case may be~~
18 Commissioner of Corrections for the supervision of
19 parolees; ~~He or she or she shall keep~~

20 (5) Keep informed concerning the conduct and condition
21 of each ~~person~~ parolee under his or her supervision and ~~shall~~
22 report ~~thereon~~ on the conduct and condition of each parolee

77 [Com. Sub. for Com. Sub. for S. B. No. 371

23 in writing as often as required by the Commissioner of

24 Corrections ~~may require; He or she or she shall use;~~

25 (6) Use all practicable and suitable methods to aid and

26 encourage ~~persons on parole~~ a parolee and to bring about

27 improvement in ~~their~~ his or her conduct and condition; ~~He~~

28 ~~or she or she shall keep~~

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

30 (8) Keep accurate and complete accounts of and give

31 receipts for all money collected from ~~persons~~ parolees under

32 his or her supervision and ~~shall~~ pay over the money to ~~those~~

33 persons designated by a circuit court or the Commissioner

34 of Corrections ~~may designate; He or she or she shall give;~~

35 (9) Give bond with good security, to be approved by the

36 Commissioner of Corrections, in a penalty of not less than

37 \$1,000 nor more than \$3,000, as determined by the

38 Commissioner of Corrections ~~may determine; and also~~

39 ~~perform~~

40 (10) Perform any other duties required by the

41 Commissioner ~~may require~~ of Corrections.

42 (b) ~~He or she~~ Each state parole officer has authority ~~may,~~
43 with or without an order or warrant, ~~to~~ arrest or order
44 confinement of any parolee. He or she has all the powers of
45 a notary public, with authority to act anywhere within the
46 state.

47 (c) The Commissioner of Corrections may issue a
48 certificate authorizing any state parole officer who has
49 successfully completed the Division of Corrections' training
50 program for firearms certification, which is the equivalent of
51 that required of deputy sheriffs, to carry firearms or
52 concealed weapons. Any parole officer authorized by the
53 Commissioner of Corrections may, without a state license,
54 carry firearms and concealed weapons. Each state parole
55 officer, authorized by the Commissioner of Corrections,
56 shall carry with him or her a certificate authorizing him or
57 her to carry a firearm or concealed weapon bearing the
58 official signature of the Commissioner of Corrections.

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

79

[Com. Sub. for Com. Sub. for S. B. No. 371

1 (a) Release and supervision on parole of any person,
2 including the supervision by the Division of Corrections of
3 any person paroled by any other state or by the federal
4 government, shall be upon the following conditions:

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

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

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

14 (4) That in every case in which the parolee for a
15 conviction is seeking parole from an offense against a child,
16 defined in section twelve, article eight, chapter sixty-one of
17 this code, or article eight-b or eight-d of said chapter, or
18 similar convictions from other jurisdictions where the

19 parolee is returning or attempting to return to this state
20 pursuant to the provisions of article six, chapter twenty-eight
21 of this code, the parolee may not live in the same residence
22 as any minor child nor exercise visitation with any minor
23 child nor may he or she have any contact with the victim of
24 the offense; and

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

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

81 [Com. Sub. for Com. Sub. for S. B. No. 371
37 fund shall be for the purposes of providing the parole
38 supervision required by the provisions of this code and are
39 not authorized from collections, but are to be made only in
40 accordance with appropriation by the Legislature and in
41 accordance with the provisions of article three, chapter
42 twelve of this code and upon the fulfillment of the
43 provisions set forth in article two, chapter five-a of this
44 code. Amounts collected which are found, from time to
45 time, to exceed the funds needed for purposes set forth in
46 this article may be transferred to other accounts or funds and
47 redesignated for other purposes by appropriation of the
48 Legislature.

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

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

55 (2) Liquid assets of the parolee or probationer, assets of
56 the parolee or probationer that may provide collateral to
57 obtain funds and assets of the parolee or probationer that
58 may be liquidated to provide funds to pay the fee;

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

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

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

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

71 (e) The Division of Corrections may order substance
72 abuse treatment as a condition or as a modification of
73 parole, only if the standardized risk and needs assessment

83 [Com. Sub. for Com. Sub. for S. B. No. 371
74 indicates the offender has a high risk for reoffending and a
75 need for substance abuse treatment.

76 (f) The Division of Corrections may impose, as an initial
77 condition of parole, a term of reporting to a day report
78 center or other community corrections program only if the
79 standardized risk and needs assessment indicates a moderate
80 to high risk of reoffending and moderate to high
81 criminogenic need. Any parolee required to report to a day
82 report center or other community corrections program is
83 subject to all the rules and regulations of the center or
84 program and may be removed at the discretion of the
85 center's or program's director. The Commissioner of
86 Corrections shall enter into a master agreement with the
87 Division of Justice and Community Services to provide
88 reimbursement to counties for the use of community
89 corrections programs by eligible parolees. Any placement by
90 the Division of Corrections of a parolee in a day report
91 center or other community corrections program may only be
92 done with the center's or program's director's consent and

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

§62-12-19. Violation of parole.

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

85 [Com. Sub. for Com. Sub. for S. B. No. 371

16 confining the paroled prisoner shall be paid out of the funds

17 appropriated for the Division of Corrections.

18 (1) If reasonable cause is found to exist that a parolee has
19 violated a term or terms of his or her release on parole that
20 does not constitute absconding supervision or new criminal
21 conduct other than a minor traffic violation or simple
22 possession of a controlled substance, the parole officer may,
23 after consultation with and written approval by the director
24 of parole services, for the first violation, require the parolee
25 to serve a period of confinement up to sixty days, or, for the
26 second violation, a period of confinement up to one hundred
27 twenty days: *Provided*, That the Division of Corrections
28 shall notify the Parole Board when a parolee is serving such
29 a term of confinement and the Parole Board may deny
30 further confinement. A parolee serving a term of
31 confinement in the first or second instance may be confined
32 in jail or any other facility designated by the commissioner,
33 but shall be committed to the custody of the Commissioner
34 of Corrections, and the costs of confining the parolee shall

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

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

47 (A) If at the hearing it ~~appears to the satisfaction of the~~
48 ~~panel~~ is determined that reasonable cause exists to believe
49 ~~that the parolee has violated any condition of his or her~~
50 ~~release on parole, or any rules or conditions of his or her~~
51 ~~supervision~~ absconded supervision or committed new
52 criminal conduct other than a minor traffic violation or
53 simple possession of a controlled substance, the panel may

87 [Com. Sub. for Com. Sub. for S. B. No. 371

54 revoke his or her parole and may require him or her to serve
55 in ~~prison~~ a state correctional institution the remainder or any
56 portion of his or her maximum sentence for which, at the
57 time of his or her release, he or she was subject to
58 imprisonment.

59 (B) If the Parole Board panel finds that reasonable cause
60 exists to believe that the parolee has violated a condition of
61 release or supervision or committed new criminal conduct
62 consisting of a minor traffic violation or simple possession
63 of a controlled substance, the panel shall require the parolee
64 to serve, for the first violation, a period of confinement up
65 to sixty days, or, for the second violation, a period of
66 confinement up to one hundred twenty days: *Provided*, That
67 if the violation of the conditions of parole or rules for his or
68 her supervision is not a felony as set out in section eighteen
69 of this article, the panel may, if in its judgment the best
70 interests of justice ~~do~~ not require ~~revocation~~ a period of
71 confinement, reinstate him or her on parole. The Division

72 of Corrections shall effect release from custody upon
73 approval of a home plan.

74 (b) Notwithstanding any provision of this code to the
75 contrary, when reasonable cause has been found to believe
76 that a parolee has violated the conditions of his or her parole
77 but the violation does not constitute felonious conduct, the
78 commissioner may, ~~in his or her discretion and~~ with the
79 written consent of the parolee, allow the parolee to remain
80 on parole with additional conditions or restrictions. The
81 additional conditions or restrictions may include, but are not
82 limited to, participation in any program described in
83 subsection (d), section five, article eleven-c of this chapter.

84 ~~Compliance by~~ If the parolee complies with the conditions
85 of parole ~~precludes revocation of~~ the commissioner may not
86 revoke his or her parole for the conduct which constituted
87 the violation. ~~Failure of~~ If the parolee fails to comply with
88 the conditions or restrictions and all other conditions of
89 release, that failure is an additional violation of parole and
90 the commissioner may proceed against the parolee may be

89 [Com. Sub. for Com. Sub. for S. B. No. 371

91 ~~proceeded against~~ under the provisions of this section for the
92 original violation as well as any subsequent violations.

93 (c) When a parolee has violated the conditions of his or
94 her release on parole by confession to, or being convicted
95 of, any of the crimes set forth in section eighteen of this
96 article, he or she shall be returned to the custody of the
97 Division of Corrections to serve the remainder of his or her
98 maximum sentence, during which remaining part of his or
99 her sentence he or she is ineligible for further parole.

100 (d) Whenever ~~the a person's parole of a paroled prisoner~~
101 has been revoked, the commissioner shall, upon receipt of
102 the panel's written order of revocation, convey and transport
103 the paroled prisoner to a state correctional institution. A
104 ~~paroled prisoner~~ parolee whose parole has been revoked
105 shall remain in custody ~~of the sheriff~~ until delivery to a
106 corrections officer sent and duly authorized by the
107 commissioner for the removal of the ~~paroled prisoner~~
108 parolee to a state ~~penal~~ correctional institution. The cost of

109 confining the ~~paroled prisoner~~ parolee shall be paid out of
110 the funds appropriated for the Division of Corrections.

111 (e) When a ~~paroled prisoner~~ parolee is convicted of, or
112 confesses to, any one of the crimes enumerated in section
113 eighteen of this article, it is the duty of the Parole Board to
114 cause him or her to be returned to this state for a summary
115 hearing as provided by this article. Whenever a parolee has
116 absconded supervision, the commissioner shall issue a
117 warrant for his or her apprehension and return to this state
118 for the hearing provided for in this article: *Provided*, That
119 the panel considering revocation may, if it determines the
120 best interests of justice do not require revocation, cause the
121 ~~paroled absconder~~ parolee to be reinstated to parole.

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

126 (g) Whenever a parolee who has absconded supervision
127 or has been transferred out of this state for supervision

91 [Com. Sub. for Com. Sub. for S. B. No. 371
128 pursuant to section one, article six, chapter twenty-eight of
129 this code is returned to West Virginia due to a violation of
130 parole and costs are incurred by the Division of Corrections,
131 the commissioner may assess reasonable costs from the
132 parolee's inmate funds or the parolee as reimbursement to
133 the Division of Corrections for the costs of returning him or
134 her to West Virginia.

135 (h) Conviction of a felony for conduct occurring during
136 the period of parole is proof of violation of the conditions of
137 parole and the hearing procedures required by the provisions
138 of this section are inapplicable.

139 (i) The Commissioner ~~of the Division~~ of Corrections may
140 issue subpoenas for persons and records necessary to prove
141 a violation of the terms and conditions of a parolee's parole
142 either at a preliminary hearing or at a final hearing before a
143 ~~panel of the Parole Board~~ panel. The subpoenas shall be
144 served in the same manner provided in the Supreme Court
145 of Appeals of West Virginia Rules of Criminal Procedure.
146 The subpoenas may be enforced by the commissioner

147 through application or petition of the commissioner to the
148 circuit court for contempt or other relief.

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

1 (a) The Administrative Director of the Supreme Court of
2 Appeals of West Virginia is requested to assemble a
3 community supervision committee, to include
4 representatives of the judiciary, probation, parole, day report
5 centers, magistrates, sheriffs, corrections and other members
6 at the discretion of the director. The administrative director
7 shall appoint a chair from among the members, and attend
8 the meeting ex officio.

9 (b) The committee shall:

10 (1) Design and deploy a method for probation officers,
11 parole officers, day report centers and others providing
12 community supervision to electronically share offender
13 information and assessments;

14 (2) Coordinate information reporting and access across
15 agencies continuing supervision;

93 [Com. Sub. for Com. Sub. for S. B. No. 371

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

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

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

23 (c) The committee shall annually submit a report on its
24 activities during the previous year, on or before September
25 30, to the Governor, the Speaker of the House of Delegates,
26 the President of the Senate and, upon request, to any
27 individual member of the Legislature.

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

§62-15-2. Definitions.

1 For the purposes of this article:

2 (1) "Assessment" means a diagnostic evaluation to
3 determine whether and to what extent a person is a drug
4 offender under this article and would benefit from its

5 provisions. The assessment shall be conducted in
6 accordance with the ~~standards, procedures, and diagnostic~~
7 ~~criteria designed to provide effective and cost-beneficial use~~
8 ~~of available resources~~ standardized risk and needs
9 assessment and risk cut-off scores adopted by the West
10 Virginia Supreme Court of Appeals.

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

16 (3) “Controlled substance” means a drug or other
17 substance for which a medical prescription or other legal
18 authorization is required for purchase or possession.

19 (4) “Drug” means a controlled substance, an illegal drug
20 or other harmful substance.

21 (5) “Drug court” means a judicial intervention process
22 that incorporates the Ten Key Components and may include
23 preadjudication or post-adjudication participation.

95 [Com. Sub. for Com. Sub. for S. B. No. 371

24 (6) “Drug court team” ~~may~~ shall consist of the following
25 members who are assigned to the drug court:

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

29 (B) The prosecutor;

30 (C) The public defender or a member of the criminal
31 defense bar;

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

35 (E) A law-enforcement officer;

36 (F) The drug court coordinator;

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

39 (H) One or more substance abuse treatment providers;

40 and

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

42 (7) “Drug offender” means an adult person charged with
43 a drug-related offense or an offense in which substance
44 abuse is determined from the evidence to have been a factor
45 in the commission of the offense.

46 (8) “Dual Diagnosis” means a substance abuse and
47 cooccurring mental health disorder.

48 (9) “Local advisory committee” may consist of the
49 following members or their designees:

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

51 (B) Drug court ~~magistrate(s)~~ magistrates;

52 (C) The prosecutor;

53 (D) A public defender;

54 (E) The drug court coordinator;

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

56 (G) The circuit clerk;

57 (H) A day report center director;

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

60 (J) Law enforcement;

97 [Com. Sub. for Com. Sub. for S. B. No. 371

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

62 (L) A corrections representative; and

63 (M) Any such other person or persons the chair ~~deems~~
64 considers appropriate.

65 (10) “Illegal drug” means a drug whose manufacture,
66 sale, use or possession is forbidden by law;

67 (11) “Memorandum of Understanding” means a written
68 document setting forth an agreed upon procedure.

69 (12) “Offender” means an adult charged with a criminal
70 offense punishable by incarceration.

71 (13) “Other harmful substance” means a misused
72 substance otherwise legal to possess, including alcohol.

73 (14) “Preadjudication order” means a court order
74 requiring a drug offender to participate in drug court before
75 charges are filed or before conviction.

76 (15) “Post adjudication” means a court order requiring a
77 drug offender to participate in drug court after having
78 entered a plea of guilty or *nolo contendere* or having been
79 found guilty.

80 (16) “Recidivism” means any subsequent arrest for a
81 serious offense (carrying a sentence of at least one year)
82 resulting in the filing of a charge.

83 (17) “Relapse” means a return to substance use after a
84 period of abstinence.

85 (18) “Split sentencing” means a sentence which includes
86 a period of incarceration followed by a period of
87 supervision.

88 (19) “Staffing” means the meeting before a drug
89 offender’s appearance in drug court in which the drug court
90 team discusses a coordinated response to the drug offender’s
91 behavior.

92 (20) “Substance” means ~~drug~~ drugs or alcohol.

93 (21) “Substance abuse” means the illegal or improper
94 consumption of a ~~drug~~ substance.

95 (22) “Substance abuse treatment” means a program
96 designed to provide prevention, education, and therapy
97 directed toward ending substance abuse and preventing a
98 return to substance usage, through a continuum of care.

99 [Com. Sub. for Com. Sub. for S. B. No. 371

99 including: treatment of cooccurring substance abuse and
100 mental health issues; outpatient care; intensive outpatient
101 care; residential care; peer support; relapse prevention; and
102 cognitive behavioral programming, based on research about
103 effective treatment models for the offender population.

104 (23) “Ten Key Components” means the following
105 benchmarks intended to describe the very best practices,
106 designs, and operations of drug courts. These benchmarks
107 are meant to serve as a practical, yet flexible framework for
108 developing effective drug courts in vastly different
109 jurisdictions and to provide a structure for conducting
110 research and evaluation for program accountability:

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

113 (B) Using a nonadversarial approach, prosecution and
114 defense counsel promote public safety while protecting
115 participants’ due process rights;

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

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

120 (E) Abstinence is monitored by frequent alcohol and other
121 drug testing;

122 (F) A coordinated strategy governs drug court responses to
123 participants' compliance;

124 (G) Ongoing judicial interaction with each drug court
125 participant is essential;

126 (H) Monitoring and evaluation measure the achievement of
127 program goals and gauge effectiveness;

128 (I) Continuing interdisciplinary education promotes
129 effective drug court planning, implementation and operations;
130 and

131 (J) Forging partnerships among drug courts, public
132 agencies and community-based organizations generates local
133 support and enhances drug court effectiveness.

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

§62-15-6a. Treatment supervision.

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

19 the Commissioner of Corrections for service of the
20 underlying sentence. Whenever a circuit judge incarcerates
21 a participant pursuant to this section a copy of the order of
22 confinement shall be provided by the clerk of the circuit
23 court within five days to the Commissioner of Corrections:
24 *Provided*, That a judge may impose treatment supervision
25 on a drug offender convicted of a felony, notwithstanding
26 the results of the risk assessment, upon making specific
27 written findings of fact as to the reason for departing from
28 the requirements of this subsection. This subsection takes
29 effect January 1, 2014.

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

103 [Com. Sub. for Com. Sub. for S. B. No. 371

37 ~~Council on Substance Abuse, created by Executive Order~~

38 ~~No. 5-11.~~

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

42 (1) Qualifications for provider certification to deliver a
43 continuum of care to offenders;

44 (2) Fee reimbursement procedures; and

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

47 (d) The Division of Justice and Community Services shall
48 require education and training for providers which shall
49 include, but not be limited to, cognitive behavior training.

50 The duties of providers who provide services under this
51 ~~program~~ section may include: notifying the probation
52 department and the court of any offender failing to meet the
53 conditions of probation or referrals to treatment; appearing
54 at revocation hearings ~~as may be~~ when required; and

55 providing assistance with data reporting and treatment
56 program quality evaluation.

57 (e) The cost for all drug abuse assessments and certified
58 drug treatment under this section and subsection (e), section
59 seventeen, article twelve of this chapter shall be paid by the
60 Division of Justice and Community Services from funds
61 appropriated for ~~such~~ that purpose. The Division of Justice
62 and Community Services shall contract for payment for ~~such~~
63 the services provided to eligible offenders.

64 (f) The Division of Justice and Community Services, in
65 consultation with the Governor's Advisory Council on
66 Substance Abuse, shall submit an annual report on or before
67 September 30 ~~of each year~~, to the Governor, the Speaker of
68 the House of Delegates, the President of the Senate and,
69 upon request, to any individual member of the Legislature
70 ~~a report on~~ containing:

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

105 [Com. Sub. for Com. Sub. for S. B. No. 371

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

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

82 (4) The type of services provided;

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

85 (6) The number of people under supervision receiving
86 treatment under this section who ~~are~~ were rearrested and
87 confined within two years of being placed under
88 supervision;

89 (7) The dollar amount needed to provide services in the
90 upcoming year to meet demand and the projected impact of

91 reductions in program funding on cost and public safety
92 measures; and

93 (8) Other appropriate measures ~~as appropriate~~ used to
94 measure the availability of treatment and the effectiveness
95 of services.

96 (g) With the exception of subsection (a) of this section,
97 the provisions of this section shall take effect on July 1,
98 2013.

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

1 (a) Whenever a judge of a drug court determines that a
2 participant who has pled to a felony offense has committed
3 a violation of his or her conditions of participation which
4 would, in the judge's opinion, warrant a period of
5 incarceration to encourage compliance with program
6 requirements, the cost of the incarceration, not to exceed a
7 period of thirty days in any one instance, shall be paid by the

107 [Com. Sub. for Com. Sub. for S. B. No. 371

8 Division of Corrections. The judge must make a written
9 finding that the participant would otherwise be sentenced to
10 the custody of the Commissioner of Corrections for service
11 of the underlying sentence.

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