



**AMERICANS FOR  
PROSPERITY®**  
**WEST VIRGINIA**

**AFP-WV Pathway to Prosperity 2022-2024 Legislative Agenda Outline**

How do we diversify our economy by creating the conditions for job growth and economic opportunity that will bring people to West Virginia?

For too long, West Virginia has faced a demographic winter in which more people leave our state than move here every year. We're one of the only states in the country to have continually lost population since the 1950's. This trend is unsustainable from both a fiscal and economic opportunity perspective. Without transformational changes that will rapidly make West Virginia a more attractive place to live, work, and raise a family, we will unfortunately continue to see reductions in our population and an overall lack of economic opportunity that will continue to hold West Virginians back from reaching their full potential. Swiftly pursuing policy solutions to reverse this harmful trend must be of utmost concern for lawmakers. They must do so in a wholistic fashion that breaks down the myriad barriers that have held us back for too long in order to transform our state into a place with abundant opportunity where every Mountaineer can thrive.

**Executive Summary**

1. **Criminal Justice Reform**: Take meaningful steps towards ending the cycle of poverty and recidivism that our current justice system perpetuates with reforms that are smart on crime and soft on taxpayers
2. **Tax and Spending Reform**: Reform state taxes so they are fair, low, and predictable while making state government spending live within its means
3. **Red Tape Reduction**: Continue to thoughtfully reform our regulatory environment
4. **Technology and Innovation**: Make WV a tech start-up state
5. **The Personal Option**: Continue to cut needless red tape to make health care more individualize, accessible, and affordable
6. **Foundational Education Reform**: Defend and expand our educational freedom gold standard while removing barriers that hold public-school teachers back from innovating
7. **Energy Policy**: Aggressively combat energy poverty head-on
8. **Implementation**: Work with lawmakers to ensure that shared priorities are implemented optimally
9. **Additional Policy Materials**

## **Section 1 | Criminal Justice Reform: Take meaningful steps towards ending the cycle of poverty and recidivism that our current justice system perpetuates with reforms that are smart on crime and soft on taxpayers**

*Right now, folks leaving incarceration who genuinely want to become contributing members of society once again are presented with too many needless barriers holding them back from reaching their full potential. The result is a system in which too many individuals are being trapped in a cycle of poverty and recidivism, denying their dignity and deeply harming our state both economically and fiscally. Taxpayers in West Virginia can no longer afford our unsustainable criminal justice system. Thankfully, data and common sense shows us there are proven solutions to this pervasive problem:*

- 1. Enact a package of bills that represent the gold standard in American for reentry policy. See our Roadmap for Reentry Reform attached.**
- 2. Thoughtfully reduce the number of criminal laws and pass common sense reforms that allow West Virginia to become smart on crime and soft on taxpayers.**
- 3. Increase the amount of non-prison/jail alternatives to traditional sentencing for non-violent offenses.**
- 4. Further reform the state’s expungement laws by making non-conviction records automatically expunged without a fee.**
- 5. Fund the following priorities at adequate levels *without* increasing overall spending:**
  - a. Public defenders*
  - b. Transitional Housing*
  - c. Actual treatment (mental health/addiction)*
- 6. Make positive sentencing reforms retroactive.**
- 7. Institute Default Mens Reas Standard.**
- 8. Increase felony theft threshold.**
- 9. “Ban the Box” for state employment.**
- 10. Restore voting rights for the formerly incarcerated.**
- 11. Institute officer duty to intervene in excessive force or gross misconduct.**
- 12. Institute Justice System data transparency.**
- 13. Make fines proportionate to one’s ability to pay, create or expand payment plans, waivers, and alternatives to payment such as programming, treatment, and community service.**
- 14. Place a moratorium on all sentencing enhancements for non-violent crimes.**
- 15. Legalize recreational marijuana.**

## **Section 2 | Tax and Spending Reform: Reform state taxes so they are fair, low, and predictable while making state government spending live within its means**

*According to [research published](#) by the CATO Institute, taxation impacts where businesses locate and where individuals move. In 2016, 24 of the 25 highest taxed states saw net out-migration. Likewise, the lowest taxed states, particularly those without income taxes such as Florida, saw the largest net in-migration. This trend [continued in 2018](#) and is increasing today. In fact, not only are high tax states repelling businesses, but also high-income earners. Fortunately, West Virginia has the opportunity to make meaningful, [comprehensive tax reforms](#) that will address many of the shortcomings in our current tax code that keep our state’s individuals, families, and businesses from truly thriving.*

1. Enact historic, comprehensive tax reform that thoughtfully eliminates the state Personal Income Tax. For more info on what realistic reform looks like, see our [Principles for Tax Reform Roadmap](#).
2. Take meaningful steps towards eliminating the job-killing Business Inventory Tax.
3. Take the first step to getting government out of the business of picking winners and losers by conducting a comprehensive review of return on investment by the Office of Fiscal and Regulatory Affairs for all tax credits, economic incentives, and other corporate crony schemes.
4. Enact priority-based budgeting.
5. Implement a BRAC-style commission to reevaluate state spending priorities.
6. Continue to make government spending live within its means with fiscally responsible budget choices.

### **Section 3 | Red Tape Reduction: Continue to significantly and thoughtfully reform West Virginia's regulatory environment**

*West Virginia can be a place where people and businesses come to grow, thrive, and provide much needed services our communities but, sadly, our state still has an excessively burdensome regulatory culture that limits opportunity, job creations, and population growth. Too often, regulations and rules only serve to protect well-connected businesses and industries, allowing government to pick winners and losers. To truly jumpstart our economy while still protecting public health and safety we must work to cut unnecessary, duplicative, or unfair bureaucratic red tape. We must also ensure that new regulations are limited to addressing significant public harm while utilizing best practices and empirical evidence in their design.*

1. Continue to reduce the amount of needless red tape, which acts as barrier to West Virginians reaching their full potential and investment in the state.
2. Enact the Universal Recognition of Licensure Act ([HB 2007, 2021 Regular Session](#))
3. Utilize [SB 472's provisions](#) (2021 Regular Session) to conduct a comprehensive review through the lens of least restrictive means for all state occupational licensing, to ensure that following best practices and not placing undue burdens on citizens simply seeking employment.
4. Utilize the [2016 Regulatory Reform Act](#) to continue removing unnecessary red tape that holds back West Virginians from principled entrepreneurship.

### **Section 4 | Technology and Innovation: Make WV a tech start-up state**

*We believe technology improves people's lives. Evidence shows us that since the 1970's technological advances paired with free markets have driven an [80 percent decline](#) in the amount of people living in starvation level poverty. From lifesaving medical advancements to technology that will make our world safer, embracing innovation is the key to transforming society for the better. That's why we need policies that support a culture of experimentation—allowing anyone to try something new. With increased investment in our state by tech companies, like Virgin Hyperloop, West Virginia should further position itself to incubate the future by advancing policies that remove government barriers holding back the next great idea from happening right here in the Mountain State.*

1. Modernize our drone deployment regulations ([HB 2726, 2021 Regular Session](#)) for both state roads and localities/municipalities while vesting land rights with private property owners.
2. Modernize our Autonomous Vehicles regulation. (See [HB 2813](#) from Arizona's 2021 Regular Session)
3. Enact an Anti-SLAPP law (Anti-[Strategic lawsuits against public participation](#)).
4. Institute a [Universal Regulatory Sandbox](#). (See [HB 217](#) from Utah's 2021 Regular Session)
5. Prohibit warrantless digital surveillance by government agencies.

## **Section 5 | The Personal Option: Continue to cut needless red tape to make health care more individualize, accessible, and affordable**

*COVID-19 exposed a tragic reality: America's healthcare system is undermined by too much bureaucracy and red tape that prevents doctors, nurses, and medical researchers from helping people. We all saw that from the start. Faulty tests. Too few beds and ventilators. Delays in supplying protective gear. Not enough doctors and nurses in hardest hit areas. Each of these problems was the result of some misguided policy that, until recently, went mostly unnoticed. In response to the crisis, state and federal authorities removed many of the bureaucratic barriers that stood in the way of doctors, nurses, and researchers doing their jobs. The result? Lives were saved. The success of these reforms, and state lawmakers working quickly to make many of them permanent, shows the good we can achieve when we completely reimagine our approach to healthcare and put our trust in doctors, nurses, researchers, and patients.*

1. **Develop a plan to quickly phase out all medical certificate of need policies, which are needlessly holding back our trusted health care community from meeting the needs they see in their communities.**
2. **Remove unnecessary red tape holding back Certified Nurse Anesthetists from practicing to their full scope.**
3. **Make permanent common-sense executive orders untying the hands of Advanced Practice Registered Nurses to practice to the full scope of their training.**
4. **Continue to take positive steps toward reimagining health care in the state. See more in the attached memo: Health Care Recommendations For West Virginia**

## **Section 6 | Foundational Education Reform: Defend and expand our educational freedom gold standard**

*No one wants to move to a place where they fear their child's educational needs may not be met. Thankfully, by ensuring that every child in this state has the opportunity to access the education that is right for them, the Hope Scholarship Act will thoughtfully provide the common-sense educational flexibility that our families need and deserve. Our state now stands as a model for the entire nation when it comes to innovation and future of K-12 education. Lawmakers should ensure that implementation of this groundbreaking approach to education lives up to the legislative intent and spirit of the statutes that created it. Further, they should safeguard the Hope Scholarship Act from attacks by wrongheaded opponents of educational freedom. To double down on West Virginia's new status as a national education policy leader, lawmakers should seek to expand flexibility in our education system by removing*

*needless regulatory barriers that hold public school teachers back from innovating and providing students the individualized education they deserve.*

- 1. Get red tape out of the way of public-school teachers so they can have the freedom they deserve to innovate within our public education system.**
- 2. Protect the groundbreaking Hope Scholarship Act and ensure it is implemented optimally.**
- 3. Increase accountability in education by giving the legislature rulemaking review authority pertaining rules promulgated by the State Board of Education.**
- 4. Begin to look at how we can reform our state funding formula in a way that focuses on funding students directly.**

## **Section 7 | Energy Policy: Aggressively combat energy poverty**

*We can and must be good stewards of our environment. At the same time, we must not hurt the most vulnerable in society by putting affordable, reliable energy further out of reach or damaging the economy. West Virginians spend more on energy than nearly any other state and tens of thousands of low-income West Virginia families already spend more than 30% of their income on energy. Environmental stewardship and a growing, thriving economy should not be mutually exclusive – to the contrary, they must go hand in hand. We need a growing and thriving economy to make innovative leaps in cleaner technology. That thriving economy depends on affordable energy. We cannot top-down our way to economic prosperity or a cleaner environment. That path leads to significant economic harm to millions of people to no good end.*

- 1. Give adequate scrutiny any draconian energy regulations coming from Washington by ensuring that the state legislature must approve of all federal compliance plans generated by the State Department of Environmental Protection. (See similar concept: [HB 2004, 2015 Regular Session](#))**
- 2. “Ban the Bans” by precluding local and state government from arbitrarily banning energy sources by type.**
- 3. Support the work of Governor Jim Justice, Treasurer Riley Moore, and Attorney General Patrick Morrissey as they work against [draconian executive actions from the Biden Administration](#).**

## **Section 9 | Additional Policy Materials**

DRAFT - Ensuring Increased Public Safety Through Effective Reentry  
From: Jeremiah Mosteller, Senior Policy Analyst, Criminal Justice  
To: Jason Huffman, State Director, AFP-West Virginia  
Date: Tuesday, November 16, 2021

### **Roadmap for Reentry Reform**

#### **The Problem:**

More than 78 million Americans have a criminal record.<sup>i</sup> They face a significant uphill battle to restoring their family, reputation, and financial future. These individuals confront more than 44,000 legal barriers on account of their criminal record – more than 850 exist in West Virginia law alone.<sup>ii</sup> These barriers significantly contribute to almost a third of the individuals exiting West Virginia’s prison system returning within just three years.<sup>iii</sup>

Examples of the barriers faced by those with a criminal record:

- Employment: [More than 50% of individuals previously incarcerated will struggle to secure employment and even those with employment will see a 52% reduction in their average annual earnings.](#)<sup>iv</sup>
- Housing: Those who were previously incarcerated are 10 times more likely to experience homelessness.<sup>v</sup>
- Education: Both state and federal policies limit access to education for those with a criminal record even though almost half of those incarcerated in the federal system have never graduated high school and 95% do not have a college degree.<sup>vi</sup>

We believe that accountability is an essential component of justice, but when someone has fulfilled the debt they owe to our community it is essential that we incentivize them to become productive citizens in their communities and avoid future criminal behavior. This is important not only for their families but also for West Virginia’s economy and public safety.

#### **The Solutions**

Having an effective reentry process that allows and incentivizes those leaving prison to become contributing members of society is essential for public safety. Efforts to ensure people are successful in reentry cannot begin as they are exiting the prison gates but instead must begin the moment they first enter the prison walls. There are changes West Virginia can make at every stage in the justice system to ensure individuals never return and can become productive citizens again once they have fulfilled their punishment. Below are some best practices and policy solutions that have been found to be effective in other states at every stage of a person’s interaction with the prison system.

#### **Evaluation at Entry to Prison**

The common axiom among correctional practitioners is that “reentry begins at day one.” The most vital thing that can be done on or before day one is to figure out an individual’s particular risk, needs, and how they might respond to certain interventions.<sup>vii</sup> This will ensure that correctional officials and practitioners can properly respond to these risks and needs with programming and other interventions that help people overcome the internal barriers they will face during the reentry process. Steps West Virginia should take to implement this proven model:

1. **Develop a risk assessment tool and statutorily require every person entering the prison system to be analyzed at day one.** The crime that someone commits is not a clear indicator of whether someone will engage in future crime. These tools utilize comprehensive information about each individual and analyze factors known to impact someone’s likelihood of future crime.<sup>viii</sup> They have been found to outperform human judgment alone in determining risk.<sup>ix</sup>
  - a. Example Reforms: [H.B. 463](#) (KY); [H.B. 86](#) (OH); [First Step Act](#) (federal).
2. **Develop a *needs* assessment tool and require every person entering the prison system to be analyzed at day one.** While a risk assessment tells us whether someone is likely to commit another crime in the future, a needs assessment identifies the steps that can be taken to reduce that risk by helping individuals overcome “needs” like substance abuse, mental health concerns, antisocial worldviews, and lack of education.
  - a. Example Reforms: [H.B. 463](#) (KY); [H.B. 1711](#) (TX); [First Step Act](#) (federal).
3. **Develop a program and treatment plan for each individual that they will complete during their time in prison.<sup>x</sup>** Once someone’s risk and needs are identified, prison staff should work with the individual to develop a plan that will help them secure the programming and reentry support they need before exiting the prison. This plan should consider the person’s sentence length and seek to ensure that progress is made over time rather than simply just in preparation for exit from the prison.
  - a. Example Reforms: [H.B. 1711](#) (TX); [H.B. 86](#) (OH); [S. 467](#) (federal).

### Constructive Culture

Some of the biggest predictors of whether an individual will return to prison in the future have nothing to do with the person he or she was upon entering prison, but rather the skills, personality, and character he or she has when exiting through the threshold of the prison gate. It is vital that we ensure a person’s time in prison is not merely punitive but also constructive. While every corrections system is attempting to implement this to some extent, there are additional steps West Virginia can take to ensure individuals can become productive members of their community when they return home.

1. **Provide adequate and properly implemented prison programming that is impacting recidivism and helping people overcome their identified needs.** Properly structured prison programming has been shown to reduce recidivism, save taxpayer expenditures, increase future employment for individuals who are incarcerated, and decrease rule violations in prison facilities.<sup>xi</sup> Sadly, many prisons do not have the necessary funding or qualified staff to achieve their full potential or have the necessary capacity to accept every person who needs such programming.
2. **Ensure minimal barriers exist to maintaining positive community relationships during incarceration.** Continued relationships with family members and positive community influences have been shown to reduce recidivism, decrease

prison violence, and prevent the intergenerational cycle of incarceration.<sup>xiii</sup> West Virginia can achieve this by both ensuring that individuals are placed in the closest appropriate prison facility to their family and that meaningful visitation is not unnecessarily restricted by unreasonable policies providing an unproven benefit for facility safety.

a. Example Reforms: [H. 2047](#) (MA); [First Step Act](#) (federal).

- 3. Allow innovative faith- and community-based organizations to provide programming in West Virginia prisons.** Prison programming is expensive, but many community-based organizations are providing effective programs that can help those incarcerated. The state's leaders should ensure that the Division of Corrections and Rehabilitation is properly incentivized to safely allow such programs to operate in the state's prisons and the number of barriers to voluntary participation by those incarcerated are limited.

a. Example Reforms: [HB 113](#) (OH); [HB 369](#) (FL); [First Step Act](#) (federal).

- 4. Incentivize program completion by providing time credits that allow individuals completing recidivism-reducing programs to be released from prison early.** Earned credit programs in states as diverse as Iowa, North Carolina, Oregon, and Washington have been found to reduce recidivism, correctional spending, and prison populations.<sup>xiii</sup> West Virginia should reform its current time credit laws to ensure that program completion is properly incentivized.<sup>xiv</sup>

a. Example Reforms: [§ 17-22.5-405](#) (CO); [HB 2170](#) (KS); [SB 201](#) (OH).

### Preparing for Reentry

Each year more than 4,000 individuals are released from West Virginia's prisons.<sup>xv</sup> Most of them are released with only the property they had with them when they were arrested or surrendered to prison officials. They will be starting from scratch unless they are one of the rare individuals who will have a robust network of family and friends that are willing to accept and forgive them. When someone is nearing the end of their prison sentence there are several steps the Division of Corrections and Rehabilitation can take to help them be more likely to succeed upon their release.

- 1. Establish a program to ensure every individual exit the prison system with the proper documentation they will need to secure a job and housing.** Most of the people exiting prison no longer have a driver's license, birth certificate, or social security card. These forms of identification are necessary for them to do almost everything – from opening a bank account to securing medical care – but each can be very difficult to secure without have at least one of the others.<sup>xvi</sup> West Virginia's Division of Corrections and Rehabilitation should be required to release every individual with official forms of such documentation as well as a formal record of any vocational training, prison programming, and work the individual completed while incarcerated.<sup>xvii</sup>
  - a. Example Reforms: [HB 53](#) (FL); [H.B. 1679](#) (OK); [SF 519](#) (MN)
- 2. Create a formal employee referral program between West Virginia employers and the Division of Corrections and Rehabilitation.** Many employers are increasingly seeking to fulfill their talent needs by looking beyond a person's criminal record and they frequently cannot find the right talent in their local community.<sup>xviii</sup> The Division of Corrections and Rehabilitation has the most comprehensive information about the skills a person has acquired in prison and could easily utilize this information to collaborate with employers to help them identify



talent.<sup>xix</sup> Other states have successfully experimented with formal programs where individuals are provided with job offers *before* they ever leave prison.<sup>xx</sup>

3. **Launch a formal program to identify housing options in each community for individuals exiting prison.** In most jurisdictions, housing for individuals with a criminal record is both in limited supply and difficult to identify.<sup>xxi</sup> Securing adequate housing is a key factor that determines whether someone will be successful during the reentry process.<sup>xxii</sup> The most significant barrier that currently exists is a lack of knowledge about which landlords or housing complexes will accept individuals exiting from prison, especially those with ongoing mental health or substance use problems. The Division of Corrections and Rehabilitation should coordinate an effort to determine which landlords will accept these individuals and connect individuals exiting state prisons with the local landlords in the community they will be reentering and can easily access the services they need to be successful.

### Removing Barriers to Success in the Community

1. **Create a program where individuals can secure certificates of rehabilitation (or relief).** These certificates give people an opportunity to overcome the negative impact of their criminal record by providing proof that a judge has determined they are rehabilitated and seeking to live positively in the future. Research on the impact of these programs in other states shows they present a significant benefit for helping people access employment or housing.<sup>xxiii</sup>
  - a. Example Reforms: [SB 337](#) (OH); [SB 1298](#) (OK); [HB 641](#) (NC)
2. **Strengthen the state’s occupational licensing laws so that licensing boards cannot bar someone from an occupation for a criminal record unrelated to the job’s responsibilities.** Even in the face of recent reforms, West Virginia still has more than 200 occupational licensing laws that bar individuals with a criminal record from working in their chosen field.<sup>xxiv</sup> The state should strengthen these previous reforms for discretionary bars and remove many of the other 550 mandatory employment-related barriers.<sup>xxv</sup>
  - a. Model Bill: [Collateral Consequences in Occupational Licensing Act](#) (Institute for Justice).
  - b. Example Reforms: [SB 120](#) (KY); [HB 1245](#) (IN); [SB 2781](#) (MS)
3. **Continue to expand the state’s expungement laws so that more individuals can access the benefits of expungement.** As West Virginia knows from previous efforts and experience, a growing body of research reveals the positive benefits of expungement for public safety and our local economies.<sup>xxvi</sup> The state should take additional steps to streamline the process so these benefits can be fully realized and establish an automatic expungement process for records related to criminal charges that never result in a conviction.
  - a. Model Bill: [Model Law on Non-Conviction Records](#) (Collateral Consequences Resource Center)
  - b. Example Reforms: [HB 4980](#) (MI); [HB 431](#) (UT); [HB 1638](#) (AR); [SB 97](#) (SD).
4. **Reform the state’s probation and parole systems to ensure any barriers posed by these programs are justified by public safety.** Most states impose a one-size-fits-all system that traps participants in an endless cycle of supervision and incarceration and force officers to fight an uphill battle. Research shows that properly structured and implemented community supervision can have a profound positive

impact on public safety. West Virginia should seek to apply some of the lessons learned in other states to improve its system.

- a. [SB 105](#) and [SB 174](#) (GA); [HB 1555](#) (PA); [HB 77](#) and [HB 643](#) (LA).

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<sup>i</sup> Federal Bureau of Investigations, *NGI Monthly Fact Sheets*, Federal Bureau of Investigations (November 2020), <https://www.fbi.gov/file-repository/ngi-monthly-fact-sheet/view>.

<sup>ii</sup> CSG Justice Center, *National Inventory of Collateral Consequences of Conviction*, CSG Justice Center (2020), <https://niccc.csjusticecenter.org/database/results/>.

<sup>iii</sup> Justice & Community Services, *2016 West Virginia Recidivism Report*, West Virginia Division of Corrections and Rehabilitation (2020), [https://dcr.wv.gov/resources/Documents/publications/DOC\\_recidivism\\_2016.pdf](https://dcr.wv.gov/resources/Documents/publications/DOC_recidivism_2016.pdf).

<sup>iv</sup> Terry-Ann Craigie, et al., *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, Brennan Center for Justice (September 2020), [https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport\\_pdf.pdf](https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf); Adam Looney & Nicholas Turner, *Work and opportunity before and after incarceration*, The Brookings Institution (2018), [https://www.brookings.edu/wp-content/uploads/2018/03/es\\_20180314\\_looneyincarceration\\_final.pdf](https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf).

<sup>v</sup> Lucius Couloute, *Nowhere to Go: Homelessness among formerly incarcerated people*, Prison Policy Initiative (2018), <https://www.prisonpolicy.org/reports/housing.html>; Maggie McCarty, et al., *Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance*, Congressional Research Service (2016), <https://fas.org/sgp/crs/misc/R42394.pdf>.

<sup>vi</sup> Leah Bacon, et al., *Laying the Groundwork: How States Can Improve Access to Continued Education for People in the Criminal Justice System*, Justice Center (2020), <https://csjusticecenter.org/publications/laying-the-groundwork/>; United States Sentencing Commission, *Table 10: Education Of Federal Offenders By Type Of Crime*, United States Sentencing Commission (2020), <https://www.usssc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2020/Table10.pdf>.

<sup>vii</sup> In academic literature and correctional practice, this is commonly called the Risk-Needs-Responsivity model for intervention. See Jill Viglione, *The Risk-Need-Responsivity Model: How Do Probation Officers Implement the Principles of Effective Intervention?*, 46 *Crim. Just. Behav.* 655 (2019); Grant Duwe & KiDeuk Kim, *The Neglected “R” in the Risk-Needs-Responsivity Model: A New Approach for Assessing Responsivity to Correctional Interventions*, 1 *Just. Eval. J.* 130 (2018).

<sup>viii</sup> The three factors which have been found to be most predictive of future crime are antisocial personality traits, pro-criminal attitudes, and social support for crime. Other factors which have been found to be weakly or moderately predictive of recidivism include substance abuse, poor family and marital relationships, poor performance or satisfaction at work or school, and lack of involvement in prosocial activities. See Donald A. Andrews & James Bonta, *THE PSYCHOLOGY OF CRIMINAL CONDUCT* (4th eds. 2007); Christopher T. Lowenkamp, et al., *The Federal Post Conviction Risk Assessment (PCRA): A Construction and Validation Study*, 10 *Psych. Services* 87 (2013); Donald A. Andrews & Craig Dowden, *The Risk-Need-Responsivity Model of Assessment and Human Service in Prevention and Corrections: Crime-Prevention Jurisprudence*, 49 *Can. J. Criminol. Crim. Justice* 439 (2007); See also Heather L. Dyck, et al., *Real-world use of the risk-need-responsivity model and the level of service/case management inventory with community-supervised offenders*, 42 *L. Hum Behav.* 258 (2018); Donald A. Andrews, et al., *Are the Major Risk/Need Factors Predictive of Both Female and Male Reoffending? A Test With the Eight Domains of the Level of Service/Case Management Inventory*, 56 *Int'l J. Offender Ther. Comp. Criminology* 113 (2012).

<sup>ix</sup> Kelley Blanchette & Shelley L. Brown, *THE ASSESSMENT AND TREATMENT OF WOMEN OFFENDERS: AN INTEGRATIVE PERSPECTIVE* (2006); Stephen D. Gottfredson & Don M. Gottfredson, *Accuracy of Prediction Models*, in *CRIMINAL CAREERS AND “CAREER CRIMINALS”* 212, 247 (Alfred Blumstein et al. eds., 1986); Jon Kleinberg, et al., *Human Decisions and Machine Predictions*, 133 *Q. J. Econ.* 237, 240–41 (2018); William M. Grove et al., *Clinical Versus Mechanical Prediction: A Meta-Analysis*, 12 *Psychol. Assessment* 19, 19 (2000); Cara Thompson, *Myths & Facts: Using Risk and Need Assessments to Enhance Outcomes and Reduce Disparities in the Criminal Justice System*, National Institute of Corrections (March 2017), <https://s3.amazonaws.com/static.nicic.gov/Library/032859a.pdf>; See also Brandon L. Garrett, *Evidence-Informed Criminal Justice*, 86 *Geo. Wash. L. Rev.* 1490 (2018); Tim Brennan, et al., *Evaluating the Predictive Validity of the Compas Risk and Needs Assessment System*, 36 *Crim. J. Behav.* 21 (2009).

<sup>x</sup> For a great example of how this is implemented in another state see Texas Gov't Code § 501.092.

<sup>xi</sup> See e.g. Eric L. Jensen, et al., *Do In-Prison Correctional Programs Affect Postrelease Employment and Earnings?*, 64 *Int'l J. Offender Ther. Comparative Crim.* 674 (2020) (finding that therapeutic community had a highly significant effect on mean quarterly earnings); Harry Wexler, et al., *The Amity Prison TC Evaluation: Reincarceration Outcomes*, 26 *Crim. Just. Behav.* 147 (1999) (substance abuse treatment resulted in a 48 percent reduction in reincarceration); Edward Latessa, et al., *Evaluation of Ohio's Prison Programs*, University of Cincinnati Corrections Institute (2015), <https://www.uc.edu/content/dam/uc/corrections/docs/InTheNews/Prison%20Study%20Final%20Report%2010-26-15.pdf> (mental health support found to reduce misconduct incidents by 22 percent); Lois Davis, et al., *How Effective Is Correctional Education, and Where Do We Go from Here?*, RAND Corporation (2014), [https://www.rand.org/pubs/research\\_reports/RR564.html](https://www.rand.org/pubs/research_reports/RR564.html) (finding that educational programming reduce recidivism by 13 percent and increase post-release employment by 13 percent, resulting in five dollars of future cost saved per dollar spent).

<sup>xii</sup> Grant Duwe & Susan McNeeley, *Just as Good as the Real Thing? The Effects of Prison Video Visitation on Recidivism*, 67 *Crime Delinq.* 475 (2021); Thomas Reidy & Jonathan Sorensen, *Visitation and Misconduct Among Maximum-Security Inmates*, 100 *Prison J.* 447 (2020); Grant Duwe & Valerie Clark, *Blessed Be the Social Tie That Binds: The Effects of Prison Visitation on Offender Recidivism*, 24 *Crim. Just. Pol'y Rev.* 271 (2013); See also Jeremy Travis & Michelle Waul, *PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES* (2004).

<sup>xiii</sup> North Carolina Sentencing and Policy Advisory Committee, *Prison Population Projections: Fiscal Year 2020 to Fiscal Year 2029*, North Carolina Courts (2020), <https://www.nccourts.gov/assets/documents/publications/Projection-2020.pdf?NsN4PfbMQMs2g4fWFUuoGOJIm4kq.k5>; Sarah Johnson & Paul Stageberg, *An Analysis on the Effects of Earned Time for Inmates Charged with Robbery*, Iowa Department of Human Rights (2014), [https://humanrights.iowa.gov/sites/default/files/media/CJJP\\_Analysis%20on%20the%20Effects%20of%20Earned%20time%20for%20Inmates%20Charged%20with%20Robbery.pdf](https://humanrights.iowa.gov/sites/default/files/media/CJJP_Analysis%20on%20the%20Effects%20of%20Earned%20time%20for%20Inmates%20Charged%20with%20Robbery.pdf); Criminal Justice Commission, *The Effect of Changes to Earned Time Awards On Recidivism*, State of Oregon (2010),

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<https://www.oregon.gov/cjc/CJC%20Document%20Library/EarnedTimeAwardsEvaluation.pdf>. Elizabeth Drake, et al., *Increased Earned Release From Prison: Impacts of a 2003 Law on Recidivism and Crime Costs*, Revised, Washington State Institute for Public Policy (2009), [https://www.wsipp.wa.gov/ReportFile/1039/Wsipp\\_Increased-Earned-Release-From-Prison-Impacts-of-a-2003-Law-on-Recidivism-and-Crime-Costs-Revised\\_Full-Report.pdf](https://www.wsipp.wa.gov/ReportFile/1039/Wsipp_Increased-Earned-Release-From-Prison-Impacts-of-a-2003-Law-on-Recidivism-and-Crime-Costs-Revised_Full-Report.pdf); See also Dan Bernstein & E. Michele Staley, *Merit Time Program Summary: October 1997 – December 2006*, Department of Correctional Services (2007), [https://doccs.ny.gov/system/files/documents/2019/09/Merit\\_Time\\_Through\\_2006.pdf](https://doccs.ny.gov/system/files/documents/2019/09/Merit_Time_Through_2006.pdf).

<sup>xiv</sup> West Virginia law currently provides the DOC with discretion to grant up to 90 days of good time credit for the completion of programs that are not in someone’s reentry program plan, but the most effective programs across the country require credits to be awarded at various amounts for completion of most programs. Given that this is a sentence reduction being granted, the legislature should ideally provide clear standards for the Department of Corrections about how much credits must be awarded for completion of programs. See W. Va. Code § 15A-4-17 (2020).

<sup>xv</sup> E. Ann Carson, *Prisoners in 2019*, Bureau of Justice Statistics (2020), <https://www.bjs.gov/content/pub/pdf/p19.pdf>.

<sup>xvi</sup> See e.g. Cat Wise, *Leaving prison without a government ID can block access to housing, jobs and help*, PBS News Hour (2020), <https://www.pbs.org/newshour/nation/leaving-prison-without-a-government-id-can-block-access-to-housing-jobs-and-help>; Ted Roelofs, *Out of prison but without ID: Gap makes road to recovery difficult for ex-cons*, The Grand Rapids Press (2019), [https://www.mlive.com/politics/2013/03/id\\_gap\\_makes\\_streets\\_meaner\\_fo.html](https://www.mlive.com/politics/2013/03/id_gap_makes_streets_meaner_fo.html).

<sup>xvii</sup> For an example of a model reform see Oklahoma’s H.B. 1679 (2021). See also Texas Gov’t Code § 501.0155; 501.0165.

<sup>xviii</sup> See Second Chance Business Coalition, *About the SBC*, Second Chance Business Coalition (2021), <https://secondchancebusinesscoalition.org/about>; Roy Maurer, *Recruiting Is Top HR Concern in 2021*, SHRM (2021), <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/recruiting-is-top-hr-concern-2021.aspx>.

<sup>xix</sup> This could be a great way to build upon the potential success of the work release pilot program passed this year in HB 3304 (2021).

<sup>xx</sup> See e.g. Clark DesSoye, *Celebrating a Remarkable, 20-Year Partnership*, Arizona Correctional Industries (2021), <https://aci.az.gov/celebrating-a-remarkable-20-year-partnership/>; Televerde, *Teverde Expands Its Prison Workforce Development Program To Florida; Will Add 200 New Jobs*, Televerde (2020), <https://televerde.com/televerde-expands-its-prison-workforce-development-program-to-florida-department-of-corrections-will-add-200-new-jobs/>; Alexis Madrigal, *Big Tech’s Newest Experiment in Criminal-Justice Reform*, The Atlantic (2018), <https://www.theatlantic.com/technology/archive/2018/08/big-techs-newest-experiment-in-criminal-justice-reform/568849/>.

<sup>xxi</sup> Katherine Cortes & Shawn Rogers, *Reentry Housing Options: The Policymakers’ Guide*, Council of State Governments (2010), [https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/CSG\\_Reentry\\_Housing.pdf](https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/CSG_Reentry_Housing.pdf);

<sup>xxii</sup> Peter Leasure, *Securing private housing with a criminal record*, 58 J. Offender Rehab. 30 (2019); Breanne Pleggenkuhle, et al., *Solid Start: supportive housing, social support, and reentry transitions*, 39 J. Crime Just. 380 (2015); Faith Lutze, et al., *Homelessness and Reentry: A Multisite Outcome Evaluation of Washington State’s Reentry Housing Program for High Risk Offenders*, 41 Crim. Just. Behav. 471 (2013); Benjamin Steiner, et al., *Examining the Effects of Residential Situations and Residential Mobility on Offender Recidivism*, 61 Crime Delinq. 375 (2011).

<sup>xxiii</sup> Peter Leasure & Tara Martin, *Criminal records and housing: an experimental study*, 13 J. Exper. Criminology 527 (2017); Peter Leasure & Tia Stevens Andersen, *The Effectiveness of Certificates of Relief as Collateral Consequence Relief Mechanisms: An Experimental Study*, 35 Yale Law Pub. Pol’y 11 (2016); See also Megan Denver, *Criminal Records, Positive Credentials and Recidivism: Incorporating Evidence of Rehabilitation Into Criminal Background Check Employment Decisions*, 66 Crime Delinq. 194 (2020); Peter Leasure & Tia Stevens Andersen, *Race, Criminal Records, and Certificates of Relief: An Experimental Pilot Study*, 41 Deviant Behav. 1065 (2019).

<sup>xxiv</sup> CSG Justice Center, *supra* note ii.

<sup>xxv</sup> CSG Justice Center, *West Virginia*, CSG Justice Center (2021), <https://csgjusticecenter.org/publications/removing-structural-barriers/state-playbooks/state/?usState=west-virginia>.

<sup>xxvi</sup> J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 Harv. L. Rev. 2460 (2020); Jeffrey Selbin, et al., *Unmarked? Criminal Record Clearing and Employment Outcomes*, 108 J. Crim. L. & Criminology (2018); Amy Shlosberg, et al., *Expungement and Post-exoneration Offending*, 104 J. Crim. L. & Criminology (2014).

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**MEMORANDUM – August 16, 2021**

From: Charlie Katebi, Health Policy Analyst, Americans for Prosperity  
For: Interested Parties  
Subject: Health Care Recommendations For West Virginia

**Health Care Recommendations For West Virginia**

Since the start of the COVID-19 pandemic, states around the country, including West Virginia, have removed harmful barriers on telehealth and the scope of practice of health care professionals in order to slow the spread of the virus. Unfortunately, most of these changes are temporary. Policymakers should make them permanent and enact other reforms to strengthen Florida's capacity to combat COVID-19.

**Empower pharmacists to administer vaccines to children:** West Virginia [prohibits pharmacists](#) from administering a variety of FDA-approved vaccines to children below a certain age. Lawmakers should remove these age-based restrictions. Pharmacists receive [extensive training](#) to safely administer vaccines to patients of all ages.

**Allow pharmacists to prescribe medication:** West Virginia law [only allows](#) pharmacists to prescribe Naloxone. Lawmakers should follow the lead of [Idaho](#) and allow pharmacists to freely prescribe important medications for conditions that: do not require a new diagnosis, are minor and self-limiting, have a low-risk test to identify the condition (e.g., flu, strep throat), or present an immediate danger and require quick treatment. This would allow pharmacists to prescribe other important medications including emergency contraception, tobacco cessation, naloxone, and vaccines.

**End Pharmacist/Pharmacy Technician Ratio Requirements:** West Virginia currently allows pharmacists to supervise [only four pharmacy technicians](#) at a time. Lawmakers should follow the lead of [21 other states](#) and repeal West Virginia's ratio limits entirely.

**End barriers on telepharmacy:** Telepharmacy technology allows pharmacies to offer remote services, including medication delivery, to remote patients. However, West Virginia currently has [no laws or regulations](#) that authorize pharmacies to offer remote services. Lawmakers should follow the lead of states like [Arizona](#) and [North Dakota](#) and enact legislation that allows pharmacies to provide telepharmacy services throughout the state.

**Remove Telehealth barriers on the settings of patients and providers:** WV's Medicaid program currently prohibits Medicaid recipients from receiving telehealth services at home except for substance abuse and mental health services. In addition, the program prohibits federally qualified health centers and rural health clinics from delivering telehealth services unless they are rendered by a psychiatrist or psychologist. Lawmakers should end all of these limitations.

**Direct Medicaid to reimburse store-and-forward:** Store-and-forward technologies allow patients to send medical images, video, and other data to providers to be evaluated. Unfortunately, WV's [telehealth statute](#) doesn't require Medicaid to cover telehealth. Therefore, WV's Medicaid program [does not reimburse](#) providers who deliver telehealth that isn't real-time video. Lawmakers should authorize

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Medicaid to reimburse providers when they deliver store-and-forward services.

**Direct Medicaid to reimburse remote-patient-monitoring (RPM):** RPM technology allows providers to remotely monitor patients' health conditions and deliver essential home health care. Unfortunately, WV's [telehealth statute](#) doesn't require Medicaid to cover telehealth. Therefore, WV's Medicaid program [does not reimburse](#) providers who deliver telehealth that isn't real-time video. Lawmakers should authorize Medicaid to reimburse providers when they deliver RPM services.

**Allow nurse anesthetists to practice without unnecessary physician supervision:** West Virginia [requires](#) certified registered nurse anesthetists (CRNAs) to work under the presence and supervision of a physician or dentist. These burdensome arrangements [restrict](#) CRNAs from opening solo practices and working in facilities in underserved areas. Lawmakers should end these requirements and empower CRNAs to practice the full extent of their training and expertise.

**Allow foreign-trained doctors to practice:** West Virginia currently requires physicians to complete several months of post-graduate training in the United States in order to receive a license to practice Medicine. This imposes [enormous barriers](#) on legal American residents who have completed their medical education but did not perform their post-graduate training within the United States. Lawmakers should end this requirement and allow individuals who have completed their post-graduate training in another developed country (United Kingdom, France, etc.) to receive a West Virginia medical license.