

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 307

(By Senators Cann, Williams, Cookman and Palumbo)

[Originating in the Committee on the Judiciary;
reported February 11, 2014.]

A BILL to amend and reenact §62-11C-5 and §62-11C-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §62-11F-1, §62-11F-2, §62-11F-3, §62-11F-4 and §62-11F-5, all relating to authorizing community corrections programs to operate pretrial release program; permitting certain fees to be assessed to county commissions; permitting certain fees to be assessed to persons on pretrial release upon subsequent conviction; stating applicability of pretrial release programs; establishing

guidelines for pretrial release programs; providing for potential funding sources; requiring community pretrial committees to recommend release of certain persons facing criminal charges who are in regional jails prior to adjudication; setting forth the duties of pretrial release programs; and clarifying that a circuit judge or a magistrate may impose a secured bond on participants in pretrial release programs.

Be it enacted by the Legislature of West Virginia:

That §62-11C-5 and §62-11C-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §62-11F-1, §62-11F-2, §62-11F-3, §62-11F-4 and §62-11F-5, all to read as follows:

**ARTICLE 11C. THE WEST VIRGINIA COMMUNITY
CORRECTIONS ACT.**

§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 this
- 4 section, to be used both prior to trial as a condition of bond in

5 circuit and magistrate court, as well as an alternative sentencing
6 option for those offenders sentenced within the jurisdiction of
7 the county or counties which establish and operate the program:
8 *Provided*, That the chief judge must certify that the community
9 corrections facility is available for use in connection with the
10 imposition of pretrial bond conditions.

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

18 (c) Any county or combination of counties or a county or
19 counties and a Class I or II municipality may establish and
20 operate an approved community corrections program to provide
21 alternative sanctioning options for an offender who is convicted
22 of an offense for which he or she may be sentenced to a period
23 of incarceration in a county or regional jail or a state correctional

24 facility and for which probation or home incarceration may be
25 imposed as an alternative to incarceration.

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

29 (1) Probation supervision programs;

30 (2) Day fine programs;

31 (3) Community service restitution programs;

32 (4) Home incarceration programs;

33 (5) Substance abuse treatment programs;

34 (6) Sex offender containment programs;

35 (7) Licensed domestic violence offender treatment
36 programs;

37 (8) Day reporting centers;

38 (9) Educational or counseling programs;

39 (10) Drug courts; or

40 (11) Community beautification and reclamation programs

41 for state highways, municipal, county and state parks and

42 recreation areas and community gardens; and

43 (12) Pretrial release programs.

44 (e) A county or combination of counties or a county or
45 counties and a Class I or II municipality which establish and
46 operate community corrections programs as provided for in
47 this section may contract with other counties to provide
48 community corrections services.

49 (f) For purposes of this section, the phrase “may be
50 sentenced to a period of incarceration” means that the statute
51 defining the offense provides for a period of incarceration as
52 a possible penalty.

53 (g) No provision of this article may be construed to allow
54 a person participating in or under the supervision of a
55 community corrections program to earn good time or any
56 other reduction in sentence.

57 (h) Nothing in this section should be construed as to
58 prohibit a court from imposing a surety bond as a condition
59 of a pretrial release.

§62-11C-7. Supervision or participation fee.

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

9 (b) A circuit judge, magistrate or community criminal
10 justice board may require payment of a supervision or
11 participation fee of \$7 per person per day of pretrial supervision
12 from the county commission pursuant to a pretrial release
13 program established pursuant to article eleven-f of this chapter.

14 (c) Should a person supervised pursuant to the provisions of
15 article eleven-f of this chapter be convicted of an offense or
16 offenses underlying the person's participation, the sentencing
17 court may assess, as a cost of prosecution, a fee not to exceed
18 \$30 per month for each month the person was in the pretrial
19 supervision program.

20 ~~(b)~~ (d) All fees ordered by the circuit court, magistrate
21 court, municipal court or community criminal justice board
22 pursuant to this section are to be paid to the community
23 criminal justice board, who shall remit the fees monthly to
24 the treasurer of the county designated as the fiscal agent for
25 the board pursuant to section six of this article.

ARTICLE 11F. PRETRIAL RELEASE PROGRAMS.

§62-11F-1. Applicability.

1 This article applies to adult defendants who have been
2 charged with one or more misdemeanors or felonies and are
3 incarcerated in a regional jail prior to adjudication.

§62-11F-2. Establishment of pretrial release programs.

1 (a) It is the purpose of pretrial release programs to
2 employ recommendations from the Council of State
3 Government's Justice Center's Analyses and Policy Options
4 to Reduce Spending on Corrections and Reinvest in
5 Strategies to Increase Public Safety, by providing for uniform
6 statewide risk assessment and monitoring of those released
7 prior to trial, facilitating a statewide response to the problem

8 of overcrowded regional jails and costs to county
9 commissions.

10 (b) Any county, circuit or combination thereof which elects
11 or is required to establish a pretrial program pursuant to this
12 article shall establish a local community pretrial committee
13 which consists of a prosecutor, county commissioner, sheriff,
14 executive director of a community corrections program, chief
15 probation officer and a member of the criminal defense bar, or
16 any of those persons' designee. The committee shall meet, at a
17 minimum, once per week to review and recommend pretrial
18 release of defendants to the court.

19 (c) Pretrial release programs shall be funded by
20 appropriations made to the Supreme Court of Appeals for
21 such purpose.

§62-11F-3. Pretrial release program guidelines.

1 (a) The Supreme Court of Appeals of West Virginia has
2 complete oversight and authority over all pretrial services.

3 (b) The Supreme Court of Appeals of West Virginia shall
4 establish recommended guidelines for pretrial programs to

5 use when ordering pretrial release for defendants whose
6 pretrial risk assessment indicate that they are an appropriate
7 candidate for pretrial release.

8 (c) The Community Corrections Subcommittee of the
9 Governor's Committee on Crime, Delinquency and
10 Corrections, pursuant to section two, article eleven-c, chapter
11 sixty-two of this code, shall approve policy and funding for
12 the development, maintenance and evaluation of pretrial
13 release programs. Any county, circuit or combination thereof
14 that establishes a pretrial program intended to provide pretrial
15 release services shall submit a grant proposal to the
16 Community Corrections Subcommittee of the Governor's
17 Committee on Crime, Delinquency and Correction for review
18 and approval.

§62-11F-4. Pretrial release assessment.

1 The Supreme Court of Appeals of West Virginia may
2 adopt a standardized pretrial risk assessment for use by
3 pretrial release programs to aid in making pretrial decisions
4 under article one-c of this chapter.

§62-11F-5. Role of pretrial release programs.

1 (a) A pretrial release program established by any county,
2 circuit or combination thereof, pursuant to this article, shall:

3 (1) Collect and present the necessary information, present
4 risk assessment and make release recommendations to the
5 court;

6 (2) Present information to the court relating to the risk
7 defendants may pose in failing to appear in court or of
8 threatening the safety of the community or any other person
9 and, consistent with court policy, develop release
10 recommendations responding to risk;

11 (3) Develop and provide appropriate and effective
12 supervision for all persons released pending adjudication
13 who are assigned supervision as a condition of release;

14 (4) Monitor compliance of released defendants with the
15 requirements of assigned release conditions;

16 (5) Promptly inform the court of all apparent violations
17 of pretrial release conditions or arrests of persons released
18 pending trial, including those directly supervised by pretrial

19 services as well as those released under other forms of
20 conditional release, and recommend appropriate
21 modifications of release conditions;

22 (6) Coordinate the services of other agencies, individuals
23 or organizations that may serve as custodians for released
24 defendants, and advise the court as to their appropriateness,
25 availability, reliability and capacity relating to pretrial release
26 conditions;

27 (7) Review the status of detained defendants on ongoing
28 basis for any changes in eligibility for release options and
29 facilitate their release as soon as feasible and appropriate;

30 (8) Develop and operate an accurate information
31 management system to support prompt identification,
32 information collections and presentation, risk assessment,
33 release conditions selection, compliance monitoring and
34 detention review functions essential to an effective pretrial
35 release program; and

36 (9) Remind persons released before trial of their court
37 dates to attempt to facilitate their court appearance.

38 (b) Pretrial release programs may monitor, supervise and
39 assist defendants released prior to trial.

40 (c) Nothing in this article should be construed to prohibit
41 a court from requiring a defendant to post a secured bond as
42 a condition of pretrial release.

(NOTE: The purpose of this bill is authorize pretrial release programs to evaluate and supervise persons on pretrial release as part of a community corrections program.

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

§62-11F-1, §62-11F-2, §62-11F-3, §62-11F-4 and §62-11F-5 are new; therefore, strike-throughs and underscoring have been omitted.)