

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 307

(SENATORS CANN, WILLIAMS, COOKMAN AND PALUMBO,
ORIGINAL SPONSORS)

[PASSED MARCH 14, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

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(SENATORS CANN, WILLIAMS, COOKMAN AND PALUMBO,
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[Passed March 14, 2014; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-10-5a; to amend and reenact §62-11C-5 and §62-11C-7 of said code; 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 the pretrial management of persons charged with committing a crime; clarifying bonding fees for persons charged with a crime; establishing minimum fees for bail bonds; setting schedule for payment of bail bond fees; requiring written prenumbered receipts for bail bond fees; establishing content requirements for bail bond receipts; requiring bail bondsmen to maintain receipt records for not less than five years; requiring courts to notify bondsmen within twenty-four hours if bond is to be forfeited; authorizing pretrial release programs; 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; clarifying that a circuit judge or a magistrate may impose a secured bond on participants in pretrial release programs; and removing day fine programs from the list of authorized community corrections programs.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §51-10-5a; that §62-11C-5 and §62-11C-7 of said code 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:

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 10. BAIL BONDSMEN IN CRIMINAL CASES.

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

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

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

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

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

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

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

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

24 (d) When a bond is to be forfeited, the court is to give
25 notification to the bail bondsman within twenty-four hours of
26 the failure to appear.

CHAPTER 62. CRIMINAL PROCEDURE.

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

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

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

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

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

31 (1) Probation supervision programs;

32 (2) Community service restitution programs;

33 (3) Home incarceration programs;

34 (4) Substance abuse treatment programs;

35 (5) Sex offender containment programs;

36 (6) Licensed domestic violence offender treatment
37 programs;

38 (7) Day reporting centers;

39 (8) Educational or counseling programs;

40 (9) Drug courts;

41 (10) Community beautification and reclamation programs
42 for state highways, municipal, county and state parks and
43 recreation areas and community gardens; and

44 (11) Pretrial release programs.

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

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

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

58 (h) Nothing in this section should be construed as to
59 prohibit a court from imposing a surety bond as a condition
60 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
3 of a supervision or participation fee from any person required
4 to be supervised by or participate in a community corrections
5 program. The circuit judge, magistrate, municipal court
6 judge or community criminal justice board shall consider the
7 person's ability to pay in determining the imposition and
8 amount of the 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
12 supervision from the county commission pursuant to a
13 pretrial release program established pursuant to article
14 eleven-f of this chapter.

15 (c) A person supervised pursuant to the provisions of
16 article eleven-f of this chapter who is later convicted of an
17 offense or offenses underlying the person's participation in
18 the pretrial release program may be assessed by the
19 sentencing court, as a cost of prosecution, a fee not to exceed
20 \$30 per month for each month the person was in the pretrial
21 supervision program.

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

ARTICLE 11F. PRETRIAL RELEASE PROGRAMS.**§62-11F-1. Applicability.**

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

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

1 (a) *Legislative findings and purpose.* – It is the purpose
2 of pretrial release programs to employ recommendations from
3 the Council of State Government’s Justice Center’s Analyses
4 and Policy Options to Reduce Spending on Corrections and
5 Reinvest in Strategies to Increase Public Safety, by providing
6 for uniform statewide risk assessment and monitoring of
7 those released prior to trial, facilitating a statewide response
8 to the problem of overcrowded regional jails and costs to
9 county commissions.

10 (b) Any county, circuit or combination thereof that
11 establishes a pretrial program pursuant to this article shall
12 establish a local community pretrial committee that consists
13 of:

14 (1) A prosecutor, or his or her designee;

15 (2) A county commissioner, or his or her designee;

16 (3) A sheriff, or his or her designee;

17 (4) An executive director of a community corrections
18 program, or his or her designee;

19 (5) A chief probation officer, or his or her designee; and

20 (6) A member of the criminal defense bar.

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

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

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

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

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

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

8 (c) The Community Corrections Subcommittee of the
9 Governor's Committee on Crime, Delinquency and
10 Correction, pursuant to section two, article eleven-c of this
11 chapter, shall approve policy and funding for the
12 development, maintenance and evaluation of pretrial release
13 programs. Any county, circuit or combination thereof that
14 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 pretrial release program established pursuant to this
2 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 who
13 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 an
28 ongoing basis for any changes in eligibility for release
29 options and facilitate their release as soon as feasible and
30 appropriate;

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

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

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this
the Day of, 2014.

.....
Governor