

Senate Bill No. 371

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

By Request of the Executive)

[Introduced February 26, 2013; referred to the Committee on the Judiciary; and
then to the Committee on Finance .]

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 a new section, designated §62-15-6a, 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; mandating a maximum of one year of supervised release for violent inmates; mandating a maximum of one hundred eighty days of supervised release for nonviolent inmates; requiring the Commissioner of Corrections to adopt policies regarding mandatory supervised release; requiring the Regional Jail Authority to utilize a standardized pretrial risk screening instrument adopted by the Supreme Court of Appeals of West Virginia; requiring the authority to develop and implement cognitive behavioral programming for inmates in regional jails committed to the custody of the Commissioner of Corrections; 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 community corrections; 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; providing 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 of each county or combination of counties; 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 the same; 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 or other community corrections program as a condition of probation; authorizing day reporting 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 a misdemeanor or felony; 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 all people 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 employment of a director of housing for released inmates with duties relating to the reduction of parole release delays; 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 a 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; providing for graduated sanctions in response to violations of the conditions of release on parole other than absconding or committing a misdemeanor or felony; 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 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; 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 that the Division of Justice and Community Services 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 and requiring submittal of an annual report; outlining duties of treatment supervision service providers; 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 a new section, designated §62-15-6a, all to read as follows:

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

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

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

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

(a) All adult inmates now in the custody of the Commissioner of Corrections, or hereafter committed to the custody of the Commissioner of Corrections, except those committed pursuant to article four, chapter twenty-five of this code shall be granted

commutation from their sentences for good conduct in accordance with this section.

(b) Such commutation of sentence, hereinafter called "good time," shall be deducted from the maximum term of indeterminate sentences or from the fixed term of determinate sentences.

(c) Except as provided by subsections (l) and (m), each inmate committed to the custody of the Commissioner of Corrections and incarcerated in a penal facility pursuant to such commitment shall be granted one day good time for each day he or she is incarcerated, including any and all days in jail awaiting sentence and which is credited by the sentencing court to his or her sentence pursuant to section twenty-four, article eleven, chapter sixty-one of this code or for any other reason relating to such commitment. No inmate may be granted any good time for time served either on parole or bond or in any other status where by he or she is not physically incarcerated.

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

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

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

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

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

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

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

time computed according to this section and all inmates will receive a new discharge date computed according to this section. All inmates that have been awarded overtime good time or extra good time pursuant to sections twenty-seven-a and twenty-seven-b of this article which are repealed simultaneously with the amendment to this section during the regular session of the Legislature in the year 1984, shall receive such good time in addition to the good time computed according to this section.

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

(l) For purposes of this section, a violent inmate is a person who is serving a sentence for a crime of violence against the person, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child, as those terms are defined in section thirteen, article twelve, chapter sixty-two of this code. Within one hundred eighty days prior to the calculated discharge date of a violent inmate who has not been paroled, from the accumulated good conduct time for the violent inmate, a maximum of one year shall be deducted to provide for a maximum of one year of mandatory supervision. This subsection applies to offenses committed on or after July 1, 2013.

(m) For purposes of this section, a nonviolent inmate is a person who is not serving a sentence for a crime of violence against the person, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child, as those terms are defined in section thirteen, article twelve, chapter sixty-two of this code. A nonviolent inmate who has not been paroled shall be released to mandatory supervision one hundred eighty days prior to the calculated discharge date. This subsection applies to offenses committed before, on or after July 1, 2013.

(n) The Commissioner of Corrections shall adopt policies for setting conditions and responding to violations by inmates on mandatory supervision under subsections (l) and (m).

CHAPTER 31. CORPORATIONS.

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

§31-20-5g. Pretrial risk assessment.

For each defendant arrested and placed in regional jail, the authority shall utilize a standardized pretrial risk screening instrument, as adopted by the Supreme Court of Appeals of West Virginia, to provide information to magistrates and circuit courts within three calendar days of the placement of the defendant in jail.

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

The authority shall develop and implement cognitive behavioral programming to address the needs of inmates in regional jail but committed to the custody of the Commissioner of Corrections. The program shall be developed in consultation with and approved by the Division of Corrections, may be offered by video teleconference or webinar technology, and may be offered to any inmate of the authority, but not to the exclusion of an inmate committed to the custody of the Commissioner of Corrections. The costs of such programming shall be paid out of funds appropriated for the Division of Corrections. The programming shall be covered by the rehabilitation plan policies and

procedures adopted by the Division of Corrections under subsection (h) of section thirteen, article twelve, chapter 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.

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

(1) Any person carrying a deadly weapon upon his or her own premises; nor shall anything herein prevent a person from carrying any firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business, nor shall anything herein prohibit a person from possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;

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

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

(4) Any employee of the West Virginia Division of Corrections duly appointed pursuant to the provisions of section five eleven-c, article five one, chapter twenty-eight twenty-five of this code while the employee is on duty and any parole officer appointed pursuant to section fourteen, article twelve, chapter sixty-two of this code;

(5) Any member of the Armed Forces of the United States or the militia of this state while the member is on duty;

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

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

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

(9) Any Hatfield-McCoy regional recreation authority ranger while the ranger is on duty.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

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

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

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

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

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

Regarding any portion of the sentence designated as a fine, the fine is to be credited at an hourly rate equal to the prevailing federal minimum wage at the time the sentence was imposed. In the discretion of the court, the sentence credits may run concurrently or consecutively. Persons sentenced under this program may be required to provide their own transportation to and from the work site, lunch and work clothes.

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

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

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

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

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

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

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

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

(d) Persons sentenced by the circuit court under the provisions of this article remain under the administrative custody and supervision of the court's probation officers or the county sheriff. Persons sentenced by a magistrate remain under the administrative custody and supervision of the county sheriff.

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

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

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

(h) Magistrates may only use a period of supervision or participation in a community corrections program with the periodic consent from the supervising judge or chief judge of the judicial circuit in which he or she presides, defining the number of people the magistrate may place, and any constraints on their characteristics or the programs they may attend.

ARTICLE 11B. HOME INCARCERATION ACT.

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

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

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

violated the terms and conditions of the court's order of home incarceration and said participant's participation was imposed as an alternative sentence to another form of incarceration, said participant shall be subject to the same procedures involving confinement and revocation as would a probationer charged with a violation of the order of home incarceration. Any participant under an order of home incarceration shall be subject to the same penalty or penalties, upon the circuit court's finding of a violation of the order of home incarceration, as he or she could have received at the initial disposition hearing: *Provided*, That the participant shall receive credit towards any sentence imposed after a finding of violation for the time spent in home incarceration.

(c) If at any time during the period of home incarceration there is reasonable cause to believe that a participant sentenced to home incarceration by a magistrate has violated the terms and conditions of the magistrate's order of home incarceration as an alternative sentence to incarceration in jail, the supervising authority may arrest the participant upon the obtaining of an order or warrant and take the offender before a magistrate within the county of the offense. The magistrate shall then conduct a prompt and summary hearing on whether the participant's home incarceration should be revoked. If it appears to the satisfaction of the magistrate that any condition of home incarceration has been violated, the magistrate may revoke the home incarceration and order that the sentence of incarceration in jail be executed. Any participant under an order of home incarceration shall be subject to the same penalty or penalties, upon the magistrate's finding of a violation of the order of home incarceration, as the participant could have received at the initial disposition hearing: *Provided*, That the participant shall receive credit towards any sentence imposed after a finding of violation for the time spent in home incarceration.

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

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

(a) A Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction is hereby created and assigned responsibility for screening community corrections programs submitted by community criminal justice boards or from other entities authorized by the provisions of this article to do so for approval for funding by the Governor's Committee and for making recommendations as to the disbursement of funds for approved community corrections programs. The subcommittee is to be comprised of fifteen members of the Governor's Committee including: A representative of the Division of Corrections, a representative of the Regional Jail and Correctional Facility Authority, a representative of the Bureau for Behavioral Health and Health Facilities, a person representing the interests of victims of crime, an attorney employed by a public defender corporation, an attorney who practices criminal law, a prosecutor and a representative of the West Virginia Coalition Against Domestic Violence. At the discretion of the West Virginia Supreme Court of Appeals, the Administrator of the Supreme Court of Appeals, a probation officer and a circuit judge may serve on the subcommittee as ex officio, nonvoting members.

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

§62-11C-3. Duties of the Governor's Committee and the Community Corrections

Subcommittee.

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

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

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

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

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

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

(b) Upon recommendation of the Community Corrections Subcommittee, the Governor's Committee shall:

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

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

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

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

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

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

(a) Each county or combination of counties or a county or counties and a Class I or II municipality that seek to establish community-based corrections services shall establish a community criminal justice board: *Provided*, That if a county has not established a community criminal justice board by July 1, 2002, the Chief Probation Officer of such county, with the approval of the chief judge of the circuit, may apply for and receive approval and funding from the Governor's Committee for such programs as are

authorized by the provisions of section five of this article. Any county which chooses to operate without a community criminal justice board shall be subject to the regulations and requirements established by the Community Corrections Subcommittee and the Governor's Committee.

(b) The community criminal justice board is to consist of no more than fifteen voting members.

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

(d) The community criminal justice board is to consist of the following members:

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

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

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

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

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

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

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

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

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

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

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

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

(f) Community criminal justice boards may:

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

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

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

(4) Develop and apply for approval of community corrections programs by the

Governor's Committee on Crime, Delinquency and Correction.

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

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

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

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

The Division of Justice and Community Services shall:

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

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

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

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

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

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

ARTICLE 12. PROBATION AND PAROLE.

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

(a) Each probation officer shall:

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

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

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

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

~~_____~~ (5) Stay informed concerning the conduct and condition of each probationer under the officer's supervision and ~~shall~~ report on the conduct and condition of each probationer in writing as often as the court requires; ~~The probation officer shall use~~
—(6) Use all practicable and suitable methods to aid and encourage the probationer to improve his or her conduct and condition; ~~The probation officer shall maintain~~
—(7) Maintain detailed work records and ~~shall~~ perform any other duties the court requires.

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

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

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

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

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

(d) The Supreme Court of Appeals of West Virginia is authorized to adopt a standardized risk and needs assessment with risk cut off scores for use by probation officers, taking into consideration the assessment instrument adopted by the Division of Corrections under subsection (h), section thirteen of this article. The Supreme Court shall also take into consideration the responsibility of the Division of Justice and Community Services to evaluate the use of the standardized risk and needs assessment.

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

(a) The Supreme Court of Appeals of West Virginia is authorized to adopt a pretrial screening instrument for use by the Regional Jail Authority to assist magistrates and circuit courts in making pretrial decisions under article one-c of this chapter based on risk of nonappearance and reoffending.

~~_____~~ (b) ~~When~~ Unless otherwise directed by the court, the probation officer shall, in the form adopted by the Supreme Court of Appeals of West Virginia, make a careful investigation of, and a written report with recommendations concerning, any prospective probationer. Insofar as practicable this report shall include information concerning the offender's court and criminal record, occupation, family background, education, habits and associations, mental and physical condition, the names, relationship, ages and condition of those dependent upon him or her for support and such other facts as may aid the court in determining the propriety and conditions of his or her release on probation. No person convicted of a felony or of any offense described in article eight-b

or eight-d, chapter sixty-one of this code against a minor child may be released on probation until this report shall have been presented to and considered by the court. The court may in its discretion request such a report concerning any person convicted of a misdemeanor. The presentence report of any person convicted of an offense, described in said articles or section twelve, article eight of said chapter, may include a statement from a therapist, psychologist or physician who is providing treatment to the child. A copy of all reports shall be filed with the board of probation and parole.

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

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

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

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

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

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

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

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

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

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

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

(3) That he or she make contribution from his or her earnings, in sums as the court may direct, for the support of his or her dependents; and

(4) That he or she, in the discretion of the court, be required to serve a period of confinement in jail of the county in which he or she was convicted for a period not to exceed one third of the minimum sentence established by law or one third of the least possible period of confinement in an indeterminate sentence, but in no case may the period of confinement exceed six consecutive months. The court has the authority to sentence the defendant within the six-month period to intermittent periods of confinement including, but not limited to, weekends or holidays and may grant to the defendant intermittent periods of release in order that he or she may work at his or her employment or for other reasons or purposes as the court may deem appropriate:

Provided, That the provisions of article eleven-a of this chapter do not apply to intermittent periods of confinement and release except to the extent that the court may direct. If a period of confinement is required as a condition of probation, the court shall make special findings that other conditions of probation are inadequate and that a period of confinement is necessary.

(c) Circuit courts may impose a term of reporting to a day report center or other community corrections program as a condition of probation under this section.

(1) To be eligible, the probationer must be identified as moderate to high risk of reoffending and moderate to high criminogenic need, as defined by the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under subsection (d), section six of this article, and applied by a probation officer or day report staff. In eligible cases, circuit courts may impose a term of up to one year:

Provided, That a judge may impose a term of reporting to a day report center or other community corrections program under this section, notwithstanding the results of the standardized risk and needs assessment, upon making specific written findings of fact as to the reason for departing from the requirements of this section.

(2) The day reporting center programs shall determine which services a person receives based on the results of the standardized risk and needs assessment and taking into consideration the other conditions of probation set by the court. For the purposes of this article, "day report center" means a court-operated or court-approved facility where persons ordered to serve a sentence in this type of facility are required to report under the terms and conditions set by the court for purposes which include, but are not limited to, counseling, employment training, alcohol or drug testing or other medical testing.

§62-12-10. Violation of probation.

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

(1) If it shall then appears to the satisfaction of the court or judge that any condition of probation has been violated the probationer absconded supervision or committed a misdemeanor or felony, the court or judge may revoke the suspension of imposition or execution of sentence, impose sentence if none has been imposed, and order that

sentence be executed. In computing the period for which the offender is to be ~~imprisoned~~ confined, the time between his or her release on probation and his or her arrest ~~shall~~ may not be taken to be any part of the term of his or her sentence.

(2) If it ~~sha~~ instead appears to the satisfaction of the court or judge that the probationer violated any condition of supervision other than absconding or committing a misdemeanor or felony, then, for the first violation, the court or judge may impose a period of confinement up to sixty days, or, for the second violation, a period of confinement up to one hundred twenty days. For the third violation, the court or judge may revoke the suspension of imposition or execution of sentence, impose sentence if none has been imposed, and order that sentence be executed, with credit for time spent in confinement under this section. If the time remaining on the probationer's maximum imposed sentence is less than the maximum period of confinement, then the term of confinement is for the remaining period of the sentence. In computing the period for which the offender is to be confined, the time between his or her release on probation and his or her arrest ~~shall~~ may not be taken to be any part of the term of his or her sentence.

(b) A probationer confined in the first or second instance in which it ~~shall~~ appears to the satisfaction of the court or judge that the probationer violated any condition of supervision other than absconding or committing a misdemeanor or felony, may be confined in jail, and the costs of confining felony probationers shall be paid out of funds appropriated for the Division of Corrections.

(c) If, despite a violation of the conditions of probation, the court or judge ~~shall be~~ is of the opinion that the interests of justice do not require that the probationer serve his or her sentence or a period of confinement, the court or judge may, except when the violation was the commission of a felony, again release him or her on probation: *Provided, That a judge may otherwise depart from the requirements of subdivisions (1) and (2) of subsection (a) of this section upon making specific written findings of fact supporting the departure in this instance.*

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

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

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

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

(B) He or she:

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

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

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

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

~~(iv)~~ (iv) Has successfully completed a rehabilitation treatment program created with the assistance of a standardized risk and needs assessment;

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

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

(C) Notwithstanding any provision of this code to the contrary, any person who committed, or attempted to commit a felony with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: *Provided*, That any person who committed, or attempted to commit, any violation of section twelve, article two, chapter sixty-one of this code, with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this paragraph applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm. A person is not ineligible for parole under the provisions of this paragraph because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm unless that fact is clearly stated and included in the indictment or presentment by which the person was charged and was either: (i) Found by the court at the time of trial upon a plea of guilty or nolo contendere; (ii) found by the jury, upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found by the court, if the matter was tried by the court without a jury.

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

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

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

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

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

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

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

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

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

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

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

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

(d) In the case of a person sentenced to any state correctional center, it is the duty of the board, as soon as a person becomes eligible, to consider the advisability of his or her release on parole.

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

(f) Any person serving a sentence on a felony conviction who becomes eligible for parole consideration prior to being transferred to a state correctional center may make written application for parole. The terms and conditions for parole consideration

established by this article apply to such inmates.

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

(h) (1) The Division of Corrections shall promulgate policies and procedures for developing a rehabilitation treatment plan created with the assistance of a standardized risk and needs assessment. The policies and procedures shall include, but not be limited to, policy and procedures for provide for, at a minimum, screening and selecting inmates for rehabilitation treatment and development, and use of using standardized risk and needs assessment and substance abuse assessment tools, and prioritizing the use of residential substance abuse treatment resources based on the results of the risk and needs assessment and a substance abuse assessment. The parole board may review and comment upon the policies and procedures.

(2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of this section solely due to having successfully completed a rehabilitation treatment plan but completion of all the requirements of a rehabilitation parole treatment plan along with compliance with the requirements of subsection (b) of this section shall creates a rebuttable presumption that parole is appropriate. The presumption created by this subsection may be rebutted by a parole board finding that, according to the risk assessment, at the time parole release is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if released. Nothing in subsection (b) of this section or in this subsection may be construed to create a right to parole.

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

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

(k) (1) The Division of Corrections is charged with the duty of supervising all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the uniform act for out-of-state parolee supervision.

(2) The Division of Corrections is charged with the duties of supervision, treatment and support services for all people released to mandatory supervision under section twenty-seven, article five, chapter twenty-eight of this code.

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

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

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

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

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

(2) The board panel considering the parole may waive the requirement of any report when not available or not applicable as to any inmate considered for parole but, in every such case, shall enter in the record thereof its reason for the waiver: *Provided*, That in the case of an inmate who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to a felony under the provisions of section twelve, article eight, chapter sixty-one of this code or under the provisions of article eight-b or eight-c of said chapter, the board panel may not waive the report required by this subsection and the report is to include a study and diagnosis including an on-going treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: *Provided, however*, That nothing disclosed by the person during the study or diagnosis may be made available to any law-enforcement agency, or other party without that person's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the parolee to do harm to any person, animal, institution or to property. Progress reports of outpatient treatment are to be made at least every six months to the parole officer supervising the person. In addition, in such cases, the parole board shall inform the prosecuting attorney of the county in which the person was convicted of the parole hearing and shall request that the prosecuting attorney inform the parole board of the circumstances surrounding a conviction or plea of guilty, plea bargaining and other background information that might be useful in its deliberations.

(m) Before releasing any inmate on parole, the board of parole shall arrange for the inmate to appear in person before a parole board panel and the panel may examine and interrogate him or her on any matters pertaining to his or her parole, including reports before the board made pursuant to the provisions hereof: *Provided*, That an inmate may appear by video teleconference if the members of the panel conducting the examination are able to contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to contemporaneously see each of the members of the panel conducting the examination and hear all of the members' remarks. The panel shall reach its own written conclusions as to the desirability of releasing the inmate on parole and the majority of the panel considering the release shall concur in the decision. The warden or superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the parole board. All information, records and reports received by the board are to be kept on permanent file.

(n) The board and its designated agents are at all times to have access to inmates imprisoned in any state correctional center or in any jail in this state and may obtain any information or aid necessary to the performance of its duties from other departments and agencies of the state or from any political subdivision thereof.

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

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

(q) Any person released on parole shall participate as a condition of parole in the litter control program of the county to the extent directed by the board, unless the board specifically finds that this alternative service would be inappropriate.

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

§62-12-14a. Director of employment released inmates.

~~The board director shall have authority to may employ or contract for a director of employment and a director of housing for paroled or pardoned prisoners released inmates. It shall be the duty of~~ The director of employment ~~to shall~~ investigate job opportunities and to give every possible assistance in helping ~~prisoners, eligible to be paroled or who have been granted parole under this article~~ released inmates to find employment. The director of housing shall work in conjunction with the parole division and the parole board to reduce release delays due to lack of a home plan, develop community housing resources, and provide short-term loans to released inmates for costs related to reentry.

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

(a) Each state parole officer shall:

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

—(2) Update the standardized risk and needs assessment adopted by the Division of Corrections under subsection (h), section thirteen of this article for each person for

whom an assessment has not been conducted for parole by a specialized assessment officer;

(3) Supervise each person according to the assessment and supervision standards determined by the commissioner;

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

~~—(5) Keep~~ informed concerning the conduct and condition of each person under his or her supervision and ~~shall~~ report thereon in writing as often as the Commissioner of Corrections may require; ~~He or she or she shall use~~

~~—(6) Use~~ all practicable and suitable methods to aid and encourage persons on parole and to bring about improvement in their conduct and condition; ~~He or she or she shall keep~~

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

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

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

~~—(10) Perform~~ any other duties the commissioner may require.

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

(c) The commissioner may issue a certificate authorizing any parole officer who has successfully completed the division's training program for firearms certification, which is the equivalent of that required of deputy sheriffs, to carry firearms or concealed weapons. Any parole officer authorized by the commissioner has the right, without a state license, to carry firearms and concealed weapons. Each parole officer, authorized by the commissioner, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon bearing the official signature of the commissioner.

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

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

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

(2) That he or she may not, during the period of his or her parole, leave the state without the consent of the division;

(3) That he or she shall comply with the rules prescribed by the division for his or her supervision by the parole officer;

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

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

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

(b) The commissioner shall keep a record of all actions taken and account for moneys received. No provision of this section prohibits the division from collecting the fees and conducting the checks upon the effective date of this section. All moneys shall be deposited in a special account in the State Treasury to be known as the "Parolee's Supervision Fee Fund". Expenditures from the fund shall be for the purposes of providing parole supervision required by the provisions of this code and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(c) The division shall consider the following factors in determining whether a parolee or probationer is financially able to pay the fee:

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

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

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

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

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

(d) In addition, the division may impose, subject to modification at any time, any other conditions which the division considers advisable.

(e) The division may order substance abuse treatment as a condition or as a modification of parole only if the standardized risk and needs assessment indicates the offender has a high risk for reoffending and a need for substance abuse treatment.

(f) The division may impose as a condition or as a modification of parole a term of reporting to a day report center or other community corrections program only if the standardized risk and needs assessment indicates a moderate to high risk of reoffending and moderate to high criminogenic need. The Commissioner of Corrections shall enter into a master agreement with the Division of Justice and Community Services to provide reimbursement to counties for the use of community corrections programs by eligible releasees.

§62-12-19. Violation of parole.

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

(1) In response to a violation of the conditions of release other than a reasonable cause to believe the parolee committed a misdemeanor, or a felony, or absconded supervision, the parole officer may, after consultation with and written approval by the director of parole services, for the first violation, require the parolee to serve a period of confinement up to sixty days, or, for the second violation, a period of confinement up to one hundred twenty days: *Provided*, That the Division of Corrections shall notify the parole board when a parolee is serving such a term of confinement and the parole board may deny further confinement. A parolee serving a term of confinement in the first or second instance may be confined in jail, but shall be committed to the custody of the Commissioner of Corrections, and the costs of confining the parolee shall be paid out of funds appropriated for the Division of Corrections: *Provided*, however, That upon request, the parolee shall be afforded the right to a hearing within forty- five days before the parole board regarding whether he or she violated the conditions of his or her release on parole.

~~(b)~~ (2) When a parolee is under arrest for committing a misdemeanor, or a felony, or absconding supervision as a violation of the conditions of his or her parole, or a violation of the conditions of release other than a reasonable cause to believe the parolee committed a misdemeanor, or a felony, or absconded supervision in the second or subsequent instance, he or she shall be given a prompt and summary hearing before a panel of the board, at which the parolee and his or her counsel are given an opportunity to attend.

(A) If at the hearing it appears to the satisfaction of the panel that the parolee has violated any condition of his or her release on parole, or any rules or conditions of his or her supervision ~~committed a misdemeanor, or a felony, or absconded supervision,~~ the panel may revoke his or her parole and may require him or her to serve in prison the remainder or any portion of his or her maximum sentence for which, at the time of his or her release, he or she was subject to imprisonment.

(B) If at the hearing it instead appears to the satisfaction of the panel that the parolee has violated any condition of release or supervision other than committing a misdemeanor, or a felony, or absconding supervision, the panel may require the parolee to serve, for the first violation, a period of confinement up to sixty days, or, for the second violation, a period of confinement up to one hundred twenty days: *Provided*, That if the violation of the conditions of parole or rules for his or her supervision is not a felony as set out in section eighteen of this article, the panel may, if in its judgment the

best interests of justice do not require ~~revocation~~ a period of confinement, reinstate him or her on parole. The Division of Corrections shall effect release from custody upon approval of a home plan.

(b) Notwithstanding any provision of this code to the contrary, when reasonable cause has been found to believe that a parolee has violated the conditions of his or her parole but the violation does not constitute felonious conduct, the commissioner may, in his or her discretion and with the written consent of the parolee, allow the parolee to remain on parole with additional conditions or restrictions. The additional conditions or restrictions may include, but are not limited to, participation in any program described in subsection (d), section five, article eleven-c of this chapter. Compliance by the parolee with the conditions of parole precludes revocation of parole for the conduct which constituted the violation. Failure of the parolee to comply with the conditions or restrictions and all other conditions of release is an additional violation of parole and the parolee may be proceeded against under the provisions of this section for the original violation as well as any subsequent violations.

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

(d) Whenever the parole of a paroled prisoner has been revoked, the commissioner shall, upon receipt of the panel's written order of revocation, convey and transport the paroled prisoner to a state correctional institution. A paroled prisoner whose parole has been revoked shall remain in custody of the sheriff until delivery to a corrections officer sent and duly authorized by the commissioner for the removal of the paroled prisoner to a state penal institution; the cost of confining the paroled prisoner shall be paid out of the funds appropriated for the Division of Corrections.

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

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

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

(h) Conviction of a felony for conduct occurring during the period of parole is proof of violation of the conditions of parole and the hearing procedures required by the

provisions of this section are inapplicable.

(i) The Commissioner of the Division of Corrections may issue subpoenas for persons and records necessary to prove a violation of the terms and conditions of a parolee's parole either at a preliminary hearing or at a final hearing before a panel of the parole board. The subpoenas shall be served in the same manner provided in the Rules of Criminal Procedure. The subpoenas may be enforced by the commissioner through application or petition of the commissioner to the circuit court for contempt or other relief.

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

(a) The administrative director of the Supreme Court of Appeals of West Virginia shall appoint a Community Supervision Committee, to include representatives of the judiciary, probation, parole, day report centers, magistrates, sheriffs, corrections, and other members at the discretion of the director. The director shall appoint a chair from among the members, and attend the meeting ex officio.

(b) The committee shall:

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

(2) Coordinate information reporting and access across agencies carrying out community supervision;

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

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

(5) Coordinate with the community corrections subcommittee of the Governor's Committee on Crime, Delinquency and Correction in the discharge of these duties.

(c) Any rules necessary to carry out the work of the committee shall be prescribed by the West Virginia Supreme Court of Appeals.

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

ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.

§62-15-2. Definitions.

For the purposes of this article:

(1) "Assessment" means a diagnostic evaluation to determine whether and to what extent a person is a drug offender under this article and would benefit from its provisions. The assessment shall be conducted in accordance with the ~~standards, procedures, and diagnostic criteria designed to provide effective and cost-beneficial use of available resources~~ standardized risk and needs assessment and risk cut-off scores adopted by the West Virginia Supreme Court of Appeals.

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

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

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

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

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

(A) The drug court judge, which may include a magistrate, Mental Hygiene Commissioner, or other hearing officer;

(B) The prosecutor;

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

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

(E) A law-enforcement officer;

(F) The drug court coordinator;

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

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

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

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

(8) "Dual Diagnosis" means a substance abuse and cooccurring mental health disorder.

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

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

(B) Drug court magistrate(s);

(C) Prosecutor;

(D) Public defender;

(E) Drug court coordinator;

(F) Criminal defense bar;

(G) Circuit clerk;

(H) Day report center director;

(I) Circuit court probation officer, parole officer or both;

(J) Law enforcement;

(K) One or more substance abuse treatment providers;

(L) Corrections representative; and

(M) Such other person or persons the chair deems appropriate.

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

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

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

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

(14) "Preadjudication" means a court order requiring a drug offender to participate in

drug court before charges are filed or before conviction.

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

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

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

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

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

(20) "Substance" means drug or alcohol.

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

(22) "Substance abuse treatment" means ~~a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance usage~~ a continuum of care, including cooccurring substance use and mental health services, outpatient, intensive outpatient, residential, peer support, relapse prevention and cognitive behavioral programming, based on research about effective treatment models for the offender population.

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

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

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

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

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

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

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

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

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

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

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

§62-15-6a. Treatment supervision.

(a) A drug offender is eligible for treatment supervision only if the offender would otherwise be sentenced to prison, and the risk assessment indicates the offender has a

high risk for reoffending and a need for substance abuse treatment. As a condition of a term of probation or as a modification of probation, treatment supervision may be imposed on an eligible drug offender convicted of a felony, with or without participation in a drug court: *Provided*, That a judge may impose treatment supervision on a drug offender convicted of a felony, notwithstanding the results of the risk assessment, upon making specific written findings of fact as to the reason for departing from the requirements of this subsection. This subsection takes effect January 1, 2014.

(b) The Division of Justice and Community Services shall use appropriated funds to implement substance abuse treatment to serve those under treatment supervision in each judicial circuit and on parole supervision, in consultation with the Governor's Advisory Committee on Substance Abuse, created by Executive Order No. 5-11.

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

- (1) Qualifications for provider certification to deliver a continuum of care to offenders;
- (2) Fee reimbursement procedures; and
- (3) Other matters related to the quality and delivery of services.

(d) The Division of Justice and Community Services shall require education and training which shall include, but not be limited to, cognitive behavior training. The duties of providers who provide services under this program may include notifying the probation department and the court of any offender failing to meet the conditions of probation or referrals to treatment, appearing at revocation hearings as may be required, and providing assistance data reporting and program evaluation.

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

(f) The Division of Justice and Community Services, in consultation with the Governor's Advisory Committee on Substance Abuse, shall submit on or before September 30 of each year, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature a report on:

- (1) The dollar amount and purpose of funds provided for the fiscal year;
- (2) The number of people on treatment supervision who received services and whether they were the result of a direct sentence or in lieu of revocation;
- (3) The number of people on treatment supervision who received services despite the risk assessment indicating less than high risk for reoffending and a need for substance abuse treatment, pursuant to a judge's specific written findings of fact;
- (4) The type of services provided;
- (5) The rate of revocations and successful completions for people who received services;
- (6) The number of people under supervision receiving treatment under this section who are rearrested within two years of being placed under supervision;
- (7) The dollar amount needed to provide services in the upcoming year to meet demand and the projected impact of reductions in program funding on cost and public safety measures; and

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

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

NOTE: The purpose of this bill is to reform aspects of the criminal justice system to improve public safety and address the growing prison overcrowding and substance abuse problems in this state.

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

§31-20-5g, §31-20-5h, §62-11C-10, §62-12-29 and §62-15-6a are new; therefore, strike-throughs and underscoring have been omitted.