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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2405**

(By Delegates Givens, Wills, Caputo,
R. Thompson, Webster and Schadler)



Passed April 14, 2001

In Effect July 1, 2001

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FOR

H. B. 2405

(BY DELEGATES GIVENS, WILLS, CAPUTO,
R. THOMPSON, WEBSTER AND SCHADLER)

[Passed April 14, 2001; in effect July 1, 2001.]

AN ACT to amend and reenact section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-a, article two, chapter fifty of said code; to amend and reenact section twenty-eight, article two, chapter sixty-one of said code; to amend article eleven of said chapter by adding a new section, designated section twenty-two; to amend and reenact section one-a, article eleven-a, chapter sixty-two of said code; to amend and reenact sections three, five, six, seven and eleven, article eleven-b of said chapter; to amend said article by adding thereto a new section, designated section thirteen; to amend said chapter by adding thereto a new article, designated article eleven-c; and to amend and reenact section nine, article twelve of said chapter, all relating to community corrections and sentencing alternatives generally; allowing imposition of community

corrections program participation for convictions of driving under the influence; providing exceptions to imposition of community corrections programs; allowing magistrate courts to impose participation in a community corrections program; requiring a preimposition hearing to determine ability to pay without undue hardship; allowing magistrates to impose home incarceration through a community corrections program; creating enhanced second offense penalty for domestic battery and assault; increasing fine for third offense domestic battery and assault; allowing diverted matters to allow enhancement; authorizing municipal judges to impose home incarceration; expanding types of allowable electronic monitoring devices; authorizing certain restitution and costs; requiring the court to consider ability to pay in assessing costs of incarceration and home incarceration fees; allocation of fees allowing circuit judges, magistrates and municipal judges to credit pre-conviction time spent on home incarceration towards a sentence; allowing county commissions to appropriate excess money from home incarceration services funds to a community corrections program; providing for the creation of community corrections programs; creating the community corrections subcommittee of the governor's committee on crime, delinquency and corrections; creating working group on domestic violence; defining duties of the community corrections subcommittee; codifying prosecutorial authority to enter into pretrial diversion agreements; providing exceptions to prosecutorial authority to enter into pretrial diversion agreements; authorizing drug courts; providing definitions, terms and eligibility requirements for drug courts; creating the West Virginia community corrections fund as a special revenue account; requiring community criminal justice boards; requiring community criminal justice accounts; allowing judges, magistrates and municipal judges to assess a fee for the participation in or supervision of a community corrections program; authorizing the ordering of fees for participation in a community corrections program; requiring courts to consider ability to pay in assessing

a participation or supervision fee; requiring a fee of persons on probation and home incarceration to fund community corrections programs; and allowing those not under court supervision to participate in or be supervised by a community corrections program under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three-a, article two, chapter fifty of said code be amended and reenacted; that section twenty-eight, article two of chapter sixty-one of said code be amended and reenacted; that article eleven of said chapter be amended by adding thereto a new section, designated section twenty-two; that section one-a, article eleven-a of chapter sixty-two of said code be amended and reenacted; that sections three, five, six, seven and eleven, article eleven-b of said chapter be amended and reenacted; that said article be amended by adding thereto a new section, designated section thirteen; that said chapter be further amended by adding a new article, designated article eleven-c; and that section nine, article twelve of said chapter be amended and reenacted, all to read as follows:

**CHAPTER 17C. TRAFFIC REGULATIONS
AND LAWS OF THE ROAD.**

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

- 1 (a) Any person who:
- 2 (1) Drives a vehicle in this state while he or she:
- 3 (A) Is under the influence of alcohol; or
- 4 (B) Is under the influence of any controlled substance; or

5 (C) Is under the influence of any other drug; or

6 (D) Is under the combined influence of alcohol and any
7 controlled substance or any other drug; or

8 (E) Has an alcohol concentration in his or her blood of ten
9 hundredths of one percent or more, by weight; and

10 (2) When so driving does any act forbidden by law or fails
11 to perform any duty imposed by law in the driving of the
12 vehicle, which act or failure proximately causes the death of
13 any person within one year next following the act or failure;
14 and

15 (3) Commits the act or failure in reckless disregard of the
16 safety of others, and when the influence of alcohol, controlled
17 substances or drugs is shown to be a contributing cause to the
18 death, is guilty of a felony and, upon conviction thereof, shall
19 be imprisoned in a state correctional facility for not less than
20 one nor more than ten years and shall be fined not less than one
21 thousand dollars nor more than three thousand dollars.

22 (b) Any person who:

23 (1) Drives a vehicle in this state while he or she:

24 (A) Is under the influence of alcohol; or

25 (B) Is under the influence of any controlled substance; or

26 (C) Is under the influence of any other drug; or

27 (D) Is under the combined influence of alcohol and any
28 controlled substance or any other drug; or

29 (E) Has an alcohol concentration in his or her blood of ten
30 hundredths of one percent or more, by weight; and

31 (2) When so driving does any act forbidden by law or fails
32 to perform any duty imposed by law in the driving of the
33 vehicle, which act or failure proximately causes the death of
34 any person within one year next following the act or failure, is
35 guilty of a misdemeanor and, upon conviction thereof, shall be
36 confined in the county or regional jail for not less than ninety
37 days nor more than one year and shall be fined not less than
38 five hundred dollars nor more than one thousand dollars.

39 (c) Any person who:

40 (1) Drives a vehicle in this state while he or she:

41 (A) Is under the influence of alcohol; or

42 (B) Is under the influence of any controlled substance; or

43 (C) Is under the influence of any other drug; or

44 (D) Is under the combined influence of alcohol and any
45 controlled substance or any other drug; or

46 (E) Has an alcohol concentration in his or her blood of ten
47 hundredths of one percent or more, by weight; and

48 (2) When so driving does any act forbidden by law or fails
49 to perform any duty imposed by law in the driving of the
50 vehicle, which act or failure proximately causes bodily injury
51 to any person other than himself or herself, is guilty of a
52 misdemeanor and, upon conviction thereof, shall be confined in
53 the county or regional jail for not less than one day nor more
54 than one year, which jail term is to include actual confinement
55 of not less than twenty-four hours, and shall be fined not less
56 than two hundred dollars nor more than one thousand dollars.

57 (d) Any person who:

58 (1) Drives a vehicle in this state while he or she:

59 (A) Is under the influence of alcohol; or

60 (B) Is under the influence of any controlled substance; or

61 (C) Is under the influence of any other drug; or

62 (D) Is under the combined influence of alcohol and any
63 controlled substance or any other drug; or

64 (E) Has an alcohol concentration in his or her blood of ten
65 hundredths of one percent or more, by weight;

66 (2) Is guilty of a misdemeanor and, upon conviction
67 thereof, shall be confined in the county or regional jail for not
68 less than one day nor more than six months, which jail term is
69 to include actual confinement of not less than twenty-four
70 hours, and shall be fined not less than one hundred dollars nor
71 more than five hundred dollars.

72 (e) Any person who, being an habitual user of narcotic
73 drugs or amphetamine or any derivative thereof, drives a
74 vehicle in this state, is guilty of a misdemeanor and, upon
75 conviction thereof, shall be confined in the county or regional
76 jail for not less than one day nor more than six months, which
77 jail term is to include actual confinement of not less than
78 twenty-four hours, and shall be fined not less than one hundred
79 dollars nor more than five hundred dollars.

80 (f) Any person who:

81 (1) Knowingly permits his or her vehicle to be driven in this
82 state by any other person who:

83 (A) Is under the influence of alcohol; or

84 (B) Is under the influence of any controlled substance; or

85 (C) Is under the influence of any other drug; or

86 (D) Is under the combined influence of alcohol and any
87 controlled substance or any other drug; or

88 (E) Has an alcohol concentration in his or her blood of ten
89 hundredths of one percent or more, by weight;

90 (2) Is guilty of a misdemeanor and, upon conviction
91 thereof, shall be confined in the county or regional jail for not
92 more than six months and shall be fined not less than one
93 hundred dollars nor more than five hundred dollars.

94 (g) Any person who knowingly permits his or her vehicle
95 to be driven in this state by any other person who is an habitual
96 user of narcotic drugs or amphetamine or any derivative
97 thereof, is guilty of a misdemeanor and, upon conviction
98 thereof, shall be confined in the county or regional jail for not
99 more than six months and shall be fined not less than one
100 hundred dollars nor more than five hundred dollars.

101 (h) Any person under the age of twenty-one years who
102 drives a vehicle in this state while he or she has an alcohol
103 concentration in his or her blood of two hundredths of one
104 percent or more, by weight, but less than ten hundredths of one
105 percent, by weight, for a first offense under this subsection, is
106 guilty of a misdemeanor and, upon conviction thereof, shall be
107 fined not less than twenty-five dollars nor more than one
108 hundred dollars. For a second or subsequent offense under this
109 subsection, the person is guilty of a misdemeanor and, upon
110 conviction thereof, shall be confined in the county or regional
111 jail for twenty-four hours, and shall be fined not less than one
112 hundred dollars nor more than five hundred dollars. A person
113 who is charged with a first offense under the provisions of this
114 subsection may move for a continuance of the proceedings from
115 time to time to allow the person to participate in the vehicle
116 alcohol test and lock program as provided for in section three-a,
117 article five-a of this chapter. Upon successful completion of the

118 program, the court shall dismiss the charge against the person
119 and expunge the person's record as it relates to the alleged
120 offense. In the event the person fails to successfully complete
121 the program, the court shall proceed to an adjudication of the
122 alleged offense. A motion for a continuance under this subsection
123 tion may not be construed as an admission or be used as
124 evidence.

125 A person arrested and charged with an offense under the
126 provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of
127 this section may not also be charged with an offense under this
128 subsection arising out of the same transaction or occurrence.

129 (i) Any person who:

130 (1) Drives a vehicle in this state while he or she:

131 (A) Is under the influence of alcohol; or

132 (B) Is under the influence of any controlled substance; or

133 (C) Is under the influence of any other drug; or

134 (D) Is under the combined influence of alcohol and any
135 controlled substance or any other drug; or

136 (E) Has an alcohol concentration in his or her blood of ten
137 hundredths of one percent or more, by weight; and

138 (2) The person when so driving has on or within the motor
139 vehicle one or more other persons who are unemancipated
140 minors who have not reached their sixteenth birthday, is guilty
141 of a misdemeanor and, upon conviction thereof, shall be
142 confined in the county or regional jail for not less than two days
143 nor more than twelve months, which jail term is to include
144 actual confinement of not less than forty-eight hours, and shall

145 be fined not less than two hundred dollars nor more than one
146 thousand dollars.

147 (j) A person violating any provision of subsection (b), (c),
148 (d), (e), (f), (g) or (i) of this section, for the second offense
149 under this section, is guilty of a misdemeanor and, upon
150 conviction thereof, shall be confined in the county or regional
151 jail for not less than six months nor more than one year, and the
152 court may, in its discretion, impose a fine of not less than one
153 thousand dollars nor more than three thousand dollars.

154 (k) A person violating any provision of subsection (b), (c),
155 (d), (e), (f), (g) or (i) of this section, for the third or any
156 subsequent offense under this section, is guilty of a felony and,
157 upon conviction thereof, shall be imprisoned in a state correc-
158 tional facility for not less than one nor more than three years,
159 and the court may, in its discretion, impose a fine of not less
160 than three thousand dollars nor more than five thousand dollars.

161 (l) For purposes of subsections (j) and (k) of this section
162 relating to second, third and subsequent offenses, the following
163 types of convictions are to be regarded as convictions under this
164 section:

165 (1) Any conviction under the provisions of subsection (a),
166 (b), (c), (d), (e) or (f) of the prior enactment of this section for
167 an offense which occurred on or after the first day of Septem-
168 ber, one thousand nine hundred eighty-one, and prior to the
169 effective date of this section;

170 (2) Any conviction under the provisions of subsection (a)
171 or (b) of the prior enactment of this section for an offense which
172 occurred within a period of five years immediately preceding
173 the first day of September, one thousand nine hundred eighty-
174 one; and

175 (3) Any conviction under a municipal ordinance of this
176 state or any other state or a statute of the United States or of any
177 other state of an offense which has the same elements as an
178 offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of
179 this section, which offense occurred after the tenth day of June,
180 one thousand nine hundred eighty-three.

181 (m) A person may be charged in a warrant or indictment or
182 information for a second or subsequent offense under this
183 section if the person has been previously arrested for or charged
184 with a violation of this section which is alleged to have oc-
185 curred within the applicable time periods for prior offenses,
186 notwithstanding the fact that there has not been a final adjudica-
187 tion of the charges for the alleged previous offense. In that case,
188 the warrant or indictment or information must set forth the date,
189 location and particulars of the previous offense or offenses. No
190 person may be convicted of a second or subsequent offense
191 under this section unless the conviction for the previous offense
192 has become final.

193 (n) The fact that any person charged with a violation of
194 subsection (a), (b), (c), (d) or (e) of this section, or any person
195 permitted to drive as described under subsection (f) or (g) of
196 this section, is or has been legally entitled to use alcohol, a
197 controlled substance or a drug does not constitute a defense
198 against any charge of violating subsection (a), (b), (c), (d), (e),
199 (f) or (g) of this section.

200 (o) For purposes of this section, the term "controlled
201 substance" has the meaning ascribed to it in chapter sixty-a of
202 this code.

203 (p) The sentences provided herein upon conviction for a
204 violation of this article are mandatory and may not be subject
205 to suspension or probation: *Provided*, That the court may apply
206 the provisions of article eleven-a, chapter sixty-two of this code

207 to a person sentenced or committed to a term of one year or
208 less. An order for home detention by the court pursuant to the
209 provisions of article eleven-b, chapter sixty-two of this code
210 may be used as an alternative sentence to any period of incar-
211 ceration required by this section. An order for supervision or
212 participation in a community corrections program created
213 pursuant to article eleven-c, chapter sixty-two of this code may
214 be used as an alternative sentence to any period of incarceration
215 required by this section.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-3a. Sentencing; probation.

1 (a) In addition to sentencing authority granted in other
2 provisions of this code to magistrate courts, magistrate courts
3 have authority to suspend sentences and impose periods of
4 unsupervised probation for a period not to exceed two years,
5 except for offenses for which the penalty includes mandatory
6 incarceration and offenses defined in sections eight and nine,
7 article eight-b, chapter sixty-one of this code and subsection (c),
8 section five, article eight-d of said chapter.

9 (b) Notwithstanding any other provision of law to the
10 contrary, magistrate courts have the authority to impose periods
11 of supervision or participation in a community corrections
12 program created pursuant to article eleven-c, chapter sixty-two
13 of this code. Periods of supervision or participation in commu-
14 nity corrections programs imposed pursuant to this subsection
15 are not to exceed two years.

16 (c) Release on probation is subject to the following condi-
17 tions:

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

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

24 (3) That he or she shall comply with the rules or terms
25 prescribed by the court;

26 (4) That he or she shall make reasonable restitution if
27 financially able to do so, in whole or in any part, immediately
28 or within the period of probation: *Provided*, That the magistrate
29 conducts a hearing prior to imposition of probation and makes
30 a determination on the record that the offender is able to pay
31 restitution without undue hardship; and

32 (5) That he or she shall pay any fine and the costs assessed
33 as the court may direct: *Provided*, That the magistrate conducts
34 a hearing prior to imposition of probation and makes a determi-
35 nation on the record that the offender is able to pay the costs
36 without undue hardship.

37 (d) On motion by the prosecuting attorney, and upon a
38 hearing and a finding that reasonable cause exists to believe that
39 a violation of any condition of probation has occurred, the
40 magistrate may revoke probation and order execution of the
41 sentence originally imposed.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-28. Domestic violence — Criminal acts.

1 (a) Domestic battery. — Any person who unlawfully and
2 intentionally makes physical contact of an insulting or provok-

3 ing nature with his or her family or household member or
4 unlawfully and intentionally causes physical harm to his or her
5 family or household member, is guilty of a misdemeanor and,
6 upon conviction thereof, shall be confined in a county or
7 regional jail for not more than twelve months, or fined not more
8 than five hundred dollars, or both.

9 (b) Domestic assault. — Any person who unlawfully
10 attempts to commit a violent injury against his or her family or
11 household member or unlawfully commits an act which places
12 his or her family or household member in reasonable apprehen-
13 sion of immediately receiving a violent injury, is guilty of a
14 misdemeanor and, upon conviction thereof, shall be confined in
15 a county or regional jail for not more than six months, or fined
16 not more than one hundred dollars, or both.

17 (c) Second offense. — Any person who has previously been
18 convicted of a violation of subsection (a) or (b) of this section,
19 a violation of the provisions of subsection (b) or (c), section
20 nine of this article where the victim was his or her family or
21 household member or who has previously been granted a period
22 of pretrial diversion pursuant to section twenty-two, article
23 eleven of this chapter for a violation of subsection (a) or (b) of
24 this section or subsection (b) or (c) of section nine of this article
25 where the victim was his or her family or household member
26 shall be guilty of a misdemeanor. A person convicted of a
27 violation of subsection (a) of this section after having been
28 previously convicted of a violation of subsection (a) or (b) of
29 this section, after having been convicted of a violation of
30 subsection (b) or (c) of section nine, of this article where the
31 victim was his or her family or household member or who has
32 previously been granted a period of pretrial diversion pursuant
33 to section twenty-two, article eleven of this chapter for a
34 violation of subsection (a) or (b) of this section or subsection
35 (b) or (c) of section nine of this article where the victim was his
36 or her family or household member shall be confined in a

37 county or regional jail for not less than sixty days nor more than
38 one year, or fined not more than one thousand dollars, or both.
39 A person convicted of a violation of subsection (b) of this
40 section after having been previously convicted of a violation of
41 subsection (a) or (b) of this section, after having been convicted
42 of a violation of subsection (b) or (c) of section nine of this
43 article where the victim was his or her family or household
44 member or having previously been granted a period of pretrial
45 diversion pursuant to section twenty-two, article eleven of this
46 chapter for a violation of subsection (a) or (b) of this section or
47 subsection (b) or (c) of section nine of this article where the
48 victim was his or her family or household member shall be
49 confined in a county or regional jail for not less than thirty days
50 nor more than six months, or fined not more than five hundred
51 dollars, or both.

52 (d) Third offense. — Any person who has been convicted
53 of a third or subsequent violation of the provisions of subsec-
54 tion (a) or (b) of this section, a third or subsequent violation of
55 the provisions of section nine of this article where the victim is
56 a family or household member or who has previously been
57 granted a period of pretrial diversion pursuant to section
58 twenty-two, article eleven of this chapter for a violation of
59 subsection (a) or (b) of this section, a violation of the provisions
60 of section nine of this article where the victim is a family or
61 household member, or any combination of convictions or
62 diversions for these offenses, is guilty of a felony if the offense
63 occurs within ten years of a prior conviction of any of these
64 offenses and, upon conviction thereof, shall be confined in a
65 state correctional facility not less than one nor more than five
66 years or fined not more than two thousand five hundred dollars,
67 or both.

68 (e) As used in this section, “family or household member”
69 means “family or household member” as defined in 48-27-203
70 of this code.

71 (f) A person charged with a violation of this section may
72 not also be charged with a violation of subsection (b) or (c),
73 section nine of this article for the same act.

74 (g) No law-enforcement officer may be subject to any civil
75 or criminal action for false arrest or unlawful detention for
76 effecting an arrest pursuant to this section or pursuant to 48-27-
77 1002 of this code.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-22. Pretrial diversion agreements; conditions; drug court programs.

1 (a) A prosecuting attorney of any county of this state or a
2 person acting as a special prosecutor may enter into a pretrial
3 diversion agreement with a person under investigation or
4 charged with an offense against the state of West Virginia,
5 when he or she considers it to be in the interests of justice. The
6 agreement is to be in writing and is to be executed in the
7 presence of the person's attorney, unless the person has
8 executed a waiver of counsel.

9 (b) Any agreement entered into pursuant to the provisions
10 of subsection (a) of this section may not exceed twenty-four
11 months in duration. The duration of the agreement must be
12 specified in the agreement. The terms of any agreement entered
13 into pursuant to the provisions of this section may include
14 conditions similar to those set forth in section nine, article
15 twelve, chapter sixty-two of this code relating to conditions of
16 probation. The agreement may require supervision by a
17 probation officer of the circuit court, with the consent of the
18 court. An agreement entered into pursuant to this section must
19 include a provision that the applicable statute of limitations be
20 tolled for the period of the agreement.

21 (c) A person who has entered into an agreement for pretrial
22 diversion with a prosecuting attorney and who has successfully
23 complied with the terms of the agreement is not subject to
24 prosecution for the offense or offenses described in the agree-
25 ment or for the underlying conduct or transaction constituting
26 the offense or offenses described in the agreement, unless the
27 agreement includes a provision that upon compliance the person
28 agrees to plead guilty or nolo contendere to a specific related
29 offense, with or without a specific sentencing recommendation
30 by the prosecuting attorney.

31 (d) No person charged with a violation of the provisions of
32 section two, article five, chapter seventeen-c of this code may
33 participate in a pretrial diversion program. No person charged
34 with a violation of the provisions of section twenty-eight,
35 article two of this chapter may participate in a pretrial diversion
36 program unless the program is part of a community corrections
37 program approved pursuant to the provisions of article eleven-c,
38 chapter sixty-two of this code. No person indicted for a felony
39 crime of violence against the person where the alleged victim
40 is a family or household member as defined in 48-27-203 of
41 this code or indicted for a violation of the provisions of sections
42 three, four or seven, article eight-b of this chapter is eligible to
43 participate in a pretrial diversion program. No defendant
44 charged with a violation of the provisions of section twenty-
45 eight, article two of this chapter or subsections (b) or (c),
46 section nine, article two of this chapter where the alleged victim
47 is a family or household member is eligible for pretrial diver-
48 sion programs if he or she has a prior conviction for the offense
49 charged or if he or she has previously been granted a period of
50 pretrial diversion pursuant to this section for the offense
51 charged. Notwithstanding any provision of this code to the
52 contrary, defendants charged with violations of the provisions
53 of section twenty-eight, article two, chapter sixty-one of this
54 code or the provisions of subsections (b) or (c), section nine,
55 article two of said chapter where the alleged victim is a family

56 or household member as defined by the provisions of 48-27-203
57 of this code are ineligible for participation in a pretrial diver-
58 sion program before the first day of July, two thousand two, and
59 before the community corrections subcommittee of the gover-
60 nor's committee on crime, delinquency and correction estab-
61 lished pursuant to the provisions of section two, article eleven-
62 c, chapter sixty-two of this code, in consultation with the
63 working group of the subcommittee, has approved guidelines
64 for a safe and effective program for diverting defendants
65 charged with domestic violence.

66 (e) The provisions of section twenty-five of this article are
67 inapplicable to defendants participating in pretrial diversion
68 programs who are charged with a violation of the provisions of
69 section twenty-eight, article two, chapter sixty-one of this code.
70 The community corrections subcommittee of the governor's
71 committee on crime, delinquency and correction established
72 pursuant to the provisions of section two, article eleven-c,
73 chapter sixty-two of this code shall, upon approving any
74 program of pretrial diversion for persons charged with viola-
75 tions of the provisions of section twenty-eight, article two,
76 chapter sixty-one of this code, establish and maintain a central
77 registry of the participants in the programs which may be
78 accessed by judicial officers and court personnel.

79 (f) (1) The chief judge of a circuit court in cooperation with
80 the prosecuting attorneys, the public defenders, if any, in the
81 circuit, and the community criminal justice board if the
82 program is to be operated pursuant to the provisions of article
83 eleven-c, chapter sixty-two of this code may establish and
84 operate a drug court program as a diversion program or an
85 alternative sentencing program, or both, to address offenses that
86 stem from substance use or abuse.

87 (2) For the purposes of this section, "drug court program"
88 means a program designed to achieve a reduction in recidivism

89 and substance abuse among nonviolent, substance abusing
90 offenders by increasing their likelihood for successful rehabili-
91 tation through early, continuous, and intense supervised
92 treatment, mandatory periodic drug testing and the use of
93 appropriate sanctions and other rehabilitation services.

94 (3) A drug court program is to provide, at a minimum:

95 (A) For successful completion of a diversion or plea
96 agreement in lieu of incarceration;

97 (B) Access by all participating parties of a case to informa-
98 tion on the offender's progress;

99 (C) Vigilant supervision and monitoring procedures;

100 (D) Random substance abuse testing;

101 (E) Provisions for dealing with noncompliance, modifica-
102 tion of the treatment plan, and revocation proceedings;

103 (F) For its operation only when appropriate facilities and
104 outpatient services are available; and

105 (G) For payment of court costs, treatment costs, supervision
106 fees, and program user fees by the offender, unless payment of
107 the costs and fees would impose an undue hardship.

108 (4) An offender is eligible for a drug court program only if:

109 (A) The underlying offense does not involve a felony crime
110 of violence, unless there is a specific treatment program
111 available designed to address violent offenders;

112 (B) The offender has no prior felony conviction in this state
113 or another state for a felony crime of violence; and

114 (C) The offender admits to having a substance abuse
115 addiction.

116 (5) The court may provide additional eligibility criteria it
117 considers appropriate.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11A. RELEASE FOR WORK OR OTHER PURPOSES.

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

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

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

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

22 (3) The community service program under which persons
23 sentenced would spend no time in jail but would be sentenced
24 to a number of hours or days of community service work with
25 government entities or charitable or nonprofit entities approved
26 by the circuit court. Regarding any portion of the sentence
27 designated as confinement, eight hours of community service
28 work is to be credited as one day of the sentence imposed.
29 Regarding any portion of the sentence designated as a fine, the
30 fine is to be credited at an hourly rate equal to the prevailing
31 federal minimum wage at the time the sentence was imposed.
32 In the discretion of the court, the sentence credits may run
33 concurrently or consecutively. Persons sentenced under this
34 program may be required to provide their own transportation to
35 and from the work site, lunch and work clothes;

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

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

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

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

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

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

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

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

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

74 (e) Persons sentenced under the provisions of this section
75 may be required to pay the costs of their incarceration, includ-
76 ing meal costs; *Provided*, That the judge or magistrate considers
77 the person's ability to pay the costs.

78 (f) Persons sentenced under the provisions of this section
79 remain under the jurisdiction of the court. The court may
80 withdraw any alternative sentence at any time by order entered
81 with or without notice and require that the remainder of the
82 sentence be served in the county jail, regional jail or a state
83 correctional facility: *Provided*, That no alternative sentence

84 directed by the sentencing judge or magistrate or administered
85 under the supervision of the sheriff, his or her deputies, a jailer
86 or a guard, may require the convicted person to perform duties
87 which would be considered detrimental to the convicted
88 person's health as attested by a physician.

89 (g) No provision of this section may be construed to limit
90 a circuit judge or magistrate's ability to impose a period of
91 supervision or participation in a community corrections
92 program created pursuant to article eleven-c, chapter sixty-two
93 of this code.

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-3. Definitions.

1 As used in this article:

2 (1) "Home" means the actual living area of the temporary
3 or permanent residence of an offender. The term includes, but
4 is not limited to, a hospital, health care facility, hospice, group
5 home, residential treatment facility and boarding house.

6 (2) "Monitoring device" means an electronic device that is:

7 (A) Limited in capability to the recording or transmitting of
8 information regarding an offender's presence or absence from
9 the offender's home and his or her use or lack of use of alcohol
10 or controlled substances;

11 (B) Minimally intrusive upon the privacy of other persons
12 residing in the offender's home; and

13 (C) Incapable of recording or transmitting:

14 (i) Visual images;

15 (ii) Oral or wire communications or any auditory sound; or

16 (iii) Information regarding the offender's activities while
17 inside the offender's home without the offender's knowledge or
18 consent.

19 (3) "Offender" means any adult convicted of a crime
20 punishable by imprisonment or detention in a county jail or
21 state penitentiary; or a juvenile convicted of a delinquent act
22 that would be a crime punishable by imprisonment or incarceration
23 in the state penitentiary or county jail, if committed by an
24 adult.

§62-11B-5. Requirements for order for home incarceration.

1 An order for home incarceration of an offender under
2 section four of this article is to include, but not be limited to,
3 the following:

4 (1) A requirement that the offender be confined to the
5 offender's home at all times except when the offender is:

6 (A) Working at employment approved by the circuit court
7 or magistrate, or traveling to or from approved employment;

8 (B) Unemployed and seeking employment approved for the
9 offender by the circuit court or magistrate;

10 (C) Undergoing medical, psychiatric, mental health
11 treatment, counseling or other treatment programs approved for
12 the offender by the circuit court or magistrate;

13 (D) Attending an educational institution or a program
14 approved for the offender by the circuit court or magistrate;

15 (E) Attending a regularly scheduled religious service at a
16 place of worship;

17 (F) Participating in a community work release or commu-
18 nity service program approved for the offender by the circuit
19 court, in circuit court cases; or

20 (G) Engaging in other activities specifically approved for
21 the offender by the circuit court or magistrate.

22 (2) Notice to the offender of the penalties which may be
23 imposed if the circuit court or magistrate subsequently finds the
24 offender to have violated the terms and conditions in the order
25 of home incarceration.

26 (3) A requirement that the offender abide by a schedule,
27 prepared by the probation officer in circuit court cases, or by
28 the supervisor or sheriff in magistrate court cases, specifically
29 setting forth the times when the offender may be absent from
30 the offender's home and the locations the offender is allowed
31 to be during the scheduled absences.

32 (4) A requirement that the offender is not to commit
33 another crime during the period of home incarceration ordered
34 by the circuit court or magistrate.

35 (5) A requirement that the offender obtain approval from
36 the probation officer or supervisor or sheriff before the offender
37 changes residence or the schedule described in subdivision (3)
38 of this section.

39 (6) A requirement that the offender maintain:

40 (A) A working telephone in the offender's home;

41 (B) If ordered by the circuit court or as ordered by the
42 magistrate, an electronic monitoring device in the offender's
43 home, or on the offender's person, or both; and

44 (C) Electric service in the offender's home if use of a
45 monitoring device is ordered by the circuit court or any time
46 home incarceration is ordered by the magistrate.

47 (7) A requirement that the offender pay a home incarcera-
48 tion fee set by the circuit court or magistrate. If a magistrate
49 orders home incarceration for an offender, the magistrate shall
50 follow a fee schedule established by the supervising circuit
51 judge in setting the home incarceration fee. The magistrate or
52 circuit judge shall consider the person's ability to pay in
53 determining the imposition and amount of the fee;

54 (8) A requirement that the offender pay a fee authorized by
55 the provisions of section four, article eleven-c of this chapter:
56 *Provided*, That the magistrate or circuit judge considers the
57 person's ability to pay in determining the imposition and
58 amount of the fee; and

59 (9) A requirement that the offender abide by other condi-
60 tions set by the circuit court or by the magistrate.

**§62-11B-6. Circumstances under which home incarceration may
not be ordered; exceptions.**

1 (a) A circuit court or magistrate may not order home
2 incarceration for an offender unless the offender agrees to abide
3 by all of the requirements set forth in the court's order issued
4 under this article.

5 (b) A circuit court or magistrate may not order home
6 incarceration for an offender who is being held under a
7 detainer, warrant or process issued by a court of another
8 jurisdiction.

9 (c) A magistrate may not order home incarceration for an
10 offender unless electronic monitoring is available and only if
11 the county of the offender's home has an established program

12 of electronic monitoring that is equipped, operated and staffed
13 by the county supervisor or sheriff for the purpose of supervis-
14 ing participants in a home incarceration program: *Provided,*
15 That electronic monitoring may not be required in a specific
16 case if a circuit court upon petition thereto finds by order that
17 electronic monitoring is not necessary.

18 (d) A magistrate may only order home incarceration for an
19 offender convicted of a crime of violence against the person if
20 the offender does not occupy the same home as the victim of
21 the crime.

22 (e) Home incarceration is not available as a sentence if the
23 language of a criminal statute expressly prohibits its applica-
24 tion.

25 (f) Notwithstanding the provisions of subsection (c) of this
26 section, a magistrate may order home incarceration through the
27 imposition of supervision or participation in a community
28 corrections program created pursuant to article eleven-c,
29 chapter sixty-two of this code.

§62-11B-7. Home incarceration fees; special fund.

1 All home incarceration fees ordered by the circuit court
2 pursuant to subdivision seven, section five of this article are to
3 be paid to the circuit clerk, who shall monthly remit the fees to
4 the sheriff. All home incarceration fees ordered by a magistrate
5 pursuant to subdivision seven, section five of this article are to
6 be paid to the magistrate court clerk, who shall monthly remit
7 the fees to the county sheriff. The county sheriff shall establish
8 a special fund designated the home incarceration services fund,
9 in which the sheriff shall deposit all home incarceration fees
10 collected pursuant to this section and remitted by the clerks.
11 The county commission shall appropriate money from the fund
12 to administer a home incarceration program, including the
13 purchase of electronic monitoring devices and other supervision

14 expenses, and may as necessary supplement the fund with
15 additional appropriations. The county commission may also
16 appropriate any excess money from the fund to defray the costs
17 of housing county inmates or for community corrections
18 programs, if the sheriff or other person designated to administer
19 the fund certifies in writing to the county commission that a
20 surplus exists in the fund at the end of the fiscal year.

**§62-11B-11. Discretion of the court; provisions of article not
exclusive.**

1 (a) Home incarceration pursuant to the provisions of this
2 article may be imposed at the discretion of the circuit court or
3 magistrate court as an alternative means of incarceration for any
4 offense. Except for offenses for which the penalty includes
5 mandatory incarceration, home incarceration may not be
6 considered an exclusive means of alternative sentencing.

7 (b) Upon conviction of a person, the circuit court, magis-
8 trate court or municipal court may, in its discretion, grant credit
9 for time spent on home incarceration as a condition of bail
10 toward any sentence imposed, if the person is found to have
11 complied with the terms of bail.

§62-11B-13. Home incarceration for municipal court offenders.

1 Notwithstanding any provision of this article to the con-
2 trary, when a person is convicted under a municipal ordinance
3 for which a period of incarceration may be imposed, the
4 municipal court may enter an order for home incarceration as
5 an alternative sentence to incarceration in a county or regional
6 jail. A home incarceration sentence ordered by a municipal
7 court pursuant to the provisions of this section is subject to the
8 same requirements and conditions as a home incarceration
9 sentence imposed by a circuit court or magistrate court pursuant
10 to the provisions of this article. All home incarceration fees
11 ordered by the municipal court pursuant to subdivision seven,

12 section five of this article are to be paid to the municipal clerk,
13 who shall monthly remit the fees to the sheriff.

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-1. Legislative intent.

1 (a) The Legislature hereby declares that the purpose of this
2 article is to enable any county or class I or II municipality or
3 any combination of counties and class I or II municipalities to
4 develop, establish and maintain community-based corrections
5 programs to provide the judicial system with sentencing
6 alternatives for those offenders who may require less than
7 institutional custody.

8 (b) The goals of developing community-based corrections
9 programs include:

10 (1) Allowing individual counties or combinations of a
11 county or counties and a class I or II municipality greater
12 flexibility and involvement in responding to the problem of
13 crime in their communities;

14 (2) Providing more effective protection of society and
15 promoting efficiency and economy in the delivery of correc-
16 tional services;

17 (3) Providing increased opportunities for offenders to make
18 restitution to victims of crime through financial reimbursement;

19 (4) Permitting counties or combinations of a county or
20 counties and a class I or II municipality to operate programs
21 specifically designed to meet the rehabilitative needs of
22 offenders;

23 (5) Providing appropriate sentencing alternatives with the
24 goal of reducing the incidence of repeat offenders;

25 (6) Permitting counties or combinations of a county or
26 counties and a class I or II municipality to designate
27 community-based programs to address local criminal justice
28 needs;

29 (7) Diverting offenders from the state regional jail or
30 correctional facilities by punishing them with community-based
31 sanctions, thereby reserving state regional jail or correctional
32 facilities for those offenders who are deemed to be most
33 dangerous to the community; and

34 (8) Promoting accountability of offenders to their commu-
35 nity.

§62-11C-2. Community corrections subcommittee.

1 (a) A community corrections subcommittee of the gover-
2 nor's committee on crime, delinquency and correction is hereby
3 created and assigned responsibility for screening community
4 corrections programs submitted by community criminal justice
5 boards for approval for funding by the governor's committee
6 and for making recommendations as to the disbursement of
7 funds for approved community corrections programs. The
8 subcommittee is to be comprised of fifteen members of the
9 governor's committee including: a representative of the division
10 of corrections, a representative of the regional jail and correc-
11 tional facility authority, a person representing the interests of
12 victims of crime, an attorney employed by a public defender
13 corporation, an attorney who practices criminal law, a prosecu-
14 tor and a representative of the West Virginia coalition against
15 domestic violence. At the discretion of the West Virginia
16 supreme court of appeals, the administrator of the supreme
17 court of appeals, a probation officer and a circuit judge may
18 serve on the subcommittee as ex officio, non-voting members.

19 (b) The subcommittee shall elect a chairperson and a vice
20 chairperson. Special meetings may be held upon the call of the

21 chairperson, vice chairperson or a majority of the members of
22 the subcommittee. A majority of the members of the subcom-
23 mittee constitute a quorum.

24 (c) A working group of the community corrections subcom-
25 mittee is hereby created to study safe and effective pretrial
26 diversion programs for persons charged with domestic violence
27 offenses and to recommend, based upon its findings, programs
28 considered to be safe and effective in reducing incidences of
29 domestic violence and educating persons charged with a
30 domestic violence offense. The working group is to be com-
31 prised of the following members of the subcommittee: (1) If
32 approved by the West Virginia supreme court of appeals, the
33 circuit judge; (2) the prosecuting attorney; (3) the public
34 defender or the criminal defense attorney; (4) the probation
35 officer; and (5) the representative of the West Virginia coalition
36 against domestic violence. The working group is to report its
37 findings and recommendations to the subcommittee on or
38 before the first day of July, two thousand two.

**§62-11C-3. Duties of the governor's committee and the commu-
nity corrections subcommittee.**

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

6 (1) Establish standards for approval of community correc-
7 tions programs submitted by community criminal justice
8 boards;

9 (2) Establish minimum standards for community correc-
10 tions programs to be funded, including requiring annual
11 program evaluations;

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

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

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

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

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

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

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

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

§62-11C-4. Special revenue account.

1 (a) There is hereby created in the state treasury a special
2 revenue account to be known as the "West Virginia community
3 corrections fund." Expenditures from the fund are for the

4 purposes set forth in subsection (d) of this section and are not
5 authorized from collections but are to be made only in accor-
6 dance with appropriation by the Legislature and in accordance
7 with the provisions of article three, chapter twelve of this code
8 and upon the fulfillment of the provisions set forth in article
9 two, chapter five-a of this code: *Provided*, That for the fiscal
10 year ending the thirtieth day of June, two thousand two,
11 expenditures are authorized from collections rather than
12 pursuant to an appropriation by the Legislature. The West
13 Virginia community corrections fund may receive any gifts,
14 grants, contributions or other money from any source which is
15 specifically designated for deposit in the fund.

16 (b) Beginning on the effective date of this article, in
17 addition to the fee required in section nine, article twelve of this
18 chapter, a fee not to exceed thirty dollars per month, unless
19 modified by legislative rule as provided in section three of this
20 article, is also to be collected from those persons on probation.
21 This fee is to be based upon the person's ability to pay. The
22 magistrate or circuit judge shall conduct a hearing prior to
23 imposition of probation and make a determination on the record
24 that the offender is able to pay the fee without undue hardship.
25 The magistrate clerk or circuit clerk shall collect all fees
26 imposed pursuant to this subsection and deposit them in a
27 separate account. Within ten calendar days following the
28 beginning of the calendar month, the magistrate clerk or circuit
29 clerk shall forward the amount deposited to the state treasurer
30 to be credited to the West Virginia community corrections fund.

31 (c) Beginning on the effective date of this article, in
32 addition to the fee required in section five, article eleven-b of
33 this chapter, a fee not to exceed five dollars per day, unless
34 modified by legislative rule as provided in section three of this
35 article, is also to be collected from those persons on home
36 incarceration. The circuit judge, magistrate or municipal court
37 judge shall consider the person's ability to pay in determining

38 the imposition and amount of the fee. The circuit clerk, magis-
39 trate clerk or municipal court clerk shall collect all fees
40 imposed pursuant to this subsection and deposit them in a
41 separate account. Within ten calendar days following the
42 beginning of the calendar month, the circuit clerk or municipal
43 court clerk shall forward the amount deposited to the state
44 treasurer to be credited to the West Virginia community
45 corrections fund.

46 (d) The moneys of the West Virginia community correc-
47 tions fund are to be disbursed by the governor's committee on
48 crime, delinquency and correction, upon recommendation by
49 the community corrections subcommittee, for the funding of
50 community corrections programs and to pay expenses of the
51 governor's committee in administering the provisions of this
52 article, which expenses may not in any fiscal year exceed ten
53 percent of the funds deposited to the special revenue account
54 during that fiscal year.

55 (e) Any disbursements from the West Virginia community
56 corrections fund allocated for community corrections programs
57 by the governor's committee may be made contingent upon
58 local appropriations or gifts in money or in kind for the support
59 of the programs. Any county commission of any county or the
60 governing body of a municipality may appropriate and expend
61 money for establishing and maintaining community corrections
62 programs.

63 (f) Nothing in this article may be construed to mandate
64 funding for the West Virginia community corrections fund or
65 to require any appropriation by the Legislature.

§62-11C-5. Establishment of programs.

1 (a) Any county or combination of counties or a county or
2 counties and a class I or II municipality may establish and
3 operate community corrections programs, as provided for in

4 this section, to be used as alternative sentencing options for
5 those offenders sentenced within the jurisdiction of the county
6 or counties which establish and operate the program.

7 (b) Any county or combination of counties or a county or
8 counties and a class I or II municipality that seek to establish
9 programs as authorized in this section shall submit plans and
10 specifications for the programs to be established, including
11 proposed budgets, for review and approval by the community
12 corrections subcommittee established in section three of this
13 article.

14 (c) Any county or combination of counties or a county or
15 counties and a class I or II municipality may establish and
16 operate an approved community corrections program to provide
17 alternative sanctioning options for an offender who is convicted
18 of an offense for which he or she may be sentenced to a period
19 of incarceration in a county or regional jail or a state correc-
20 tional facility and for which probation or home incarceration
21 may be imposed as an alternative to incarceration.

22 (d) Community corrections programs authorized by
23 subsection (a) of this section may provide, but are not limited
24 to providing, any of the following services:

- 25 (1) Probation supervision programs;
- 26 (2) Day fine programs;
- 27 (3) Community service restitution programs;
- 28 (4) Home incarceration programs;
- 29 (5) Substance abuse treatment programs;
- 30 (6) Sex offender containment programs;

31 (7) Licensed domestic violence offender treatment pro-
32 grams;

33 (8) Day reporting centers;

34 (9) Educational or counseling programs; or

35 (10) Drug courts.

36 (e) A county or combination of counties or a county or
37 counties and a class I or II municipality which establish and
38 operate community corrections programs as provided for in this
39 section may contract with other counties to provide community
40 corrections services.

41 (f) For purposes of this section, the phrase “may be
42 sentenced to a period of incarceration” means that the statute
43 defining the offense provides for a period of incarceration as a
44 possible penalty.

45 (g) No provision of this article may be construed to allow
46 a person participating in or under the supervision of a commu-
47 nity corrections program to earn “good time” or any other
48 reduction in sentence.

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

1 (a) Each county or combination of counties or a county or
2 counties and a class I or II municipality that seek to establish
3 community-based corrections services shall establish a commu-
4 nity criminal justice board.

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

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

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

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

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

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

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

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

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

33 (7) Three at-large members to be appointed by the commis-
34 sion or commissions of the county or counties represented by
35 the board.

36 (c) At the discretion of the West Virginia supreme court of
37 appeals, any or all of the following people may serve on a

38 community criminal justice board as ex officio, non-voting
39 members:

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

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

43 (3) A probation officer from the county or counties repre-
44 sented.

45 (d) Community criminal justice boards may:

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

48 (2) Coordinate with local probation departments in estab-
49 lishing and modifying programs and services for offenders;

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

53 (4) Develop and apply for approval of community correc-
54 tions programs by the governor's committee on crime, delin-
55 quency and correction.

56 (e) If a community criminal justice board represents more
57 than one county, the appointed membership of the board,
58 excluding any ex officio members, shall include an equal
59 number of members from each county, unless the county
60 commissions of each county agree in writing otherwise.

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

65 (g) Any political subdivision of this state operating a
66 community corrections program shall, regardless of whether or
67 not the program has been approved by the governor's commit-
68 tee on crime, delinquency and correction, provide to the
69 governor's committee required information regarding the
70 program's operations as required by legislative rule.

§62-11C-7. Supervision or Participation Fee.

1 (a) A circuit judge, magistrate or municipal court judge
2 may require the payment of a supervision or participation fee
3 from any person required to be supervised by or participate in
4 a community corrections program. The circuit judge, magistrate
5 or municipal court judge shall consider the person's ability to
6 pay in determining the imposition and amount of the fee.

7 (b) All fees ordered by the circuit court pursuant to this
8 section are to be paid to the circuit clerk, who shall monthly
9 remit the fees to the treasurer of the county designated as the
10 fiscal agent for the board pursuant to section six of this article.
11 All fees ordered by the magistrate court pursuant to this section
12 are to be paid to the magistrate clerk, who shall monthly remit
13 the fees to the treasurer of the county designated as the fiscal
14 agent for the board pursuant to section six of this article. All
15 fees ordered by the municipal court judge pursuant to this
16 section are to be paid to the municipal court clerk who shall
17 monthly remit the fees to the treasurer of the county designated
18 as the fiscal agent for the board pursuant to section six of this
19 article.

§62-11C-8. Local community criminal justice accounts.

1 (a) The treasurer of the county designated as the fiscal
2 agent for the board pursuant to section six of this article shall
3 establish a separate fund designated the community criminal
4 justice fund. He or she shall deposit all fees remitted by the
5 municipal, magistrate and circuit clerks pursuant to section

6 seven of this article and all funds appropriated by a county
7 commission pursuant to section seven, article eleven-b of this
8 chapter, or any other provision of this code and all funds
9 provided by the governor's committee for approved community
10 corrections programs in the community criminal justice fund.
11 Funds in the community criminal justice account are to be
12 expended by order of the designated county's commission upon
13 recommendation of the community criminal justice board in
14 furtherance of the operation of an approved community
15 corrections program.

16 (b) A county commission representing the same county as
17 a community criminal justice board may require the community
18 criminal justice board to render an accounting, at intervals the
19 county commission may designate, of the use of money,
20 property, goods and services made available to the board by the
21 county commission and to make available at quarterly intervals
22 an itemized statement of receipts and disbursements, and its
23 books, records and accounts during the preceding quarter, for
24 audit and examination pursuant to article nine, chapter six of
25 this code.

**§62-11C-9. Use of Community Corrections Programs for those
not under court supervision.**

1 (a) Subject to the availability of community corrections
2 programs in the county, a written pre-trial diversion agreement,
3 entered into pursuant to the provisions of section twenty-two,
4 article eleven, chapter sixty-one of this code, may require
5 participation or supervision in a community corrections
6 program as part of the prosecution and resolution of charges.

7 (b) Any pretrial diversion program for a defendant charged
8 with a violation of the provisions of section twenty-eight,
9 article two, chapter sixty-one of this code, subsections (b) or
10 (c), section nine, article two of said chapter where the alleged

11 victim is a family or household member or the provisions of
12 section two, article five, chapter seventeen-c of this code is to
13 require the person charged to appear before the presiding judge
14 or magistrate and either acknowledge his or her understanding
15 of the terms of the agreement or tender a plea of guilty or nolo
16 contendere to the charge or charges. Upon the defendant's
17 motion, the court shall continue the matter for the period of
18 time necessary for the person charged to complete the pretrial
19 diversion program. If the person charged successfully com-
20 pletes the pretrial diversion program, the matter is to be
21 resolved pursuant to the terms of the pretrial diversion agree-
22 ment. If the person charged fails to successfully complete the
23 pretrial diversion program, the matter, if no plea of guilty or
24 nolo contendere has been tendered, is to be returned to the
25 court's docket for resolution. If the person charged has tendered
26 a plea of guilty or nolo contendere and fails to successfully
27 complete the pretrial diversion program, the court shall accept
28 the tendered plea of guilty or nolo contendere and proceed to
29 sentencing.

30 (c) No provision of this article may be construed to limit
31 the prosecutor's discretion to prosecute an individual who has
32 not fulfilled the terms of a written pretrial diversion agreement
33 by not completing the required supervision or participation in
34 a community corrections program.

ARTICLE 12. PROBATION AND PAROLE.

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

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

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

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

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

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

21 (5) That the probationer be required to pay a fee, not to
22 exceed twenty dollars per month to defray costs of supervision:
23 *Provided*, That the court conducts a hearing prior to imposition
24 of probation and makes a determination on the record that the
25 offender is able to pay the fee without undue hardship. All
26 moneys collected as fees from probationers pursuant to this
27 subdivision are to be deposited with the circuit clerk who shall,
28 on a monthly basis, remit the moneys collected to the state
29 treasurer for deposit in the state general revenue fund; and

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

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

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

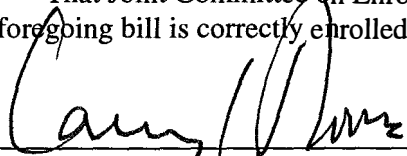
45 (2) That he or she pay any fine assessed and the costs of the
46 proceeding in installments as the court may direct: *Provided*,
47 That the court conducts a hearing prior to imposition of
48 probation and makes a determination on the record that the
49 offender is able to pay the costs without undue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

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

53 (4) That he or she, in the discretion of the court, be required
54 to serve a period of confinement in the county jail of the county
55 in which he or she was convicted for a period not to exceed one
56 third of the minimum sentence established by law or one third
57 of the least possible period of confinement in an indeterminate
58 sentence, but in no case may the period of confinement exceed
59 six consecutive months. The court has the authority to sentence
60 the defendant within the six-month period to intermittent
61 periods of confinement including, but not limited to, weekends
62 or holidays and may grant to the defendant intermittent periods
63 of release in order that he or she may work at his or her
64 employment or for other reasons or purposes as the court may
65 deem appropriate: *Provided*, That the provisions of article
66 eleven-a of this chapter do not apply to intermittent periods of
67 confinement and release except to the extent that the court may

68 direct. If a period of confinement is required as a condition of
69 probation, the court shall make special findings that other
70 conditions of probation are inadequate and that a period of
71 confinement is necessary.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



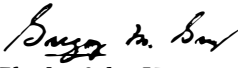
Chairman House Committee

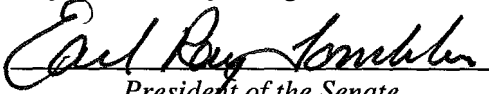
Originating in the House.

In effect July 1, 2001.

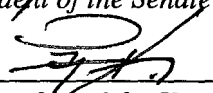


Clerk of the Senate

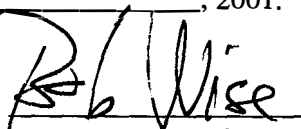

Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 1st
day of April, 2001.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/27/01

Time 4:30 pm