

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 472**

SENATORS MAYNARD, STOLLINGS, CLEMENTS, AND

CLINE, *original sponsors*

[Originating in the Committee on the Judiciary;

reported on February 21, 2020]

1 A BILL to amend and reenact §62-11A-1a of the Code of West Virginia, 1931, as amended,  
2 relating to inmate work generally; including persons convicted in municipal court of  
3 ordinance violations as eligible to participate in alternative work programs; specifying  
4 supervisory authority for municipally sentenced inmates; authorizing approved and  
5 sentenced inmates in the custody of the Commissioner of Corrections to work for  
6 municipal, county, and state agencies; providing for sentenced persons in jails and state  
7 correctional facilities to perform tasks such as cleaning streams, parks, streets, and  
8 highways for municipal and county governments and state agencies; and requiring the  
9 commissioner to approve the tasks.

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

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

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

15 be required to provide his or her own transportation to and from the work site, lunch, and work  
16 clothes;

17 (3) The community service program under which a sentenced person would spend no time  
18 in jail, but would be sentenced to a number of hours or days of community service work with  
19 government entities or charitable or nonprofit entities approved by the circuit court. Regarding any  
20 portion of the sentence designated as confinement, eight hours of community service work is to  
21 be credited as one day of the sentence imposed. Regarding any portion of the sentence  
22 designated as a fine, the fine is to be credited at an hourly rate equal to the prevailing federal  
23 minimum wage at the time the sentence was imposed. In the discretion of the court, the sentence  
24 credits may run concurrently or consecutively. A person sentenced under this program may be  
25 required to provide his or her own transportation to and from the work site, lunch, and work  
26 clothes; or

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

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

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

33 (2) In circuit court cases, that the person sentenced is not a habitual criminal within the  
34 meaning of §61-11-18 and §61-11-19 of this code;

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

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

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

43 (d) A person sentenced by the circuit court under the provisions of this article remains  
44 under the administrative custody and supervision of the court's probation officers or the county  
45 sheriff. A person sentenced by a magistrate remains under the administrative custody and  
46 supervision of the county sheriff. A person sentenced by a municipal judge would be under the  
47 supervision of the city department for whom work is performed.

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 §62-11C-1 *et seq.* of this code, except that a person sentenced to a day report center must be  
61 identified as moderate to high risk of reoffending and moderate to high criminogenic need, as  
62 defined by the standardized risk and needs assessment adopted by the Supreme Court of  
63 Appeals of West Virginia under §62-12-6d of this code, and applied by a probation officer or day  
64 report staff: *Provided*, That a judge may impose a period of supervision or participation in a day  
65 report center, notwithstanding the results of the standardized risk and needs assessment, upon  
66 making specific written findings of fact as to the reason for departing from the requirements of this

67 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 §62-12-6d of this code, along with any other  
73 conditions of supervision set by the court.

74 (i) There is hereby authorized a program whereby a sentenced person in a regional jail or  
75 state correctional facility may be assigned to participate in performing requested tasks approved  
76 by the commissioner for municipal, county, and state agencies that could use such services as  
77 cleaning up streams, state parks, streets and highways, and similar services.