

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 496

BY SENATORS GAUNCH, FERNS AND PALUMBO

[Introduced February 3, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §62-11G-1, §62-11G-2, §62-11G-3, §62-11G-4, §62-11G-5, §62-11G-6, §62-
 3 11G-7, §62-11G-8 and §62-11G-9, all relating to the creation of the 24/7 Sobriety Program
 4 to be administered by the Office of the Attorney General; establishing the 24/7 Sobriety
 5 Fund, and to make an appropriation for the fund; providing that sheriffs, the Division of
 6 Corrections and the Administrative Office of the Supreme Court of Appeals may participate
 7 in the 24/7 Sobriety Program for electronic alcohol monitoring device testing of persons
 8 under their control; promulgation of rules and distribution of fees from the program;
 9 providing that participation in program may be made a condition of bond or pretrial release,
 10 of suspended sentence or probation, as condition of child placement or return or as
 11 condition of parole; when fees are to be paid; sanctions for failure to pay electronic alcohol
 12 monitoring or ignition interlock device testing fees; and providing for an annual review of
 13 the 24/7 Sobriety Program fees and collection procedures.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §62-11G-1, §62-11G-2, §62-11G-3, §62-11G-4, §62-11G-5, §62-11G-6, §62-
 3 11G-7, §62-11G-8 and §62-11G-9, all to read as follows:

ARTICLE 11G. STATEWIDE 24/7 SOBRIETY PROGRAM.

§62-11G-1. Statewide 24/7 sobriety program established.

1 There is hereby established a statewide 24/7 sobriety program to be administered by the
 2 Attorney General. The program shall coordinate efforts among various state and local
 3 government entities for the purpose of finding and implementing alternatives to incarceration for
 4 certain offenses that involve driving under the influence and other offenses involving alcohol,
 5 marijuana or controlled substances.

§62-11G-2. Establishment of 24/7 sobriety fund.

1 There is hereby established in the State Treasury the "24/7 Sobriety Fund". The fund shall

2 be maintained and administered by the Attorney General to defray costs of operating the 24/7
 3 sobriety program, including purchasing and maintaining equipment and funding support services.
 4 The Attorney General may accept for deposit in the fund money from donations, gifts, grants,
 5 participation fees and user fees or payments. Expenditures from the fund shall be budgeted
 6 through the normal budget process. Unexpended funds and interest shall remain in the fund.

§62-11G-3. Participation in 24/7 sobriety program; electronic alcohol monitoring device testing; testing locations and times.

1 Each county, through its sheriff, may participate in the 24/7 sobriety program. If a sheriff
 2 is unwilling or unable to participate in the 24/7 sobriety program, the sheriff may designate an
 3 entity willing to provide the service. If twice a day testing is ordered, the sheriff, or designated
 4 entity, shall establish the testing locations and times for the county but shall have at least one
 5 location and two daily testing times approximately twelve hours apart.

6 The Division of Corrections may participate in the 24/7 sobriety program for electronic
 7 alcohol monitoring device testing of parolees.

8 The Administrative Office of the Supreme Court of Appeals may participate in the 24/7
 9 sobriety program for electronic alcohol monitoring device testing of persons placed under its
 10 supervision.

§62-11G-4. Program participation as condition of bond or pretrial release, of suspended sentence or probation, as condition of child placement or return or as condition of parole.

1 (a) The circuit court or other court with jurisdiction may condition any bond or pretrial
 2 release upon:

3 (1) Participation in the 24/7 sobriety program and payment of associated costs and
 4 expenses; or

5 (2) The granting of a suspended imposition of sentence, suspended execution of
 6 sentence, or probation upon participation in the 24/7 sobriety program and payment of associated

7 costs and expenses.

8 (b) During any stage of a proceeding under article eight-b, chapter sixty-one of this code,
9 the circuit court or other court with jurisdiction may condition the placement or return of an
10 apparent, alleged or adjudicated abused or neglected child on participation in the 24/7 sobriety
11 program and payment of associated costs and expenses.

12 (c) The Division of Corrections or any parole officer may condition parole upon
13 participation in the 24/7 sobriety program and payment of associated cost and expense.

§62-11G-5. Promulgation of rules.

1 The Attorney General, may promulgate rules for legislative approval in accordance with
2 article three, chapter twenty-nine-a of this code to implement the provisions of sections eight and
3 nine of this article, in order to:

4 (1) Regulate the nature, method and manner of testing;

5 (2) Provide for procedures and apparatus for testing including electronic monitoring
6 devices and ignition interlock devices; and

7 (3) Require the submission of reports and information by law-enforcement agencies within
8 this state.

§62-11G-6. Distribution of 24/7 sobriety program fees.

1 Any fees collected under this article shall be distributed as follows:

2 (a) Any daily user fee collected in the administration of twice a day testing, drug patch
3 testing, or urinalysis testing under the 24/7 sobriety program shall be collected by the sheriff, or
4 an entity designated by the sheriff, and deposited with the county treasurer, the proceeds of which
5 shall be applied and used only to defray the recurring costs of the 24/7 sobriety program including
6 maintaining equipment, funding support services and ensuring compliance;

7 (b) Any installation and deactivation fee collected in the administration of electronic alcohol
8 monitoring device testing shall be collected by the sheriff, or an entity designated by the sheriff,
9 and deposited with the county treasurer, the proceeds of which shall be applied and used only to

10 defray the recurring costs of the 24/7 sobriety program including maintaining equipment, funding
11 support services, and ensuring compliance;

12 (c) Any daily user fee collected in the administration of electronic alcohol monitoring device
13 testing, arising from a court ordered placement in the 24/7 sobriety program, shall be collected by
14 the sheriff, or an entity designated by the sheriff, and deposited in the state 24/7 sobriety fund
15 created by section two of this article. If the test is directed by the Division of Corrections, probation
16 officer or a parole officer, the fees shall be collected and deposited as provided in the written
17 directive;

18 (d) The Division of Corrections or the Administrative Office of the Supreme Court of
19 Appeals may collect an installation fee and a deactivation fee in their administration of electronic
20 alcohol monitoring device testing. These fees shall be deposited into State General Revenue
21 Fund;

22 (e) Any enrollment and monitoring fee collected in the administration of ignition interlock
23 device testing shall be collected by the sheriff, or an entity designated by the sheriff, and deposited
24 with the county treasurer, the proceeds of which shall be applied and used only to defray the
25 recurring costs of the 24/7 sobriety program including maintaining equipment, funding support
26 services, and ensuring compliance; and

27 (f) Any participation fee collected in the administration of testing under the 24/7 sobriety
28 program to cover program administration costs incurred by the Attorney General shall be collected
29 by the sheriff, or an entity designated by the sheriff, and deposited in the state 24/7 sobriety fund
30 created by this article.

31 (g) All fees collected for deposit in the state 24/7 sobriety fund created by this article shall
32 be remitted on at least a quarterly basis.

§62-11G-7. Sobriety program participation fee; fees for twice-a-day testing, urinalysis
testing, drug patch, electronic alcohol monitoring device and ignition interlock
device.

1 Each participant in the 24/7 sobriety program shall pay a participation fee of not more than
2 \$3 per day. In addition to the participation fee, user testing fees shall be assessed as follows:

3 (a) A participant submitting to twice-a-day testing shall pay a user fee of not more than \$3
4 for each test.

5 (b) A participant submitting to urinalysis testing shall pay a user fee of not more than \$10
6 for each test. If further analysis of the sample is required or requested, the participant is
7 responsible for payment of the actual costs incurred by the participating agency for the analysis
8 of the sample.

9 (c) A participant submitting to wear a drug patch shall pay a user fee of not more than \$50
10 for each drug patch attached.

11 (d) A participant submitting to the wearing of the electronic alcohol monitoring device shall
12 pay a user fee of not more than \$10 for each day. In addition, the participant shall pay an
13 installation fee and a deactivation fee, each in the amount of not more than \$50. A participant is
14 also financially responsible for the actual replacement cost for loss or breakage of the electronic
15 alcohol monitoring device and all associated equipment provided to the participant that is
16 necessary to conduct electronic alcohol monitoring device testing.

17 (e) A participant submitting to the installation of an ignition interlock device shall pay all
18 costs and expenses associated with the installation and operation of the ignition interlock device
19 directly to the authorized vendor pursuant to a contract between the vendor and participant. In
20 addition, the participant shall pay an enrollment fee in the amount of not more than \$50 at the
21 time of enrollment and monitoring fees in the amount of not more than \$20 at intervals to be set
22 by the Attorney General. The participant is also financially responsible for the actual replacement
23 cost for loss or breakage of the ignition interlock device and all associated equipment provided to
24 the participant that is necessary to conduct ignition interlock device testing.

§62-11G-8. Time for payment of fees; sanctions for failure to pay electronic alcohol
monitoring or ignition interlock device testing fees.

1 (a) A participant shall pay all electronic alcohol monitoring device fees in advance or
2 contemporaneously with the fee becoming due. All other applicable fees shall be paid at or in
3 advance of the time for the test.

4 (b) A sheriff, entity designated by a sheriff, or a directing entity may, in addition to any
5 other authorized sanction, remove a participant from electronic alcohol monitoring device testing
6 and ignition interlock device testing and place the participant on twice-a-day testing if the
7 participant fails to pay the required fees and costs for those testing devices.

§62-11G-9. Annual review of 24/7 sobriety program fees and collection procedures.

1 The Attorney General shall meet with participating agencies to review fees and collection
2 procedures for the 24/7 sobriety program. The Attorney General shall set and give notice of the
3 time and place for the meeting. The Attorney General shall promulgate rules for legislative
4 approval in accordance with article three, chapter twenty-nine-a of this code, to implement the
5 annual fees within the range established by this article.

NOTE: The purpose of this bill is to create the 24/7 Sobriety Program to be administered by the Attorney General. It establishes the 24/7 sobriety fund, and makes an appropriation therefor. The bill provides that sheriffs, the Division of Corrections and The Administrative Office of the Supreme Court of Appeals may participate in the 24/7 sobriety program for electronic alcohol monitoring device testing of persons under their control. The Attorney General is authorized to propose rules for setting and distribution of fees from the program. The bill provides that participation in program may be made a condition of bond or pretrial release, of suspended sentence or probation, as condition of child placement or return or as condition of parole. The bill states a time when fees are to be paid and provides sanctions for failure to pay electronic alcohol monitoring or ignition interlock device testing fees. And, the bill provides for an annual review of the 24/7 sobriety program fees and collection procedures.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.