WEST VIRGINIA CODE CHAPTER 15A ARTICLE 4

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§15A-4-1. Applicability of article.

(a) Except as otherwise provided herein, the provisions of this article relate to adult inmates housed in jails, prisons, and correctional facilities, and do not apply to juvenile residents housed in juvenile centers.

(b) Where reference in this article is made to the "division", it shall mean the Division of Corrections and Rehabilitation.

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§15A-4-2. Furlough programs.

(a) The commissioner may establish a furlough program for inmates committed to his or her custody for a felony offense. The program may provide that selected inmates be permitted to reside outside an institution operated by the division pursuant to legislative rules promulgated pursuant to §29A-3-1 et seq. of this code.

(b) The commissioner, or his or her designee, is authorized to propose rules for legislative authorization, pursuant to §29A-3-1 et seq. of this code, or policy directives, promulgated by the commissioner, a furlough program for pretrial and misdemeanant inmates under his or her control and custody in accordance with the following provisions:

(1) The program may include, but is not limited to, granting furloughs or special escorts for specified inmates under the commissioner's control and custody to attend funerals or make hospital visits to terminally ill family members.

(2) The commissioner shall establish criteria to be used in determining which inmates are not likely to jeopardize public safety and should be granted a furlough or a special escort through this program.

(3) The commissioner is authorized to establish any other guidelines he or she considers necessary to administer the program and to ensure public safety, including, but not limited to:

(A) Eligibility for consideration, restrictions, conditions, and procedures; and

(B) The family relationship an inmate must have with the deceased or terminally ill individual in order to qualify for consideration for a furlough.

(c)(1) The division, the commissioner, members of the Regional Jail and Correctional Facility Authority Board, and employees of the division are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act of an inmate while on a furlough granted under this section.

(2) The immunity from suit and liability provided in this subsection does not extend to liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any person identified in §15A-4-2(c)(1) of this code.

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§15A-4-3. Electronic monitoring of offenders; special account.

(a) The commissioner may use electronic monitoring equipment to aid in the supervision of offenders.

(b) The commissioner shall charge offenders subject to supervision by means of electronic monitoring equipment a reasonable fee, to be established under a legislative rule proposed by the commissioner for legislative authorization pursuant to §29A-3-1 et seq. of this code, to help defray the costs of the purchase and use of the equipment and the division's operational costs: Provided, That an offender's inability to pay a fee does not preclude the offender from being eligible for this program.

(c) All fees collected shall be deposited in a special account in the State Treasury designated the "electronic monitoring program account." The funds deposited in the account may be used by the commissioner only for the operation of the program and for the administration of the division.

(d) For purposes of this section, "electronic monitoring equipment" means an electronic device or apparatus approved by the division that is capable of recording or transmitting information regarding the offender's presence or nonpresence in a designated area. The device shall be minimally intrusive. Except to the extent provided in this section, the division shall not approve any monitoring device which is capable of recording or transmitting: (1) Visual images, except for that of a still image of the offender that can only be transmitted by the offender triggering the monitoring system; or (2) information as to the offender's activities while he or she is within the designated area. A monitoring device may transmit information regarding blood alcohol levels. The monitoring device shall not be used to eavesdrop or record any conversation: Provided, That conversations between the offender and the person supervising the offender may be recorded solely for purpose of voice identification.

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§15A-4-4. Diagnostic and classification divisions.

(a) The commissioner may continue and establish diagnostic and classification subdivisions.

(b) Notwithstanding any provision of this code to the contrary, all persons committed to the custody of the division for presentence diagnosis and classification, and all persons sentenced to the custody of the division shall, upon transfer to the division, undergo diagnosis and classification, which 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.

(c) The division shall perform mental health preliminary screens, appraisals, and evaluations according to standards provided by the American Correctional Association.

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§15A-4-5. Transfer of inmates of state institutions or facilities.

(a) The commissioner shall have authority to cause the transfer of any inmate from any facility under his or her control to any other state or federal institution or facility which is better equipped for the care or treatment of the inmate, or for other good cause or reason.

(b) Whenever an inmate committed to the custody of the division becomes mentally ill and his or her needs cannot be properly met within the correctional facility, the commissioner shall proceed in accordance with §15A-4-19 of this code.

(c) Whenever an inmate committed to the custody of the division needs medical attention, other than mental health care, not available at the prison, the superintendent of the facility shall immediately notify the commissioner who, after proper investigation, shall cause the transfer of the inmate to a facility properly equipped to render the medical attention necessary. The inmate, while receiving treatment in the hospital, shall be under an appropriate level of supervision at all times and shall forthwith be returned to his or her correctional facility upon release from the facility.

(d) In providing or arranging for the necessary medical and other care and treatment of a pregnant inmate, the superintendent of the facility shall take reasonable measures to assure that pregnant inmates will not be restrained after reaching the second trimester of pregnancy until the end of the pregnancy: Provided, That if the inmate, based upon her classification, discipline history, or other factors deemed relevant by the superintendent poses a threat of escape, or to the safety of herself, the public, staff, or the fetus, the inmate may be restrained in a manner reasonably necessary: Provided, however, That prior to directing the application of restraints and where there is no threat to the safety of the inmate, the public, staff, or the fetus, the superintendent, or designee shall consult with an appropriate health care professional to assure that the manner of restraint will not pose an unreasonable risk of harm to the inmate or the fetus.

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§15A-4-6. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

(a) The commissioner, or his or her designee, is authorized to monitor, intercept, record, and disclose telephone calls to or from adult inmates of state institutions under his or her control, in accordance with the following provisions:

(1) All adult inmates of state institutions shall be notified in writing that their telephone conversations may be monitored, intercepted, recorded, and disclosed;

(2) Only the commissioner, superintendent, or their designee shall have access to recordings of inmates' telephone calls unless disclosed pursuant to §15A-4-6(a)(4) of this code;

(3) Notice shall be prominently placed on, or immediately near, every telephone that may be monitored;

(4) The contents of inmates' telephone calls may be disclosed to an appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, when disclosure is necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly operation of the correctional institution. Disclosure may also be made in civil or administrative proceedings pursuant to an order of a court or an administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the correctional institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All recordings of telephone calls shall be retained for at least three years and maintained and destroyed in accordance with the record retention policy of the division adopted as required by §5A-8-1 et seq. of this code; or

(6) To safeguard the sanctity of the attorney-client privilege, a telephone line that is not monitored shall be made available for telephone calls to or from an attorney. These calls may not be monitored, intercepted, recorded, or disclosed in any matter.

(b) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) A copy of the contents of any inmate telephone conversation provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the contents of the telephone conversation were provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §29B-1-4(a)(4) of this code. The inmate's telephone conversation and the information regarding law enforcement are law-enforcement records under that subdivision.

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(c) Should an inmate be charged with a crime based, in whole or in part, on the inmate's telephone conversation supplied to law enforcement, the inmate's attorney in the criminal matter shall be entitled to access to and copies of the inmate's telephone conversations in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.

(d) The provisions of this section apply only to those persons in the physical custody of the commissioner.

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§15A-4-7. Monitoring inmate mail; procedures and restrictions; identifying mail from a state institution; mail to or from attorneys excepted.

(a) The commissioner, or his or her designee, is authorized to monitor, open, review, copy, and disclose mail sent to adult inmates of state institutions under his or her control, in accordance with the following provisions:

(1) All adult inmates of state institutions shall be notified in writing that their mail may be monitored, opened, reviewed, copied, and disclosed;

(2) Only the commissioner and his or her designee shall have access to copies of inmates' mail unless disclosed pursuant to §15A-4-7(a)(4) of this code;

(3) Notice that the mail may be monitored shall be prominently placed on or immediately near every mail receptacle or other designated area for the collection or delivery of mail;

(4) The contents of inmate's mail may be disclosed to an appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, when disclosure is necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly operation of the institution. Disclosure may also be made in civil or administrative proceedings pursuant to an order of a court or administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All copies of mail shall be retained for at least three years and maintained and destroyed in accordance with the records retention policy of the division adopted as required by §5A-8-1 et seq. of this code; or

(6) The inmate whose mail has been copied and disclosed under this section shall be given a copy of that mail when it is determined by the commissioner, or superintendent, not to jeopardize the safe and secure operation of the facility or to be detrimental to an ongoing investigation or administrative action.

(b) To safeguard the sanctity of the attorney-client privilege, mail to or from an inmate's attorney shall not be monitored, reviewed, copied, and kept by the institution, or disclosed in any manner unless required by an order of a court of competent jurisdiction. However, that mail may be checked for weapons, drugs, and other contraband provided it is done in the presence of the inmate and there is a reasonable basis to believe that any weapon, drug, or other contraband exists in the mail.

(c) All inmate's outgoing mail must be clearly identified as being sent from an inmate at a state correctional institution and must include on the face of the envelope the name and full address of the institution.

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(d) The commissioner or his or her designee is authorized to open, monitor, review, copy, and disclose an inmate's outgoing mail in accordance with the provisions of §5A-4-7(a) of this code.

(e) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) All inmate mail provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the inmate mail was provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §15A-4-7(a)(5) of this code. The inmate mail and the information regarding law enforcement are law-enforcement records under §29B-1-4(a)(4) of this code.

(f) Should an inmate be charged with a criminal offense based, in whole or in part, on the inmate's mail supplied to law enforcement, the inmate's attorney in the criminal matter shall be entitled access to and copies of the inmate's mail in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.

(g) The provisions of this section apply only to those persons in the physical custody of the commissioner.

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§15A-4-8. Monitoring of inmate electronic correspondence; procedures and restrictions; to or from attorneys excepted.

(a) The commissioner, or his or her designee, is authorized to monitor, intercept, record, and disclose electronic communications to or from adult inmates of state institutions under his or her control, in accordance with the following provisions:

(1) All adult inmates of state institutions shall be notified in writing that their electronic communications may be monitored, intercepted, recorded, and disclosed;

(2) Only the commissioner, superintendent, or their designees, shall have access to copies or recordings of inmates' electronic communications unless disclosed pursuant to §15A-4-8(a)(4) of this code;

(3) Notice shall be prominently placed on, or immediately near, every electronic communications device that may be monitored;

(4) The contents of inmates' electronic communications may be disclosed to an appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, when disclosure is necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly operation of the correctional institution. Disclosure may also be made in civil or administrative proceedings pursuant to an order of a court or an administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the correctional institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All recordings or copies of electronic communications shall be retained for at least three years and maintained and destroyed in accordance with the record retention policy of the division adopted as required by §5A-8-1 et seq. of this code; or

(6) To safeguard the sanctity of the attorney-client privilege, a method of electronic communications that is not monitored shall be made available for communications to or from an attorney. These communications shall not be monitored, intercepted, recorded, or disclosed in any matter.

(b) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) A copy of the contents of any inmate electronic communication provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the contents of the communications were provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §15A-4-8(a)(5) of this code. The inmate's electronic communication and the information regarding law enforcement are law-

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enforcement records under §29B-1-4(a)(4) of this code.

(c) Should an inmate be charged with a crime based, in whole or in part, on the inmate's electronic communication supplied to law enforcement, the inmate's attorney in the criminal matter shall be entitled to access to and copies of the inmate's electronic communications in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.

(d) The provisions of this section shall apply only to those persons in the physical custody of the commissioner.

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§15A-4-8a. Facility video and security records confidential; exceptions.

(a) The contents of all records necessary for the safe and secure management of inmates and residents committed to state correctional and juvenile facilities are confidential and may only be disclosed or released:

(1) Pursuant to this section;

(2) As required by the provisions of §29B-1-1 *et seq*. of this code;

(3) In accordance with the discovery provisions of the West Virginia Rules of Civil Procedure or the West Virginia Rules of Criminal Procedure; or

(4) In accordance with the provisions of §49-5-101 of this code.

(b) As used in this section, "records necessary for the safe and secure management of inmates and residents" means:

(1) Video and audio recordings produced in a correctional or juvenile facility;

(2) Incident reports and attachments thereto;

(3) Investigation reports and any attachments thereto, including, but not limited to, witness statements; and

(4) Any document or recording generated within a facility containing information which would reasonably place the safety of an employee, inmate, or resident in jeopardy.

(c) Records protected pursuant to the provisions of this section may be disclosed:

(1) To the Secretary of the Department of Homeland Security, his or her designees, and the commissioner or his or her designees for official use;

(2) To law enforcement when release is determined by the commissioner or his or her designees to be necessary for the investigation, prevention, or prosecution of a crime or crimes;

(3) To the Juvenile Justice Commission and its designees acting in the course of their official duties; and

(4) Pursuant to a lawful order of a court of record or an administrative tribunal for use in a civil, criminal, or administrative matter: *Provided*, That the order shall contain a provision limiting disclosure or publication of the records to purposes necessary to the proceeding and prohibiting its unauthorized use and reproduction.

(5) The commissioner shall authorize an attorney, licensed to practice law in this state and who is representing a person with a potential claim for personal injury or a violation of the

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United States Constitution or West Virginia Constitution allegedly caused by the division, to view facility video, incident reports, or investigation reports related to the safe and secure management of inmates and residents for purposes of determining the validity of a claim against the division: *Provided*, That such video, incident reports, or investigation reports related to the safe and secure management of inmates and residents shall not be released to the licensed attorney prior to institution of a suit or petition for pre-suit discovery in the appropriate forum and after the entry of an appropriate protective order prohibiting the misuse and reproduction of disclosed records.

(d) The commissioner shall authorize an attorney, licensed to practice in this state and who is representing a person related by consanguinity or affinity to an inmate or resident who has suffered an alleged injury or death while in the custody of the division to view facility video, incident reports, or investigation reports related to the safe and secure management of inmates and residents under the conditions set forth in subdivision (5), subsection (c) of this section.

(e) The confidentiality provisions of this section extend to any person receiving such records and may not be used for any unauthorized purpose except upon order of a court of record or administrative tribunal.

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§15A-4-9. Trustee accounts and funds, earnings and personal property of inmates and residents.

(a) The commissioner is authorized to establish at each institution under his or her jurisdiction a "Trustee Fund". The superintendent of each institution shall receive and take charge of the money and personal property, as defined by policy, of all inmates or residents in his or her institution and all money or personal property, as defined by policy, sent to the inmates or residents or earned by the inmates as compensation for work performed while they are domiciled there. The superintendent shall credit the money and earnings to the inmate or resident entitled to it and shall keep an accurate account of all the money and personal property so received, which account is subject to examination by the commissioner. The superintendent shall deposit the moneys in one or more responsible banks in accounts to be designated "Trustee Fund".

(b) For all felony sentenced inmates, except those serving life without mercy and those the superintendent determines are likely to serve the remainder of their natural lives in the custody of the division due to their age and the length of their sentences, the superintendent shall keep in an account at least 10 percent of all money earned during the inmate's or resident's incarceration and pay the money to the inmate or resident at the time of the inmate's or resident's release. The superintendent may authorize the inmate to withdraw money from his or her mandatory savings for the purpose of preparing the inmate for reentry into society.

(c) The commissioner may direct that offenders who work in community work programs, including work release inmates who have obtained employment, make reimbursement to the state toward the cost of his or her incarceration.

(d)(1) Prior to ordering an incarcerated offender to make reimbursement toward the costs of his or her incarceration, the commissioner, or his or her designee, shall consider the following:

(A) The offender's ability to pay;

(B) The nature and extent of the offender's responsibilities to his or her dependents, if any;

(C) The length of probable incarceration under the court's sentence; and

(D) The effect, if any, that reimbursement might have on the offender's rehabilitation.

(2) No order of reimbursement entered pursuant to this section may exceed $500 per month unless the offender gives his or her express consent; and

(3) The commissioner shall, prior to the beginning of each fiscal year, prepare a report that details the average cost per inmate incurred by the division for the care and supervision of those individuals in his or her custody.

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(e) The superintendent of any facility, on request of an inmate or resident, may expend up to one half of the money earned by the inmate or resident on behalf of the family of the inmate or resident if the 10 percent mandatory savings has first been set aside and other fees or court ordered obligations owed by the inmate or resident have been paid. The remainder of the money earned, after deducting amounts expended as authorized, shall be accumulated to the credit of the inmate or resident and be paid to the inmate or resident at times as may be prescribed by rules. The funds so accumulated on behalf of inmates or residents shall be held by the superintendent of each institution under a bond approved by the Attorney General.

(f) The superintendent shall deliver to the inmate or resident at the time he or she leaves the institution, or as soon as practicable after departure, all personal property, moneys, and earnings then credited to the inmate or resident, or in case of the death of the inmate or resident before authorized release from the institution, the superintendent shall deliver the property to the inmate's or resident's personal representative. In case a conservator is appointed for the inmate or resident while he or she is domiciled at the institution, the superintendent shall deliver to the conservator, upon proper demand, all moneys and personal property belonging to the inmate or resident that are in the custody of the superintendent.

(g) If any money is credited to a former inmate or resident after remittance of the sum of money as provided in §15A-4-9(f) of this code, the commissioner shall notify the former inmate or resident within 30 days of receipt of the money. The former inmate or resident will be afforded the opportunity to collect the money if he or she pays the cost of the transaction. If the former inmate or resident does not claim the money within 30 days of receiving the notice and the sum of money is less than $10, the commissioner may place the money into the inmate benefit fund.

(h) The provisions of this section apply to both juveniles and adults within the custody of the commissioner.

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§15A-4-10. Inmate or resident benefit funds.

(a) The commissioner shall establish an inmate, or resident, benefit fund for each of the institutions under his or her jurisdiction. The inmate, or resident, benefit fund is a fund held by the institutions for the benefit and welfare of inmates incarcerated, or juveniles placed in facilities under the jurisdiction of the commissioner, and for the benefit of victims.

(b) There is continued a special revenue account in the State Treasury for each inmate, or resident, benefit fund established by the commissioner. If an account does not currently exist for an institution, the commissioner may establish the account for that institution. Moneys received by an institution for deposit in an inmate, or resident, benefit fund shall be deposited with the State Treasurer to be credited to the special revenue account created for the institution's inmate, or resident, benefit fund: Provided, That commissions on any contract providing services to jail inmates shall not be deposited into this account. Moneys in a special revenue account established for an inmate benefit fund may be expended by the institution for the purposes set forth in this section. Moneys to be deposited into an inmate, or resident, benefit fund consist of, but are not limited to:

(1) All profit from the exchange or commissary operation and if the commissary is operated by a vendor, whether a public or private entity, the profit is the negotiated commission paid to the Division of Corrections and Rehabilitation by the vendor;

(2) All net proceeds from vending machines used for inmate or resident visitation;

(3) All proceeds from contracted inmate or resident telephone commissions;

(4) Any funds that may be assigned by inmates or donated to the institution by the general public or an inmate service organization on behalf of all inmates or residents;

(5) Any funds confiscated considered contraband; and

(6) Any unexpended balances in individual inmate or resident trustee funds if designated by the inmate upon his or her discharge from the institution.

(c) The inmate benefit fund may only be used for the following purposes at facilities:

(1) Open-house visitation functions or other nonroutine inmate or resident functions;

(2) Holiday functions which may include decorations and gifts for children of inmates or residents;

(3) Cable television service;

(4) Rental of movies;

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(5) Payment of video license;

(6) Recreational supplies, equipment, or area surfacing;

(7) Reimbursement of employee wages for overtime incurred during open-house visitations and holiday functions;

(8) Post-secondary education classes;

(9) Reimbursement of a pro rata share of inmate or resident work compensation;

(10) Household equipment and supplies in day rooms or units as approved by superintendents of institutions, excluding supplies used in the daily maintenance and sanitation of the unit;

(11) Christmas or other holidays gift certificates for each inmate or resident to be used at the exchange or commissary;

(12) Any expense associated with the operation of the fund;

(13) Expenditures necessary to properly operate an automated inmate family and victim information notification system;

(14) Any expense for improvement of the facility which will benefit the inmate or resident population that is not otherwise funded;

(15) Any expense related to the installation, operation, and maintenance of the inmate or resident telephone system; and

(16) Restitution of any negative balance on any inmate's trustee account for inmate medical copay, legal and ancillary related postage, and photocopy fees that are due the State of West Virginia, if the balance is uncollectible from an inmate after one calendar year from an inmate's release on parole or discharge date.

(d) The institution shall compile a monthly report that specifically documents inmate benefit fund receipts and expenditures and a yearly report for the previous fiscal year by September 1 of each year and submit the reports to the commissioner.

(e) The provisions of this section apply to both juveniles and adults within the custody of the commissioner.

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§15A-4-11. Financial responsibility program for inmates.

(a) The Legislature finds that:

(1) There is an urgent need for vigorous enforcement of child support, restitution, and other court-ordered obligations;

(2) The duty of inmates to provide for the needs of dependent children, including their necessary food, clothing, shelter, education, and health care should not be avoided because of where the inmate resides;

(3) A person owing a duty of child support who chooses to engage in behaviors that result in the person becoming incarcerated should not be able to avoid child support obligations; and

(4) Each sentenced inmate should be encouraged to meet his or her legitimate court-ordered financial obligations.

(b) As part of the initial classification process into a correctional facility, the division shall assist each inmate in developing a financial plan for meeting the inmate's child support obligations, if any exist. At subsequent program reviews, the division shall consider the inmate's efforts to fulfill those obligations as indicative of that individual's acceptance and demonstrated level of responsibility.

(c)(1) The superintendent shall deduct from the earnings of each inmate all legitimate court-ordered financial obligations. The superintendent shall also deduct child support payments from the earnings of each inmate who has a court-ordered financial obligation. The commissioner shall develop a policy that outlines the formula for the distribution of the offender's income and the formula shall include a percentage deduction, not to exceed 50 percent in the aggregate, for any court-ordered victim restitution, court fees, and child support obligations owed under a support order, including an administrative fee, consistent with the provisions of §48-14-406(c) of this code, to support the division's administration of this financial service;

(2) If the inmate worker's income is subject to garnishment for child support enforcement deductions, it shall be calculated on the net wages after taxes, legal financial obligations, and garnishment;

(3) The division shall develop the necessary administrative structure to record inmates' wages and keep records of the amount inmates pay for child support; and

(4) Nothing in this section limits the authority of the Bureau for Child Support Enforcement from taking collection action against an inmate's moneys, assets, or property.

(d) If an inmate is awarded a civil judgment, or settles a civil matter, which awards him or her monetary damages, the court in which those damages are awarded or settled shall enter an order which deducts attorney fees and litigation costs owed the inmate's legal counsel

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and deducts all known outstanding child support, restitution, spousal support, and court costs from the award to the inmate, and satisfies those obligations, prior to releasing any funds to the inmate.

(e) Notwithstanding the failure of a court to act in accordance with subsection (d) of this section, the division may honor any outstanding court-ordered obligations of which it is aware, to satisfy all known orders of child support, restitution, spousal support, or court costs and shall deduct from any civil judgment or civil settlement such amounts necessary to pay such obligations of the inmate, if any, arising from orders of child support, restitution, spousal support, or court costs prior to depositing funds from such civil judgment or civil settlement in the inmate's account. The provisions of this subsection shall apply to civil actions filed after July 1, 2019.

(f) The accumulation of the total funds, not necessary for current distribution, shall be invested, with the approval of the commissioner or as appropriate, through the West Virginia Municipal Bond Commission, in short-term bonds or treasury certificates or equivalent of the United States. Bonds and certificates so purchased shall remain in the custody of the State Treasurer. The earnings from investments so made shall be reported to the principal officer of each institution, from time to time, as earned, and shall be credited to the respective accounts of the institutions by the West Virginia Municipal Bond Commission. When the earnings are transferred to the respective institutions, they shall be credited by the superintendent to the credit of, and for the benefit of, the inmate, or resident, benefit fund.

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§15A-4-12. Limitation on reimbursement rate to medical service providers for services outside division facilities.

The division, or its contracted medical providers, may not pay an amount to an outside provider of a medical service for an adult inmate residing in a jail or correctional facility greater than the reimbursement rate applicable to service providers established in the Medicaid plan by the Bureau for Medical Services: *Provided*, That critical access hospitals shall be reimbursed at 75 percent of the billed charges. These limitations apply to all medical care services, goods, prescription drugs, and medications provided to a person who is in the custody of a correctional facility and is provided these services outside of a correctional facility: *Provided, however*, That the Department of Military Affairs and Public Safety and the Department of Human Services effectuate an interagency agreement for the electronic processing and payment of medical services.

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§15A-4-13. Charges assessed against inmates for services provided by state.

(a) The commissioner is authorized to assess inmates serving a sentence in any state jail, penal, or correctional facility reasonable charges for health care and treatment services provided to them by the state. The charges assessed against an inmate may be deducted directly from the inmate's trustee account without the inmate's consent. The inmate shall be notified of the amount deducted and the charges to which it has been applied.

(b) As used in this section, a "reasonable charge" may not exceed the sum of $25 for any billable service. Inmates shall be notified of the fee schedule, billable services, and exempt services. Services initiated by the inmate shall be assessed a fee, except that no charge may be assessed for: (1) a specific health care service required under the law of this state, including, by way of illustration, tuberculin testing; (2) an emergency service following a traumatic injury other than a self-induced injury, or necessary to prevent death or severe or permanent disability; (3) diagnosis and treatment of communicable diseases, including, by way of illustration, tuberculosis or hepatitis; (4) treatment of diagnosed severe mental illness; (5) treatment of specific chronic conditions identified by the commissioner, including, by way of illustration, heart disease and diabetes; (6) staff-initiated care, including follow-up and referral visits; (7) preventive services that the commissioner determines are to be provided or made available to all inmates, including services related to disease prevention and promotion of proper health habits; or (8) other services as may be exempted by rule of the commissioner. No inmate may be denied any necessary billable medical service because of inability to pay the charge.

(c) Any inmate who intentionally ingests, inhales, injects, absorbs, applies, or otherwise exposes himself or herself to, in any manner whatsoever not otherwise specified herein, an illegal drug, a drug not legally prescribed to him or her, a drug in quantities above that recommended by a prescribing physician, a synthetic intoxicant, or any substance for the purpose of causing an excited, euphoric, or stupefied state, or altered perception, including hallucinations or delusions, and the inmate requires medical treatment due to the ingestion, inhalation, injection, absorption, application, or exposure shall reimburse the cost of the medical treatment to the division.

(d) Each inmate shall be afforded an opportunity at least quarterly to review all deposits into, withdrawals from, and balance remaining in the inmate's trustee account during the preceding three months.

(e) The commissioner shall promulgate interpretive rules implementing this section pursuant to §29A-3-1 et seq. of this code prior to making any assessment under this section. The policy directive rules may establish the fee schedule and list of billable services and further define services to be exempted.

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§15A-4-13a. Prohibition on use of taxpayer resources for certain medical procedures.

(a) For purposes of this section:

(1) "Medical procedure" means health care services or products, surgery, in-patient or out-patient treatment, or the prescribing or dispensing of drugs or biologicals for the purpose of treating an illness, injury, disease, condition, or the symptoms thereof.

(2) "Medically necessary" means health care services or products that a prudent provider of health care would provide to a patient to prevent, diagnose, or treat an illness, injury, or disease, or any symptoms thereof to include the provision of contraception by means of dispensing drugs or medical procedures, that are necessary and:

(A) Provided in accordance with generally accepted standards of medical practice;

(B) Clinically appropriate with regard to type, frequency, extent, location, and duration;

(C) Not provided primarily for the convenience of the patient or provider of health care;

(D) Required to improve a specific health condition of a patient or to preserve the existing state of health of the patient; and

(E) The most clinically appropriate level of health care that may be safely provided to the patient.

(3) A provider of health care prescribing, ordering, recommending, or approving a health care service or product does not, by itself, make that health care service or product medically necessary.

(b) No funds authorized or appropriated by state law shall be expended, directly or indirectly, for any medical procedure that the Commissioner of Corrections and Rehabilitation, or his or her designee or agent, after consulting with a medical professional determines is not medically necessary for any individual who is in the custody of the Division of Corrections and Rehabilitation.

(c) No funds authorized or appropriated by state law may be expended, directly or indirectly, for health benefits that cover any medical procedure that the Commissioner of Corrections and Rehabilitation, or his or her designee or agent, after consulting with a medical professional determines is not medically necessary for any individual who is in the custody of the Division of Corrections and Rehabilitation.

(d) The commissioner is authorized to establish written rules, policies, and regulations regarding medical procedures which may distinguish between inmates based upon, among other grounds, length of incarceration.

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§15A-4-14. Record of inmate or resident.

The commissioner shall file and preserve the record of the indictment and conviction, in the case of an adult, or the charges and adjudication, in the case of a juvenile, of each inmate or resident, and keep a register describing him or her, the term of his or her confinement, for what offense, and when received into the institution.

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§15A-4-15. Manufacture of license plates, road signs or markers.

(a) The commissioner is hereby authorized and empowered to establish and operate a plant in his or her institution for the manufacture of road signs and markers of any description for state roads and of license plates.

(b) The Commissioner of Motor Vehicles shall secure all license plates from the division: *Provided*, That the Commissioner of Motor Vehicles may secure license plates from alternative sources if the division is unable to provide a six-month supply of license plates due to a shortage of resources, labor, or other circumstance beyond the control of the division.

(c) The Commissioner of Highways may obtain road signs and markers of any description for state roads from the division.

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§15A-4-16. Gifts to or dealings with inmate or resident.

No officer or employee of the state, or contractor, or employee of a contractor shall make any gift or present to an inmate or resident, or receive any from an inmate or resident, or have any barter or dealings with a convict, except as allowed and permitted by the commissioner.

For every violation of this section, the party engaged therein shall be dismissed from his or her office or service, and every contractor, or employee, or agent of a contractor engaged therein shall be expelled from any facility within the jurisdiction of the commissioner, and not again employed in any institution as a contractor, agent, or employee.

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§15A-4-17. Deduction from sentence for good conduct; mandatory supervision.

(a) All adult inmates placed in the custody of the Commissioner of the Division of Corrections and Rehabilitation pursuant to a term of court-ordered incarceration for a misdemeanor or felony, except those committed pursuant to §25-4-1 *et seq.* and §62-12-26 of this code, shall be granted commutation from their sentences for good conduct in accordance with this section: *Provided*, That nothing in this section shall be considered to recalculate the "good time" of inmates currently serving a sentence or of giving back good time to inmates who have previously lost good time earned for a disciplinary violation: *Provided, however*, That as of the effective date of the amendments to this section enacted during the regular session of the Legislature, 2021, an inmate who had good time calculated into his or her release date prior to October 21, 2020, is entitled to the benefit of the good time awarded or earned before that date, unless the good time was lost due to a disciplinary violation.

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

(c) Each eligible inmate committed to the custody of the commissioner and incarcerated in a facility pursuant to that 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 which are credited by the sentencing court to his or her sentence pursuant to §61-11-24 of this code, or for any other reason relating to the commitment. An inmate may not be granted any good time for time served either on parole or bond or in any other status when he or she is not physically incarcerated.

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

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

(f) The commissioner shall promulgate disciplinary rules and policies. The rules and policies shall describe acts that inmates are prohibited from committing, procedures for charging individual inmates for violation of the rules, and for determining the guilt or innocence of inmates charged with the violations, and the sanctions which may be imposed for the violations. A copy of the rules shall be given to each inmate. For each violation any part or all of the good time which has been granted to the inmate pursuant to this section may be forfeited and revoked by the superintendent of the institution in which the violation occurred. The superintendent, when appropriate and with approval of the commissioner, may restore any forfeited good time.

(g) Each inmate, upon his or her commitment to, and being placed into the custody of, the commissioner, or upon his or her return to custody as the result of violation of parole under §62-12-19 of this code, or supervised release under §62-12-26 of this code shall be given a

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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) of this section when any part or all of the good time has been forfeited and revoked or restored pursuant to subsection (f) of this section, by which the time of his or her earliest discharge is changed.

(i)(1) An eligible inmate may receive extra good time in the sole discretion of the commissioner for meritorious service or performing extra assigned duties during emergencies; and

(2) In addition to the good time granted under subsection (c) of this section and that authorized by subdivision (1) of this subsection, an eligible inmate serving a felony sentence may receive up to 90 days good time per program for successfully completing an approved, but not required, academic or vocational program, which is not part of the inmate's required individualized reentry programing plan. The commissioner shall adopt a written policy to effectuate the purposes of this subsection.

(j) There shall be no grants or accumulations of good time or credit to any inmate serving a sentence in the custody of the Division of Corrections and Rehabilitation except in the manner provided in this section.

(k) Prior to the calculated discharge date of an inmate serving a sentence for a felony crime of violence against the person, a felony offense where the victim was a minor child, or a felony offense involving the use of a firearm, one year shall be deducted from the inmate's accumulated good time to provide for one year of mandatory post-release supervision following the first instance in which the inmate reaches his or her calculated discharge date. All inmates released pursuant to this subsection are subject to electronic or GPS monitoring for the entire period of supervision. The provisions of this subsection are applicable to offenses committed on or after July 1, 2013.

(l) Upon sentencing of an inmate for a felony offense not referenced in subsection (k) of this section, the court may order that 180 days of the sentence, or some lesser period, be served through post-release mandatory supervision if the court determines supervision is appropriate and in the best interest of justice, rehabilitation, and public safety. All inmates released pursuant to this subsection are subject to electronic or GPS monitoring for the entire period of supervision. The provisions of this subsection are applicable to offenses committed on or after July 1, 2013.

(m) The commissioner shall adopt policies and procedures to implement the mandatory supervision provided for in subsections (k) and (l) of this section which may include terms, conditions, and procedures for supervision, modification, and violation applicable to persons on parole.

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(n) As used in this section, "felony crime of violence against the person" means felony offenses set forth in §61-2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, or §61-8D-1 *et seq.* of this code, and the felony offenses of arson and burglary of a residence where an individual is physically located at the time of the offense as set forth in §61-3-1 *et seq.* of this code.

(o) 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 offense set forth in §61-8-1 *et seq.*, §61-8A-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code.

(p) The Division of Corrections and Rehabilitation, its commissioner, employees, agents, and assigns, shall be granted absolute immunity from liability from any claims or actions of any person serving, or who has served, a term of incarceration pursuant to §62-12-26 of this code, for any matter or claim arising out of good time calculations or awards which may or may not have been awarded, given, removed, or taken which caused a person to be reincarcerated or to increase the expected term of his or her incarceration, which calculation, award, removal, taking, or reincarceration occurred prior to the effective date of the amendments to this section enacted during the regular session of the Legislature, 2021.

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§15A-4-17a. Division of Corrections and Rehabilitation mandatory supervised release plan.

The commissioner may develop a mandatory supervised release plan for an inmate serving a sentence for a felony offense not referenced in §15A-4-17(k) of this code who has not been granted discretionary parole 180 days prior to the inmate's minimum expiration of sentence, which may include electronic monitoring as a condition of release. The inmate may be released and subject to a period of mandatory supervision of 180 days when he or she is 180 days from his or her minimum expiration of sentence.

(1) An inmate on mandatory supervised release pursuant to this subsection may be returned by the commissioner to a correctional facility for violation of the conditions of supervision and may not again be eligible for mandatory supervised release during the same period of incarceration.

(2) An inmate on mandatory supervised release shall be considered released on parole.

(3) Mandatory supervised release is not a commutation of sentence or any other form of clemency.

(4) Subject to subdivision (1) of this subsection, the period of mandatory supervised release shall conclude upon completion of the minimum expiration of sentence.

WV Legislature

§15A-4-18. Governor's authority to authorize commissioner to consent to transfer of inmates under a federal treaty.

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which they are citizens or nationals, the Governor may, on behalf of the state and subject to the terms of the treaty and with the consent of the offender, authorize the commissioner to consent to the transfer or exchange of inmates in his or her custody and take any other action necessary to initiate the participation of this state in the treaty. No transfer may occur pursuant to the provisions of this section until the inmate is informed of his or her rights and the procedures involved in his or her native language unless it is determined that the inmate's knowledge of English is sufficient.

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§15A-4-19. Mentally ill inmates; treatment; transfer between correctional and mental health facilities; correctional facility procedures.

(a) No person who is, or was considered to be, mentally ill, intellectually disabled, or addicted shall be denied parole or a parole hearing based upon the past or present condition. In the event a convicted person is deemed to be an appropriate candidate for parole, but for a condition warranting involuntary hospitalization of the person, shall be paroled, and proceedings instituted pursuant to §27-5-4 of this code. Any time spent in such a facility shall be considered part of the term, and any person whose sentence expires while receiving treatment for a mental condition shall be discharged unless proceedings have been instituted and a determination made pursuant to §27-5-4 of this code.

(b) When a convicted person in a jail, prison, or other facility is believed to be mentally ill, intellectually disabled, or addicted, as those terms are defined in §27-1-1 et seq. of this code, and in need of treatment, training, or other services, the facts relating to the illness, shall be presented to the superintendent of the facility. The facts may be presented by a correctional officer, member of a correctional institution medical staff, relative, or the convicted person. Immediately upon receipt of the facts, the superintendent shall arrange for psychiatric or psychological examination of the person alleged to be so afflicted. If the report of the examination is to the effect that the individual is mentally ill, intellectually disabled, or addicted and that treatment, training, or other services are required which cannot reasonably be provided at the correctional facility, the superintendent shall file within 20 days after presentation of the facts an application for transfer with the clerk of the circuit court of the county of location of the correctional facility. The application for transfer shall include a statement of the nature of the treatment which the person’s condition warrants and the facility to which transfer is sought.

Within 10 days of receipt of the application from the superintendent, the mental hygiene commissioner or circuit judge shall appoint counsel for the convicted person if the person is indigent.

The clerk of the circuit court shall forthwith notify the convicted person, by certified mail, return receipt requested, delivered only to addressee, that the application has been filed, enclosing therewith a copy of the application with an explanation of the place and purpose of the transfer and the type of treatment to be afforded, together with the name, address, and telephone number of any appointed counsel. The person shall be afforded reasonable telephone access to his or her counsel. The clerk shall also notify the superintendent or other chief administrative officer of the facility to which transfer is sought. Within 15 days after receipt of notice, the convicted person, through counsel, shall file a verified return admitting or denying the allegations and informing the court or mental hygiene commissioner as to whether the respondent wishes to oppose the transfer. Counsel shall file the return only after personal consultation with the convicted person. The superintendent of the facility to which transfer is sought shall also file a return within 15 days of the receipt of notice, informing the court or mental hygiene commissioner as to whether the needed

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treatment or other services can be provided within that facility. If the superintendent objects to receiving the convicted person for treatment or services, the reasons for the objection shall be specified in detail.

If the transfer is opposed by either the convicted person or by the superintendent of the facility to which transfer is sought, the matter shall forthwith be set for hearing, in no event to exceed 30 days from the date of the return opposing the transfer, and the clerk shall provide to the convicted person, the superintendent of the facility to which transfer is sought, and the superintendent of the correctional facility, at least 10 days written notice, by certified mail, return receipt requested, of the purpose, time, and place of the hearing.

The convicted person shall be present at the hearing, and be afforded an opportunity to testify and to present and cross-examine witnesses. Counsel for the convicted person shall be entitled to copies of all medical reports upon request. The person shall have the right to an examination by an independent expert of the person's choice and testimony from the expert as a medical witness on the person's behalf. The cost of providing the medical expert shall be borne by the state if the person is indigent. The person shall not be required to give testimony which is self-incriminating. The circuit court or mental hygiene commissioner shall hear evidence from all parties, in accord with the rules of evidence. A transcript or recording shall be made of all proceedings, and transcript made available to the person within 30 days, if the same is requested for the purpose of further proceedings, and without cost if the person is indigent.

Upon completion of the hearing, and consideration of the evidence presented therein, the circuit court or mental hygiene commissioner shall make findings of facts as to whether or not: (1) The individual is mentally ill, intellectually disabled, or addicted; (2) the individual because of mental illness, mental retardation, or addiction is likely to cause serious harm to self or others; (3) the individual could not obtain the requisite treatment or training at the correctional facility or another appropriate correctional facility; and (4) the designated facility to which transfer is sought could provide the treatment or training with the security as the court finds appropriate; and, if all the findings are in the affirmative, the circuit court may order the transfer of the person to the appropriate facility. The findings of fact shall be incorporated into the order entered by the circuit court. In all proceedings hereunder, proof of mental condition and of likelihood of serious harm must be established by clear, cogent, and convincing evidence, and the likelihood of serious harm must be based upon evidence of recent overt acts.

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§15A-4-20. Work program.

(a) The commissioner is authorized to establish at each institution a work program for qualified inmates. The commissioner shall establish guidelines and qualifications to allow inmates sentenced to a regional jail facility to be gainfully employed with local businesses and governmental entities as part of a job program. A qualified inmate does not include an inmate convicted of a sexual offense or a violent felony.

(b) An inmate who works in work programs established under this section may be required to make reimbursement to the division toward the cost of his or her incarceration to be credited to the agency billed for that incarceration, pursuant to the conditions set forth in §15A-4-19 of this code.

(c) Notwithstanding any provision of this code to the contrary, the county commission, its members and agents, the Division of Corrections and Rehabilitation or designee, its employees, agents, or assigns, the Regional Jail and Correctional Facility Authority Board, its members, agents, or assigns, the sheriff, and his or her deputies, shall be immune from all liability of any kind except for accident, injury, or death resulting directly from gross negligence or malfeasance.

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§15A-4-21. Director of employment; director of housing; released inmates; duties.

The commissioner may employ or contract for a Director of Employment and a Director of Housing for released inmates. The Director of Employment shall work with federal, state, county, and local government and private entities to negotiate agreements which facilitate employment opportunities for released inmates. The Director of Housing shall work with federal, state, county, and local government and private entities to negotiate agreements which facilitate housing opportunities for released inmates. The Director of Employment shall investigate job opportunities and give every possible assistance in helping released inmates find employment. The Director of Housing shall work in conjunction with the Bureau of Community Corrections and the Parole Board to reduce release delays due to lack of a home plan and develop community housing resources.

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