WEST VIRGINIA CODE CHAPTER 15A

WV Legislature

§15A-1-1. Rules of construction generally.

Whenever in this chapter, or in any rule or regulation authorized by it, any of the words, terms, or phrases defined in this article are used, they shall be taken and construed to have the meaning, application, and effect ascribed to them in this article, unless otherwise specified or clearly intended.

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§15A-1-2. Department.

"Department" means the Department of Homeland Security.

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§15A-1-3. Secretary.

"Secretary" means the Secretary of the Department of Homeland Security.

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§15A-1-4. "Commissioner" defined.

"Commissioner" means the Commissioner of the Division of Corrections and Rehabilitation within the Department of Military Affairs and Public Safety.

WV Legislature

§15A-1-5. “Inmate” defined.

“Inmate” means an adult incarcerated person.

WV Legislature

§15A-1-6. "Resident" defined.

"Resident" means a juvenile within the custody of the Division of Corrections and Rehabilitation.

WV Legislature

§15A-1-7. Compliance with requests for personnel information.

(a) Notwithstanding any provision of this code or any rule promulgated thereunder to the contrary, when the Department of Military Affairs and Public Safety or any agency within the department is placed on notice that a past or current employee has been subpoenaed or is to be called as a witness in a criminal proceeding on behalf of the state or federal government, the department, or agency, and the employee has, to the departments' or agencies' knowledge, previously been determined to have engaged in conduct reflecting dishonesty, moral turpitude, bias, prejudice, or other conduct which might reasonably be deemed to constitute impeachment evidence, the department or agency shall provide the name of the employee to the prosecuting attorney or United States attorney representing the state or the United States in the prosecution.

(b) The responsibilities of the department and agencies imposed by this section are met by transmittal of the employee name to the prosecuting attorney or attorney for the United States.

(c) The Department of Military Affairs and Public Safety and all its officers and employees are immune from any and all liability arising from the good faith release of information under the provisions of this section. The immunity granted by this section shall be in addition to any other immunity now existing or granted under any other provision of this code or common law.

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§15A-1-8. Preservation of biological evidence from criminal cases; directing Secretary to undertake a study and report to the Legislature.

(a) As used in this section:

(1) "Biological evidence" means:

(A) A sexual assault forensic examination kit; or

(B) Semen, blood, saliva, hair, human body tissue, or other biological material containing human DNA.

(2) "DNA" means deoxyribonucleic acid.

(3) "Secretary" means the Secretary of Military Affairs and Public Safety.

(b) The Secretary of Military Affairs and Public Safety shall undertake an investigation of effective modes and methods of storing and preserving biological materials obtained by law enforcement in criminal investigations and criminal prosecutions.

(c) On or before January 1, 2020, the Secretary shall submit to the President of the Senate and the Speaker of the House of Delegates a proposed plan, along with proposed legislation, creating within the department a program for the centralized storage and preservation of biological evidence obtained in criminal investigations and criminal trials throughout the state.

(d) It is the intent of the Legislature in enacting this section to acknowledge the importance of biological evidence and to recognize that improvements in technology make biological evidence ever more important in identifying criminal perpetrators and protecting innocent persons.

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§15A-1-9. Department of Homeland Security; Secretary of the Department of Homeland Security; powers and duties.

(a)(1) The Department of Homeland Security is established within the Executive Branch as a criminal justice agency. In addition to all other powers and duties set forth in this code, the department is designated as the principal state agency to coordinate the receipt, distribution, and monitoring of all funds available from any source for the purpose of equipping, training, research, and education in regard to homeland security related items, issues, or services. The department is authorized to coordinate and establish standards for all operations and activities of the state related to homeland security efforts and to establish protocols for coordinating and sharing information with state and federal law enforcement and intelligence agencies responsible for investigating and collecting information related to homeland security and national security threats.

(2) The department is designated as the state administrative agency responsible for homeland security and emergency management for the planning and development of state programs and grants which may be funded by federal, state, or other allocations in the areas of homeland security and emergency management, unless such administration has been specifically entrusted to another state agency by the Governor or the Legislature.

(3) Notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule promulgated thereunder, a reference is made to the Department of Military Affairs and Public Safety, it means the Department of Homeland Security.

(b) The secretary is the chief executive officer of the department. Subject to §5F-2-2 of this code, the secretary shall organize the department into such offices, sections, agencies, and other units of activity as may be found by the secretary to be desirable for the orderly, efficient and economical administration of the department and for the accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief of staff, assistants, hearing officers, clerks, stenographers, and other officers, technical personnel, and employees needed for the operation of the department and may prescribe their powers and duties and fix their compensation within amounts appropriated.

(c) The secretary has the power to and may designate supervisory officers or other officers or employees of the department to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings, or other activities with such substitute having the same powers, duties, authority, and responsibility as the secretary. The secretary has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the department his or her powers, duties, authority and responsibility relating to such duties and functions set forth in this chapter or elsewhere in this code.

(d) The secretary has responsibility for the conduct of the intergovernmental relations of the department, including assuring:

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(1) That the department carries out its functions in a manner which supplements and complements the homeland security and public safety policies, programs and procedures of the federal government, other state governments, and other instrumentalities of this state; and

(2) That appropriate officers and employees of the department consult with individuals responsible for making policy relating to homeland security and public safety issues in the federal government, other state governments, and other instrumentalities of this state concerning differences over policies, programs, and procedures and concerning the impact of statutory law and rules upon the homeland security and public safety of this state.

(e) In addition to other powers, duties, and responsibilities granted and assigned to the secretary by this code, the secretary is authorized and empowered to:

(1) Sign and execute in the name of the state by the Department of Homeland Security any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: *Provided,* That the powers granted to the secretary to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision may not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors, or board members of the various departments, agencies, or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter 5F of this code;

(2) Conduct research in improved homeland security and public safety methods and disseminate information to the citizens of this state;

(3) Require any persons contracting to install, establish, modify, operate, or close a correctional or other public safety facility to furnish the fingerprints of the person or persons; any officer, director, or manager of the contractor; any person owning a five percent or more interest, beneficial or otherwise, in the contractor's business; or any other person conducting or managing the affairs of the contractor, in whole or in part. These fingerprints may be used to obtain and review any police record for the purposes that may be in the interest of homeland security or public safety, and to use the fingerprints furnished to conduct a criminal records check through the Criminal Identification Bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of the checks shall be provided to the secretary;

(4) Acquire for the state in the name of the Department of Homeland Security by purchase, lease, or agreement, or accept or reject for the state, in the name of the Department of Homeland Security, gifts, donations, contributions, bequests, or devises of money, security, or property, both real and personal, and any interest in property; and

(5) Provide for workshops, training programs, and other educational programs, apart from or in cooperation with other governmental agencies, necessary to ensure adequate standards of

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public service in the department. The secretary may provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The secretary is authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to the educational programs, training and instruction. Eligibility for participation by employees shall be in accordance with guidelines established by the secretary.

(f) The secretary shall be appointed by the Governor, by and with the advice and consent of the Senate and serves at the will and pleasure of the Governor.

(g) The secretary shall serve as the Homeland Security Advisor (HSA) for West Virginia, and shall be responsible for coordinating, designing, and implementing West Virginia's program for homeland security. The secretary shall be the principal point of contact between the State of West Virginia and the federal government with respect to homeland security issues. The HSA shall either possess at least a secret clearance through the federal government or be able to qualify for, and be in the process of obtaining, such clearance at the time of his or her appointment as HSA. The HSA shall keep the Governor advised of all homeland security matters and shall be the main point of contact for the Governor on these issues. The secretary, with permission of the Governor, may delegate all or a portion of the functions of the HSA to a designee who possesses at least a secret clearance.

(h) Notwithstanding any other provision of this code to the contrary, any records compiled by the department or any division, agency, office, or unit thereof, the disclosure of which could be used to create an endangerment to municipal, county, state, or national welfare and security, are not public records and are not subject to disclosure in response to a Freedom of Information Act request under §29B-1-1 *et seq.* of this code.

(i) The Department of Homeland Security shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

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§15A-2-1. Division of Administrative Services.

(a) The Division of Administrative Services is created within the department to perform the administrative services for identified agencies within the department.

(b) The Division of Administrative Services shall provide fiscal services, payroll services, human resources services, and procurement services for the Division of Corrections and Rehabilitation, created in §15A-3-1 et seq. of this code, and any other agencies or boards required by the secretary: Provided, That the secretary may not require the administrative services of the State Police, the West Virginia National Guard, or the West Virginia Military Authority be provided by the Division of Administrative Services. The division is the designated staffing agency for, and shall provide executive and administrative support to, the Governor's Committee on Crime, Delinquency, and Correction, and all of its subcommittees, in the coordination of planning for the criminal justice system and administering federal and state grant programs assigned to it by the actions of the Governor or Legislature.

(c) The State Police, the West Virginia National Guard, and the West Virginia Military Authority may elect to utilize the services of the Division of Administrative Services. The Director of the Division of Administrative Services is authorized to enter into a memorandum of understanding with the head of the State Police, the West Virginia National Guard, or the West Virginia Military Authority to effectuate this utilization.

(d) The division may apply for grants and other funding from federal or state programs, foundations, corporations, and organizations which funding is consistent with its responsibilities and the purposes assigned to it or the subcommittees it staffs. The Division of Administrative Services is hereby designated as the state administrative agency responsible for criminal justice and juvenile justice systems, and various component agencies of state and local government, for the planning and development of state programs and grants which may be funded by federal, state, or other allocations in the areas of public safety, community corrections, law-enforcement training and compliance, sexual assault forensic examinations, victim services, human trafficking, and juvenile justice unless such administration has been specifically entrusted to another state agency by the Legislature. The division is empowered to comply with all regulations and requirements to qualify for such grants funded by federal, state, or other allocations and to administer such funds.

(e) Notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule promulgated thereunder, a reference is made to the Director of the Division of Justice and Community Services, it shall be construed to mean the Director of the Division of Administrative Services. Whenever in this code, or a rule promulgated thereunder, a reference is made to the Division of Justice and Community Services, it shall be construed to mean the Division of Administrative Services.

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§15A-2-2. Division director; appointment and qualifications; powers and duties.

(a) The secretary shall appoint a director for the Division of Administrative Services who shall serve at the will and pleasure of the secretary. The director shall have extensive knowledge in the field of public safety and the principles and practices of administration and experience in the civil service system.

(b) The director shall have control and supervision of the Division of Administrative Services and shall be responsible for the work of each of its employees.

(c) The director shall have the authority to employ all personnel necessary to perform the functions of the Division of Administrative Services. The director shall also have the authority to employ assistants and attorneys as may be necessary for the efficient operation of the Division of Administrative Services.

(d) The director shall perform the duties herein specified and shall also perform other duties as the secretary may prescribe.

(e) Where reference in this article is made to the "director", it shall mean the Director of the Division of Administrative Services.

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§15A-2-3. Transfer of employees; continuation of programs; transfer of equipment and records; protection.

(a) All persons employed by the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, or the Division of Corrections whose employment responsibilities include those to be provided by the Division of Administrative Services are assigned and transferred to the Division of Administrative Services. Effective July 1, 2019, all persons employed on the effective date of this article by the Division of Justice and Community Services whose current employment responsibilities include those to be provided by the Division of Administrative Services are hereby assigned and transferred to the Division of Administrative Services.

(1) The Division of Administrative Services shall assume all responsibilities of the administrative services sections of the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, and the Division of Corrections, including those related to ongoing programs, benefits, litigations, or grievances.

(2) All equipment and records necessary to effectuate the purposes of this article shall be transferred to the Division of Administrative Services.

(b) Any person transferred to the office of the Director of the Division of Administrative Services who is a classified civil service employee shall, within the limits contained in §29-6-1 et seq. of this code, remain in the civil service system as a covered employee. Any person transferred to the office of the Director of the Division of Administrative Services who is a classified exempt civil service employee, other than the director, and his or her deputy directors, and one exempt assistant, shall, within the limits contained in §29-6-1 et seq. of this code, be transferred into the civil service system as a permanent covered employee, and is no longer exempt: Provided, That any transferred employee that has been employed in his or her position for less than the required probationary period must first complete the probationary period prior to becoming a permanent covered employee.

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§15A-2-4. Criminal justice and grant administration.

(a) The director shall:

(1) Carry out the specific duties imposed on the Governor's Committee on Crime, Delinquency, and Correction under the provisions of §15-9-1 *et seq.* of this code, §30-29-1 *et seq.* of this code, and §62-11C-1 *et seq.* of this code;

(2) Maintain appropriate liaison with federal, state, and local agencies and units of government, or combinations thereof, in order that all programs, projects, and activities for strengthening and improving law enforcement, public safety, and the administration of criminal justice may function effectively at all levels of government;

(3) Seek sources of federal grant assistance programs that may benefit the state when authorized by the Governor and manage the dispersal of those funds through grant contracts to subgrantees in a manner consistent with state and federal law and with sound and accountable management practices for the efficient and effective use of public funds;

(4) Seek sources of program or grant assistance from foundations, corporations, and organizations which funding is consistent with its responsibilities and the purposes assigned to the director, the Governor's Committee on Crime, Delinquency, and Correction, and any of its subcommittees; and

(5) Serve as the Executive Director of the Governor's Committee on Crime, Delinquency, and Correction and its subcommittees: *Provided*, That notwithstanding any provision of this code or a rule promulgated thereunder to the contrary, appeals to the Governor's Committee on Crime, Delinquency, and Correction from an individual who has been denied entry into an entry level law-enforcement certification program, a trainee who has not been allowed to continue in the entry level law-enforcement training process, an officer who has made application for his or her law-enforcement certification to be reactivated and that application has been denied, or an officer or individual whose law-enforcement certification as a law enforcement officer or as an instructor has been denied, suspended, or decertified, pursuant to a final decision of the Law-Enforcement Professional Standards Subcommittee established by §30-29-2 of this code, shall be heard by the Office of Administrative Hearings established in §15A-9-1 *et seq.* of this code.

(b) In discharging these duties, the director may:

(1) Work to bridge gaps between federal, state, and local units of government, as well as private/nonprofit organizations and the general public;

(2) Provide staff assistance in the coordination of all facets of the criminal and juvenile justice systems on behalf of the Governor's Committee on Crime, Delinquency, and Correction, including, but not limited to, law enforcement, jails, corrections, community corrections, juvenile justice, sexual assault forensic examinations, and victim services;

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(3) Acquire criminal justice resources and coordinate the allocation of these resources to state, local, and not-for-profit agencies;

(4) Maintain a web-based database for all community corrections programs;

(5) Collect, compile, and analyze crime and justice data in the state, generating statistical and analytical products for criminal justice professionals and policy makers to establish a basis for sound policy and practical considerations for the criminal justice system, make such recommendations for system improvement as may be warranted by such research, and contract with other persons, firms, corporations, or organizations to assist in these responsibilities;

(6) Receive and disburse federal and state grants and funding received from foundations, corporations, or other entities; and

(7) Enter into agreements with law enforcement agencies within the Department of Homeland Security, including the West Virginia State Police, to facilitate the application for and administration of federal grants that are exclusively open to law enforcement agencies or are only open to entities invited by the federal grant program.

(c) Nothing in this article authorizes the division to undertake direct operational responsibilities in law enforcement or the administration of criminal justice.

(d) The director shall propose legislative rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code which may be necessary to fulfill the functions and responsibilities of this article and the Governor's Committee on Crime, Delinquency, and Correction. All legislative rules and policies of the former Division of Justice and Community Services shall be transferred to the Division of Administrative Services and remain effective until amended or terminated pursuant to §29A-3-1 *et seq.* of this code by the Division of Administrative Services: *Provided*, That these rules shall expire on July 1, 2022, if not superseded sooner.

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§15A-2-5. Human trafficking assistance notices.

(a) For the purpose of assisting victims of human trafficking to obtain help and services, the following businesses and establishments shall post a notice which meets the requirements of this section:

(1) All locations licensed by the Alcohol Beverage Control Commissioner that permit on-premises consumption of alcoholic beverages, pursuant to §60-7-1 et seq. of this code;

(2) Exotic entertainment facilities, which are facilities featuring live nude dancing, nude service personnel, or live nude entertainment;

(3) Primary airports;

(4) Passenger rail stations;

(5) Bus stations;

(6) Locations where gasoline and diesel fuel are sold;

(7) Emergency departments within hospitals;

(8) Urgent care centers;

(9) Locations at which farm labor contractors and day haulers work, if a physical facility is available at those locations, upon or in which notice can be posted;

(10) Privately operated job recruitment centers;

(11) Rest areas located along interstate highways in this state operated by the Division of Highways;

(12) Hotels; and

(13) Any other business or establishment that the director determines, by legislative rule, is an effective location to provide notice to victims of human trafficking.

(b) Requirements for posting of notice. — The notice required by this section must be posted in English, Spanish, and any other language determined by legislative rule by the director. The notice must be posted in each public restroom for the business or establishment, and either in a conspicuous place near the public entrance of the business or establishment, or in another location in clear view of the public and employees where similar notices are customarily posted.

(c) The director shall provide hyperlinks on the division’s website to downloadable notices that are eight and one-half inches by 11 inches in size that provide information regarding the National Human Trafficking Resource Center and display the telephone number for the

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National Human Trafficking Resource Center hotline. These downloadable notices must be available in English, Spanish, and any other language determined by legislative rule by the director. These downloadable notices, if printed and posted, will satisfy the notice posting requirements of this section.

(d) Any law-enforcement officer, representative of the Bureau for Public Health or of a county health department, representative of the State Alcohol Beverage Control Commissioner, representative of the Division of Labor, or other state representative inspecting a business or establishment, or otherwise lawfully acting under his or her state authority, may notify, in writing, any business or establishment that it has failed to comply with the requirements of this section. The written notice must be delivered to the noncomplying business or establishment by certified mail, with return receipt requested. A business or establishment that does not correct a violation within 30 days from the receipt of the written notice is guilty of a misdemeanor and, upon a first conviction thereof, shall be fined not more than $250; and upon a second or subsequent conviction, shall be fined not less than $250 nor more than $500.

(e) For the purposes of this section, and unless a different meaning is plainly required:

(1) "Day hauler" means any person who is employed by a farm labor contractor to transport, or who, for a fee, transports, by motor vehicle, workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person: Provided, That such term does not include a person engaged in the production of agricultural products;

(2) "Farm labor contractor" means any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: Furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to such persons: Provided, That such term does not include a person engaged in the production of agricultural products;

(3) "Hospital" shall have the same meaning as set forth in §16-2D-2(21) of this code;

(4) "Hotel" means any establishment which offers overnight accommodations to the public in exchange for a monetary payment;

(5) "Primary airport" shall have the same meaning as set forth in 49 U.S.C. § 47102(16); and

(6) "Production of agricultural products" means raising, growing, harvesting, or storing of crops; feeding, breeding, or managing livestock, equine, or poultry; and producing or storing feed for use in the production of livestock.

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§15A-3-1. Purpose and legislative intent.

(a) The primary purpose of the Division of Corrections and Rehabilitation is to enhance public safety by providing for the detention of juvenile offenders, both pretrial and adjudicated, pretrial detention of adult persons facing criminal charges, and incarceration and care of adult convicted offenders who have been sentenced by courts of proper jurisdiction to serve terms of incarceration.

(b) It is the intent of the Legislature:

(1) That juveniles and adult offenders be afforded appropriate education and treatment to reestablish their ability to live peaceably, consistent with the protection of the community;

(2) That persons held in pretrial detention, and committed to jails and correctional institutions of the state for whom release is available for crimes, be afforded appropriate treatment to reestablish their ability to live peaceably, consistent with the protection of the community;

(3) That persons committed to jails and correctional institutions of the state be released at the earliest possible date, consistent with public safety;

(4) To establish a just, humane, and efficient corrections program; and

(5) To avoid duplication and waste of effort and money on the part of public and private agencies.

(c) This chapter shall be construed in favor of public safety.

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§15A-3-2. Division of Corrections and Rehabilitation established.

(a) The Division of Corrections and Rehabilitation is hereby established within the Department of Military Affairs and Public Safety. The executive and administrative head of the Division of Correction and Rehabilitation shall be the Commissioner appointed pursuant to §15A-3-3 of this code.

(b) Effective July 1, 2018, the Division of Corrections and the Division of Juvenile Services are hereby abolished. Except as otherwise provided in this chapter, the powers and authority of those divisions are hereby transferred to the Division of Corrections and Rehabilitation.

(c) Effective July 1, 2018, the powers and authority of the Regional Jail and Correctional Facility Authority Board, in relation to all functions of correctional operations, are hereby transferred to the Division of Corrections and Rehabilitation. The Regional Jail and Correctional Facility Authority Board shall only retain the powers authorized in §15A-8-1 et seq. of this code.

(d) Whenever in this code a reference is made to the Division of Corrections, it shall be construed to mean the Division of Corrections and Rehabilitation. Wherever in this code a reference is made to the Division of Juvenile Services, it shall be construed to mean the Division of Corrections and Rehabilitation. Whenever in this code reference is made to the Regional Jail and Correctional Facility Authority Board in relation to operations of any of the regional jails, it shall be construed to mean the Division of Corrections and Rehabilitation.

(e) Any person employed by the Division of Corrections and Rehabilitation who on the effective date of this article is a classified service employee shall, within the limits contained in §29-6-1 et seq. of this code, remain in the classified service system as a covered employee.

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

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§15A-3-3. Commissioner of division; qualifications, oath and bond.

(a) A commissioner of the Division of Corrections and Rehabilitation shall be appointed by the Governor, by and with the advice and consent of the Senate, as provided in §6-7-2a of this code.

(b) Effective July 1, 2018, the offices of Commissioner of Division of Corrections, the Director of Juvenile Services, and the Executive Director of the Regional Jail and Correctional Facility Authority are hereby abolished. Except as otherwise provided in this chapter, the powers and authority of those officers are vested in the Commissioner of the Division of Corrections and Rehabilitation.

(c) The commissioner shall take and subscribe to the oath prescribed by the Constitution for public officials and shall execute an official bond in a penalty of $15,000, conditioned as required by law. Premiums on the bond shall be paid from appropriations made for the commissioner's office. The bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor and, when fully executed and approved, shall be filed in the office of the Secretary of State.

(d) Whenever in this code, reference is made to the Commissioner of the Division of Corrections or the Director of the Division of Juvenile Services, it shall be construed to mean the Commissioner of the Division of Corrections and Rehabilitation. Whenever in this code reference is made to the Executive Director of the Regional Jail and Correctional Facility Authority, in relation to operations of any of the regional jails, it shall be construed to mean the Commissioner of the Division of Corrections and Rehabilitation.

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§15A-3-4. Powers and duties of commissioner generally.

(a) The commissioner, in order to carry out the purposes and intent of this chapter, shall:

(1) Exercise general supervision over the administration of the institutions under the jurisdiction of the division;

(2) Establish separate subdivisions, including a Bureau of Prisons and Jails, a Bureau of Juvenile Services, and a Bureau of Community Corrections, each to be headed by assistant commissioners, and other subdivisions as he or she deems advisable, which may be headed by one of the assistant commissioners, or by deputy directors. Nothing herein shall prohibit the commissioner from appointing the same person to head more than one subdivision;

(3) Establish rules, policies, and regulations in writing governing all subdivisions and institutions within the division;

(4) Establish an appropriate training program for personnel of the division;

(5) Classify the institutions of the division, varying according to the factors as security features, program, age, and sex of inmates, physical stature or size, character of inmates;

(6) Establish a system of classification of inmates and residents, through a reception and examination procedure;

(7) Cooperate with the Department of Education in providing for the education of inmates and residents in all institutions within the division, as provided in §18-2-13f of this code and any other provision of this code;

(8) Supervise the treatment, custody, and discipline of all inmates and residents and the maintenance of the institutions and their industries;

(9) Establish a system of compensation for inmates and residents of the institutions of the state who perform good and satisfactory work either within the industrial program or in the servicing and maintenance of the institutions or any other institutions or camps within the state. The commissioner, or his or her designee, may establish a graduated scale of compensation to be paid to inmates and residents in accordance with their skill in industry; and

(10) Subject to the provisions in §25-1A-5 of this code, provide for the transportation of inmates between the jails and local holding facilities for court appearances.

(b) The commissioner, in order to carry out the purposes and intent of this chapter, may:

(1) Appoint a deputy commissioner to assist in the day to day operations of the division;

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(2) Employ professional and support staff, including, but not limited to, certified public accountants, attorneys, assistants, and other employees as necessary for the efficient operation of the division;

(3) Acquire, own, hold, and dispose of property, real and personal, tangible and intangible;

(4) Lease property, whether as a lessee or lessor;

(5) Conduct examinations and investigations and hear testimony and take proof, under oath or affirmation;

(6) Issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before the commissioner, or his or her designee, to conduct any hearing;

(7) Apply to the circuit court having venue of the offense to have punished for contempt any witness who refuses to obey a subpoena, refuses to be sworn or affirmed, or refuses to testify, or who commits any contempt after being summoned to appear;

(8) Sue and be sued, implead and be impleaded, and complain and defend in any court;

(9) Propose rules for legislative approval for the management and regulation of the affairs of the division pursuant to the provisions of §29A-3-1 et seq. of this code;

(10) Make policies for the management and regulation of the affairs of the divisions;

(11) Make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership, or corporation to affect any or all of the purposes of this chapter;

(12) Accept gifts or grants of property, funds, security interests, money, materials, labor, supplies, or services from the United States of America or from any governmental unit or any person, firm, or corporation, acceptance or disposition of gifts or grants; and

(13) Designate a facility as a rehabilitation facility; a rehabilitation facility may utilize recommendations on programming from West Virginia higher education institutions and share statistical data with the same institutions for study on the effectiveness of services provided by the institution.

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§15A-3-4a. Powers and duties of commissioner generally regarding Stevens Correctional Center.

(a) In compliance with the powers and duties of the commissioner in §15A-3-4 of this code, the commissioner shall manage, direct, control, and govern Stevens Correctional Center in McDowell County consistent with any other juvenile or adult facility since Stevens Correctional Center in McDowell County has been transferred to the commissioner and is no longer contracted with the county commission of McDowell County to house and incarcerate inmates.

(1) Under prior actions, all of the facilities, equipment, and assets, associated with and on the property known as Stevens Correctional Center have been acquired and ownership assumed by the State of West Virginia through the Division of Corrections and Rehabilitation.

(2) All debt liability related to the operation of the Stevens Correctional Center in its capacity and previous agreements related to the West Virginia Division of Corrections and Rehabilitation currently owed by the County of McDowell have been paid and acquired by the West Virginia Division of Corrections and Rehabilitation and the State, or both.

(3) All county employees of the Stevens Correctional Center shall be transferred to the West Virginia Division of Corrections and Rehabilitation in the state classified service system, subject to a one year probationary period, and shall carry over all rank and accrued annual and sick leave balances.

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§15A-3-5. Officers and employees of corrections institutions.

(a) The commissioner, or his or her designee, has the authority to manage and administer the finances, business, operations, security, and personnel affairs of correctional units and juvenile facilities under the jurisdiction of the division.

(b) The superintendent of each institution or correctional unit has the power to hire all assistants and employees required for the management of the institution in his or her charge, but the number of the assistants and employees, and their compensation, shall first be approved by the commissioner.

(c) It is the duty of the commissioner to investigate any complaint made against the superintendent of any institution, and against any other officer or employee thereof, if the same has not been investigated.

(d) All prospective correctional employees shall pass a preemployment drug screening prior to being hired.

(e) All persons employed at a state-operated correctional institution or correctional unit are subject to the supervision and approval of the superintendent and the authority of the commissioner, or his or her designee, except those persons employed by the State Board of Education, pursuant to §18-2-13f of this code.

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§15A-3-6. Hiring of correctional officer without regard to position on the register.

Notwithstanding any provision of law to the contrary or any rule promulgated under the provisions of this code, the Division of Corrections and Rehabilitation may hire any person listed on the Correctional Officer I Register for employment as a Correctional Officer I without regard to the person's position on the register: Provided, That no person on the Correctional Officer I Register may be offered employment or hired before an otherwise qualified person on a preference register who is willing to accept the position.

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§15A-3-7. Compensation of employees; traveling and other expenses.

The commissioner shall, in accordance with the provisions of §29-6-1 et seq. of this code, approve the salaries of all employees of the division. Salaries shall be commensurate with their duties and responsibilities, but no meals or other emoluments of any kind shall be furnished, given, or paid to the employee as all or part of their salary. The employees may be provided meals, household facilities, and supplies as may be necessary for them to perform their duties, if the employees agree to pay the reasonable cost as established by the commissioner. In the event of an emergency, such as a riot or other disturbance, the commissioner may authorize meals to be provided to employees at no cost. Additionally, the commissioner may establish a procedure to reimburse employees reasonable costs in the event the employee's personal property is stolen or damaged by an inmate or resident. All persons employed under this article are entitled to be reimbursed for necessary traveling and other expenses.

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§15A-3-8. Reports by commissioner and chief officers of institutions to Auditor.

The commissioner shall, from time to time, as may be necessary, make a report to the Auditor, which shall state the name of each person employed at any of the institutions named in §15A-3-12 of this code, his or her official designation and biweekly rate of compensation, and out of what funds or appropriation the same is payable. The superintendent of the institution, or other person who may have been appointed for the purpose by the commissioner, shall make and certify to the Auditor at the end of each month a list of persons to whom any payments may be due, stating for what purpose due, the amount due each person, and the fund or appropriation from which payable; one copy whereof shall be filed in the office of the institution where made, and one in the office of the commissioner. If the Auditor finds the list correct and in accordance with the reports made to him or her by the commissioner, he or she may pay to the persons entitled thereto the amounts so certified as due each.

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§15A-3-9. Special compensation of officers and employees prohibited; penalty.

No officer or employee shall receive, directly or indirectly, any other compensation for his or her services than that provided by law, or by the commissioner before his or her appointment, nor shall he or she receive any compensation whatever, directly or indirectly, for any act or service which he or she may do or perform for or on behalf of any contractor, or agent, or employee of a contractor. For any violation of this section the officer, agent, or employee of the state 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 the grounds of an institution, and not again employed in any institution as a contractor, agent, or employee.

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§15A-3-10. Law-enforcement powers of employees; authority to carry firearms.

(a) As outlined in this section, a correctional officer employed by the division is a law-enforcement officer: *Provided*, That such law-enforcement officers who have successfully completed the appropriate training program for correctional officers established by the commissioner pursuant to §15A-3-4 are not subject to the certification requirements set forth in §30-29-1 *et seq*.: *Provided, however*, That the commissioner may consult with the Law Enforcement Professional Standards Subcommittee of the Governor's Committee on Crime, Delinquency, and Correction when designing his or her law-enforcement officer training course specifically for correctional officers: *Provided further*, That nothing in this section shall be construed as superseding the requirements set forth in §30-29-5 of this code for a person to be employed as a law-enforcement officer by any West Virginia law-enforcement agency or by any state institution of higher education or by a hospital or by the Public Service Commission of West Virginia.

(b) The commissioner is a law-enforcement official and may use, and allow or disallow his or her designated employees to use, publicly provided vehicle to travel to and from their workplace: *Provided*, That the usage is subject to the supervision of the commissioner and is directly connected with and required by the nature and in the performance of the official's or designated employee's duties and responsibilities.

(c) All employees of the division are responsible for enforcing rules and laws necessary for the control and management of correctional units and the maintenance of public safety that is within the scope of responsibilities of the division.

(d) Persons employed by the Division of Corrections and Rehabilitation as correctional officers may make arrests of persons already charged with a violation of law who surrender themselves to the correctional officer, to arrest persons already in the custody of the division for violations of law occurring in the officer's presence, to detain or arrest persons for violations of state law committed on the property of any facility under the jurisdiction of the commissioner, and to conduct investigations, pursue, and apprehend escapees from the custody of a facility of the division.

(e) The commissioner may designate correctional employees as correctional peace officers who may:

(1) Detain persons for violations of state law committed on the property of any state correctional institution;

(2) Conduct investigations regarding criminal activity occurring within a correctional facility;

(3) Execute criminal process or other process in furtherance of these duties; and

(4) Apply for, obtain, and execute search warrants necessary for the completion of his or her

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duties and responsibilities.

(f) The Corrections Special Operations Team is continued and consists of the Corrections Emergency Response Team, the K9 unit, and the Crisis Negotiations Team created under the former Division of Corrections. The Corrections Special Operations Team serves as the first responder necessary for the protection of life, liberty, and property. It has limited law-enforcement authority regarding matters occurring at jails, correctional centers, and juvenile centers, and arrest powers to apprehend escapees, absconders, and in all matters arising on the grounds of a facility under the care and control of the commissioner: *Provided*, That at any time the Corrections Special Operations Team is apprehending an escapee or an absconder outside the confinement of the facility grounds, it does so with the assistance and cooperation of local law enforcement or the West Virginia State Police.

(g) Notwithstanding any provision of this code to the contrary, the commissioner may issue a certificate authorizing any correctional employee who has successfully completed the division's training program for firearms certification to carry a firearm in the performance of his or her official duties. The training program shall be approved by the commissioner and be equivalent to the training requirements applicable to deputy sheriffs for the use and handling of firearms. Any correctional employee authorized to do so by the commissioner may carry division-issued firearms while in the performance of his or her official duties, which shall include travel to and from work sites. To maintain certification, a correctional employee must successfully complete an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by the law enforcement professional standards program. The certificate shall be on a form prescribed by the commissioner and shall bear his or her official signature.

(h) In recognition of the duties of their employment supervising the confinement and transportation of inmates, and their arrest powers referenced in this section which constitute law enforcement, correctional officers with the power to arrest and who have been authorized to carry firearms by the Commissioner are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. § 926B. When a qualified law-enforcement officer within the meaning of this subsection retires from, or otherwise honorably ceases employment with the division, such correctional officer is determined to be a qualified retired law-enforcement officer within the meaning of 18 U.S.C. § 926C: *Provided*, That such officer maintains the requirements of and status as an honorably separated or qualified retired law-enforcement officer within the meaning of 18 U.S.C. § 926C.

(i) Any state designated correctional officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. § 926B, if the following criteria are met:

(1) The Commissioner of Corrections has a written policy authorizing correctional officers to carry a concealed firearm for self-defense purposes;

(2) There is in place a requirement that the designated correctional officers annually qualify

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in the use of a firearm with standards for qualification which are equal to, or exceed, those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(3) The Commissioner issues a photographic identification and certification card which identify the designated correctional officers as qualified law-enforcement employees pursuant to the provisions of this subsection.

(j) Any policy instituted pursuant to this section shall include provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(k) Any designated correctional officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(l) It is the intent of the Legislature in enacting the amendments to this section during the 2024 regular session of the Legislature to authorize designated correctional officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

(m) The privileges authorized by the amendments to this section enacted during the 2024 regular session of the Legislature are wholly within the discretion of the Commissioner.

(n) The provisions of §30-29-12 of this code shall apply to all correctional officers recognized in subsection (h) of this section.

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§15A-3-11. Unauthorized use of uniform, badge, identification card, or other insignia; impersonation of member; and penalty.

(a) The commissioner shall prescribe the design, or designs, of uniforms used by employees of the division, which shall be dissimilar to the design of the uniform worn by the members of the State Police or the established statewide uniform of a sheriff or deputy sheriffs. A municipality shall not adopt for its police officers or other employees a uniform which is similar in design to the uniform adopted by the commissioner.

(b) No person who is not an officer or employee of the Division of Corrections and Rehabilitation, and no officer or employee of the division who is not authorized to do so, may, with intent to deceive, wear, use, order to be used or worn, copy, or imitate in any respect or manner the uniform, badge, identification card, or other insignia prescribed for employees of the division.

(c) No person who is not an officer or employee of the Division of Corrections and Rehabilitation may falsely represent himself or herself to be an officer or employee of the Division of Corrections and Rehabilitation or to be under the order or direction of any officer or employee of the division.

(d) No person employed as an officer or employee of the Division of Corrections and Rehabilitation may use his or her position as such to threaten or coerce any other person in order to receive any favoritism, employment, or thing of favor by virtue of his or her employment with the division: Provided, That this subsection does not apply to violations of the Prison Rape Elimination Act.

(e) Any person who violates the provisions of §15A-3-11(b), §15A-3-11(c), or §15A-3-11(d) of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200, or confined in the county or regional jail for not more than six months, or both fined and confined.

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§15A-3-12. Institutions managed by commissioner.

(a) The commissioner shall manage, direct, control, and govern the prisons, jails, or correctional institutions of this state, and the juvenile facilities of this state, including, but not limited to:

Mount Olive Correctional Complex and Jail;

Huttonsville Correctional Center and Jail;

Anthony Correctional Center and Jail;

Denmar Correctional Center and Jail;

Pruntytown Correctional Center and Jail;

Northern Regional Jail and Correctional Center;

Saint Marys Correctional Center and Jail;

Lakin Correctional Center and Jail;

Ohio County Correctional Center and Jail;

Beckley Correctional Center and Jail;

Martinsburg Correctional Center and Jail;

Salem Correctional Center and Jail;

Stevens Correctional Center;

Parkersburg Correctional Center and Jail;

Charleston Correctional Center and Jail;

Central Regional Jail and Corrections Facility;

Eastern Regional Jail and Corrections Facility;

North Central Regional Jail and Corrections Facility;

Potomac Highlands Regional Jail and Corrections Facility;

South Central Regional Jail and Corrections Facility;

Southern Regional Jail and Corrections Facility;

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Southwestern Regional Jail and Corrections Facility;

Tygart Valley Regional Jail and Corrections Facility;

Western Regional Jail and Corrections Facility;

Donald R. Kuhn Juvenile Center;

Gene Spadaro Juvenile Center;

J.M. Chick Buckbee Juvenile Center;

Kenneth "Honey" Rubenstein Juvenile Center;

Lorrie Yeager Juvenile Center;

Robert L. Shell Juvenile Center;

Sam Perdue Juvenile Center;

Tiger Morton Juvenile Center;

Vicki Douglas Juvenile Center; and

Any other juvenile or adult facility later transferred to the commissioner.

(b) The commissioner may contract with Youth Services System to house and detain juveniles at the Ronald Mulholland Juvenile Center consistent with all the requirements and standards governing the division.

(c) The commissioner may establish work and study release units as extensions and subsidiaries of those state institutions under his or her control and authority. The work and study release units may be coeducational and shall be managed, directed, and controlled as provided in this article.

(d) The commissioner may contract with nonprofit or charitable entities including, but not limited to, nonprofit community mental health clinics, operating half-way houses, or transitional housing facilities for the placement of persons in the commissioner’s custody, whether confined or under parole supervision, as long as the facilities meet standards and criteria established by the commissioner.

(1) The commissioner may direct that a person who is placed in a half-way house or transitional housing facility under this section make reimbursement to the state in the amount of a reasonable sum calculated to offset all or part of the costs of the placement. Prior to ordering the person to make the reimbursement, the commissioner, or his or her designee, shall consider the following:

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(A) The person's ability to pay;

(B) The nature and extent of the person'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 person's rehabilitation.

(2) The division shall provide the number of persons placed in a half-way house or a transitional housing facility as authorized in this section in its report made pursuant to §5-1-20 of this code, and shall describe its plans to use the authority provided under the provisions of §15A-3-12 (f) of this code in furtherance of the duties and responsibilities imposed by this article.

(e) All adult persons sentenced by a court to serve a sentence of incarceration in a prison, jail, or correctional institution under the jurisdiction of the commissioner shall be deemed to be sentenced to the custody of the commissioner. The commissioner, or his or her designee, may order the transfer of any adult to any appropriate institution within the division.

(f) The commissioner may contract with any county jail, or other appropriate facility or institution for the incarceration and care of adult inmates. If a felony sentenced inmate is held in a jail facility or unit, under the jurisdiction of the commissioner, the commissioner shall pay a per diem rate, not subject to the limitations set forth in §15A-3-16(g) of this code.

(g) The commissioner, or his or her designee, may transfer any adult prisoner or inmate who is mentally disturbed and who would more appropriately be treated in an institution under the jurisdiction of the Bureau of Health, to the Bureau, subject to the approval of the Director of Health, and may transfer any adult prisoner or inmate to an appropriate mental facility for specialized medical treatment.

(h) The commissioner shall, no later than July 1, 2019, complete an evaluation of all facilities within his or her control for the most appropriate space to house each type of inmate, and shall consult with the Juvenile Justice Commission on any and all intended uses of current or prospective juvenile facilities. This evaluation shall include an assessment of the physical plant of each institution, the inmate population size and type, and classification of inmates. Following completion of the evaluation, the commissioner shall develop a plan on how to best utilize the institutional space, and shall report to the Joint Committee on Government and Finance with recommendations regarding implementation of that plan. The commissioner may, from time to time, and as circumstances dictate, reorganize the facilities, and units within the facilities, to house pretrial inmates, convicted misdemeanants, and convicted felons in the most appropriate manner. No facility shall be converted from a juvenile to an adult facility, or from an adult to a juvenile facility, without legislative authorization.

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§15A-3-13. Title to property of state institutions; custody of deeds and other muniments of title; authority of Commissioner.

The title to all property constituting or belonging to the several institutions named in §15A-3-12 of this code is vested in the state. The commissioner is custodian of all deeds and other muniments of title and shall cause such as are susceptible of recordation to be recorded in the proper offices. The commissioner is authorized, as lessor, to lease the West Virginia penitentiary in Moundsville, title to which is vested in the state by prior act of the Legislature, for a term of not more than five years: Provided, That this section does not affect any lease in effect as of the effective date of this section. Any agreement entered into under this section shall be with the consent and approval of the Secretary of the Department of Military Affairs and Public Safety, and shall include a provision within each agreement allowing for the immediate termination by the secretary or commissioner at any time.

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§15A-3-14. Exempt from Purchasing Division; purchasing procedures.

(a) The provisions established in §5A-3-1 *et seq*. of this code do not apply to the division or any institution under the control of the division.

(b) When the cost under any contract or agreement entered into by the division, other than compensation for personal services, involves an expenditure of more than $10,000 and less than $25,000, the division shall solicit at least three bids, if possible, from vendors and make a written contract, or agreement, with the lowest responsible bidder. When the cost under any contract or agreement entered into by the division, other than compensation for personal services, involves an expenditure of $25,000 or more, the division shall make a written contract with the lowest responsive, responsible bidder after public notice is published, which notice shall state the general character of the work and general character of the materials to be furnished, the place where plans and specifications therefor may be examined, and the time and place of receiving bids. The notice may be published by an advertising medium the division deems advisable. The division may also solicit sealed bids by sending requests by mail or electronic transmission to prospective vendors. But a contract for lease of a correctional facility is not subject to the foregoing requirements and the division may enter into the contract for lease pursuant to negotiation upon the terms and conditions and for the period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or efficient acquisition or construction of the projects. The division may reject any and all bids. A bond with good and sufficient surety, approved by the division, may be required by the division. The good and sufficient surety may be in the form of a bid bond, performance bond, payment bond, maintenance bond, labor and materials bond, or any other type of surety deemed necessary by the division.

(c) The division may use best value procurement to enter into a contract when the commissioner determines in writing that it is advantageous to the state.

(1) A solicitation for bids under best value procurement shall be made in the same manner as provided in this section.

(2) Best value procurement awards shall be based on criteria set forth in the solicitation and information contained in the proposals submitted in response to the solicitation. Those criteria include, but are not limited to, price and the total cost of acquiring, operating, maintaining, and supporting a commodity or service over its projected lifetime, as well as technical criteria. The technical criteria may include, but are not limited to, the evaluated technical merit of the bidder’s bid or proposal, the bidder’s past performance, the degree to which a proposal exceeds other proposals in technical merit, the utility of any novel or unrequested items in the proposal, and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the business objectives set forth in the solicitation.

(3) The award must be made to the highest scoring responsive and responsible bidder whose

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bid is determined, in writing, to be most advantageous to the state, taking into consideration all evaluation factors set forth in the best value solicitation.

(4) The division may not use best value procurement to enter into government construction contracts, including, but not limited to, those set forth in §5-22-1 *et seq*. of this code.

(d)(1) The division may make a direct award of a contract without competitive bidding if:

(A) The commissioner shall make a written determination that the direct award is in the best interest of the state;

(B) The division documents in writing that competition is not available because there is no other source for the commodity or service, or that no other source would be willing or able to replace the existing source without a detrimental effect on the division, the existence of a detrimental effect being determined by the commissioner in his or her sole discretion;

(C) The division publicly advertises a notice of intent to make a direct award without competition in the state's official bid notification system, as well as any other public advertisement that the division deems appropriate, for no less than 10 business days; and

(D) No other vendor expresses an interest in providing the commodity or service in question.

(2) If a vendor expresses an interest in providing the commodity or service described in the notice of intent to make a direct award, then the division must convert the direct award to a competitive bid, unless the commissioner determines that the interest expressed by a vendor is unreasonable. The competitive bid may, at the discretion of the commissioner, be either a request for quotation or request for proposal.

(3) The notice of intent to make a direct award shall contain the following information:

(A) A description of the commodity or service for which a direct award will be made;

(B) A time period by which delivery must be made or performance must occur;

(C) The price that will be paid for the commodity or service;

(D) Any limitations that a competing vendor would need to satisfy;

(E) An invitation to all vendors interested in providing the commodity or service to make that interest known; and

(F) Contact information for the commissioner or his or her designee, and instructions to submit a statement of interest to the commissioner or his or her designee.

(e) The commissioner, or division, shall not award a contract or renew a contract to any vendor or prospective vendor when the vendor or prospective vendor, or a related party to

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the vendor or prospective vendor, is a debtor and:

(1) The debt owed is an amount greater than $1,000 in the aggregate; or

(2) The debtor is in employer default.

(f) The division has the authority to run criminal background checks, financial background checks, a licensing check, and a credit check, and any vendor, or any and all principals in a company or corporation, must submit to said checks to be eligible to be awarded a contract for the division. The commissioner, or division, shall not award a contract to a vendor if any of the following are present:

(1) Conviction of an offense involving fraud or a felony offense in connection with obtaining or attempting to obtain a public contract or subcontract;

(2) Conviction of any federal or state antitrust statute relating to the submission of offers;

(3) Conviction of an offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property in connection with the performance of a contract;

(4) Conviction of a felony offense demonstrating a lack of business integrity or business honesty that affects the present responsibility of the vendor or subcontractor;

(5) Default on obligations owed to the state, including, but not limited to, obligations owed to the Workers' Compensation Fund, as defined in §23-2C-1 *et seq*. of this code, and obligations under the West Virginia Unemployment Compensation Act and West Virginia state tax and revenue laws. For purposes of this subsection, a vendor is in default when, after due notice, the vendor fails to submit a required payment, interest thereon, or penalty, and has not entered into a repayment agreement with the appropriate agency of the state or has entered into a repayment agreement but does not remain in compliance with its obligations under the repayment agreement. In the case of a vendor granted protection by order of a federal bankruptcy court or a vendor granted an exemption under any rule of the Bureau of Employment Programs or the Insurance Commissioner, the commissioner may award a contract: *Provided*, That in no event may the contract be awarded to any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, excluding the current calendar quarter, or with respect to any vendor who is in default on a repayment agreement with an agency of the state;

(6) The vendor is not in good standing with a licensing board, in that the vendor is not licensed when licensure is required by the law of this state, or the vendor has been found to be in violation of an applicable licensing law after notice, opportunity to be heard, and other due process required by law;

(7) The vendor is an active and knowing participant in dividing or planning procurements to circumvent the $25,000 threshold requiring a sealed bid or otherwise avoid the use of a

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sealed bid; or

(8) Violation of the terms of public contracts or subcontracts for:

(A) Willful failure to substantially perform in accordance with the terms of one or more public contracts;

(B) Performance in violation of standards established by law or generally accepted standards of the trade or profession amounting to intentionally deficient or grossly negligent performance on one or more public contracts;

(C) Use of substandard materials on one or more public contracts or defects in construction in one or more public construction projects amounting to intentionally deficient or grossly negligent performance, even if discovery of the defect is subsequent to acceptance of a construction project and expiration of any warranty thereunder;

(D) A repeated pattern or practice of failure to perform so serious and compelling as to justify disqualification; or

(E) Any other cause of a serious and compelling nature amounting to knowing and willful misconduct of the vendor that demonstrates a wanton indifference to the interests of the public and that caused, or that had a substantial likelihood of causing, serious harm to the public.

(g) Unless the context clearly requires a different meaning, for the purposes of this section, the term:

(1) "Debt" means any assessment, premium, penalty, fine, tax, or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, amounts owed to the Workers' Compensation Fund as defined in §23-2C-1 *et seq*. of this code, penalty, or other assessment or surcharge presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon;

(2) "Debtor" means any individual, corporation, partnership, association, limited liability company, or any other form of business association owing a debt to the state or any of its political subdivisions, and includes any person or entity that is in employer default;

(3) "Employer default" means having an outstanding balance or liability to the Old Fund or to the Uninsured Employers' Fund or being in policy default, as defined in §23-2C-2 of this code, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement;

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(4) "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties or municipalities; and

(5) "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company, or any other form of business association or other entity whatever, related to any vendor by blood, marriage, ownership, or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually, or by effect, receive or control a portion of the benefit, profit, or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

(h) The prohibitions of subdivision (5), subsection (f) of this section do not apply where a vendor has contested any tax administered pursuant to chapter 11 of this code, amount owed to the Workers' Compensation Fund as defined in §23-2C-1 *et seq*. of this code, permit fee, or environmental fee or assessment and the matter has not become final, or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

(i) The division may disqualify a vendor if award to the vendor would jeopardize the safe, secure, and orderly operations of the division.

(j) All bids, contract proposals, or contracts with the state or any of its political subdivisions submitted or approved under the provisions of this code shall include an affidavit that the vendor, prospective vendor, or a related party to the vendor or prospective vendor is not in employer default and does not owe any debt in an amount in excess of $1,000 or, if a debt is owed, that the provisions of subsection (h) of this section apply.

(k) If the division has to make a purchase under emergency conditions, or an emergency situation, that jeopardizes the safe, secure, and orderly operations of the division, as deemed by the commissioner, and approved by the Secretary of the Department of Military Affairs and Public Safety, subsection (b) of this section shall not apply.

(l) The commissioner may enter into agreements with medical schools and institutions of higher education in this state to develop standards for appropriate and innovative medical programming and care for inmates: *Provided*, That the division will follow the procedures set forth in subsection (b) of this section for delivery of regular and normal medical care within the facilities.

(m) Notwithstanding any other provision of this code to the contrary, any records obtained in response to solicitations for bids from the division shall not be subject to disclosure pursuant to §29B-1-1 *et seq*. of this code, until and unless the time frame for submission of bids has

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closed: *Provided*, That once bids close, the records may be exempt from disclosure pursuant to §29B-1-4 of this code. Any record relating to any solicitation for, or purchase of, any item related to the safe and secure running of any facility under the jurisdiction of the Commissioner of the Division of Corrections and Rehabilitation is not subject to disclosure pursuant to §29B-1-1 *et seq*. of this code.

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§15A-3-14a. Creation of special fund for surplus property revenue; disposal of surplus property.

(a) There is hereby created a special revenue fund in the State Treasury known as the Division of Corrections and Rehabilitation Surplus Property Fund. Moneys from this fund shall be used for facility maintenance and repair.

(b) The commissioner is hereby authorized to dispose of surplus state property owned by the division in the following manner:

(1) Transferring the particular commodities or expendable commodities between departments;

(2) Selling the commodities to county commissions, county boards of education, municipalities, public service districts, county building commissions, airport authorities, parks and recreation commissions, nonprofit domestic corporations qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or volunteer fire departments in this state when the volunteer fire departments have been held exempt from taxation under Section 501(c) of the Internal Revenue Code;

(3) Trading in the commodities as a part payment on the purchase of new commodities;

(4) Cannibalizing the commodities pursuant to procedures established under subsection (g) of this section;

(5) Properly disposing of the commodities as waste;

(6) Selling the commodities to the general public at the posted price or to the highest bidder by means of public auctions or sealed bids, after having first advertised the time, terms, and place of the sale as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code. The publication area for the publication is the county in which the sale is to be conducted. The sale may also be advertised in other advertising media that the division considers advisable. The division may sell to the highest bidder or to any one or more of the highest bidders, if there is more than one, or, if the best interest of the state will be served, reject all bids; or

(7) Selling the commodities to the highest bidder by means of an internet auction site approved by the division, as set forth in an emergency rule promulgated pursuant to the provisions of §29A-3-15 of this code.

(c) Upon the sale to the general public or transfer of commodities or expendable commodities between departments, or upon the sale of commodities or expendable commodities to an eligible organization, the division shall set the price to be paid by the receiving eligible organization, with due consideration given to current market prices.

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(d) The division may sell expendable, obsolete, or unused motor vehicles owned by the division to an eligible organization, other than volunteer fire departments. In addition, the division may sell expendable, obsolete, or unused motor vehicles owned by the division with a gross weight in excess of 4,000 pounds to an eligible volunteer fire department. The division, with due consideration given to current market prices, shall set the price to be paid by the receiving eligible organization for motor vehicles sold pursuant to this provision: Provided, That the sale price of any motor vehicle sold to an eligible organization may not be less than the "average loan" value, as published in the most recent available eastern edition of the National Automobile Dealers Association (NADA) Official Used Car Guide, if the value is available, unless the fair market value of the vehicle is less than the NADA "average loan" value, in which case the vehicle may be sold for less than the "average loan" value. The fair market value shall be based on a thorough inspection of the vehicle by an employee of the division who shall consider the mileage of the vehicle and the condition of the body, engine, and tires as indicators of its fair market value. If no fair market value is available, the division shall set the price to be paid by the receiving eligible organization with due consideration given to current market prices. The duly authorized representative of the eligible organization, for whom the motor vehicle or other similar surplus equipment is purchased or otherwise obtained, shall cause ownership and proper title to the motor vehicle to be vested only in the official name of the authorized governing body for whom the purchase or transfer was made. The ownership or title, or both, shall remain in the possession of that governing body and be nontransferable for a period of not less than one year from the date of the purchase or transfer. Resale or transfer of ownership of the motor vehicle or equipment prior to an elapsed period of one year may be made only by reason of certified unserviceability.

(e) The division shall report to the Legislative Auditor, semiannually, all sales of commodities or expendable commodities made during the preceding six months to eligible organizations. The report shall include a description of the commodities sold, the price paid by the eligible organization that received the commodities, and to whom each commodity was sold.

(f) The proceeds of the sales or transfers shall be deposited in the State Treasury in the special revenue account created in subsection (a) of this section.

(g)(1) For purposes of this section, "cannibalization" means the removal of parts from one commodity to use in the creation or repair of another commodity.

(2)(A) If the division intends to cannibalize an asset, the division shall document: (i) The commodity identification number; (ii) the commodity’s acquisition date; (iii) the commodity’s acquisition cost; (iv) a description of the commodity; (v) whether the commodity is operable and, if so, how well it operates; (vi) how the division will dispose of the remaining parts of the commodity; and (vii) who will cannibalize the commodity and how the person is qualified to remove and reinstall the parts.

(B) If the division has immediate plans to use the cannibalized parts, the division shall document for the commodity or commodities that will receive the cannibalized part or parts:

(i) The commodity identification number; (ii) the commodity's acquisition date; (iii) the commodity's acquisition cost; (iv) a description of the commodity; (v) whether the commodity is operable; (vi) whether the part restores the commodity to an operable condition; and (vii) the cost of the parts and labor to restore the commodity to an operable condition without cannibalization.

(C) If the division intends to retain the cannibalized parts for future use, it shall document that said parts have been retained for future use.

(D) The division shall develop procedures for the disposal of the residual components of cannibalized property.

(3) Whenever the division disposes of a commodity in a landfill, or by other lawful means of waste disposal, the division shall notate this on the inventory for the commodity and shall document the reasons why it was disposed of in such manner.

WV Legislature

§15A-3-15. Mutual aid agreements.

(a) The commissioner may enter into agreements to provide for the rendering of mutual aid with the political subdivisions of this state, other states, and the federal government to provide for the common defense, protect the public peace, health, and safety and to preserve the lives and property of the people of this state.

(b) Any agreement entered into under this section shall be with the consent and approval of the Secretary of the Department of Military Affairs and Public Safety, and shall include a provision within each agreement allowing for the immediate termination by the secretary or commissioner at any time.

WV Legislature

§15A-3-16. Funds for operations of jails under the jurisdiction of the commissioner.

(a) Any special revenue funds previously administered by the Regional Jail and Correctional Facility Authority or its executive director are continued and shall be administered by the commissioner.

(b) Funds that have been transferred by §15A-3-16(a) of this code shall be limited in use to operations of jail functions, and for payment to the Regional Jail and Correctional Facility Authority Board, for payment of indebtedness. In no case shall a fund be utilized to offset or pay operations of non-jail parts of the facility: *Provided*, That funds may be utilized on a pro rata basis for shared staff and for operational expenses of facilities being used as both prisons and jails.

(c) Whenever the commissioner determines that the balance in these funds is more than the immediate requirements of this article, he or she may request that the excess be invested until needed. Any excess funds so requested shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any moneys invested pursuant to this section shall be credited to these funds.

(d) These funds consist of the following:

(1) Moneys collected and deposited in the State Treasury which are specifically designated by Acts of the Legislature for inclusion in these funds;

(2) Contributions, grants, and gifts from any source, both public and private, specifically directed to the operations of jails under the control of the commissioner;

(3) All sums paid pursuant to §15A-3-16(g) of this code; and

(4) All interest earned on investments made by the state from moneys deposited in these funds.

(e) The amounts deposited in these funds shall be accounted for and expended in the following manner:

(1) Amounts deposited shall be pledged first to the debt service on any bonded indebtedness;

(2) After any requirements of debt service have been satisfied, the commissioner shall requisition from these funds the amounts that are necessary to provide for payment of the administrative expenses of this article, as limited by this section;

(3) The commissioner shall requisition from these funds, after any requirements of debt service have been satisfied, the amounts that are necessary for the maintenance and operation of jails under his or her control. These funds shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs, or fines required by law to be deposited in these funds and amounts from the jail improvement funds of the

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various counties;

(4) Notwithstanding any other provisions of this article, sums paid into these funds by each county pursuant to §15A-3-16(g) of this code for each inmate shall be placed in a separate account and shall be requisitioned from these funds to pay for costs incurred; and

(5) Any amounts deposited in these funds from other sources permitted by this article shall be expended based on particular needs to be determined by the commissioner.

(f)(1) After a jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the jail facility in the jail facility, except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the previously promulgated, and hereby transferred standards and procedures developed by the Jail Facilities Standards Commission, and whom the sheriff or the circuit court elects to incarcerate therein.

(2) Notwithstanding the provisions of §15A-3-16(f)(1) of this code, circuit and magistrate courts are authorized to:

(A) Detain persons who have been arrested or charged with a crime in a county or municipal jail for a period not to exceed 96 hours; or

(B) Commit persons convicted of a crime in a county or municipal jail for a period not to exceed 14 days.

(g) When inmates are placed in a jail facility under the jurisdiction of the commissioner pursuant to §15A-3-16(f) of this code, the county, and municipality if the incarceration is a municipal violation, shall pay into this fund a cost per day for each incarcerated inmate, to be determined as set forth in subsection (k) of this section.

(h) The per diem costs for incarcerating inmates may not include the cost of construction, acquisition, or renovation of the regional jail facilities: *Provided*, That each jail facility or unit operating in this state shall keep a record of the date and time that an inmate is incarcerated, and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than 24 hours. After that, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of 24 hours pass from the original time of incarceration.

(i) The county is responsible for costs incurred by the division for housing and maintaining inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of housing shall be borne by the division on a felony conviction when an inmate is incarcerated beginning the calendar day following the day of conviction. In no case shall the county be responsible for any costs of housing and maintaining felony convicted inmate populations.

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(j) The county is responsible for the costs incurred by the authority for housing and maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and is awaiting transportation to a state correctional facility for a 60-day evaluation period as provided in §62-12-7a of this code.

(k) (1) Effective July 1, 2023, the cost per day, per inmate for an incarcerated inmate shall be determined as set forth in this subsection. The base per day, per inmate rate shall be set at $54.48. The State Budget Office shall annually examine the most recent three fiscal years of costs submitted by the commissioner for the cost of operating the jail facilities and units under his or her jurisdiction, and taking an average per day, per inmate cost of maintaining the operations of the jail facilities or units shall adjust the per day, per inmate rate annually. Notice of the adjusted per day, per inmate rate shall be provided to each county commission.

(2) Beginning July 1, 2023, the commissioner shall determine the pro rata share of inmate days per county. This figure shall be calculated by multiplying each county's population as contained in the 2020 United States Census by .52.

(3) Each county shall pay as its annual per diem jail cost:

(A) Eighty percent of the current per diem rate for the first 80 percent of its pro rata share of total billed inmate days;

(B) One hundred percent of the current per diem rate for its inmate days that are greater than 80 percent and up to 100 percent of its pro rata share of total billed inmate days; and

(C) One hundred twenty percent of the current per diem rate for its inmate days that exceed 100 percent of its pro rata share of total billed inmate days.

(4) Beginning July 1, 2031, and every 10 years thereafter the pro rata share of inmate days per county shall be calculated by dividing the number of inmate days from the previous calendar year by the state's population according to the most recent United States Census data and then multiplying that number by each county's population.

(5) The commissioner shall post on the Division of Corrections and Rehabilitations webpage by county:

(i) The pro rata share of inmate days;

(ii) The base number of pro rata days;

(iii) The reduced rate of the per day, per inmate costs;

(iv) The increased per day, per inmate; and

(v) Any other information deemed necessary by the commissioner.

WV Legislature

(l) In cases in which the incarcerated inmate was placed in a jail facility by the municipal police of a Class I or Class II municipal corporation as defined in §8-1-3 of this code, or of a Class III municipal corporation as defined in §8-1-3 of this code but with a population in excess of 4,000 according to the most recent census taken under the authority of the United States, and the incarceration resulted from a charge that could have been brought in municipal court but was brought in a magistrate court of this state, the county commission responsible for paying the cost per day pursuant to this subsection shall be entitled to reimbursement from the municipal corporation of actual expenditures for up to five days of per diem costs borne by the county commission.

WV Legislature

§15A-3-17. Jail Operations Partial Reimbursement Fund.

(a) There is continued in the State Treasury the Jail Operations Partial Reimbursement Fund.

(b) Revenues deposited into this fund shall be composed of fees collected by magistrate courts pursuant to §50-3-2(a) of this code, and by circuit courts pursuant to §59-1-11 of this code.

(c) Revenues deposited into this fund shall be used to reimburse those counties and municipalities participating in the jail system for the cost of incarceration.

(d) The State Treasurer shall, in cooperation with the division, administer the fund. The State Treasurer shall determine the amount of funds available for reimbursement and, upon receiving a report from the commissioner containing the total number of inmate days in the fiscal year immediately concluded, the State Treasurer shall calculate the reimbursement to each participant based upon a pro rata share formula: Provided, That only counties and municipalities that, on July 1 of each year, are not more than 90 days delinquent in payments for moneys to incarcerate its offenders are eligible to receive this reimbursement: Provided, however, That the pro rata share formula shall not include the counties or municipalities which are not entitled to reimbursement pursuant to this section.

(e) A participant's share shall be comparable with its total of inmate days, which shall consist of the number of inmates it contributed to the regional jail system and the number of days those inmates remained incarcerated.

(f) A participant's share shall be disbursed annually, within 90 days of July 1 each year, as provided in §15A-3-17(d) of this section.

WV Legislature

§15A-3-18. Rules.

(a) The commissioner is authorized to propose rules for legislative authorization pursuant to §29A-3-1 et seq. of this code or develop policies for the proper execution of his or her duties and powers; adopt rules or policies for the government of the institutions named or referred to in §15A-3-12 of this code; adopt rules or policies for the administration of the financial and business affairs of the institutions named or referred to in §15A-3-12 of this code, and establish policies regarding the treatment of mentally ill inmates, which reflect the safety and security concerns specific to jails and correctional facilities.

(b) All legislative rules and policies of the former Division of Corrections, the former Division of Juvenile Services, and the Regional Jail and Correctional Facility Authority shall remain effective until amended or terminated pursuant to the provisions of §29A-3-1 et seq. of this code by the Division of Correction and Rehabilitation: Provided, That these rules shall expire on July 1, 2021, if not superseded sooner.

(c) Notwithstanding any provisions of law to the contrary, the division is not subject to the rules promulgated by, nor any mandates upon, the board of health for the treatment of mentally ill patients.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

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§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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§15A-4A-1. Purpose of article and legislative findings.

(a) The purpose of this article is to establish an expanded required work release pilot program in no more than five locations in this state.

(b) The Legislature finds that the primary reasons for requiring participation in a work release program are to increase public protection while aiding the transition of the offender back into the community where he or she will be going with or without work release program participation. Participating in work release may reduce the likelihood of recidivism by gradually reintroducing an offender to the community while providing security, structure, and supervision and providing necessary services.

(c) The Legislature further finds that participation in a work release program provides an transitional environment for offenders nearing the end of their sentences while maintaining structure, supervision, offender accountability, improved program opportunities, employment counseling and placement, substance abuse, and life skills training.

WV Legislature

§15A-4A-2. Definitions.

As used in this article, unless the context clearly requires a different meaning, the term:

(1) “Commissioner” means the commissioner of the Division of Corrections and Rehabilitation;

(2) “Division” means the Division of Corrections and Rehabilitation;

(3) “Offender” means a person sentenced to the custody of the Commissioner for service of a sentence of incarceration due to conviction of a felony or felonies.

WV Legislature

§15A-4A-3. Expanded work release pilot program.

The Commissioner of the Division of Corrections and Rehabilitation is hereby authorized to establish a pilot program expanding available work release facilities to no more than a total of five locations be used for eligible offenders who are sentenced to serve a term of imprisonment in the custody of the commissioner and whom the commissioner requires to serve the last portion of their sentences in a work release facility in accordance with this article.

WV Legislature

§15A-4A-4. Eligibility; Funding.

(a) An offender is eligible to participate in the work release program if he or she:

(1) Is 18 years of age or older;

(2) Is physically and psychologically able, as determined by the commissioner, to participate in the program: *Provided*, That offenders with medical conditions or disabilities shall be eligible for work release placement.

(3) Is directed by the Commissioner of Corrections to participate in the work release program; and

(4) Meets other criteria as the commissioner of the Division of Corrections and Rehabilitation may direct.

(b) The expansion of work release authorized by this article is subject to funds being appropriated by the Legislature therefor or appropriated funds being redirected thereto.

WV Legislature

§15A-4A-5. Limitations on eligibility for work release participation.

The following persons may not participate in the work release program:

(1) An offender who requires inpatient psychological or psychiatric treatment;

(2) An offender who refuses to participate in the Offender Financial Responsibility Program;

(3) An offender who refuses to participate in the Institution Release Preparation Program; and

(4) An offender determined by the commissioner, in his or her sole discretion, to pose a threat to the safety of another or to the community or to be an otherwise inappropriate candidate for participation in the program.

WV Legislature

§15A-4A-6. Internal policy development.

(a) The commissioner shall develop operational procedures and policies for the work release program. The procedures and policies may, pursuant to §15A-3-12 of this code, allow the division to partner with contractors to be established at multiple sites, which sites shall subject to the control and authority of the commissioner.

(b) The procedures and policies shall include the following:

(1) A period of Imprisonment in work release of no more than 6 months prior to release on parole or discharge which period of Imprisonment may include substance abuse education, mandatory employment or employment skills training, social skills training, and psychological evaluation and treatment. Additionally, the state Board of Education and State Superintendent of Schools, pursuant to section five, article twenty, chapter eighteen of this code, respectively, may, as funds are available, establish an education program for those eligible offenders who are not recipients of a high school diploma or a certificate of high school equivalency.

(2) Policies and procedures identifying the facilities subject to the control and authority of the commissioner that will be used for offenders serving a sentence in a work release program;

(3) Policies and procedures establishing additional criteria the commissioner deems necessary and appropriate to determine eligibility and of offenders to serve the last portion of his or her sentence in a work release program;

(4) Policies and procedures to effectuate notification to a sentencing court of the performance of an eligible offender serving part of his or her sentence in a work release facility; and

(5) Any other policies and procedures that are necessary for the proper operation of the program.

(c) Upon successful completion of the work release program, an offender shall be released on parole or discharged in accordance with this article.

(d) An offender who does not satisfactorily complete the work release program shall be removed from the program and returned to serve the remainder of his or her sentence in a facility designated by the commissioner.

WV Legislature

§15A-4A-7. Funding and financial implications.

Funding for the expanded work release pilot program may be derived from the state's general revenue fund or budget assigned annually to the division.

WV Legislature

§15A-5-1. Creation of Bureau of Prisons and Jails; organization of facilities.

(a) The commissioner shall establish a Bureau of Prisons and Jails. The commissioner shall determine what adult facilities or institutions shall appropriately be managed by the Bureau of Prisons and Jails.

(b) The commissioner shall appoint an assistant commissioner, who shall oversee the Bureau of Prisons and Jails.

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

WV Legislature

§15A-5-2. Transfer of duties and funds of Division of Corrections.

All prior conveyed responsibilities of the Division of Corrections, and its Commissioner are hereby transferred to the Division of Corrections and Rehabilitation. All funds, both general revenue and special revenue, are hereby transferred to the Division of Corrections and Rehabilitation. Any funds administered by the Division of Corrections are to be administered by the Division of Corrections and Rehabilitation, and its Commissioner.

WV Legislature

§15A-5-3. Superintendents; duties and authority; bond; residence.

(a) The commissioner shall appoint a superintendent for each institution under the control of the division. Each superintendent shall be bonded by the Board of Risk and Insurance Management.

(b) The superintendent shall be the chief executive officer of his or her assigned correctional institution and, subject to the direction of the commissioner, has the responsibility for the overall management of all operations within his or her assigned institution. The superintendent shall be in charge of its internal police and management and shall provide for feeding, clothing, working and taking care of the inmates, subject to the control of the commissioner.

(c) The superintendent shall promptly enforce all orders and rules made by the commissioner. He or she shall protect and preserve the property of the state and may for that purpose punish the inmates in the manner authorized by the commissioner. The superintendent shall have the custody and control of all the real and personal property at the correctional institution, subject to the orders of the commissioner.

(d) The commissioner may authorize the superintendent to establish an imprest fund in accordance with the provisions of §12-2-2 of this code for the sole purpose of providing employees with funds to transport inmates for any purpose as determined by the superintendent, and any of the fund that currently exists is hereby continued. The employee is required to complete a travel reimbursement form for the travel within five days of returning to the correctional facility. The funds shall be used to reimburse the imprest fund for the amount expended by the employee.

WV Legislature

§15A-5-4. Appointment of deputy superintendent; duties; bond.

Each superintendent, with the approval of the commissioner, may hire a deputy superintendent. The deputy superintendent's duties shall be fixed by the superintendent, as approved by the commissioner. In the absence of the superintendent, the deputy superintendent shall perform all the duties required of the superintendent. The deputy superintendent shall be bonded by the Board of Risk and Insurance Management.

WV Legislature

§15A-5-5. Hiring of other assistants and employees.

The superintendent of each correctional institution or unit shall, in the manner provided in §15A-3-5 of this code, hire all assistants and employees required for the management of the correctional institutions or units, including a sufficient number of correctional employees to preserve order and enforce discipline among the inmates, to prevent escapes, and to remove all persons convicted and sentenced to the custody of the Division of Corrections and Rehabilitation, from the place confined to a correctional institution, all of whom shall be under the control of the superintendent: Provided, That the number of the assistants and employees, and their compensation, shall first be approved by the commissioner.

All persons employed at a state-operated correctional institution or correctional unit are subject to the supervision and approval of the superintendent and the authority of the commissioner, or his or her designee, except those persons employed by the State Board of Education, pursuant to §18-2-13f of this code.

WV Legislature

§15A-5-6. Jail intake facilities; housing of adult inmates.

To the extent practicable, and in a manner consistent with providing for the safety of the public, correctional employees, and inmates, the commissioner will create space in every adult institution for both jail and prison populations: Provided, That in no case shall the commissioner be required to provide jail space in every institution in excess of space necessary for initial receiving, booking, and holding of an inmate to await transport by the Division of Corrections and Rehabilitation to the most appropriate housing placement for that inmate. In no case may a person who is a pretrial detainee, who is not currently serving a felony sentence in the custody of the commissioner, be held in a space designated as a prison unit. Further, no convicted misdemeanant actively serving a sentence on a misdemeanor shall be held in a space designated as a prison unit.

WV Legislature

§15A-5-7. Pretrial risk assessment.

(a) Within three calendar days of the arrest and placement of any person in a jail, the division shall conduct a pretrial risk assessment using a standardized risk assessment instrument approved and adopted by the Supreme Court of Appeals of West Virginia. The results of all standardized risk and needs assessments are confidential and shall only be provided to the court, court personnel, the prosecuting attorney, defense counsel, and the person who is the subject of the pretrial risk assessment. Upon completion of the assessment, the Division of Corrections and Rehabilitation shall provide it to the magistrate and circuit clerks for delivery to the appropriate circuit judge or magistrate.

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

WV Legislature

§15A-5-8. Jail processing fee.

(a) A person committed to be housed in jail by order of magistrate, circuit judge, or by temporary commitment order shall, at the time of initial booking into the jail, pay a processing fee of $30. If the person is unable to pay at the time of booking, the fee shall be deducted, at a rate of 50 percent, from any new deposits made into the person's trust account until the jail processing fee is paid in full. The fee shall be credited to:

(1) The Jail's operating budget if the person is committed to and housed in a jail;

(2) The county commission if the person is committed to and housed in a county jail; or

(3) The municipality if the person is committed to and housed in a municipal jail. The fee should be paid prior to the offender being released.

(b) A refund of a fee collected under this section shall be made to a person who has paid the fee if the person is not convicted of the offense for which the person was booked and the person provides documentation from the court showing that all charges for which the person was booked were dismissed, accurate current name and address and a valid photographic identification. In the case of multiple offenses, if the person is convicted of any of the offenses the fee may not be refunded. If the person is convicted of a lesser included offense or a related offense, no refund may be made.

WV Legislature

§15A-5-9. Ability to refuse offenders.

(a) Notwithstanding any other provision of this code, the commissioner, or any employee or agent of the division, having authority to accept offenders in a jail is not required to accept those offenders if an offender appears to be in need of medical attention of a degree necessitating treatment by a physician. If an offender is refused pursuant to the provisions of this section, he or she may not be accepted for detention until a written clearance is received from a licensed physician reflecting that the offender has been examined and if necessary treated, and which states that it is the physician's medical opinion that the offender can be safely housed in a jail.

(b) Notwithstanding the provisions of subsection (a) of this section, the division, the commissioner, or any employee or agent of the division, may accept an offender into custody who appears to be in need of medical attention of a degree necessitating treatment by a licensed medical professional, who refuses a medical examination or medical treatment to a licensed medical professional, and is immune from civil or criminal liability for accepting the person into custody.

WV Legislature

§15A-5-10. Completing the GOALS Program satisfies the requirements for the DUI Safety and Treatment Program.

Notwithstanding any provision of this code to the contrary, any individual committed to the custody of the Commissioner of the Division of Corrections and Rehabilitation who successfully completes the Getting Over Addictive Lifestyles Successfully Program shall be deemed to have also completed the West Virginia DUI Safety and Treatment Program discussed in §17C-5A-3 of this code for purposes of reinstatement of driving privileges.

The Commissioner of the Division of Corrections and Rehabilitation shall provide each individual that completes the Getting Over Addictive Lifestyles Successfully Program with a certificate of completion. Upon completion of the Getting Over Addictive Lifestyles Successfully Program, the individual shall provide the certificate of completion to the Division of Motor Vehicles. The Division of Motor Vehicles shall accept the certificate as evidence of completion of the DUI Safety and Treatment Program.

WV Legislature

§15A-6-1. Creation of Bureau of Juvenile Services; organization of facilities.

(a) The Commissioner of Corrections and Rehabilitation shall establish a Bureau of Juvenile Services. This bureau shall manage any juvenile facilities or units, as determined pursuant to §15A-3-12 of this code.

(b) The commissioner shall appoint an assistant commissioner, who shall oversee the Bureau of Juvenile Services.

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

WV Legislature

§15A-6-2. Transfer of duties and funds.

All prior conveyed responsibilities and duties of the Division of Juvenile Services, and the Director of Juvenile Services, outlined in §49-1-101 et seq. of this code, are hereby transferred and conveyed to the Division of Corrections and Rehabilitation, and to its Commissioner. Any funds administered by the Division of Juvenile Services are to be administered by the Division of Corrections and Rehabilitation, and its Commissioner.

WV Legislature

§15A-6-3. Superintendents; duties and authority; bond; residence.

(a) The commissioner shall appoint a superintendent for each institution under the control of the division. Each superintendent shall be bonded by the Board of Risk and Insurance Management.

(b) The superintendent shall be the chief executive officer of his or her assigned correctional institution and, subject to the direction of the commissioner, has the responsibility for the overall management of all operations within his or her assigned institution. The superintendent shall be in charge of its internal police and management and shall provide for feeding, clothing, working and taking care of the inmates, subject to the control of the commissioner.

(c) The superintendent shall promptly enforce all orders and rules made by the commissioner. He or she shall protect and preserve the property of the state and may for that purpose punish the inmates in the manner authorized by the commissioner. The superintendent shall have the custody and control of all the real and personal property at the correctional institution, subject to the orders of the commissioner.

(d) The commissioner may authorize the superintendent to establish an imprest fund in accordance with the provisions of §12-2-2 of this code for the sole purpose of providing employees with funds to transport inmates for any purpose as determined by the superintendent, and any of the fund that currently exists is hereby continued. The employee is required to complete a travel reimbursement form for the travel within five days of returning to the correctional facility. The funds shall be used to reimburse the imprest fund for the amount expended by the employee.

WV Legislature

§15A-6-4. Appointment of deputy superintendent; duties; bond.

Each superintendent, with the approval of the commissioner, may hire a deputy superintendent. The deputy superintendent's duties shall be fixed by the superintendent, as approved by the commissioner. In the absence of the superintendent, the deputy superintendent shall perform all the duties required of the superintendent. The deputy superintendent shall be bonded by the Board of Risk and Insurance Management.

WV Legislature

§15A-6-5. Hiring of other assistants and employees; duties of correctional employees.

The superintendent of each juvenile institution or unit shall, in the manner provided in §15A-3-5 of this code, hire all assistants and employees required for the management of the juvenile institutions or units, including a sufficient number of correctional employees to preserve order and enforce internal rules among the juvenile inmates, to prevent escapes, and carry out all other responsibilities as outlined in chapter 49 of this code.

All persons employed at a state-operated juvenile facility are subject to the supervision and approval of the superintendent and the authority of the commissioner, or his or her designee, except those persons employed by the State Board of Education, pursuant to §18-2-13f of this code.

WV Legislature

§15A-7-1. Creation of Bureau of Community Corrections; Organization of facilities.

(a) The commissioner shall establish a Bureau of Community Corrections. The commissioner shall establish which adult facilities or institutions shall appropriately be managed by the Bureau of Community Corrections.

(b) The commissioner shall appoint an assistant commissioner, who shall oversee the Bureau of Community Corrections.

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

WV Legislature

§15A-7-2. Duties of superintendents; bond; residence.

The commissioner shall appoint a Superintendent for each institution under the control of the division. The superintendent of a community corrections facility shall have the same duties and responsibilities as described in §15A-3-1 et seq. of this code.

WV Legislature

§15A-7-3. Hiring of other assistants and employees; duties of employees.

(a) Each superintendent of a community corrections facility shall, in the manner provided in §15A-3-5 of this code, hire all assistants and employees required for the management of these facilities or units, including a sufficient number of correctional employees to preserve order and enforce discipline among the inmates or parolees, to prevent escapes, to enforce laws, rules, and policies, and to protect the public. Any person employed by the office of the Commissioner of the Division of Corrections and Rehabilitation who on the effective date of this article is a classified civil service employee shall, within the limits contained in §29-6-1 et seq. of this code, remain in the civil service system as a covered employee.

(b) The commissioner shall, in the manner provided in §15A-3-5 of this code, hire all probation and parole officers, assistants, and employees required to carry out the duties as proscribed in this code for management of the parolee population, and probation population, as set forth in §15A-7-4 and §62-13-2(b) of this code, for the management of parolees, to preserve order, and enforce discipline among the parolees, to enforce laws, rules, and policies, and to protect the public. Any person employed by the office of the Commissioner of the Division of Corrections and Rehabilitation who on the effective date of this article is a classified civil service employee shall, within the limits contained in §29-6-1 et seq. of this code, remain in the civil service system as a covered employee. Nothing in this section shall limit the abilities of the Supreme Court of Appeals of this state to carry forth their responsibilities and duties as proscribed in this code. All persons appointed or employed by the director shall be paid all necessary expenses incurred in the discharge of their duties.

WV Legislature

§15A-7-4. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.

The commissioner shall supervise all persons released on parole and placed in the charge of a state parole officer and all persons released on parole under any law of this state. He or she shall also supervise 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 probation and parolee supervision. The commissioner shall prescribe rules for the supervision of probationers and parolees under his or her supervision and control, and shall succeed to all administrative and supervisory powers of the Parole Board and the authority of the Parole Board in those matters only.

The commissioner shall administer all other laws affecting the custody, control, treatment, and employment of persons sentenced or committed to institutions under the supervision of the department or affecting the operation and administration of institutions or functions of the division.

The final determination regarding the release of inmates from penal institutions and the final determination regarding revocation of parolees from those institutions pursuant to the provisions of §62-12-1 et seq. of this code shall remain within the exclusive jurisdiction of the Parole Board.

WV Legislature

§15A-7-5. Powers and duties of state parole officers.

(a) Each state probation and parole officer employed by the Division of Corrections and Rehabilitation shall:

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

(2) Update the standardized risk and needs assessment adopted by the Division of Corrections and Rehabilitation pursuant to §62-12-13(h) of this code for each parolee for whom an assessment has not been conducted for parole by a specialized assessment officer;

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

(4) Furnish to each parolee 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 Commissioner of Corrections and Rehabilitation for the supervision of parolees;

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

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

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

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

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

(10) Perform any other duties required by the Commissioner of Corrections and Rehabilitation.

(b) Each probation and parole officer, as described in this article, may, with or without an order or warrant:

(1) Arrest or order confinement of any parolee or probationer under his or her supervision; and

(2) Search a parolee or probationer, or a parolee or probationer’s residence or property,

WV Legislature

under his or her supervision. A probation and parole officer may apply for a search warrant, and execute the search warrant, in connection to a parolee's whereabouts, or a parolee's activities. He or she has all the powers of a notary public, with authority to act anywhere within the state.

(c) Notwithstanding any provision of this article to the contrary, the Commissioner of Corrections and Rehabilitation may issue a certificate authorizing any state parole officer who has successfully completed the Division of Corrections and Rehabilitation's training program for firearms certification, which is the equivalent of that required of any correctional employee under §15A-3-10 of this code, to carry firearms or concealed weapons. Any parole officer authorized by the Commissioner of Corrections and Rehabilitation may, without a state license, carry firearms and concealed weapons. Each state parole officer, authorized by the Commissioner of Corrections and Rehabilitation, 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 of Corrections and Rehabilitation.

(d) State parole officers, in recognition of the duties of their employment supervising confinement and supervised release, and the inherent arrest powers for violation of the same which constitute law enforcement, are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C §926B.

(e) Any state parole officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. § 926B if the following criteria are met:

(1) The Division of Corrections and Rehabilitation has a written policy authorizing a state parole officer to carry a concealed firearm for self-defense purposes;

(2) For those state parole officers wishing to avail themselves of the provisions of this subdivision, there shall be in place in the Division of Corrections and Rehabilitation a requirement that those state parole officers must annually qualify in the use of a firearm with standards which are equal to or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program; and

(3) The Division of Corrections and Rehabilitation issues a photographic identification and certification card which identify the state parole officers who meet the provisions of this subdivision, as law-enforcement employees of the Division of Corrections and Rehabilitation pursuant to the provisions of §30-29-12 of this code.

(f) Any policy instituted pursuant to this subsection shall include provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection

WV Legislature

while in an impaired state as defined in §17C-5-2 of this code.

(g) Any state parole officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(h) It is the intent of the Legislature in enacting the amendments to this section during the 2022, regular session of the Legislature to authorize those state parole officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

(i) The privileges authorized by the amendments in this section enacted during the 2022, regular session of the Legislature are wholly within the discretion of the Commissioner of Corrections and Rehabilitation.

WV Legislature

§15A-7-6. Parole supervision benefit fund.

(a) There is continued a special revenue account in the State Treasury designated the "Parole Supervision Benefit Fund". The fund is to be used by the Division of Corrections and Rehabilitation for the benefit of parolee supervision with approval of the commissioner. The fund shall consist of moneys received from any source, including, but not limited to, funds donated by the general public or an organization dedicated to parole supervision improvement, and funds seized from parolees that are forfeited pursuant to the provisions of §60A-7-701 et seq. of this code.

(b) Notwithstanding any other provision of this code to the contrary, the commissioner may authorize use of the money in the fund created pursuant to this section for payment to a community corrections program established pursuant to §62-11C-1 et seq. of this code for providing enhanced supervision of parolees.

WV Legislature

§15A-8-1. Powers and authority of the Regional Jail and Correctional Facility Authority Board; continuation of the Regional Jail and Correctional Facility Authority Board; payment of bonds; appeal of per diem rate.

(a) The Regional Jail and Correctional Facility Authority Board is continued, as follows:

(1) The powers and authority of the Regional Jail and Correctional Facility Authority Board, in relation to all functions of correctional operations, are hereby abolished, and these powers and authority are transferred to the Division of Corrections and Rehabilitation as of July 1, 2018. The Regional Jail and Correctional Facility Authority Board shall only retain the powers as now outlined in this chapter. Where reference in this code is made to the Regional Jail and Correctional Facility Authority, in relation to operations of any of the regional jails, it shall be construed to mean the Division of Corrections and Rehabilitation.

(2) The following powers and authority of the Regional Jail and Correctional Facility Board are hereby specifically abolished:

(A) To mortgage or otherwise grant security interests in its property;

(B) To borrow money and to issue its negotiable bonds, security interests, or notes and to provide for and secure the payment thereof, and to provide for the rights of the holders thereof, and to purchase, hold, and dispose of any of its bonds, security interests, or notes;

(C) To sell, at public or private sale, any bond or other negotiable instrument, security interest or obligation of the authority in a manner and upon terms that the authority considers would best serve the purposes of this article;

(D) To issue its bonds, security interests, and notes payable solely from the revenues or other funds available to the authority therefor; and the authority may issue its bonds, security interests, or notes in those principal amounts as it considers necessary to provide funds for any purposes under this article, including:

(i) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on, any bonds, security interests, or notes issued by it whether the bonds, security interests, notes, or interest to be funded or refunded have or have not become due; and

(ii) The establishment or increase of reserves to secure or to pay bonds, security interests, notes, or the interest thereon and all other costs or expenses of the Division of Corrections and Rehabilitation incident to and necessary or convenient to carry out its purposes and powers. Any bonds, security interests, or notes may be additionally secured by a pledge of any revenues, funds, assets, or moneys of the authority from any source whatsoever;

(E) To issue renewal notes or security interests, to issue bonds to pay notes or security interests and, whenever it considers refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except

WV Legislature

that no renewal notes shall be issued to mature more than 10 years from date of issuance of the notes renewed and no refunding bonds may be issued to mature more than 25 years from the date of issuance;

(F) To apply the proceeds from the sale of renewal notes, security interests, or refunding bonds to the purchase, redemption, or payment of the notes, security interests, or bonds to be refunded; and

(G) To sell security interests in the loan portfolio of the authority. The security interests shall be evidenced by instruments issued by the authority.

(3) The powers and duties of the board in relation to paying the current bond series, designated as The State Building Commission of West Virginia Lease Revenue Refunding Bonds (West Virginia Regional Jail and Correctional Facility Authority) Series 1998A, Series 1998B, and Series 1998C are specifically continued. The board, however, may not reissue these bonds, renegotiate the terms of the current bonds, or refinance these bonds. There is hereby created in the State Treasury a Regional Jail and Correctional Facility Board Fund. The fund shall be controlled by the board, and shall be utilized for the sole purpose of payment of the outstanding bond series as provided above. The Commissioner of the Division of Corrections and Rehabilitation shall, on or before the fifth day of every month, transfer to this fund the amount necessary for the monthly payment of the bond, as set forth by the yearly communication from the creditor of the bonds. Further, on the effective date of this section, the commissioner shall transfer to this fund the reserve amount required by the bonds. On the date that the bonds are satisfied in full, these obligations shall cease, and any funds left in the board fund shall be transferred to the Commissioner of the Division of Corrections and Rehabilitation: Provided, That the funds can only be used in the manner directed or established by the board. Further, the board retains the authority to be able, and with consent of the Secretary of the Department of Military Affairs and Public Safety, to the extent permitted under its contracts with the holders of bonds, security interests, or notes of the authority, consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interest, note, or contract or agreement of any kind to which the authority is a party.

(4) The Regional Jail Authority shall review the per diem cost set by the state Budget Office, pursuant to §15A-3-16 of this code. If the authority believes that the amount set by the state Budget Office is incorrect, or that the amounts submitted by the Division of Corrections and Rehabilitation include more than what should be attributed to the efficient operation of jail facilities and units, the authority may institute an action in regard to this pursuant to §29A-5-1 et seq. of this code.

(5) The Regional Jail Authority retains the ability to sue, as defined in this article, and to be sued.

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

§15A-8-2. West Virginia Regional Jail and Correctional Facility Authority Board; composition; appointment; terms; compensation and expenses.

The West Virginia Regional Jail and Correctional Facility Authority Board is continued. The members of the board in office on the date this section takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

The authority shall be governed by a board of nine members, seven of whom are entitled to vote on matters coming before the authority. The complete governing board shall consist of the Commissioner of the Division of Corrections; the Assistant Commissioner for the Bureau of Juvenile Services; the Secretary of the Department of Military Affairs and Public Safety; the Secretary of the Department of Administration, or his or her designated representative; two county commissioners and one sheriff appointed by the Governor, no more than two of which may be of the same political party; and two citizens appointed by the Governor to represent the areas of law and medicine. The Commissioner of the Division of Corrections and Rehabilitation and the Assistant Commissioner for the Bureau of Juvenile Services shall serve in an advisory capacity and are not entitled to vote on matters coming before the authority. Members of the Legislature are not eligible to serve on the board.

The Governor shall nominate and, by and with the advice and consent of the Senate, appoint the five appointed members of the authority for staggered terms of four years.

Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. Members of the board are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

All members of the board shall execute an official bond in a penalty of $10,000, conditioned as required by law. Premiums on the bond shall be paid from funds accruing to the Division of Corrections and Rehabilitation. The bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor and, when fully executed and approved, shall be filed in the office of the Secretary of State.

WV Legislature

§15A-8-3. Governing body; organization and meetings; quorum; administrative expenses.

(a) The board shall consist of the voting members of the board as provided for in §15A-8-2 of this code and shall exercise all the powers given to the authority in this article. On the second Monday of July of each odd-numbered year, the board shall meet to elect a chairman and a secretary from among its own members. The Secretary of the Department of Administration or his or her designated representative shall serve as treasurer of the board. The board shall otherwise meet two times a year, unless a special meeting is called by its chairman.

(b) A majority of the members of the board constitute a quorum, and a quorum must be present for the board to conduct business. Unless the bylaws require a larger number, action may be taken by majority vote of the members present.

(c) The board shall prescribe, amend, and repeal bylaws and rules governing the manner in which the business of the authority is conducted and shall review and approve the budget prepared by the executive director annually.

(d) All costs incidental to the administration of the board shall be paid from the jail operation fund by the Commissioner of Corrections and Rehabilitation.

WV Legislature

§15A-9-1. Office created; appointment of Chief Hearing Examiner.

(a) The Office of Administrative Hearings is created as a separate operating agency within the department.

(b) The secretary shall appoint a director of the office who serves as the administrative head of the office and as Chief Hearing Examiner.

(c) The Chief Hearing Examiner shall be a citizen of the United States and a resident of this state who is admitted to the practice of law in this state.

(d) The salary of the Chief Hearing Examiner shall be set by the secretary of the department.

(e) In addition to adherence to the code of conduct set forth in §6B-2-5a of this code, the Chief Hearing Examiner during his or her term shall:

(1) Not engage directly or indirectly in any activity, occupation, or business interfering or inconsistent with his or her duties as Chief Hearing Examiner;

(2) Not hold any other appointed public office or any elected public office or any other position of public trust; and

(3) Not be a candidate for any elected public office, or serve on or under any committee of, any political party.

(f) The Chief Hearing Examiner serves at the will and pleasure of the secretary.

WV Legislature

§15A-9-2. Organization of office.

(a) The Chief Hearing Examiner is the chief administrator of the Office of Administrative Hearings and he or she may employ hearing examiners and other clerical personnel necessary for the proper administration of this article.

(1) The Chief Hearing Examiner may delegate administrative duties to other employees, but the Chief Hearing Examiner is responsible for all official delegated acts.

(2) All employees of the Office of Administrative Hearings are classified exempt.

(b) The Chief Hearing Examiner shall:

(1) Direct and supervise the work of the office staff;

(2) Hold hearings;

(3) Make hearing assignments;

(4) Maintain the records of the office;

(5) Review and approve decisions of hearing examiners as to legal accuracy, clarity, and other requirements; and

(6) Perform the other duties necessary and proper to carry out the purposes of this article.

(c) The administrative expenses of the office shall be included within the annual budget of the Division of Administrative Services.

WV Legislature

§15A-9-3. Jurisdiction of Office of Administrative Hearings.

Notwithstanding any provision of this code to the contrary, the Office of Administrative Hearings has jurisdiction to hear and determine all:

(1) Level one grievance proceedings for all divisions of the department, except for the State Police;

(2) Appeals from decisions or orders of the State Fire Commission, except as otherwise provided in §15A-10-9(b) of this code;

(3) Appeals from decisions or orders of any of the subcommittees of the Governor's Committee on Crime, Delinquency and Correction;

(4) Other matters for which a hearing examiner is necessary within the department or any division of the department; and

(5) Other matters which may be conferred upon the office by statute or legislatively approved rules.

WV Legislature

§15A-9-4. Hearing procedures.

(a) All level one grievance hearings before the office shall be heard in accordance with practices and procedures as set forth in §6C-2-1 *et seq.* of this code.

(b) All hearings on appeals before the office shall be heard *de novo* and conducted pursuant to the provisions of the contested case procedure set forth in §29A-5-1 *et seq.* of this code.

(1) Notwithstanding any provision of this code to the contrary, the division head, or the Fire Commission, may be represented at hearings conducted by the office and evidence submitted by the division head may be considered in such hearings with or without such representation.

(2) The West Virginia Rules of Evidence governing proceedings in the courts of this state shall be given like effect in hearings held before a hearing examiner. All testimony shall be given under oath.

(3) The hearing examiner may request proposed findings of fact and conclusions of law from the parties prior to the issuance by the office of the decision in the matter.

(c) Hearings and all records of hearings are exempt from the requirements of §29B-1-1 *et seq.* of this code, until the results of the hearing have been rendered: *Provided*, That once the decision is rendered, the records may be exempt from disclosure, pursuant to §29B-1-4 or other applicable section of this code.

WV Legislature

§15A-9-5. Rule-making authority.

The Office of Administrative Hearings may propose legislative and procedural rules in accordance with the provisions of chapter 29A of this code in order to implement the provisions of this article and to carry out the duties prescribed therein.

WV Legislature

§15A-9-6. Duty to provide notice of change of address.

Any person who has any pending contested matter before the Office of Administrative Hearings is required to provide notice of a change in address in writing at least 10 days prior to any scheduled hearing in which they are a party. If the person's final hearing is held prior to the person's change in address, then the person is required to provide the written notice prior to the issuance of the final order in their case. Written notice must be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the Office of Administrative Hearings.

WV Legislature

§15A-9-7. Transition from divisions of the department to the Office of Administrative Hearings.

(a) In order to implement an orderly and efficient transition of the administrative hearing process from the many divisions of the department, the secretary may establish interim policies and procedures for the transfer of administrative hearings, appeals from decisions or orders of, as contemplated by this article, currently administered by the separate divisions and the Fire Commission, no later than October 1, 2020.

(b) On the effective date of this article, all equipment and records necessary to effectuate the purposes of this article shall be transferred from the many divisions of the department to the Office of Administrative Hearings: *Provided,* That in order to provide for a smooth transition, the secretary may establish interim policies and procedures, determine how the equipment and records are to be transferred and provide that the transfers provided for in this subsection take effect no later than October 1, 2020.

WV Legislature

§15A-10-1. State Fire Marshal and Office of the State Fire Marshal transferred to Department of Homeland Security; appointment of State Fire Marshal; removal; salary; qualifications; responsibilities; employees; equipment.

(a) The State Fire Marshal and the Office of the State Fire Marshal, heretofore existing in this code, are hereby continued in all respects except that all powers and duties exercised by the State Fire Commission with respect to the State Fire Marshal and the Office of the State Fire Marshal are terminated and all such powers and duties are hereby transferred to and vested in the Department of Homeland Security except as provided otherwise in this article.

(b) When a vacancy occurs in the position of State Fire Marshal, the Fire Commission, at the request of the Governor, shall submit a list of not more than three names to the Governor from which the Governor shall make the appointment. The Governor shall appoint a State Fire Marshal, from a list of names submitted by the Fire Commission. The State Fire Marshal serves at the will and pleasure of the Governor and is exempt from coverage under the classified civil service system.

(c) The State Fire Marshal shall have a baccalaureate degree from an accredited four-year college or university, or equivalent experience, and six years of full-time or part-time equivalent paid or volunteer experience in fire prevention or fire safety including two years in a supervisory capacity in fire prevention and fire safety.

(d) The State Fire Marshal, shall have full responsibility for the enforcement of fire and life safety programs in this state designated to minimize fire hazards and disaster and loss of life and property from these causes. These responsibilities include, but are not limited to, the establishment and enforcement of fire safety practices throughout the state, preventive inspection and correction activities, coordination of fire safety programs with volunteer and paid fire departments, and critical analysis and evaluation of West Virginia’s fire loss statistics for determination of problems and solutions.

(e) The State Fire Marshal may employ such technical, clerical, stenographic, and other personnel and fix their compensation and may incur such expenses as may be necessary in the performance of the duties of his or her office within the appropriation therefor. Employees of the Fire Marshal’s office shall be members of the state civil service system and all appointments of the office shall be a part of the classified service under the civil service system.

(f) The State Fire Marshal may employ a chief deputy fire marshal, who shall be classified exempt. The deputy shall have a baccalaureate degree from an accredited four-year college or university, or equivalent experience, and six years of full-time or part-time equivalent paid or volunteer experience in fire prevention or fire safety including two years in a supervisory capacity in fire prevention and fire safety.

(g) Any individual who is employed by the State Fire Marshal to conduct criminal investigations or who may become actively involved in matters of a criminal nature shall first

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be required to pass a civil service examination testing his or her competency and proficiency in the law of arrest, search and seizure, and other criminal procedures relating to the powers granted to the State Fire Marshal pursuant to the provisions of this article: *Provided,* That all new hires to sworn positions of Fire Marshal 1, 2, or 3 and deputy fire marshal, excluding the chief deputy as described in subdivision (f) of this section, shall comply with the law enforcement certification requirements set forth in §30-29-1 *et seq.*

(h) The State Fire Marshal and other personnel of the State Fire Marshal's Office shall be provided with appropriate office space, furniture, equipment, supplies, stationery, and printing in the same manner as provided for other state agencies.

WV Legislature

§15A-10-2. Powers, duties, and authority of State Fire Marshal.

(a) The State Fire Marshal may employ personnel, fix their compensation and, within funds available to do so, incur expenses as necessary in the performance of the duties of his or her office.

(b) The State Fire Marshal is responsible for the enforcement of fire programs within this state, training, uniform standards and certification, finance, and planning, and fire prevention.

(c) The State Fire Marshal shall ensure that state and area training and education in fire service are operated throughout the state at a level consistent with needs identified by the State Fire Commission.

(d) The State Fire Marshal shall perform any such duties as necessary to assist the State Fire Commission in performing its duties and responsibilities as provided in §15A-11-1 *et seq.* of this code. This shall include, but not be limited to, performing inspections on fire departments, making recommendations on fire department boundary lines, making recommendations on applications for new fire departments, making recommendations on closures or suspensions of fire departments, and any other act or assistance to the State Fire Commission as may be necessary. The Fire Marshal may, in the case of imminent danger, issue immediate cease and desist orders on behalf of the State Fire Commission without their prior approval. In that case, the State Fire Commission shall act further upon said order at their next regular meeting.

(e) The State Fire Marshal may accept, on behalf of the Office of the State Fire Marshal, or on behalf of the State Fire Commission, gifts, grants, court ordered civil forfeiture proceedings and bequests of funds or property from individuals, foundations, corporations, the federal government, governmental agencies and other organizations or institutions. Moneys from gifts, grants, civil forfeiture proceedings and bequests received by the State Fire Marshal shall be deposited into the special account set forth in §15A-10-7 of this code, and the State Fire Marshal, has the authority to make expenditures of, or use of any tangible property, in order to effectuate the purposes of this article.

(f) Beginning July 1, 2020, applicants for certification or licensure in accordance with the education and training programs under the respective jurisdictions of State Fire Marshal shall be permitted to apply training hours earned via career technical education provided by West Virginia public schools or an apprenticeship program or employer-sponsored training program towards the requirements for certification and/or licensure by the State Fire Marshal as applicable. The State Fire Marshal shall, after consultation with the State Superintendent of Schools, propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, for the implementation and enforcement of these provisions. The rules shall provide at least the following:

(1) Standards and procedures for recognizing training hours acquired through career

WV Legislature

technical education provided by West Virginia public schools and applying those hours to requirements for testing and/or certification and/or licensure; and

(2) Standards and procedures for recognizing training hours acquired through apprenticeship programs and employer-sponsored training programs and applying those hours to requirements for testing and/or certification and/or licensure.

As used in this subsection:

(A) "Apprentice" means someone who is enrolled in an apprenticeship program.

(B) "Apprenticeship program" means a program offered by an employer to provide supervised on-the-job training to employees approved by the United States Department of Labor.

(C) "Employer sponsored training program" means a program approved in accordance with a rule promulgated by the State Fire Commission or the State Fire Marshal under their respective authorities established in this code.

(D) "License" means a valid and current certification or license issued by State Fire Commission or the State Fire Marshal for satisfactory completion of education and training programs under their respective jurisdictions.

(E) "Career technical education" means programs of study, clusters, and pathways approved by the West Virginia Board of Education pursuant to state board policy.

(g) Notwithstanding any other provisions of this code, beginning on July 1, 2020, the State Fire Commission has no enforcement authority for violations of the fire code, or the building code, all enforcement authority previously held by the Fire Commission regarding these two rules is hereby transferred and solely vests in the Office of the State Fire Marshal.

(h) Notwithstanding any provision of this code to the contrary, on July 1, 2020, all power and authority for the licensing or certifications programs of "home inspectors", and "municipal, county, and other public sector building code officials, building code inspectors, and plans examiners", are hereby transferred to the Office of the State Fire Marshal, and the State Fire Marshal shall have full authority over said programs, licenses, certifications, and all responsibilities thereof. Whenever in this code a reference is made to the State Fire Commission in relation to these Licensing or Certification Programs, it shall be construed to mean the State Fire Marshal.

WV Legislature

§15A-10-3. Additional powers, duties and authority of State Fire Marshal relating to law enforcement; statewide contracts; penalties; authority to carry firearms.

(a) *Enforcement of laws.* — The State Fire Marshal, and any of his or her assistant fire marshals or deputy fire marshals, are fully authorized to enforce the fire code, the building code, this article, §15A-11-1 *et seq*. of this code, and any laws over of the state having to do with:

(1) Prevention of fire;

(2) The storage, sale, and use of any explosive, combustible, or other dangerous article or articles in solid, flammable liquid, or gas form;

(3) The installation and maintenance of equipment of all sorts intended to extinguish, detect, and control fires;

(4) The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live, or congregate, from time to time, for any purpose, except buildings used wholly as dwelling houses for no more than two families;

(5) The suppression of arson; and

(6) Any other thing necessary to carry into effect the provisions of this article and §15A-11-1 *et seq*. of this code including, but not limited to, confiscating any materials, chemicals, items, or personal property owned, possessed, or used in direct violation of the State Fire Code.

(b) *Assistance upon request.* — Upon request, the State Fire Marshal shall assist any chief of any recognized fire company or department. Upon the request of any federal law-enforcement officer, State Police officer, Natural Resources police officer, or any county or municipal law-enforcement officer, the State Fire Marshal, any deputy state fire marshal, or assistant state fire marshal employed pursuant to the provisions of this article and any person deputized pursuant to subsection (j) of this section may assist in the lawful execution of the requesting officer's official duties: *Provided*, That the State Fire Marshal, or other person authorized to act under this subsection, shall at all times work under the direct supervision of the requesting officer.

(c) *Enforcement of rules.* — The State Fire Marshal shall enforce the rules promulgated by the State Fire Commission as authorized by this article and §15A-11-1 *et seq*. of this code.

(d) *Inspections generally.* — The State Fire Marshal shall inspect all structures and facilities, other than one- and two-family dwelling houses, subject to the State Fire Code and this article, including, but not limited to, state, county, and municipally owned institutions, all public and private schools, health care facilities, theaters, churches, and other places of public assembly to determine whether the structures or facilities are in compliance with the State Fire Code.

WV Legislature

(e) *Right of entry.* — The State Fire Marshal may, at any hour necessary, enter any building or premises, other than dwelling houses, for the purpose of making an inspection which he or she may consider necessary under the provisions of this article. The State Fire Marshal and any deputy state fire marshal or assistant state fire marshal approved by the State Fire Marshal may enter upon any property, or enter any building, structure, or premises, including dwelling houses during construction and prior to occupancy, for the purpose of ascertaining compliance with the conditions set forth in any permit or license issued by the office of the State Fire Marshal pursuant to §15A-10-7 or §29-3B-1 *et seq.* of this code.

(f) *Investigations.* — The State Fire Marshal may, at any time, investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the state. The State Fire Marshal has the authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to investigate where any fires or explosions or attempt to cause fires or explosions may have occurred, or which at the time may be burning. Notwithstanding the above provisions of this subsection, prior to entering any building or premises for the purposes of the investigation, the State Fire Marshal shall obtain a proper search warrant: *Provided*, That a search warrant is not necessary where there is permissive waiver or the State Fire Marshal is an invitee of the individual having legal custody and control of the property, building or premises to be searched.

(g) *Testimony.* — The State Fire Marshal, in making an inspection or investigation when in his or her judgment the proceedings are necessary, may take the statements or testimony under oath of all persons who may be cognizant of any facts or have any knowledge about the matter to be examined and inquired into and may have the statements or testimony reduced to writing; and shall transmit a copy of the statements or testimony so taken to the prosecuting attorney for the county wherein the fire or explosion or attempt to cause a fire or explosion occurred. Notwithstanding the above, no person may be compelled to testify or give any statement under this subsection.

(h) *Arrests; warrants*. — The State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal pursuant to this article is hereby authorized and empowered and any person deputized pursuant to this article may be authorized and empowered by the State Fire Marshal:

(1) To arrest any person anywhere within the confines of the State of West Virginia, or have him or her arrested, for any violation of the arson-related offenses of §61-3-1 *et seq.* of this code or of the explosives-related offenses of §61-3E-1 *et seq.* of said code: *Provided,* That any and all persons so arrested shall be forthwith brought before the magistrate or circuit court: *Provided, however*, That the State Fire Marshal, any full-time deputy fire marshal or any full-time assistant fire marshal is authorized to arrest persons for violations of §61-5-17 of this code.

(2) To make complaint in writing before any court or officer having jurisdiction and obtain, serve, and execute an arrest warrant when knowing or having reason to believe that anyone

has committed an offense under any provision of this article, of the arson-related offenses of §61-3-1 *et seq.* of this code or of the explosives-related offenses of §61-3E-1 *et seq.* of this code. Proper return shall be made on all arrest warrants before the tribunal having jurisdiction over the violation.

(3) To make a complaint in writing before any court or officer having jurisdiction and obtain, serve, and execute a warrant for the search of any premises that may possess evidence or unlawful contraband relating to violations of this article, of the arson-related offenses of §61-3-1 *et seq.* of this code or of the explosives-related offenses of §61-3E-1 *et seq.* of said code. Proper return shall be made on all search warrants before the tribunal having jurisdiction over the violation.

(4) Any member of the West Virginia State Police, Natural Resources police officer, or any county or municipal law-enforcement officer may assist, upon request, the State Fire Marshal or any of his or her employees authorized to enforce the provisions of this section in any duties for which the State Fire Marshal has jurisdiction.

(i) *Witnesses and oaths.* — The State Fire Marshal may issue subpoenas and subpoenas duces tecum to compel the attendance of persons before him or her to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and investigation by the State Fire Marshal and cause to be produced before him or her such papers as he or she may require in making the examination. The State Fire Marshal may administer oaths and affirmations to persons appearing as witnesses before him or her. False swearing in any matter or proceeding is considered perjury and is punishable as perjury.

(j) *Deputizing members of fire departments in this state.* — The State Fire Marshal may deputize a member of any fire department, duly organized and operating in this state, who is approved by the chief of his or her department and who is properly qualified to act as his or her assistant for the purpose of making inspections with the consent of the property owner or the person in control of the property and the investigations as may be directed by the State Fire Marshal, and the carrying out of orders as may be prescribed by him or her, to enforce and make effective the provisions of this article and any and all rules promulgated by the State Fire Commission under authority of this article: *Provided*, That in the case of a volunteer fire department, only the chief thereof or his or her single designated assistant may be so deputized.

(k) *Written report of examinations.* — The State Fire Marshal shall, at the request of the county commission of any county or the municipal authorities of any incorporated municipality in this state, make to them a written report of the examination made by him or her regarding any fire happening within their respective jurisdictions.

(l) *Report of losses by insurance companies.* — Each fire insurance company or association doing business in this state, within 10 days after the adjustment of any loss sustained by it that exceeds $1,500, shall report to the State Fire Marshal information regarding the amount of insurance, the value of the property insured, and the amount of claim as adjusted.

WV Legislature

This report is in addition to any information required by the State Insurance Commissioner. Upon the request of the owner or insurer of any property destroyed or injured by fire or explosion, or in which an attempt to cause a fire or explosion may have occurred, the State Fire Marshal shall report in writing to the owner or insurer the result of the examination regarding the property.

(m) *Issuance of permits and licenses.* — The State Fire Marshal may issue permits, documents, and licenses in accordance with the provisions of this article or §29-3B-1 *et seq.* of this code: *Provided*, That unless otherwise provided, the State Fire Marshall shall take final action upon any completed permit applications within 30 days of receipt if the application is uncontested, or within 90 days if the application is contested. The State Fire Marshal may require any person who applies for a permit to use explosives, other than an applicant for a license to be a pyrotechnic operator under §29-3E-6 of this code, to be fingerprinted and to authorize the State Fire Marshal to conduct a criminal records check through the Criminal Identification Bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of any criminal records or criminal history check shall be sent to the State Fire Marshal.

(n) *Issuance of citations for fire and life safety violations.* — The State Fire Marshal, any deputy fire marshal, and any assistant fire marshal employed pursuant to this article, and any person deputized pursuant to subsection (j) of this section may be authorized by the State Fire Marshal to issue citations, in his or her jurisdiction, for fire and life safety violations of the State Fire Code and as provided for by the rules promulgated by the State Fire Commission in accordance with §15A-11-1 *et seq.* of this code: *Provided*, That a summary report of all citations issued pursuant to this section by persons deputized under subsection (j) of this section shall be forwarded monthly to the State Fire Marshal in the form and containing information as he or she may by rule require, including the violation for which the citation was issued, the date of issuance, the name of the person issuing the citation, and the person to whom the citation was issued. The State Fire Marshal may at any time revoke the authorization of a person deputized pursuant to subsection (j) of this section to issue citations, if in the opinion of the State Fire Marshal, the exercise of authority by the person is inappropriate.

Violations for which citations may be issued include, but are not limited to:

(1) Overcrowding places of public assembly;

(2) Locked or blocked exits in public areas;

(3) Failure to abate a fire hazard;

(4) Blocking of fire lanes or fire department connections; and

(5) Tampering with, or rendering inoperable, except during necessary maintenance or repairs, on-premise firefighting equipment, fire detection equipment, and fire alarm systems.

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(o) *Required training; liability coverage.* – No person deputized pursuant to subsection (j) of this section may be authorized to issue a citation unless that person has satisfactorily completed the mandatory training as described in §15A-10-1 of this code, or a law-enforcement officer training course designed specifically for fire marshals. The course shall be approved by the Law-enforcement Training Subcommittee of the Governor's Committee on Criminal Justice and Highway Safety and the State Fire Commission. In addition, no person deputized pursuant to subsection (j) of this section may be authorized to issue a citation until evidence of liability coverage of the person has been provided, in the case of a paid municipal fire department, by the municipality wherein the fire department is located, or in the case of a volunteer fire department, by the county commission of the county wherein the fire department is located, or by the municipality served by the volunteer fire department and that evidence of liability coverage has been filed with the State Fire Marshal.

(p) *Statewide contracts.* — The State Fire Marshal may cooperate with the Department of Administration, Purchasing Division, to establish one or more statewide contracts for equipment and supplies utilized by fire companies and departments in accordance with §5A-3-1 *et seq.* of this code.

(1) Any statewide contract established hereunder shall be made available to any fire company and department in this state, as well as any other state agency or political subdivision that has a need for the equipment or supplies included in those contracts.

(2) The State Fire Marshal may develop uniform standards for equipment and supplies used by fire companies and departments in accordance with §5A-3-1 *et seq.* of this code.

(3) The State Fire Commission shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to effectuate the provisions of this subsection.

(q) *Penalties for violations.* — Any person who violates any fire and life safety rule of the State Fire Code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, or confined in jail not more than 90 days, or both fined and confined. Every day during which any violation of the provisions of this article continues after knowledge or official notice that it is illegal is a separate offense.

(r) The State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal, pursuant to this article may carry a firearm while acting in the course of his or her official duties, if he or she has successfully completed a firearms training and certification program equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy. The person shall thereafter successfully complete an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by legislative rule. The State Fire Marshal may reimburse the person for the cost of the training and requalification.

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§15A-10-4. Enforcement standards.

(a) In the enforcement of the State Building Code and State Fire Code, the State Fire Marshal shall provide compliance alternatives for historic structures as provided for in §29-1-5 of this code, which compliance alternatives shall take into account the historic integrity of the historic structures, and shall coordinate with the Director of the Archives and History Division the application of the rules of that division.

(b) In interpretation and application, the State Fire Code shall be held to be the minimum requirements for the safeguarding of life and property from the hazards of fire and explosion: *Provided,* That the State Fire Marshal shall provide compliance alternatives for historic structures and sites as provided in §29-1-5 of this code, which compliance alternatives shall take into account the historic integrity of the historic structures and sites. Whenever any other state law, county or municipal ordinance, or regulation of any agency thereof, is more stringent or imposes a higher standard than is required by the State Fire Code, the provisions of the state law, county or municipal ordinance, or regulation of any agency thereof governs, if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices: *Provided*, *however,* That, on and after July 1, 2010, if a municipal or county fire ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Fire Code, it must be presented for review and approval and sanctioned for use by the State Fire Commission. In any question, the decision of the State Fire Commission determines the relative priority of any such state law, county or municipal ordinance, or regulation of any agency thereof and determines compliance with state fire rules by officials of the state, counties, municipalities, and political subdivisions of the state.

WV Legislature

§15A-10-5. General rule-making authority; appointment of advisory boards.

(a) The State Fire Marshal may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code, establishing state standards and fee schedules for the licensing, registration, certification, regulation and continuing education of persons which will conduct inspections relating to the State Building Code, which include, but are not limited to, building code officials, inspectors, plans examiners, and home inspectors.

(b) The State Fire Marshal shall propose rules for legislative approval requiring applicants for home inspector licensing, registration, or certification to submit to a state and national criminal history record check as set forth in this section and may deny licensing, registration, or certification based upon the results of the criminal history record check.

(c) The State Fire Marshal may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the rules promulgated by the State Fire Marshal.

WV Legislature

§15A-10-6. Responsibilities of insurance companies in fire loss investigation.

(a) The State Fire Marshal or any deputy or assistant fire marshals under the authority of the fire marshal may request any insurance company investigating a fire loss of real or personal property to release any information in its possession relative to that loss. The company shall release the information and cooperate with any official authorized to request such information pursuant to this section. The information shall include, but not be limited to:

(1) Any policy in force;

(2) Any application for a policy;

(3) Premium payment records;

(4) History of previous claims; and

(5) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other relevant evidence.

(b) Any insurance company shall notify the State Fire Marshal if it has reason to believe, based on its investigation of a fire loss to real or personal property, that the fire was caused by other than accidental means. The company shall furnish the State Fire Marshal with pertinent information acquired during its investigation and cooperate with the courts and administrative agencies of the state, and any official mentioned, or referred to, in subsection (a) of this section.

(c) In the absence of fraud, no insurance company or person who furnishes information on its behalf, shall be liable for any oral or written statement or any other action necessary to supply information required pursuant to this section.

(d) Any information furnished pursuant to this section shall be held in confidence, and is exempt from the provisions of §29B-1-1 *et seq.* of this code, until such time as its release may be required pursuant to a criminal proceeding.

(e) Any official mentioned, or referred to, in subsection (a) of this section may be required to testify as to any information in his or her possession regarding the fire loss of real or personal property in any civil action in which any person seeks recovery under a policy against an insurance company for the fire loss.

WV Legislature

§15A-10-7. Fees.

(a) The State Fire Marshal is authorized to propose rules for legislative authorization pursuant to §29A-3-1 *et seq.* of this code to establish fees in accordance with the following:

(1) For blasting;

(2) For inspections of schools or day-care facilities;

(3) For inspections of hospitals or nursing homes;

(4) For inspections of personal care homes or board and care facilities;

(5) For inspections of residential occupancies;

(6) For inspections of mercantile occupancies;

(7) For business occupancies; and

(8) For inspections of assembly occupancies;

For purposes of this subdivision, an "assembly occupancy" includes, but is not limited to, all buildings or portions of buildings used for gathering together 50 or more persons for such purposes as deliberation, worship, entertainment, eating, drinking, amusement, or awaiting transportation. For purposes of this section, a "Class C assembly facility" is one that accommodates 50 to 300 persons, a "Class B facility" is one which accommodates more than 300 persons but less than 1,000 persons, and a "Class A facility" is one which accommodates more than 1,000 persons.

(b) The State Fire Marshal may collect fees for the fire safety review of plans and specifications for new and existing construction. Fees shall be paid by the party or parties receiving the review.

(1) Structural barriers and fire safety plans review;

(2) Sprinkler system review;

(3) Fire alarm systems review;

(4) Range hood extinguishment system review;

(5) Carpet specifications;

(c) All fees authorized and collected pursuant to this article, §29-3B-1 *et seq.*, §29-3C-1 *et seq.,* and §29-3D-1 *et seq.* of this code shall be paid to the State Fire Marshal and thereafter deposited into the special account in the State Treasury known as the Fire Marshal Fees Fund. Expenditures from the fund shall be for the purposes set forth in this article and

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§29-3B-1 *et seq.*, §29-3C-1 *et seq.,* and §29-3D-1 *et seq.* 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 §12-3-1 et seq. of this code and upon fulfillment of the provisions of §5A-2-1 *et seq.* of this code. Any balance remaining in the special account at the end of any fiscal year shall be reappropriated to the next fiscal year.

(d) If the owner or occupant of any occupancy arranges a time and place for an inspection with the State Fire Marshal and is not ready for the occupancy to be inspected at the appointed time and place, the owner or occupant thereof shall be charged the inspection fee provided in this section unless at least 48 hours prior to the scheduled inspection the owner or occupant requests the State Fire Marshal to reschedule the inspection. In the event a second inspection is required by the State Fire Marshal as a result of the owner or occupant failing to be ready for the inspection when the State Fire Marshal arrives, the State Fire Marshal shall charge the owner or occupant of the occupancy the inspection fees set forth above for each inspection trip required.

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§15A-10-8. Annual reports.

The State Fire Marshal shall transmit annually to the Governor an annual report, pursuant to §5-1-20 of this code. Said annual report shall include the activities of the State Fire Commission which are reportable pursuant to §5-1-20 of this code.

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§15A-10-9. Maintenance of fire hazard; order for repair or demolition; order to contain notice to comply; right to appeal.

(a) No person shall erect, construct, reconstruct, alter, maintain, or use any building, structure, or equipment, or use any land in such a way to endanger life or property from the hazards of fire or explosion, or in violation of any regulation, rule, or any provision or any change thereof promulgated by the State Fire Marshal or State Fire Commission.

(b) Whenever the State Fire Marshal determines that any building or structure has been constructed, altered, or repaired in a manner violating the State Building Code, or State Fire Code, prior to the commencement of such construction, alteration, or repairs; or whenever he or she may determine that any building or structure constitutes a fire hazard by reason of want of repair, age, or dilapidated or abandoned condition, or otherwise, and is so situated as to endanger other buildings and property; or whenever he or she may find in any building or upon any premises any combustible, flammable, or explosive substance or material, or other conditions dangerous to the safety of persons occupying the building or premises and adjacent premises or property, he or she may make reasonable orders in writing, directed to the owner of such building, structure, or premises, for the repair or demolition of such building or structure, or the removal of the combustible, flammable, or explosive substance or material, as the case may be, and the remedying of any conditions found to be in violation of a regulation promulgated as aforesaid or to be dangerous to the safety of persons or property.

A true copy of every order of the State Fire Marshal as provided for in this section shall be filed in the county where the premises are totally or partially located, with the county clerk who shall index and record the order in the general lien book. Upon filing, the order constitutes notice of such proceedings to all persons or parties thereafter having dealings involving said property.

A statement of the expenses and administrative charges shall also be filed with the county clerk, recorded, and indexed in the general lien book and upon filing, shall become a lien against the property. Thereafter, a court supervised sale of the property to enforce the collection of the expenses and administrative charges may be prosecuted at the request of the State Fire Marshal, or the Attorney General.

Every order provided for in this section shall contain a notice that compliance therewith shall be required within a period of 30 days from the date of issuance thereof and also that any person desiring to contest the validity of any such order may enter an appeal from such order to the Office of Administrative Hearings established in §15-9-1 *et. seq*. of this code, and then to the circuit court in the county where the premises are totally or partially located as provided in this article.

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§15A-10-10. Service of repair or demolition order.

The written order of the State Fire Marshal made pursuant to §15A-10-9 of this code shall be served by delivering a true copy thereof to such owner or, if the owner is absent from the state or his or her whereabouts be unknown to the State Fire Marshal, by mailing a true copy thereof by certified mail to the said owner's last known post-office address, or if no such address be known, then by certified mail to said owner in care of general delivery at the post office serving the community in which said premises lie. Delivering or mailing such order shall be accomplished within five days of the date of issuance of such order. In the event it is necessary to mail a copy of such order as aforesaid, the officer mailing the same shall also, within five days of the date of issuance of such order, post a true copy thereof in a conspicuous place on the door or other prominent entrance to said premises.

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§15A-10-11. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.

In the event any owner of any building or premises served with a copy of an order as provided in §15A-10-9 and §15A-10-10 of this code shall fail substantially to comply with such order within 30 days from the date of issuance thereof, or within 30 days after any appeal from such order has been affirmed by the State Fire Marshal or by the court, the State Fire Marshal, or his or her designee, may enter into and upon the premises affected by such order and cause the building, structure, or premises to be repaired, torn down, materials removed, and all dangerous conditions to be remedied, as the case may be, at the expense of the owner and with any administrative charges as established by the State Fire Marshal also being borne by the owner, and if such person shall fail or neglect to repay the State Fire Marshal the expense and administrative charge thereby incurred by him or her within 30 days after written demand shall have been delivered or mailed to the said owner as provided in §15A-10-10 of this code, the State Fire Marshal is hereby authorized to bring an action in the name of the state to recover such expenses, with interest, and any administrative charge as established by the commission, in any court of competent jurisdiction.

Upon a determination by the State Fire Marshal that the provisions of §15A-10-9 and §15A-10-10 of this code have not been met, and that such property constitutes a hazard to health or public safety, in lieu of initiating an order as therein provided, the State Fire Marshal may notify the county commission or the county health officer in order that they may perform their duties pursuant to section §7-1-3ff of this code. The State Fire Marshal may also, in lieu thereof, notify the municipality where the property is located so that the municipality may perform its duties pursuant to §8-12-14 of this code.

The State Fire Marshal may designate, pursuant to this section, a designee to accomplish the building, structure, or premises to be repaired, torn down, materials removed, and all dangerous conditions to be remedied, as the case may be. The designee may include an employee of the Fire Marshal, an agent of the Fire Marshal, a vendor, a Fire Department and its employees or agents, or a governmental entity and its employees or agents. Any contract entered into, pursuant to this section is exempt from the requirements of § 5A-3 -1 *et seq.* of this code.

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§15A-10-12. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units, schools, and daycare facilities; penalty.

(a) An operational smoke detector shall be installed in the immediate vicinity of each sleeping area within all one- and two-family dwellings, including any "manufactured home" as that term is defined in §21-9-2(j) of this code. The smoke detector shall be capable of sensing visible or invisible particles of combustion and shall meet the specifications and be installed as provided in the current edition of the State Fire Code, and in the manufacturer's specifications. When activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger of fire.

(b) The owner of each dwelling described in subsection (a) of this section shall provide, install, and replace the operational smoke detectors required by this section. To assure that the smoke detector continues to be operational in each dwelling described in subsection (a) of this section which is not occupied by the owner of the dwelling, the tenant in any dwelling shall perform routine maintenance on the smoke detectors within the dwelling.

(c) Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hard of hearing, the owner shall, upon written request by or on behalf of the individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hard of hearing individual of the danger of fire.

(d) An automatic fire sprinkler system installed in accordance with the current edition of the State Fire Code and the State Building Code may be provided in lieu of smoke detectors.

(e) After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.

(f) An operational single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector, which shall be alternating current (AC) powered, either plugged directly in to an electrical outlet that is not controlled by a switch or hardwired into an alternating current (AC) electrical source, with battery backup, shall be installed, maintained, tested, repaired, or replaced, if necessary, in accordance with the manufacturer's direction:

(1) In any newly constructed residential unit which has a fuel-burning heating or cooking source including, but not limited to, an oil or gas furnace or stove;

(2) In any residential unit which is connected to a newly constructed building, including, but not limited to, a garage, storage shed, or barn, which has a fuel-burning heating or cooking source, including, but not limited to, an oil or gas furnace or stove; and

(3) In either a common area where the general public has access or all rooms in which a person will be sleeping that are adjoining to and directly below and above all areas or rooms

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that contain permanently installed fuel-burning appliances and equipment that emit carbon monoxide as a byproduct of combustion located within all apartment buildings, boarding houses, dormitories, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two-family dwellings intended to be rented or leased, hotels, and motels.

(g) All single station carbon monoxide detectors with a suitable alarm or a combination smoke detector and carbon monoxide detectors shall be hardwired into an alternating current (AC) electrical source, with battery backup, when installed in all newly constructed apartment buildings, boarding houses, dormitories, hospitals, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two-family dwellings intended to be rented or leased, hotels, and motels.

(h) In any long-term care facility that is staffed on a 24-hour, seven day a week basis, the single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector is only required to be installed in an area of the facility that permits the detector to be audible to the staff on duty.

(i) Carbon monoxide detectors shall be installed in every public or private school or daycare facility that uses a fuel-burning heating system or other fuel-burning device that produces combustion gases. A carbon monoxide detector shall be located in each area with a fuel-burning heating system or other fuel-burning device that produces combustion gases.

(j) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor, or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the installed carbon monoxide detector.

(k) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor, or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

(l) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined $250. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $750. For a third and subsequent offenses, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $2000.

(m) A violation of this section may not be considered to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(n) A violation of this section may not constitute a defense in any civil action or proceeding

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involving any insurance policy.

(o) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling or other building described in subsection (a) or (f) of this section a greater duty with regard to the installation, repair, and replacement of the smoke detectors or carbon monoxide detectors than is required by this section.

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§15A-10-13. Use of live trees in public buildings; exceptions.

Notwithstanding any other provision of law to the contrary, live trees may be displayed in public buildings if the trees are decorated with U/L approved miniature lights, or are not decorated with electrical lights. The provisions of this section do not apply to public buildings used for education, health care, nursing homes, or correctional facilities.

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§15A-10-14. Safety standards for bed and breakfast establishments; findings.

(a) *Findings.* — Bed and breakfast establishments provide a unique and important contribution to the state, allowing visitors the opportunity to enjoy many of the aspects of our communities and state not available at hotels and motels, and often provide vacationers access to overnight accommodation in areas of this state that would not otherwise be available. These operations continue to grow in number and importance in our state's economy and must be promoted and encouraged by state and local government. Most of these facilities are older residences being converted to this use, and in many cases have architectural and historical significance; and, as with most small businesses, are begun with limited capital available for investment. Any fire safety code standards applicable to these facilities must be sensitive to this distinction and avoid placing a large financial burden on persons operating or planning to operate these facilities. Further, the personal safety of those who live in and visit these facilities is of paramount importance and requires that consideration be made to assure that adequate safety requirements are placed on these facilities to provide for the safety of visitors, residents, and, in an emergency, responding firefighters and rescue workers.

(b) *Definition.* — For the purposes of this section, the term "bed and breakfast establishment" means a building occupied as a one-family dwelling unit that provides sleeping accommodations and breakfast to transient guests for a single fee and does not offer more than six guest rooms to no more than 12 guests.

(c) *Fire code standards.* — Notwithstanding any provision of this code to the contrary, every bed and breakfast establishment shall be exempt from provisions of fire safety code requirements which are contrary to the following standards:

(1) Each bed and breakfast shall have operational smoke alarms in all common areas, guest rooms, and hallways, and heat detectors as otherwise required by this code or rule of the Fire Commission. Battery-powered smoke alarms shall be permitted where the establishment has demonstrated that the testing, maintenance, and battery replacement procedures will ensure reliable power to the smoke alarms. Notwithstanding any provision of this code to the contrary, no smoking will be allowed inside a bed and breakfast establishment.

(2) Each bed and breakfast shall have operational hard-wired, battery-powered, or plug-in emergency lighting that indicates available means of egress. Battery-powered or plug-in emergency lighting devices shall be permitted where the establishment has demonstrated that the testing, maintenance, and battery replacement procedures will ensure reliable power to the emergency lighting devices.

(3) The State Fire Marshal shall permit bed and breakfast establishments that cannot readily comply with the requirements of a legislative rule, which may mandate the installation of a secondary means of escape or a sprinkler system, one year per floor of the establishment to comply with the requirements.

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(4) All other provisions of the state fire safety code not inconsistent with this section and rules promulgated pursuant to subsection (d) of this section are applicable to bed and breakfast establishments.

(d) *Legislative rules*. — The State Fire Commission shall promulgate or amend an existing legislative rule, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to effectuate the provisions of this section. The rule shall include a mechanism for the Fire Marshal to grant individual variances to bed and breakfast establishments which cannot otherwise meet provisions of the state fire safety code due to the historic and architectural significance of the establishment, with due consideration of the economic limitations inherent in the operation of this type of small business.

(e) *Historic preservation review*. — The owner of a bed and breakfast may request the historical preservation section of the Division of Culture and History, pursuant to §15A-1-8 of this code, to consult with the owner and provide a recommendation to the Fire Marshal regarding the historic character of the structures used or proposed to be used as a bed and breakfast and any objections or concerns regarding any renovations or other changes required by the Fire Marshal. If an appeal regarding a decision made by the Fire Marshal is made as provided by §15A-10-18 of this code, the Fire Marshal shall consider the recommendation of the historical preservation section when making a determination regarding the variance as provided for in subsection (d) of this section.

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§15A-10-15. Performance of installation of propane gas systems.

(a) Notwithstanding any statutory or regulatory provisions to the contrary, any person who installs, fuels, maintains, or services any fuel gas system to a one- or two-family dwelling shall comply with rules promulgated by the Fire Commission relating to fuel gas systems.

(b) This section does not apply to any person who performs this work on a single-family dwelling, owned or leased, and occupied by that person. The personal exemption provided in this subsection is the same as the personal exemption provided in §29-3D-1, *et seq*. of this code.

(c) Use of, refilling of, or work upon a liquefied petroleum gas container without the consent of the tank owner is prohibited.

(d) No person shall sell, install, fill, refill, deliver or permit to be delivered, or use in any manner any liquefied petroleum gas container unless the container is owned by the person, or its use is authorized by its owner.

(e) For purposes of this section "Liquefied petroleum gas" means propane and or predominantly a mixture of propane and butane.

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§15A-10-16. Additional remedies to abate, etc., fire hazards.

In case any building, structure, or equipment is, or is proposed to be, erected, constructed, reconstructed, altered, maintained, or used, or any land is or is proposed to be used in such a way to endanger life or property from the hazards of fire or explosion or in violation of this article, §15A-11-1 *et seq*. of this code, the fire code or the building code, the State Fire Marshal, or the Attorney General may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or any other appropriate action or actions, proceedings to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, maintenance, or use.

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§15A-10-17. License denial limitation, suspension, or revocation.

(a) The State Fire Marshal shall deny, limit, suspend, or revoke a license issued if the provisions of this article, or if the rules promulgated pursuant to this article or §15A-11-1 *et seq*. of this code are violated

(b) Before any such license is denied, limited, suspended, or revoked, however, written notice shall be given to the licensee stating the grounds for such denial, limitation, suspension, or revocation.

(c) An applicant or licensee has 10 working days after receipt of the order denying, limiting, suspending, or revoking a license to request a formal hearing contesting the denial, limitation, suspension, or revocation of a license under this article. If a formal hearing is requested, the applicant or licensee and the secretary shall proceed in accordance with the provisions of §29A-5-1 *et seq.* of this code.

(d) If the license is denied, limited, suspended, or revoked, the license or certification holder shall cease and desist practices of their profession as of the effective date of the denial, limitation, suspension, or revocation. Any administrative appeal of such denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or revocation.

(e) A party aggrieved by a decision by the State Fire Marshal may appeal such final decision to the Office of Administrative Hearings, pursuant to §15A-9-1 *et seq*. of this code, or may choose independent informal dispute resolution as set forth in this article.

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§15A-10-18. Independent informal dispute resolution.

(a) A license or certification holder adversely affected by an order or citation of a deficient practice issued pursuant to this article may request the independent informal dispute resolution process. A license or certificate holder may contest a cited deficiency as contrary to law or unwarranted by the facts or both.

(b) The State Fire Marshal has the authority to establish conference panels composed of three persons of the licensed or certified skill to decide the outcome of the independent informal dispute resolution process. One member shall be selected by the State Fire Marshal, one member shall be selected by the licensee or certificate holder, and one member shall be selected by agreement of both. If a vacancy occurs on the panel, the replacement for that member shall be made by the original individual who had selected such member. The members of the panel shall serve without compensation. This panel shall hear the matter and render a decision. The licensee or certificate holder may not be accompanied by counsel during the independent informal dispute resolution conference.

(c) Upon appeal of a decision rendered by the State Fire Marshal, the panel shall hold an informal conference affirming, modifying, or vacating an order of the State Fire Marshal, or issuing an order in the name of the State Fire Marshal. The panel shall forthwith notify the parties of its decision and as soon as practicable send written notices of its decision to the parties. The decision of the panel is final. The independent informal dispute resolution process is not a formal evidentiary proceeding.

(d) A party aggrieved by a decision of a panel may appeal pursuant to §29A-5-1 *et seq*. of this code.

(e) The State Fire Marshal shall promulgate a procedural rule to carry out the provisions of this section.

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§15A-10-19. Establishment of demonstration buildings and equipment for educational instruction in fire prevention and protection; payment therefor.

The State Fire Marshal is authorized to establish for educational purposes in public and private schools and state educational institutions, demonstration buildings and equipment for fire prevention and protection, and such expenditures therefor shall be made from the funds appropriated therefor to the office of the State Fire Marshal.

WV Legislature

§15A-10-20. False alarm of fire; penalties.

No person shall make, report, or disclose, by any means of written or verbal communication, aid or abet in such, any alarm of fire which he or she knows to be false at the time of making or turning in the alarm.

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§15A-10-21. Tax on insurance companies.

Every insurance company doing business in this state, except Farmers' Mutual Fire Insurance companies, shall pay to the State Insurance Commissioner annually on or before March 1, in addition to the taxes now required by law to be paid by the companies, one half of one percent of the taxable premiums of the companies on insurance against the hazard of fire and on that portion of all other taxable premiums reasonably applicable to insurance against the hazard of fire which are included in other coverages, and received by it for insurance on property or risks in this state during the calendar year next preceding as shown by their annual statement under oath to the insurance department. The money so received by the State Insurance Commissioner is paid by him or her into the treasury and credited to the Special Revenue Fund created in §15A-10-7 of this code.

WV Legislature

§15A-10-22. Penalties.

(a) Any person who violates any regulations promulgated by the State Fire Commission as provided in §15A-11-1 *et seq*. of this code, or by the State Fire Marshal as provided in this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 or confined in the county jail not more than 90 days, or both.

Each day during which any illegal erection, construction, reconstruction, alteration, maintenance or use continues after knowledge or official notice that it is illegal is a separate offense.

(b) Except as provided by the provisions of subsection (c) of this section, any person who violates the provisions of §15A-10-20 of this code shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined for a first offense not more than $100 or confined in jail for not more than 30 days, or both fined and confined; and for a second and each subsequent offense, fined not less than $100 nor more than $500, or confined in jail for not less than 90 days nor more than one year, or both.

(c) Any person who violates the provisions of §15A-10-20 of this code with the intent to cause injury to the person of another, to cause destruction of the property of another, or to divert the attention of law enforcement or fire personnel to help effectuate the commission of another crime shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one nor more than three years, or fined not more than $500, or both fined and confined.

(d) Any officer who knowingly and willfully fails to perform any duty required of him or her by this article or who violates any of its provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $50 for each failure or violation.

(e) Any person who violates any other provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 or confined in jail not more than 90 days, or both fined and confined.

WV Legislature

§15A-10-23. Construction.

Being in the interest of public safety, the provisions of this article shall be liberally construed.

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§15A-10-24. Severability.

If any section, subsection, subdivision, subparagraph, sentence, or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article and, to this end, the provisions of this article are hereby declared to be severable.

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§15A-10-25. Awarding service weapon upon retirement of fire marshal or service weapon.

(a) Upon the retirement of a State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal pursuant to this article shall award to the retiring member his or her service weapon, without charge, upon determining:

(1) That the retiring employee is retiring honorably with at least 10 years of service; or

(2) The retiring employee is retiring with less than 10 years of service based upon a determination that the employee is totally physically disabled as a result of his or her service with the State Fire Marshal.

(b) Notwithstanding the provisions of subsection (a) of this section, the State Fire Marshal shall not award a service weapon to any employee whom the State Fire Marshal: (1) Knows is prohibited from possessing a firearm by state of federal law; (2) has reason to believe such retiring employee to be mentally incapacitated; or (3) has reason to believe the retiring employee constitutes a danger to any person or the community.

(c) If a service weapon is taken out of service due to routine wear, the State Fire Marshal may offer the service weapon for sale to any active or retired State Fire Marshal, assistant state fire marshal, or deputy state fire marshal, at fair market value, with the proceeds from any sales used to offset the cost of new service weapons. The disposal of service weapons pursuant to this subsection does not fall within the jurisdiction of the Purchasing Division of the Department of Administration.

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§15A-11-1. State Fire Commission continued; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

(a) The Fire Commission is hereby continued, which shall consist of 13 voting members, with the State Fire Marshal sitting as an ex officio nonvoting member. The voting members shall be qualified by experience and training to deal with the matters which are the responsibilities of the commission. All current members of the commission are continued in their respective term. The officers of the West Virginia Fire Chief's Association, the West Virginia Firemen's Association, the West Virginia Professional Fire Fighters Association, the West Virginia Professional Fire Chiefs Association, the West Virginia Manufacturers Association, the Professional Independent Insurance Agents of West Virginia, and the West Virginia Society of Architects shall submit a list of names of persons recommended by each of these associations to the Governor for consideration in appointing the State Fire Commission. The West Virginia Professional Fire Fighters Association and the West Virginia Professional Fire Chiefs Association shall recommend the names of two persons from full-time paid fire departments. The West Virginia Fire Chief's Association and the West Virginia Firemen's Association shall each recommend the names of three persons from volunteer fire departments. The West Virginia Manufacturers Association shall recommend the names of three persons to represent business and industry. The Professional Independent Insurance Agents of West Virginia shall recommend the names of two persons to represent the fire insurance industry. The West Virginia Society of Architects shall recommend the names of two persons to represent registered architects. Appointments to the commission shall be made by the Governor, by and with the advice and consent of the Senate, from the lists of qualified persons recommended by the organizations. Three members shall be appointed to represent full-time paid fire departments, one member shall be appointed to represent the full-time paid fire chiefs, three members shall be appointed to represent volunteer fire departments, and two members shall be appointed to represent the volunteer fire chiefs. Two members shall be appointed to represent business and industry and one member shall be appointed to represent the fire insurance industry. One member shall be appointed to represent registered architects. The term of office of the members shall be staggered five-year terms. Vacancies shall be filled in the same manner as the original appointment but only for the remainder of a term. All members serve at the will and pleasure of the Governor, and may be removed for any or no reason.

(b) The members of the State Fire Commission shall serve without compensation but shall be reimbursed for their reasonable and necessary expenses actually incurred in the performance of their duties.

(c) All costs incidental to the administration of the commission shall be paid from the special fund by the State Fire Marshal established in §15A-10-7 of this code.

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§15A-11-2. Chairperson; vice chairperson; meetings; quorum.

(a) The State Fire Commission shall select a chairperson and vice chairperson from among its members and shall hold regular meetings at least once every two months and special meetings when called by its chairman. In the absence of the chairman, the vice chairman shall exercise the powers and duties of the chairman.

(b) No business shall be transacted by the State Fire Commission in the absence of a quorum which shall be seven members, one of whom must be the chairperson or vice chairperson.

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§15A-11-3. Promulgation of rules and State Fire Code.

(a) Pursuant to the provisions of §29A-3-1 *et seq*. of this code, the State Fire Commission shall propose and promulgate comprehensive rules for the safeguarding of life and property from the hazards of fire and explosion to be known as the State Fire Code. Rules embodied in the State Fire Code shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and have the force and effect of law in the several counties, municipalities, and political subdivisions of the state: *Provided*, That buildings or structures utilized primarily for agricultural purposes shall be exempt from the provisions of the State Building Code, the State Fire Code, and any county or municipal building code or ordinance that is or may be adopted, such as the ICC International Property Maintenance Code. The rule shall include, but not be limited to, standard safe practices for the design, construction, location, installation, maintenance, and operation of liquefied petroleum gas systems, and training standards and qualifications for persons who install or maintain liquefied petroleum gas systems.

(b) The State Fire Commission may establish work groups and seek input in the rulemaking process from groups or individuals with an interest in any aspect of the fire code.

(c) For purposes of this section, the term “agricultural purposes” means the raising, cultivation, drying, harvesting, marketing, production, or storage of agricultural products, including both crops and livestock, for sale or use in agriculture or agricultural production, or the storage of machinery or equipment used in support of agricultural production.

(d) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code relating to sprinkler protection, specifically providing that buildings commencing construction after July 1, 2023, housing emergency fire, rescue, or ambulance services shall be protected throughout by approved automatic sprinkler systems: *Provided*, That emergency services buildings that house only equipment, are less than 5,000 square feet, and do not have designated sleeping areas or quarters within them, regardless when constructed or commencing construction, are exempt from this requirement.

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§15A-11-4. Hazardous substance emergency response training programs.

(a) The State Fire Commission shall promulgate rules pursuant to §29A-3-1 *et seq.* of this code establishing criteria for qualified training programs in hazardous substance emergency response activities and procedures for such qualified training programs to be certified by the State Fire Marshal.

(b) For the purposes of this section, "hazardous substance" means any hazardous substance as defined in chapter 88, Acts of the Legislature, regular session, 1985, any "chemical substances and materials" listed in the rules promulgated by the Commissioner of Labor pursuant to §21-3-8 of this code, and any "hazardous waste" as defined in §22-18-1 *et seq.* of this code.

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§15A-11-5. Promulgation of rules and statewide building code.

(a) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state through the adoption of a State Building Code. The rule may include provisions regarding building construction, renovation, and all other aspects as related to the construction and mechanical operations of a structure. The rule shall include building energy codes. The rules shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building construction and all aspects related thereto and have force and effect in those counties and municipalities adopting the State Building Code: *Provided*, That each county or municipality may adopt the code to the extent that it is only prospective and not retroactive in its application; *Provided, however*, That buildings or structures utilized primarily for agricultural purposes shall be exempt from the provisions of the State Building Code, the State Fire Code, and any county or municipal building code or ordinance that is or may be adopted, such as the ICC International Property Maintenance Code.

(b) The State Fire Commission may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the State Building Code or related construction or renovation practices.

(c) For the purpose of this section, the term "building code" is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto. Whenever any other state law, county, or municipal ordinance, or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Building Code, the provisions of the state law, county or municipal ordinance, or regulation of any agency thereof governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the State Fire Commission determines the relative priority of any such state law, county or municipal ordinance, or regulation of any agency thereof, and determines compliance with State Building Code by officials of the state, counties, municipalities, and political subdivisions of the state.

(d) Enforcement of the provisions of the State Building Code is the responsibility of the respective local jurisdiction. Also, any county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: *Provided*, That any county or municipality may adopt the State Building Code with or without adopting the BOCA National Property Maintenance Code. If a county adopts a property maintenance code or ordinance including, but not limited to, the ICC International Property Maintenance Code, such code or ordinance shall exempt all property used for agricultural purposes or otherwise cause such property to be exempted from any such code or ordinance from enforcement. Any such code that may be or is adopted by any county shall be and is unenforceable as to agricultural property.

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(e) After the State Fire Commission has promulgated rules as provided in this section, each county or municipality intending to adopt the State Building Code shall notify the State Fire Marshal of its adoption.

(f) The State Fire Commission may conduct public meetings in each county or municipality adopting the State Building Code to explain the provisions of the rules.

(g) The provisions of the State Building Code relating to the construction, repair, alteration, restoration, and movement of structures are not mandatory for existing buildings and structures identified and classified by the State Register of Historic Places under the provisions of §29-1-8 of this code or the National Register of Historic Places, pursuant to 54 U.S.C. § 302101 *et seq.* Prior to renovations regarding the application of the State Building Code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the Division of Culture and History, State Historic Preservation Office. The final decision is vested in the State Fire Marshal. Additions constructed on a historic building are not excluded from complying with the State Building Code.

(h) For purposes of this section, the term "agricultural purposes" has the same meaning as is set forth in §15A-11-3 of this code.

(i) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code relating to sprinkler protection, specifically providing that buildings commencing construction after July 1, 2023, housing emergency fire, rescue, or ambulance services shall be protected throughout by approved automatic sprinkler systems: *Provided,* That emergency services buildings that house only equipment, are less than 5,000 square feet, and do not have designated sleeping areas or quarters within them, regardless when constructed or commencing construction, are exempt from this requirement

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§15A-11-6. Public hearings and notice.

Prior to the promulgation of a State Fire Code, or any amendments thereto, as provided in this article, the State Fire Commission shall hold at least one public hearing on the proposed regulations contained therein, notice of which shall be the same as the notice for a hearing as provided in the Administrative Procedure Act, chapter 29A of this code.

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§15A-11-7. Commission's powers in conduct of public hearing.

For the purposes of any public hearing under this article, the State Fire Commission is empowered and authorized to issue subpoenas and subpoenas duces tecum, to take testimony, and to administer oaths to any witness in any proceeding or examination instituted before it or conducted by it with reference to any matter within its jurisdiction. In all hearings or proceedings before the State Fire Commission, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing; and in case of disobedience to a subpoena or other process, the State Fire Commission or any party to the proceedings before the commission may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books, and documents. Such court, in case of refusal to obey the subpoena issued to any person subject to the provisions of this chapter, shall issue an order requiring such person to appear before the State Fire Commission and produce all books and papers, if so ordered, and give evidence touching the matter in question.

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§15A-11-8. Powers, duties, and authority of State Fire Commission.

(a) All state and area training and education in fire service shall be coordinated by the State Fire Commission. The State Fire Marshal shall ensure that these programs are operated throughout the state at a level consistent with needs identified by the commission. Beginning on the effective date of the amendment to this section, all trainings approved by the State Fire Commission for Fire Officer 2, shall contain a section on the current laws, rules, and regulations governing the fire service. All trainings approved by the State Fire Commission for Firefighter 1, shall contain a section on the Fire Commission, and the Fire Marshal's Office, and the operations of both.

(b) The State Fire Commission may make recommendations to the State Insurance Commissioner regarding town classifications for fire insurance rates.

(c) The formation of any new fire department, including volunteer fire departments, requires the concurrence of the State Fire Commission. The State Fire Commission shall develop a method of certification which can be applied to all fire departments and volunteer fire departments.

(d) The State Fire Commission shall certify the chief, or acting chief, of every department. The Fire Commission shall propose emergency legislative rules for promulgation in accordance with §29A-3-1 *et seq*. of this code to implement the program established pursuant to this subsection.

(e) The State Fire Commission shall develop a plan for fire prevention and control which shall include, but not be limited to, the following areas: manpower needs, location of training centers, location of fire prevention and control units, communications, fire-fighting facilities, water sources, vehicular needs, public education and information, public participation, standardization in recordkeeping, evaluation of personnel, reporting of fire hazards, programs on mutual aid, location of public safety agencies, outline of fire prevention programs, and accessibility of fire prevention information.

(f) The State Fire Commission shall establish fire protection areas, and at such times as funds are available, shall establish field offices for inspection, planning, and certification.

(g) The State Fire Marshal may accept, on behalf of the State Fire Commission, gifts, grants, court-ordered civil forfeiture proceedings, and bequests of funds or property from individuals, foundations, corporations, the federal government, governmental agencies, and other organizations or institutions. The State Fire Marshal, acting on behalf of the State Fire Commission, may enter into, sign, and execute any agreements, and do and perform any acts that may be necessary, useful, desirable, or convenient to effectuate the purposes of this article. Moneys from gifts, grants, civil forfeiture proceedings, and bequests received by the State Fire Marshal shall be deposited into the special account set forth in §15A-10-7 of this code, and the State Fire Marshal, with the approval of the State Fire Commission, may make expenditures of, or use of any tangible property, in order to effectuate the purposes of this

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article.

(h) The State Fire Commission shall establish standards and procedures for fire departments to implement the provisions of this section with regard to the following:

(1) Fire prevention and control;

(2) Uniform standards of performance, equipment, and training;

(3) Certification;

(4) Training and education in fire service, subject to the rule-making requirements set forth in §15A-11-9 of this code; and

(5) The creation, operation, and responsibilities of fire departments throughout the state.

(i) The State Fire Commission may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the State Fire or Building Code or related construction or renovation practices.

(j) The State Fire Commission may deny, suspend, or revoke certification of any fire department, or any chief, or acting chief in the State of West Virginia if a fire department is not in compliance with all applicable laws, rules, and regulations, or the chief, or acting chief, does not operate the department in compliance with all applicable laws, rules, and regulations, or allows the department, or members of the department, to act or operate in a manner that is not in compliance with all applicable laws, rules, and regulations.

(k) Appeals from any final decision of the Fire Commission shall be heard by the Office of Administrative Hearings pursuant to this chapter, except as otherwise provided in §15A-10-9(b) of this code.

(l) The State Fire Commission shall develop procedures to authorize persons with specialized training, but who are not certified as firefighters, to be members of a volunteer fire department to only perform specialized functions, none of which shall be, or include, firefighting. These specialized functions can include, but are not limited to, swift water rescue, search and rescue, trench rescue, and confined space rescue. The State Fire Commission shall propose legislative rules, and may propose emergency legislative rules, for promulgation in accordance with §29A-3-1 *et seq*. of this code to implement this program, and to set minimum training standards for these types of specialized members.

(m) The State Fire Commission shall, in compliance with §21-6-11 of this code, propose emergency legislative rules for promulgation in accordance with §29A-3-1 *et seq*. of this code to specify what activities junior firefighters may and may not participate in.

(n) The State Fire Commission shall, by legislative rules proposed for promulgation in

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accordance with §29A-3-1 *et seq*. of this code, establish minimum probationary volunteer firefighter standards:

(1) For the purpose of this subsection, a probationary firefighter means an active member of a volunteer fire department who is 18 years old or older and is not a certified firefighter;

(2) A person may serve as a probationary firefighter, at the discretion of the fire chief, for a period not to exceed five years; and

(3) The Legislature finds that an emergency exists, and therefore, the Fire Commission shall propose an emergency rule to implement the provisions of this subsection in accordance with §29A-3-15 of this code by October 1, 2022.

(o) The State Fire Commission may propose legislative rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code. The State Fire Commission may promulgate interpretive and procedural rules in accordance with the provisions of §29A-3-1 *et seq*. of this code.

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§15A-11-9. Volunteer firefighters' training and equipment.

(a) The State Fire Commission shall maintain oversight and authority over training, equipment requirements, and performance standards for volunteer fire departments and its members, establishing and maintaining said requirements pursuant to legislative rule, in accordance with the provisions of §29A-3-1 *et seq*. of this code, to establish training requirements for firefighters which:

(1) Provide for:

(A) Minimum training levels for rescue and firefighting;

(B) Minimum levels of equipment needed to protect life and property within fire service areas;

(C) Minimum performance standards the departments shall meet in response times, communications, levels of water flow, and pressure; and

(D) Other performance measures as considered necessary to meet the overall goals of improved fire prevention and control;

(2) Allow the training to be offered in segments, blocks, or modules: *Provided*, That no firefighter may engage in fire fighting activities, except in response to wildland fires, until he or she has completed all firefighter one training: *Provided, however*, That support members may provide ancillary assistance to firefighters as defined by the rule;

(3) Provide for online training;

(4) Allow testing to be done in person or online; and

(5) Establish the testing requirements which include:

(A) If the individual is required to test in person, then the tests shall be given regionally at various times throughout the year; or

(B) If the individual is authorized to test online, then the requirements for online testing shall be established.

(b) Notwithstanding any provision of this code to the contrary, the State Fire Commission may establish or continue a pilot project program which implements changes to standards imposed on volunteer fire fighting that address problems facing volunteer fire departments in the state, including issues related to training, recruitment, and retention.

(1) The State Fire Commission may limit the number of participating volunteer fire departments in the pilot project program.

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(2) The State Fire Commission shall set the rules and conditions for participating volunteer fire departments by policies adopted and ratified by the commission.

(3) On July 1 of each year, the State Fire Commission shall annually provide a full summary report of the status of the program to the Joint Committee on Government and Finance.

(c) After conducting its evaluations of any fire department, the Office of the State Fire Marshal shall issue a certificate of evaluation to the chief of that department, which shall be made and issued in duplicate. The certificate of evaluation shall show the date of each evaluation and the notations relating thereto by the Office of the State Fire Marshal, and the most recent certificate of evaluation shall be posted at the fire department in such a conspicuous place and manner that the results are visible to the members of the department, and to members of the public.

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§15A-11-10. Courtesy certification of firefighters in surrounding states to serve as volunteer firefighter.

(a) It is the intention of the Legislature to permit individuals who have been certified as professional or volunteer firefighters in a state bordering West Virginia to serve as volunteer firefighters in West Virginia.

(b) Beginning July 1, 2020, the State Fire Commission shall establish a process by which a courtesy certification to serve as a volunteer firefighter in this state may be issued to any person who satisfies the following requirements:

(1) Is a certified professional or volunteer firefighter in good standing in a state bordering West Virginia;

(2) Complies with the application process and procedures established by the State Fire Commission; and

(3) Submits any required fee.

(c) Issuance of a courtesy certification shall not be withheld by the State Fire Commission based on an individual's failure to satisfy the training requirements for volunteer firefighters set forth in legislative rules promulgated pursuant to §15A-11-9 of this code.

(d) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this section.

(e) Any courtesy certification issued pursuant to this section may be revoked at any time if the individual's certification in the bordering state is restricted, revoked, or otherwise expires.

(f) Any courtesy certification issued pursuant to this section must be renewed biennially.

(g) The State Fire Commission may deny, suspend, or revoke a courtesy certification if the certificate holder is, or has acted, not in compliance with all applicable laws, rules, and regulations.

(h) Appeals from any final decision of the Fire Commission shall be heard by the Office of Administrative Hearings pursuant to this chapter.

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§15A-11-11. Fire Service Equipment and Training Fund; creation of fire service equipment and training grant; reports of ineligibility to State Fire Marshal.

(a) There is hereby continued in the Treasury a special revenue fund to be known as the Fire Service Equipment and Training Fund. Expenditures from the fund by the State Fire Commission are authorized from collections. The fund may only be used for the purpose of providing grants to equip volunteer and part-volunteer fire companies and departments and their members, and to train volunteer and part-volunteer firefighters. Any balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund, but remains in the Special Revenue Fund.

(b) The State Fire Commission shall establish a grant program for equipment and training for volunteer and part-volunteer fire companies and departments. Such grant program shall be open to all volunteer and part-volunteer fire companies and departments. In making grants pursuant to this section, the State Fire Marshal shall consider:

(1) The number of emergency and nonemergency calls responded to by the company or department;

(2) The activities and responses of the company or department;

(3) The revenues received by the company or department from federal, state, county, municipal, local, and other sources; and

(4) The company's or department's assets, expenditures, and other liabilities, including whether the fire company or department has availed itself of available statewide contracts.

(c) The State Fire Commission may promulgate emergency rules and shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code as may be necessary to implement and comply with the provisions of this section.

(d) The Legislative Auditor shall notify the State Fire Marshal of any volunteer or part-volunteer fire company or department that is ineligible to receive grant funds due to the company's or department's failure to file required bank statements or financial reports or failure to comply with an audit or review by the Legislative Auditor. A volunteer or part-volunteer fire company or department reported by the Legislative Auditor shall be ineligible to receive funds under this section until the Legislative Auditor notifies the State Fire Marshal that the company or department has come into compliance.

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§15A-12-1. West Virginia Fusion Center Established.

(a) The Governor shall establish, organize, equip, staff, and maintain a multiagency information fusion center ("Fusion Center") to receive, analyze, and disseminate all hazard, crime, and threat information. The Department of Homeland Security shall operate the facility, as directed by the Governor, with oversight auditing and accountability to the select committee of the Legislature as set forth herein, and in collaboration among federal, state, and local agencies, as well as private sector persons, organizations, entities, or agencies, including, but not limited to, those with the primary purposes of homeland security, counter-terrorism, public safety, public protection, and critical infrastructure: *Provided*, That the Fusion Center shall not knowingly participate in activity, or knowingly cooperate, with any federal agency, or a contractor for any federal agency, when that participation or cooperation involves illegal or improper actions. Further, the Fusion Center shall not allow a federal agency or contractor for a federal agency to work inside the Fusion Center when it knows or has reason to know that such federal agency or federal contractor is presently engaged or intends to engage in unlawful intelligence-gathering activity against a citizen of West Virginia.

(b) The Fusion Center shall collect, integrate, analyze, disseminate, and maintain such information to support local, state, and federal law-enforcement agencies, other governmental agencies, and private persons, organizations, entities, or agencies in detecting, preventing, investigating, preparing for, responding to, and recovering from any possible or actual criminal or terrorist activity, as well as any hazard, including to the state's critical infrastructure, in compliance with applicable state and federal laws and regulations, including 28 CFR 23: *Provided*, That as used in this article, "terrorism" shall mean only foreign or international terrorist groups or individuals, or domestic groups or individuals involved in transnational or domestic terrorism as defined in 6 U.S.C. § 485: *Provided, however*, That under no circumstance shall the Fusion Center or its officers, directors, agents, or employees engage in, or be ordered or directed to engage in prohibited non-law enforcement intelligence gathering activities on citizens of the United States as set forth in any federal or state law or in contravention of the Constitution of the United States, nor shall the Fusion Center engage in any information or intelligence gathering for any political purpose nor be solicited for, or cooperate in, any investigation of a public official or candidate for elected office, unless reasonable grounds exist to suspect the subject of the investigation is, or may be, involved in criminal conduct. This provision shall not prohibit the Fusion Center from participating in matters dealing with election fraud, election tampering, or other issues designed to provide the citizens of the state with tamper-free elections, and shall not restrict the Fusion Center from assisting in security matters involving political or dignitary visits to or within the State of West Virginia.

(c) The West Virginia Fusion Center shall be housed within secure facilities in order to access sensitive information, as permitted by state and federal law. Within the secure facilities, the Fusion Center shall house a Homeland Secure Data Network (HSDN) in order to access classified information as permitted by state and federal law and ensure that appropriate security measures are in place for: (1) the secure facilities; (2) data collected or

stored at the secure facilities; and (3) personnel working at the secure facilities.

(d) The West Virginia Fusion Center shall do all acts necessary and proper to carry out the powers granted to the board of the State Resiliency Office.

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§15A-12-2. Operation of center.

(a) The West Virginia Department of Homeland Security shall operate the West Virginia Fusion Center under the direction of the Governor, with oversight auditing and accountability to the select committee of the Legislature as set forth herein, and shall cooperate with the United States Department of Homeland Security, local, county, state, or federal government agencies, and private organizations: *Provided*, That the Fusion Center shall not knowingly participate in activity, or knowingly cooperate, with any federal agency, or a contractor for any federal agency, when that participation or cooperation involves illegal or improper actions. Further, the Fusion Center shall not allow a federal agency or contractor for a federal agency to work inside the Fusion Center when it knows or has reason to know that such federal agency or federal contractor is presently engaged or intends to engage in unlawful intelligence-gathering activity against a citizen of West Virginia: *Provided, however*, That all Fusion Center operations shall be subject to applicable state and federal laws and regulations, including, but not limited to, 28 CFR Part 23, and shall at all times strictly abide by all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in any federal or state law or in contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d).

(b) The West Virginia Fusion Center shall: (1) Be the primary clearinghouse for the State of West Virginia for the collection, analysis, and proper distribution of information and actionable intelligence as defined in this section; (2) generate intelligence analyses critical for homeland security policy and relevant threat warning in order to protect life, liberty, and property in West Virginia; (3) promote and improve intelligence sharing among public safety and public service agencies at the federal, state, and local levels, and with critical infrastructure and key resource entities within the private sector subject to all restrictions and prohibitions recited in this article; (4) receive and integrate intelligence and information related to terrorism and other homeland security threats; (5) collect, analyze, produce, disseminate, and maintain such intelligence and information, as allowed by law, to support local, state, and federal law enforcement agencies, other governmental agencies, and private organizations in: preventing, preparing for, responding to, and recovering from any possible or actual terrorist attack or other homeland security threat; and (6) maximize intelligence and information sharing in strict accordance with all applicable state and federal laws, restrictions, and prohibitions: *Provided*, That the Fusion Center shall not knowingly participate in activity, or knowingly cooperate, with any federal agency, or a contractor for any federal agency, when that participation or cooperation involves illegal or improper actions. Further, the Fusion Center shall not allow a federal agency or contractor for a federal agency to work inside the Fusion Center when it knows or has reason to know that such federal agency or federal contractor is presently engaged or intends to engage in unlawful intelligence-gathering activity against a citizen of West Virginia.

(c) The Governor shall provide facilities, budget, and administrative support for the West Virginia Fusion Center and its employees and participants. The cabinet secretary shall serve as security manager for the West Virginia Fusion Center.

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(d) Private sector persons, organizations, entities, or agencies participating in the West Virginia Fusion Center shall not be considered governmental entities, nor shall employees or agents of private sector persons, organizations, entities, or agencies assigned to the West Virginia Fusion Center be considered state employees; however, private sector entities and their employees or agents are subject to the same confidentiality requirements and held to the same standards as an employee of the West Virginia Fusion Center, including, but not limited to, any and all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d): *Provided*, That the Fusion Center shall not knowingly participate in any activity, or knowingly cooperate, with any federal agency, or a contractor for or any person or entity utilizing or collaborating with any federal agency, when that participation or cooperation involves illegal or improper actions: *Provided*, *however*, that the Fusion Center shall not allow a federal agency or contractor for a federal agency to work inside the Fusion Center when it knows or has reason to know that such federal agency or federal contractor is presently engaged or intends to engage in unlawful intelligence-gathering activity against a citizen of West Virginia.

(e) The operations of the West Virginia Fusion Center shall be overseen by the cabinet secretary and deputy cabinet secretary of the West Virginia Department of Homeland Security, with oversight auditing and accountability to the select committee of the Legislature as set forth herein.

(f) The cabinet secretary and deputy cabinet secretary shall either have a current, valid federal security clearance at the appropriate level, and training and certifications commensurate with the position, or be eligible for that clearance, and be in the process of obtaining the appropriate clearance.

(g) The cabinet secretary and deputy cabinet secretary may adopt policies and procedures for the operation of the West Virginia Fusion Center. The cabinet secretary and deputy cabinet secretary may adopt rules and regulations as may be necessary to carry out the provisions of this act, including rules and regulations concerning the operations of the West Virginia Fusion Center: *Provided*, That all policies, procedures, rules, and regulations shall be subject to any and all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the United States, including but not limited to, 50 U.S.C. §3036(d).

(h) Subject to appropriations, the West Virginia Fusion Center shall have the following employees, all in the unclassified service of the civil service act:

(1) A director, who shall be appointed by and serve at the pleasure of the cabinet secretary. The director shall either have a current, valid federal security clearance at the appropriate level, and training and certifications commensurate with the position, or be eligible for that clearance, and be in the process of obtaining the appropriate clearance, and shall:

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(A) Be responsible for all operations of the West Virginia Fusion Center and shall report to the cabinet secretary or deputy cabinet secretary;

(B) Be responsible for:

(i) Facilitating and implementing applicable federal standards and programs by the West Virginia Fusion Center;

(ii) Ensuring compliance with all applicable laws and federal requirements, including, but not limited to, any and all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d);

(iii) Maintaining proper separation between military and civilian capacities;

(iv) Providing support, as needed, to the cabinet secretary and deputy cabinet secretary; and

(v) Other duties and responsibilities as may be assigned by the cabinet secretary and deputy cabinet secretary, subject to all restrictions and prohibitions described in this article.

(5) A deputy director, who shall be appointed by and serve at the pleasure of the director. The deputy director shall either have a current, valid federal security clearance at the appropriate level, and training and certifications commensurate with the position, or be eligible for that clearance, and be in the process of obtaining the appropriate clearance, and shall be responsible for assisting the director in: (A) facilitating and implementing applicable federal standards and programs by the West Virginia Fusion Center; (B) ensuring compliance with all applicable laws and federal requirements; (C) maintaining proper separation between military and civilian capacities; (D) providing support, as needed, to the cabinet secretary and deputy cabinet secretary; and (E) other duties and responsibilities as may be assigned by the Fusion Center director.

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§15A-12-3. Joint Oversight Committee.

(a) The Speaker of the House of Delegates and President of the Senate shall establish a select committee which shall have oversight of the information collected by the West Virginia Fusion Center to ensure the proper collection, dissemination, storage, and destruction of information or intelligence. The committee shall be composed of: (1) The Speaker of the House of Delegates and four members of the House of Delegates, to be appointed by the Speaker of the House of Delegates, no more than two of whom shall be appointed from the same political party; and (2) the President of the Senate and four members of the Senate, to be appointed by the President of the Senate, no more than two of whom shall be from the same political party; and counsel and staff to the Speaker and the Senate President: *Provided*, That in the event the membership of a political party is less than 15 percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than 15 percent membership may be one from that house. The committee shall be chaired by the President of the Senate and the Speaker of the House of Delegates. All members appointed to the select committee by the select committee chairs serve until their successors are appointed as provided in this section. The select committee members, counsel, and staff must have the appropriate security clearance in order to obtain information that is classified and shall be subject to the same rules, regulations, and laws as the employees of the West Virginia Fusion Center for safeguarding both classified and law enforcement sensitive information or intelligence. These select committee members, counsel, and staff shall be advised of the restrictions and protocol for handling such information or intelligence and shall sign a statement of understanding as well as a confidentiality agreement.

(b) Members of the select committee may enter and inspect the West Virginia Fusion Center at any time staff is present with select committee counsel and staff, with or without notice to the West Virginia Fusion Center.

(c) Meetings of the select committee shall be confidential and the information and materials, in any medium, including hard copy and electronic, coming to the attention of or placed in the custody of the Select Committee shall not be subject to the West Virginia Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code.

(d) The select committee may conduct proceedings in a confidential executive session for the purpose of conducting business, establishing policy, reviewing investigations, and interrogating a witness or witnesses.

(e) All witnesses appearing before the select committee shall testify under oath or affirmation, and any member of the select committee or its counsel may administer oaths or affirmations to such witnesses. To compel witnesses to attend a hearing or produce any books, records, documents, or papers, or any other tangible thing except where the records, documents, data, or items are protected from disclosure by privilege recognized by state or federal courts, the select committee may issue subpoenas, signed by one of the co-chairs: *Provided*, That the select committee may specifically authorize or delegate the power to any

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member of the select committee to sign subpoenas on its behalf. The subpoenas shall be served by any person authorized by law to serve and execute legal process, and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

(f) If any person subpoenaed to appear at any hearing shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers, or any other tangible thing within his or her control when the same are demanded, the select committee shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and that court may compel obedience to the subpoena as though the subpoena had been issued by that court in the first instance: *Provided*, That prior to seeking circuit court relief, the select committee may, in its discretion, first demand the Secretary of Homeland Security or the director of the West Virginia Fusion Center under whom an employee has failed to appear or which has failed to produce requested or subpoenaed material to appear before the select committee and address the basis for the failure to comply and whether compliance will be forthcoming.

(g) The select committee may direct the West Virginia Fusion Center to send its budgetary accounting to the State Auditor: *Provided*, That if budgetary expenditures are classified, or security or law enforcement sensitive such that disclosure would compromise an investigation, those entry descriptions, but not the expenditure amounts, may be redacted from the West Virginia Fusion Center accounting provided to the State Auditor: *Provided, however*, That the State Auditor shall bring any accounting issues of concern to the attention of the select committee, upon which the select committee shall subpoena the West Virginia Fusion Center for unredacted copies of the accounting items to be presented for explanation and justification of the necessity and legality of the concerns raised by the State Auditor. The select committee may take whatever action it deems necessary, if any, after review and analysis of the subpoenaed unredacted materials.

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§15A-12-4. Memoranda of understanding required.

(a) Each governmental and nongovernmental entity participating in the West Virginia Fusion Center shall enter a memorandum of understanding between the West Virginia Fusion Center and the participating entity. The memorandum of understanding shall at a minimum:

(1) Provide a framework and working mechanism for the organization of the West Virginia Fusion Center to address issues that are common to city, county, state, and federal governments' obligations to protect the safety and well-being of citizens and to enhance the success of the Fusion Center in responding to criminal, terrorist, and other threats to public safety through the achievement of coordination and cooperation;

(2) Clarify the working relationships between the governmental and nongovernmental entities and use limitations of shared information; and

(3) Outline the intent of the parties regarding the information provided by the governmental and non- governmental entities to the West Virginia Fusion Center.

(b) Nothing in any agreement shall obligate any nongovernmental entity to provide information nor establish any duty for any nongovernmental entity to assume any police or law enforcement responsibilities.

(c) Failure of any governmental or nongovernmental entity to abide by the restrictions and use limitations set forth by the West Virginia Fusion Center may result in the suspension or termination of use privileges, discipline sanctions imposed by the user's employing agency, or criminal prosecution.

(d) Any and all interagency memoranda of understanding and participating public or private persons, organizations, entities, or agencies described in this section shall be subject to all restrictions and prohibitions described in this section.

WV Legislature

§15A-12-5. Confidentiality and immunity from service of process; penalties.

(a) Papers, records, documents, reports, materials, databases, or other evidence or information relative to criminal intelligence, any terrorism investigation, threat assessment, or information on infrastructure which if released would compromise the public safety in the possession of the West Virginia Fusion Center shall be confidential and shall not be subject to the West Virginia Freedom of Information Act (§29B-1-1 *et seq.* of this code): *Provided*, That this exemption from the West Virginia Freedom of Information Act may be lifted in the event a court determines in a state or federal whistleblower action that unlawful or unauthorized activity has taken place, and shall in no way restrict the Legislature's select oversight committee from access to all such information. Every five years, the West Virginia Fusion Center shall conduct a review of information contained in any database maintained by the West Virginia Fusion Center. Data that has been determined not to have a nexus to criminal or terrorist activity shall be removed from such database. A reasonable suspicion standard shall be applied when determining whether or not information has a nexus to terrorist activity for non-U.S. citizens, but a probable cause standard shall apply for U.S. citizens: *Provided, however*, That all such determinations shall be reported to the Legislature's select oversight committee at regularly scheduled oversight audit and committee meetings.

(b) No person having access to information maintained by the West Virginia Fusion Center shall be subject to subpoena in a civil action in any court of the state to testify concerning a matter of which he has knowledge pursuant to his access to criminal intelligence information maintained by the West Virginia Fusion Center.

(c) No person or agency receiving information from the West Virginia Fusion Center shall release or disseminate that information without prior authorization from the West Virginia Fusion Center.

(d) Intelligence data in the possession of a criminal or juvenile justice agency, state or federal regulatory agency, or peace officer, or disseminated by such agency or peace officer, are confidential records under §29B-1-1 *et seq.* of this code.

(e) Any person who knowingly disseminates information in violation of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $200 nor more than $1,000, or be confined in jail for not more than 20 days, or both fined and confined. If such unauthorized dissemination results in death or serious bodily injury to another person, such person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years: *Provided*, That all state and federal Whistleblower Protection Act protections shall apply to any person whose disclosures are found to have been made to report or protect against violation or attempted violation of any and all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d).

WV Legislature

(f) Any person, being an officer or employee of the United States, the State of West Virginia or of any department, agency, or political subdivision thereof, or any person from the private sector or industry assigned to or working with the West Virginia Fusion Center in any capacity, who knowingly publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by law, any critical infrastructure or national intelligence information protected from disclosure by this section coming to him or her in the course of his or her employment, affiliation, or official duties with the West Virginia Fusion Center, or by reason of any examination or investigation made by, return, report, or record made to or filed with, such department or agency, officer or employee thereof, shall be guilty of a felony and, upon conviction, be imprisoned in a state correctional facility for not less than one year, and shall be removed from office or employment and affiliation with the West Virginia Fusion Center: *Provided*, That all state and federal Whistleblower Protection Act protections shall apply to any person whose disclosures are found to have been made to report or protect against violation or attempted violation of any and all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d).

(g) The West Virginia Department of Homeland Security shall provide legal counsel to the West Virginia Fusion Center to serve as privacy and civil liberties counsel to the West Virginia Fusion Center. Such attorney shall advise the West Virginia Fusion Center director and its deputy director on all matters necessary to ensure compliance with all applicable federal and state privacy or civil liberties laws, obligations, restrictions, and prohibitions as set forth herein.

(h) For purposes of this article:

(1) “Criminal intelligence information” means data or information that has been evaluated and determined to be relevant to the identification and criminal activity of individuals or organizations that are reasonably suspected of involvement in criminal activity.

(2) “Critical Infrastructure” means systems and assets as defined in 42 U.S.C. § 5195c(e).

(3) “National Intelligence” means data or information determined to meet the definition stated in 50 U.S.C. §3003 (5): *Provided*, That Fusion Center activities and operations relating to National Intelligence shall at all times strictly abide by all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d).

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§15A-12-6. Receipt of information; immunity from liability.

(a) No cause of action for defamation, invasion of privacy, or negligence shall arise against any person by reason of that person's furnishing information concerning any suspected, anticipated, or completed criminal violation or terrorist activity when the information is provided to or received from the West Virginia Fusion Center or any federal, state, or local governmental or private sector entity established for the purpose of detecting and preventing acts of criminal activity or terrorism: *Provided*, That with regard to any Fusion Center intelligence or information gathering activity or operation against a U.S. Citizen related to alleged terrorism or violation of a law, such allegation must be vetted and confirmed by procedures substantially in compliance with those set forth in laws, rules, and regulations developed in accordance with 50 U.S.C. §3036(d).

(b) No person shall be subject to such cause of action for cooperating with or furnishing evidence or information regarding any suspected criminal violation to the West Virginia Fusion Center.

(c) This section shall not provide immunity for those disclosing or furnishing false information with malice or willful intent to injure any person, nor for any person who does not comply with the procedures set forth in §15A-9-6(a) of this code.

(d) This section does not in any way abrogate or modify common law or statutory privilege or immunity heretofore enjoyed by any person or entity.

WV Legislature

§15A-12-7. Costs.

(a) The director, with approval of the cabinet secretary or deputy cabinet secretary, may enter into agreements with participating agencies or organizations, whether public or private, for their participation in the West Virginia Fusion Center. Such agreements: (1) Shall define the duties and responsibilities of each participating agency or organization; (2) may provide for payment by the participating agency or organization of a reasonable share of the cost to establish, maintain, and operate the West Virginia Fusion Center; and (3) shall require compliance with all requirements, restrictions, and prohibitions set forth in this article.

(b)(1) The West Virginia Fusion Center, with approval of the cabinet secretary or deputy cabinet secretary, may accept any gift, grant, payment, moneys, or assets seized by forfeiture as a result of collaborative efforts or contribution from any source, public or private, for the purpose of paying the costs to establish, maintain, or operate the West Virginia Fusion Center. Such gift, grant, payment, moneys, or assets seized by forfeiture as a result of collaborative works or contribution may be in the form of services, equipment, supplies, materials, or funds. All amounts received under this section shall be remitted to the State Treasurer in accordance with chapter 12 of this code, and the amendments thereto. Upon receipt of each such remittance, the State Treasurer shall deposit the entire amount in the State Treasury to the credit of the West Virginia Fusion Center Fund, that is hereby created in the State Treasury and shall be administered by the West Virginia Department of Homeland Security in accordance with this article and subject to regular auditing and oversight by the Legislature's select oversight committee.

(2) Moneys in the West Virginia Fusion Center Fund may be used by the director to pay any costs associated with establishing, maintaining, or operating the West Virginia Fusion Center. The director of the West Virginia Fusion Center Fund shall develop policy and procedures for purchasing, and expenditures shall be made in accordance with vouchers approved by the director or the director's designee. Any gift, grant, payment, moneys, or any assets seized by forfeiture as a result of collaborative efforts, or contribution in any form other than funds may be accepted by the director, with approval of the cabinet secretary, and utilized and expended in any manner authorized by law to establish, maintain, or operate the West Virginia Fusion Center: *Provided*, That all moneys used by the director shall be subject to all restrictions and prohibitions set forth in this article, and also to regular auditing and oversight by the Legislature's select oversight committee.

(3) The moneys credited to the fund created in subsection (b) of this section shall be used for the purposes set forth in this section and for no other governmental purposes. It is the intent of the Legislature that the moneys deposited in this fund shall remain intact and inviolate for the purposes set forth in this act.

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§15A-12-8. Registration plates to official vehicles used in agency activities.

Notwithstanding any provision of this code to the contrary, the Commissioner of the Division of Motor Vehicles is authorized to issue Class A license plates to authorized state-owned vehicles operated by the West Virginia Fusion Center when the director signs a written affidavit stating that the vehicle or vehicles for which the plates are being requested will be used by the West Virginia Fusion Center in fulfilling its mission.

WV Legislature

§15A-12-9. Cold case database.

(a) As used in this section:

"CODIS" means the Combined DNA Index System;

"Cold case" means any investigation into a qualifying crime, an unresolved missing persons complaint as defined in §15-3D-3 of this code, or unidentified human remains where all investigative leads have been exhausted and the crime remains unsolved;

"Database" means the cold case database;

"NAMUS" means the National Missing and Unidentified Persons System;

"NCIC" means the National Crime Information Center;

"NCMEC" means the National Center for Missing and Exploited Children;

"Qualifying crime" means felony offenses set forth in §61-2-1 *et seq.*, §61-3-1, §61-3-2, §61-3-7, §61-3C-14b, §61-3E-1 *et seq.*, §61-8-1 *et seq.*, §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq*. of this code; and

"ViCAP" means the Violent Crime Apprehension Program.

(b) The West Virginia Fusion Center shall develop a secure database that contains all information related to each cold case in any jurisdiction in the state.

(c) The West Virginia Fusion Center shall adopt policies and procedures to collect information for the database and for its maintenance.

(d) Each law-enforcement agency in the state and the State Fire Marshal's Fire Investigation Division shall provide the information required by the West Virginia Fusion Center for inclusion in the database for each cold case as provided in §15-3D-10 of this code. Each law-enforcement agency and the office of the State Fire Marshal may maintain its physical evidence and investigation files for each cold case until the investigation is resolved.

(e) Information to be collected and maintained in the cold case database. – Each law-enforcement agency in the state and the Fire Marshal's Fire Investigation Division may provide a written report or other information to the West Virginia Fusion Center for inclusion in the database containing the following:

(1) The victim's:

(A) Name;

(B) Gender;

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(C) Race;

(D) Ethnicity; and

(E) Date of birth;

(2) The ViCAP number if the case has been entered into the ViCAP system;

(3) The NCMEC number if the case has been entered into the NCMEC system;

(4) Whether the case was entered into the NAMUS system;

(5) The NCIC number if entered into the NCIC system;

(6) The Medical Examiner case number;

(7) Whether a probative, unanalyzed suspect referenced DNA is available;

(8) Whether a probative crime scene DNA profile from the putative perpetrator has been uploaded to CODIS;

(9) Whether reference DNA from the victim is available;

(10) The West Virginia State Police Forensic Lab case number;

(11) The name of the agency investigating the case;

(12) The investigating agency's phone number;

(13) The agency case number;

(14) Whether the victim was a juvenile or adult victim at the time the crime occurred;

(15) The date the crime was reported to the investigating agency;

(16) The date or approximate date the victim was last seen;

(17) The date or approximate date of death;

(18) The cause or manner of death;

(19) The location where the body was found;

(20) Whether a weapon was used, and the type of weapon used;

(21) Whether the following evidence is available:

(A) Fingerprints;

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(B) Palm prints;

(C) Latent prints;

(D) Dental records;

(E) Shell casings; or

(F) Other physical evidence;

(22) Whether a suspect or person of interest has been identified;

(23) Scars, marks, tattoos, and any other unique distinguishing features of any suspects or persons of interest;

(24) A case narrative; and

(25) Any other additional information that is pertinent to the case.

(f) The following information may be entered if applicable to either the victim or the suspect, but the law-enforcement agency shall specify which individual is being referenced:

(1) Vehicle information;

(2) Aliases;

(3) Associated case addresses;

(4) Associated phone numbers;

(5) Associated names;

(6) Case photos or composite drawings at the discretion of the investigating agency; and

(7) Any other additional information that is pertinent to the case.

(g) The West Virginia Fusion Center shall maintain the information contained within the database indefinitely.

WV Legislature

§15A-13-1. Office created; appointment of Inspector General.

(a) There is hereby created the Office of the Inspector General as a separate and independent operating agency within the department.

(b) The Office of the Inspector General shall be headed by the Inspector General.

(c) The Inspector General shall be appointed by the Governor, subject to the advice and consent of the Senate.

(d) The term of the Inspector General is five years.

(e) At the end of a term, an Inspector General shall be eligible for reappointment by the Governor, subject to confirmation as required by the provisions of subsection (c) of this section. The Inspector General may continue to serve until a successor is appointed if he or she is not reappointed.

(f) If a vacancy occurs in the position, an interim Inspector General may be appointed as successor to serve until a successor is appointed.

(g) The Inspector General may be removed by the Governor during his or her term only for:

(1) Malfeasance or gross misfeasance in office;

(2) Persistent failure to perform the duties of the office; or

(3) Conduct prejudicial to the proper administration of justice.

(h) The Inspector General shall be appointed without regard to political affiliation and shall be professionally qualified through experience or education in at least two of the following areas:

(1) The practice of law;

(2) Auditing;

(3) Government operations;

(4) Financial analysis;

(5) Management analysis;

(6) Public administration; or

(7) Fraud investigation.

(i) The Inspector General shall be paid an annual salary not to exceed $95,000.

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(j) The Inspector General:

(1) Shall perform inspections, evaluations, and reviews, and provide quality control for all investigations within the department, and supervise all personnel of the Office of the Inspector General;

(2) Shall investigate fraud, waste, abuse of departmental funds, and behavior in the department that threatens public safety or demonstrates negligence, incompetence, misfeasance, or malfeasance;

(3) Shall cooperate with and coordinate investigative efforts with law enforcement, and where a preliminary investigation establishes a sufficient basis to warrant referral, shall refer such matters to the appropriate prosecuting attorney or the appropriate federal law-enforcement agency; and

(4) May subpoena any person or evidence, administer oaths, take and certify affidavits, and take depositions and other testimony for the purpose of investigating fraud, waste, abuse of departmental funds, or behavior in the department that threatens public safety or demonstrates negligence, incompetence, or malfeasance.

(A) If a person fails to comply with a lawful order or subpoena issued under this subsection, on petition of the Inspector General or a designated Assistant Inspector General, a court of competent jurisdiction may compel:

(i) Compliance with the order or subpoena; or

(ii) Testimony or the production of evidence.

(k) If the Office of the Inspector General is unable to investigate a complaint or allegation because of a conflict of interest, the Office of the Inspector General shall refer the complaint or allegation to the Attorney General for referral to another investigative entity.

(l) Neither the Governor, the secretary, nor any other person, may impede, interfere, or inhibit the Inspector General from initiating, conducting, or completing any investigation, inspection, evaluation, review, or other activity regarding oversight of any investigation conducted by the Office of the Inspector General.

(m) The position of the Inspector General shall be governed by the classified-exempt service provisions in §29-6-4 of this code: *Provided*, That, any employees of the Office of the Inspector General shall be governed by the classified service provisions of §29-6-1 *et seq*. of this code and rules promulgated thereunder.

(n) The Inspector General may employ such professional personnel, investigators, and other personnel, including certified law-enforcement officers, necessary for the proper administration of the office.

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(o) The Inspector General may delegate duties to other employees or obtain services through contract, but the Inspector General is responsible for all official tasks so delegated.

(p) The Inspector General shall propose legislative and procedural rules in accordance with the provisions of chapter 29A of this code in order to implement provisions of this section and to carry out the duties prescribed therein. The Inspector General may promulgate emergency rules pursuant to §29A-3-15 of this code to effectuate the purposes of this section.

(q) Reports of investigations are confidential and shall be provided under seal to the Governor, the secretary, and the Joint Committee on Government and Finance on a quarterly basis.

(r) Reports and documents relating to active investigations involving possible criminal conduct are confidential and are not subject to the provisions of 29B-1-1 *et seq*.

(s) All agencies and boards listed in §5F-2-1(i) of this code shall keep posted in any physical office space, when applicable and in a conspicuous place on their website as required by §5F-1-7 of this code, the office contact information of the Inspector General, including office location and mailing address, telephone number, facsimile number, office hours, and a secure electronic means of contacting the office such as a contact portal or other interface.

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