

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 307**

5 (SENATORS CANN, WILLIAMS, COOKMAN AND PALUMBO, *original sponsors*)

6 _____
7 [Passed March 14, 2014; in effect ninety days from passage.]
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10
11 AN ACT to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new section, designated §51-10-5a; to amend
13 and reenact §62-11C-5 and §62-11C-7 of said code; and to amend
14 said code by adding thereto a new article, designated §62-11F-
15 1, §62-11F-2, §62-11F-3, §62-11F-4 and §62-11F-5, all relating
16 to the pretrial management of persons charged with committing
17 a crime; clarifying bonding fees for persons charged with a
18 crime; establishing minimum fees for bail bonds; setting
19 schedule for payment of bail bond fees; requiring written
20 prenumbered receipts for bail bond fees; establishing content
21 requirements for bail bond receipts; requiring bail bondsmen
22 to maintain receipt records for not less than five years;
23 requiring courts to notify bondsmen within twenty-four hours
24 if bond is to be forfeited; authorizing pretrial release

1 programs; permitting certain fees to be assessed to county
2 commissions; permitting certain fees to be assessed to persons
3 on pretrial release upon subsequent conviction; stating
4 applicability of pretrial release programs; establishing
5 guidelines for pretrial release programs; providing for
6 potential funding sources; requiring community pretrial
7 committees to recommend release of certain persons facing
8 criminal charges who are in regional jails prior to
9 adjudication; setting forth the duties of pretrial release
10 programs; clarifying that a circuit judge or a magistrate may
11 impose a secured bond on participants in pretrial release
12 programs; and removing day fine programs from the list of
13 authorized community corrections programs.

14 *Be it enacted by the Legislature of West Virginia:*

15 That the Code of West Virginia, 1931, as amended, be amended
16 by adding thereto a new section, designated §51-10-5a; that §62-
17 11C-5 and §62-11C-7 of said code be amended and reenacted; and that
18 said code be amended by adding thereto a new article, designated
19 §62-11F-1, §62-11F-2, §62-11F-3, §62-11F-4 and §62-11F-5, all to
20 read as follows:

21 **CHAPTER 51. COURTS AND THEIR OFFICERS.**

22 **ARTICLE 10. BAIL BONDSMEN IN CRIMINAL CASES.**

23 **§51-10-5a. Bonding fee and collateral security required by bail**
24 **bondsmen.**

1 (a) The bonding fee required by a bail bondsman shall be at
2 least ten percent of the amount of the bond. The bonding fee
3 received by the bondsman shall not, in the aggregate, exceed the
4 amount of the bond.

5 (b) The bonding fee may be paid as follows:

6 (1) In full at the time of the issuance of the bond; or

7 (2) At least three percent paid at the issuance of the bond
8 with the remaining percentage to be paid over a period not to
9 exceed twelve months.

10 (c) When collateral or security is received by a bail
11 bondsman, a receipt shall be furnished. Copies of all receipts
12 issued shall be kept by the bail bondsman for a minimum of five
13 years. All receipts issued shall:

14 (1) Be prenumbered and used and filed in consecutive numerical
15 order;

16 (2) Show the name and address of the bail bondsman;

17 (3) Show the name and address of the person providing the
18 collateral;

19 (4) Show the amount and nature of the collateral and the date
20 received;

21 (5) Show the name of the person accepting collateral; and

22 (6) Show the total amount of the bond for which the collateral
23 is being accepted and the name of the defendant.

24 (d) When a bond is to be forfeited, the court is to give

1 notification to the bail bondsman within twenty-four hours of the
2 failure to appear.

3 **CHAPTER 62. CRIMINAL PROCEDURE.**

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

5 **§62-11C-5. Establishment of programs.**

6 (a) Any county or combination of counties, or a county or
7 counties and a Class I or II municipality, may establish and
8 operate community corrections programs, as provided in this
9 section, to be used both prior to trial as a condition of bond in
10 circuit and magistrate court, as well as an alternative sentencing
11 option for those offenders sentenced within the jurisdiction of the
12 county or counties which establish and operate the program:
13 *Provided*, That the chief judge must certify that the community
14 corrections facility is available for use in connection with the
15 imposition of pretrial bond conditions.

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

23 (c) Any county or combination of counties, or a county or
24 counties and a Class I or II municipality, may establish and

1 operate an approved community corrections program to provide
2 alternative sanctioning options for an offender who is convicted of
3 an offense for which he or she may be sentenced to a period of
4 incarceration in a county or regional jail or a state correctional
5 facility and for which probation or home incarceration may be
6 imposed as an alternative to incarceration.

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

- 10 (1) Probation supervision programs;
- 11 (2) Community service restitution programs;
- 12 (3) Home incarceration programs;
- 13 (4) Substance abuse treatment programs;
- 14 (5) Sex offender containment programs;
- 15 (6) Licensed domestic violence offender treatment programs;
- 16 (7) Day reporting centers;
- 17 (8) Educational or counseling programs;
- 18 (9) Drug courts;
- 19 (10) Community beautification and reclamation programs for
20 state highways, municipal, county and state parks and recreation
21 areas and community gardens; and
- 22 (11) Pretrial release programs.

23 (e) A county or combination of counties, or a county or
24 counties and a Class I or II municipality, which establish and

1 operate community corrections programs as provided in this section
2 may contract with other counties to provide community corrections
3 services.

4 (f) For purposes of this section, the phrase "may be sentenced
5 to a period of incarceration" means that the statute defining the
6 offense provides for a period of incarceration as a possible
7 penalty.

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

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

15 **§62-11C-7. Supervision or participation fee.**

16 (a) A circuit judge, magistrate, municipal court judge or
17 community criminal justice board may require the payment of a
18 supervision or participation fee from any person required to be
19 supervised by or participate in a community corrections program.
20 The circuit judge, magistrate, municipal court judge or community
21 criminal justice board shall consider the person's ability to pay
22 in determining the imposition and amount of the fee.

23 (b) A circuit judge, magistrate or community criminal justice
24 board may require payment of a supervision or participation fee of

1 \$7 per person per day of pretrial supervision from the county
2 commission pursuant to a pretrial release program established
3 pursuant to article eleven-f of this chapter.

4 (c) A person supervised pursuant to the provisions of article
5 eleven-f of this chapter who is later convicted of an offense or
6 offenses underlying the person's participation in the pretrial
7 release program may be assessed by the sentencing court, as a cost
8 of prosecution, a fee not to exceed \$30 per month for each month
9 the person was in the pretrial supervision program.

10 (d) All fees ordered by the circuit court, magistrate court,
11 municipal court or community criminal justice board pursuant to
12 this section are to be paid to the community criminal justice
13 board, who shall remit the fees monthly to the treasurer of the
14 county designated as the fiscal agent for the board pursuant to
15 section six of this article.

16 **ARTICLE 11F. PRETRIAL RELEASE PROGRAMS.**

17 **§62-11F-1. Applicability.**

18 This article applies to adults charged with one or more
19 misdemeanors or felonies and who are incarcerated in a regional
20 jail prior to adjudication due to their inability to post bond.

21 **§62-11F-2. Establishment of pretrial release programs.**

22 (a) *Legislative findings and purpose.* -- It is the purpose of
23 pretrial release programs to employ recommendations from the
24 Council of State Government's Justice Center's Analyses and Policy

1 Options to Reduce Spending on Corrections and Reinvest in
2 Strategies to Increase Public Safety, by providing for uniform
3 statewide risk assessment and monitoring of those released prior to
4 trial, facilitating a statewide response to the problem of
5 overcrowded regional jails and costs to county commissions.

6 (b) Any county, circuit or combination thereof that
7 establishes a pretrial program pursuant to this article shall
8 establish a local community pretrial committee that consists of:

- 9 (1) A prosecutor, or his or her designee;
- 10 (2) A county commissioner, or his or her designee;
- 11 (3) A sheriff, or his or her designee;
- 12 (4) An executive director of a community corrections program,
13 or his or her designee;
- 14 (5) A chief probation officer, or his or her designee; and
- 15 (6) A member of the criminal defense bar.

16 (c) Pretrial release programs may monitor, supervise and
17 assist defendants released prior to trial.

18 (d) Nothing in this article should be construed to prohibit a
19 court from requiring a defendant to post a secured bond as a
20 condition of pretrial release.

21 (e) In addition to funding provided pursuant to subsection
22 (c), section three of this article, pretrial release programs may
23 be funded by appropriations made to the Supreme Court of Appeals
24 for such purpose.

1 **§62-11F-3. Pretrial release program guidelines.**

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

4 (b) The Supreme Court of Appeals shall establish recommended
5 guidelines for pretrial programs to use when ordering pretrial
6 release for defendants whose pretrial risk assessment indicates
7 that they are an appropriate candidate for pretrial release.

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

17 **§62-11F-4. Pretrial release assessment.**

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

22 **§62-11F-5. Role of pretrial release programs.**

23 A pretrial release program established pursuant to this
24 article shall:

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

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

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

11 (4) Monitor compliance of released defendants with the
12 requirements of assigned release conditions;

13 (5) Promptly inform the court of all apparent violations of
14 pretrial release conditions or arrests of persons released pending
15 trial, including those directly supervised by pretrial services as
16 well as those released under other forms of conditional release,
17 and recommend appropriate modifications of release conditions;

18 (6) Coordinate the services of other agencies, individuals or
19 organizations that may serve as custodians for released defendants,
20 and advise the court as to their appropriateness, availability,
21 reliability and capacity relating to pretrial release conditions;

22 (7) Review the status of detained defendants on an ongoing
23 basis for any changes in eligibility for release options and
24 facilitate their release as soon as feasible and appropriate;

1 (8) Develop and operate an accurate information management
2 system to support prompt identification, information collections
3 and presentation, risk assessment, release conditions selection,
4 compliance monitoring and detention review functions essential to
5 an effective pretrial release program; and

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