

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 472

FISCAL
NOTE

BY SENATORS MAYNARD, STOLLINGS, CLEMENTS, AND

CLINE

[Introduced January 15, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §62-11A-1a of the Code of West Virginia, 1931, as amended,
2 relating to work release; and providing for sentenced persons in state correctional facilities
3 to perform tasks such as cleaning up streams, state parks, and highways.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

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

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

6 (1) The weekend jail program under which a person would be required to spend weekends
7 or other days normally off from work in jail;

8 (2) The work program under which a sentenced person would be required to spend the
9 first two or more days of his or her sentence in jail and then, in the discretion of the court, would
10 be assigned to a county agency to perform labor within the jail, or in and upon the buildings,
11 grounds, institutions, bridges and roads, including orphaned roads used by the general public and
12 public works within the county. Eight hours of labor are to be credited as one day of the sentence
13 imposed. A person sentenced under this program may be required to provide his or her own
14 transportation to and from the work site, lunch and work clothes; or

15 (3) The community service program under which a sentenced person would spend no time
16 in jail, but would be sentenced to a number of hours or days of community service work with
17 government entities or charitable or nonprofit entities approved by the circuit court. Regarding any
18 portion of the sentence designated as confinement, eight hours of community service work is to
19 be credited as one day of the sentence imposed. Regarding any portion of the sentence
20 designated as a fine, the fine is to be credited at an hourly rate equal to the prevailing federal

21 minimum wage at the time the sentence was imposed. In the discretion of the court, the sentence
22 credits may run concurrently or consecutively. A person sentenced under this program may be
23 required to provide his or her own transportation to and from the work site, lunch and work clothes;
24 or

25 (4) A program in which a sentenced person in a regional jail or state correctional facility is
26 released to participate in performing tasks as requested by the Division of Highways or Division
27 of Natural Resources, such as cleaning up streams, state parks, or highways.

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

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

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

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

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

38 (4) In circuit court cases, that adequate facilities for the administration and supervision of
39 alternative sentencing programs are available through the court's probation officers or the county
40 sheriff or, in magistrate court cases, that adequate facilities for the administration and supervision
41 of alternative sentencing programs are available through the county sheriff; and

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

44 (d) A person sentenced by the circuit court under the provisions of this article remains
45 under the administrative custody and supervision of the court's probation officers or the county
46 sheriff. A person sentenced by a magistrate remains under the administrative custody and

47 supervision of the county sheriff.

48 (e) A person sentenced under the provisions of this section may be required to pay the
49 costs of his or her incarceration, including meal costs: *Provided*, That the judge or magistrate
50 considers the person's ability to pay the costs.

51 (f) A person sentenced under the provisions of this section remains under the jurisdiction
52 of the court. The court may withdraw any alternative sentence at any time by order entered with
53 or without notice and require that the remainder of the sentence be served in the county jail, a
54 regional jail or a state correctional facility: *Provided*, That no alternative sentence directed by the
55 sentencing judge or magistrate or administered under the supervision of the sheriff, his or her
56 deputies, a jailer or a guard may require the convicted person to perform duties which would be
57 considered detrimental to the convicted person's health as attested to by a physician.

58 (g) No provision of this section may be construed to limit a circuit judge's ability to impose
59 a period of supervision or participation in a community corrections program created pursuant to
60 article eleven-c, chapter sixty-two of this code, except that a person sentenced to a day report
61 center must be identified as moderate to high risk of reoffending and moderate to high
62 criminogenic need, as defined by the standardized risk and needs assessment adopted by the
63 Supreme Court of Appeals of West Virginia under subsection (d), section six, article twelve of this
64 chapter, and applied by a probation officer or day report staff: *Provided*, That a judge may impose
65 a period of supervision or participation in a day report center, notwithstanding the results of the
66 standardized risk and needs assessment, upon making specific written findings of fact as to the
67 reason for departing from the requirements of this section.

68 (h) Magistrates may only impose a period of participation in a day report center with the
69 consent by general administrative order of the supervising judge or chief judge of the judicial
70 circuit in which he or she presides. The day report center staff shall determine which services a
71 person receives based on the results of the standardized risk and needs assessment adopted by
72 the Supreme Court of Appeals of West Virginia under subsection (d), section six, article twelve of

73 this chapter, along with any other conditions of supervision set by the court.

NOTE: The purpose of this bill is to provide an alternative sentencing program to permit persons convicted of a misdemeanor or felony to participate in work release to assist with tasks requested by the Division of Highways or the Division of Natural resources, such as cleaning up streams, state parks or Highways.

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