

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### Senate Bill 612

FISCAL  
NOTE

BY SENATORS MAYNARD AND CLINE

[Introduced January 24, 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 alternative sentencing; and providing that persons in work programs or  
3 community service programs may be assigned to state agencies, as well as county  
4 agencies.

*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 or state agency to perform labor within the jail, or in and upon the  
11 buildings, grounds, institutions, bridges and roads, including orphaned roads used by the general  
12 public and public works within the county. Eight hours of labor are to be credited as one day of  
13 the sentence imposed. A person sentenced under this program may be required to provide his or  
14 her own 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 county or state government entities or charitable or nonprofit entities approved by the circuit court.  
18 Regarding any portion of the sentence designated as confinement, eight hours of community  
19 service work is to be credited as one day of the sentence imposed. Regarding any portion of the

20 sentence designated as a fine, the fine is to be credited at an hourly rate equal to the prevailing  
21 federal minimum wage at the time the sentence was imposed. In the discretion of the court, the  
22 sentence credits may run concurrently or consecutively. A person sentenced under this program  
23 may be required to provide his or her own transportation to and from the work site, lunch and work  
24 clothes.

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

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

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

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

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

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

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

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

45 (e) A person sentenced under the provisions of this section may be required to pay the

46 costs of his or her incarceration, including meal costs: *Provided*, That the judge or magistrate  
47 considers the person's ability to pay the costs.

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

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

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

NOTE: The purpose of this bill is to provide that alternative sentencing can include work or community service for state agencies, as well as county agencies.

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