

West Virginia Division of Justice and Community Services (DJCS)



1204 Kanawha Boulevard East
Charleston, West Virginia 25301
Phone: (304) 558-8814
Fax: (304) 558-0391

2013 Annual Report on Implementation of §62-15-6a of West Virginia Code

DJCS Staff

J. Norbert Federspiel, *Director*
Jeffrey Estep, *Chief Deputy Director*
Leslie Boggess, *Deputy Director*
Stephen M. Haas, *Ph.D., Deputy Director ORSP*
Jason Metzger, *Senior Justice Programs Specialist*

Annual Report on Implementation TREATMENT SUPERVISION

Pursuant to §62-15-6a of

West Virginia Code

West Virginia's Justice Reinvestment initiative, known colloquially as Senate Bill 371 was passed by the 2013 regular session of the Legislature. Among the many changes to West Virginia criminal procedure was added §62-15-6a relating to "Treatment Supervision" of offenders sentenced to a community correctional setting, but requiring that substance abuse treatment be ordered and accepted by the felony offender as a condition of the less than incarceration alternative sanction. In order to encourage compliance with this sanction, judges were empowered to impose intermediate incarceration not to exceed thirty days for violations of the terms of treatment supervision.

The "treatment" component of this effort was to be designed by the Division of Justice and Community Services (DJCS) in consultation with the Governor's Advisory Council on Substance Abuse (GACSA), and to use appropriated funds to serve those offenders under "treatment supervision" in each judicial circuit and on parole supervision. Additionally, the Division of Justice and Community Services in consultation with the above referenced Governor's Advisory Council, is to submit on or before September 30 an annual report to the Governor, the Speaker of the House of Delegates, the President of the Senate addressing specific items related to the implementation and measuring the success (if any) of the treatment supervision program with a projection of the amount of funding necessary to continue the program into the next fiscal year. The effective date for beginning of treatment supervision under this code section is January 1, 2014, while the effective date for DJCS to work on developing this program was July 1, 2013. As the specific elements of the annual report required by §62-15-6a (h) are premised on treatment supervision having been implemented in the field – which it has not been -- this first annual report will focus on the efforts that the Division of Justice and Community Services has made at this point to develop the program envisioned by the legislature. (A copy of §62-15-6a is attached to the end of this document for easy access to the portions of the code that are referenced within this report.)

Outreach:

Sub-paragraphs (d) and (e) of §62-15-6a orders DJCS in consultation with the Governor's Advisory Council on Substance Abuse to develop proposed substance abuse treatment plans to serve offenders under treatment supervision. Further they are to develop (1) Qualifications for provider certification to deliver a continuum of care to offenders; (2) Fee reimbursement procedures; and (3) Other matters related to the quality and delivery of services. While the DJCS has not yet consulted the Governor's Advisory Council on Substance Abuse, it has initiated a broad scope of activities to

educate itself on the dimensions of treatment supervision. The Division has opened a dialog with representatives from the West Virginia Department of Health and Human Resources (DHHR) Bureau for Behavioral Health and Health Facilities (BHBF). This dialog began as a vehicle to discuss the implementation of the Act's treatment supervision provisions but has expanded into a colloquy about the role of community corrections programs in a continuum of care that is fully integrated with non-correctional human services agencies. While the transition from a punitive-focused intervention to a treatment-focused one has long been underway, the collaboration with BHBF has guided the next steps in this transition. Note however, that any decisions on the implementation of this section are decisions of the Division of Justice and Community Services and not necessarily those of the Bureau of Behavioral Health and Health Facilities.

Foremost among these steps is defining the scope of services to be provided by community corrections programs. The Division is reexamining the idea of the Day Report Center as a "one stop shop" for all community correctional interventions. The hypothetical paradigm being explored by the committee is one in which the day report center functions not as an isolated treatment/supervision center, but as a hub connected to specialized community resources. Day report centers would become the conduit by which correctional populations access community resources. The day report center would still provide all services needed to address the client's risks and needs, but if a particular need exceeds the threshold of what the program can provide, and there is a community resource better suited to address the need, the program will collaborate with that resource to ensure an appropriate level of service. In communities where these resources are limited or absent, such as rural communities, resources would be allocated to provide more specialized services within the day report center than would be necessary in communities where resources are abundant.

To assure that the services a client receives from community resources are of high quality an accountability structure needs to be developed. There are two models being discussed to address this issue. The first model utilizes a specialized liaison that serves as the intermediary between the day report center and the service providers. This liaison would be part of the referral team and would ensure a seamless and complete bilateral flow of information so that the client's case manager is fully aware of the client's progress with a service provider and vice versa. The second model is based on the same rationale but instead of one or two liaisons at each day report center, each case manager is better trained to actively engage with the service provider(s) from which their clients receive services. These models are intended to be steps to align substance abuse treatment and co-occurring behavioral health needs with the state's comprehensive service providers and other service providers in their respective areas.

Another effort the Division has undertaken to implement the Justice Reinvestment Act is to engage the directors of all state community corrections programs. This is necessary due to the unique governance structure of community corrections programs. The Division is responsible for implementing many legislative

provisions with regard to these programs but does not directly administer them. Each program is governed by a local board as required by West Virginia Code §62-11C-5. The Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction is responsible for ensuring that community corrections programs comply with the Community Corrections Act, Legislative Rules, and Program Guidelines, but the day to day operations of each of the twenty two programs are determined by the local board and the program director.

The result of twenty-two different boards is twenty-two different ways of doing things. To cultivate greater standardization, the Division contacted the day report center directors, who are required to meet at least once quarterly, and encouraged them to form a policy working group. The directors agreed and have held monthly meetings which supplement their quarterly ones. The working group has already addressed several areas where greater standardization was needed. The first was the ratification of a vision statement outlining a shared idea of what day report centers in the state are supposed to be. The second was the adoption of a statewide protocol for the assessment of clients referred to day report programs. A shared calendar was implemented with the approval of the workgroup to share information regarding training opportunities, and other events as well as to coordinate monitoring efforts. This year monitoring will be scheduled to coincide with local board meetings as much as possible to provide each board an opportunity to resolve any questions they may have with the justice programs monitor.

Next steps in developing generic "treatment plans" will be to share these ideas with the Governor's Advisory Council on Substance Abuse for further development of specifications to be adopted for service delivery. Additional discussion with the GACSA will need to address issues of provider qualifications and certifications as well as to address schedules for reimbursement of services provided to the offenders. Given the immensity of this task, DJCS has decided to "Pilot" this program for at least six months to identify problem areas and assure that treatment plans, certification requirements, fee schedules and a myriad of other matters get put to the test prior to statewide rollout. DJCS has chosen the following community correction programs (Day Report Centers) to implement the pilot stage: 1) Wood County (including Wirt, Jackson and Roane), 2) Logan County (including Lincoln, Boone and Mingo), 3) Harrison County, 4) Ohio County including Marshall, Brooke and Hancock), 5) Monongalia County, 6) Cabell County (including Wayne) and 7) Mercer County (including Raleigh). These represent approximately one-third of the programs in the state, including some of the counties with large numbers of persons with revocations of probation or parole.

§62-15-6a (g) contemplates that the cost for all drug abuse assessments and certified drug treatment under this section be paid by DJCS from funds appropriated for that purpose. As of this date, there have been no funds appropriated to pay for any of these services. Notwithstanding this impediment, DJCS in discussions with the Bureau for Behavioral Health and Health Facilities has investigated the possibilities of utilizing Federal Medicaid resources in serving clients who are under the care of the State's Day

Report Centers. In synchronicity with trying to discover ways to utilize Medicaid funds for Day Report Center clients, the Division and Bureau have discussed ways to utilize Federal resources as outlined in the Patient Protection and Affordable Care Act of 2010 (ACA). DJCS staff has also met with staff from the Division of Rehabilitation Services (DRS) to discuss ways that DRS may assist in the comprehensive treatment of offenders beyond the specifically identified substance abuse treatment to which they have been sentenced. Presentations on both Medicaid funding and Rehabilitation Services are being shared with community program directors to educate them to additional sources of services. Such services, where applicable, may enhance the substance abuse treatment and benefit the offender in ways that will improve their employability and capability to remain drug and crime free.

Quality Assurance and Data Collection

The quality of delivery of services as well as the quantitative information specifically required in the annual report of the Division by §62-15-6a (h) are all demanding the collection of data from different sources. The “quality issues” are similar to those that are demanded of DJCS at §62-11C-10 of West Virginia Code and relate to the implementation of evidence based practices in community corrections programs. Therefor a workgroup was organized to develop definitions and standards for measurement of quality assurance in the implementation of evidence based programs. This workgroup consisted of representatives of all community supervision agencies and was led by the Office of Research and Strategic Planning (ORSP) within the DJCS. Our consultation with GACSA will need to review the adequacy and relevance of the standards that have been developed. Further, the standards have not yet been approved by the Community Correction Subcommittee of the Governor’s Committee on Crime, Delinquency and Correction, but will be presented to that group at its November 2013 meeting.

The workgroup began by reviewing what the scientific literature tells us is most effective in community supervision and treatment. Research tells us that if community supervision and treatment programs are not successfully implemented and monitored on a regular basis for their adherence to known best practices then their capacity to reduce crime and recidivism is appreciably diminished. Fortunately, there is extensive research on “what works” in corrections, and specifically community corrections. This research has resulted in several evidence-based principles which are known to be associated with successful community supervision and treatment. Among these principles are:

- Assessing the actuarial risk/needs of offenders;
- Enhancing the intrinsic motivation of offenders for behavior change;
- Targeting interventions to the specific criminogenic needs of offenders;
- Training offenders on various cognitive-behavioral skills (problem solving, social skills, coping, anger management, etc.) through directed practice;
- Measuring relevant processes and practices of treatment staff for quality;

- Providing measurement feedback to staff and practitioners to maintain and improve skills.

In order to measure indicators of quality, data is required and any system of quality assurance cannot be separated from data collection. Successful monitoring of quality will require some degree of standardization across agencies, paying attention to what extant agency databases capture, and the development to new sources of data collection. Agencies will need to be active participants in the quality assurance process, providing access to staff and data for the purposes of analysis. Standardization of data doesn't mean development of a singular database. Rather it requires standardized data elements and protocols for the sharing of data across platforms for the purposes of analytical work. Internally, the DJCS has developed the Community Corrections Information System or CCIS for the community correction programs that it sponsors through grant funds. New revisions to that system go further to assist program directors and their staffs in monitoring the activities in relation to evidence based practices. Currently, West Virginia may maintain the only data system in the country that systematically measures and reports on key principles of effective correctional intervention. To achieve this goal, the ORSP worked with program directors to develop a series of stock reports that can be ran at any point in time at the state, program, and caseload level by DRC staff.

One source of measurement of quality assurance is the use of the online LS/CMI risk screening tool. An online quality assurance reporting form has been developed based upon statewide minimum standards policies in the implementation of the LS/CMI as well as Motivational Interviewing and Relationship Skills. These policies are in use by all community justice agencies except the Supreme Court and Probation Services. With assistance from GACSA, additional or similar quality measures will need be developed and required of treatment providers as a condition of their provision of services.

Impediments to implementation

Senate Bill 371 was passed by the legislature without additional specified funding for the administration of new programs that are created in the Bill, nor with money "appropriated" to support the delivery of treatment proposed in the Bill. DJCS is a small agency experienced in managing community corrections programs and in conduct of research and development of evidence based practice in the corrections field. Due to lack of funding, the agency has not been able to hire a person with experience in the management of clinical treatment personnel in the fields of behavioral health and substance abuse. As a result, time has been taken to assist current staff in understanding minimal needs in the development of substance abuse treatment programs. These staff members are now in the position where intelligent conversations may be held with representatives of the Governor's Advisory Council on Substance Abuse.

A further impediment has been the difficulty in trying to identify the “core” offender likely to be referred to “treatment supervision” and thus to know at what level of programming one needs to concentrate resources. Identifying that “core” offender and determining those needs are reasons to roll this program out on a Pilot basis rather than attempt statewide implementation. Further, we remain without knowledge of the level of funding resource that may be made available to service this program. It is extremely difficult from a planning perspective to develop a program without a hint at the amount of financial resources that may be available to support it. Likewise, it is difficult to inform the legislature on the need for future funding if we don’t know the size of the population that may be ordered into treatment supervision.

Conclusion:

Justice Reinvestment in West Virginia is a work in progress, as is the development of this new tool of “treatment supervision” that the legislature wishes to provide to judges as well as to the Parole Board in the handling of offenders in the community. The Division of Justice and Community Services appreciates the assistance already rendered by the Bureau of Behavioral Health and Health Facilities, and so many others as we strive to stand up this service. January 1, 2014 is fast approaching and our conversations need to become concrete quickly. Our next steps will be taken in conjunction with the Governor’s Advisory Council on Substance Abuse and together with their assistance and knowledge of the state and its people. This new program will develop to assist offenders with substance abuse and or coexisting behavioral health issues. This new tool shall be one more step in healing communities and providing for public safety while reducing the toll of prison overcrowding.

§62-15-6a. Treatment supervision.

(a) A felony drug offender is eligible for treatment supervision only if the offender would otherwise be sentenced to prison, and the standardized risk and needs assessment indicates the offender has a high risk for reoffending and a need for substance abuse treatment: *Provided*, That an inmate who is, or has been, convicted for a felony crime of violence against the person, a felony offense where the victim was a minor child or a felony offense involving the use of a firearm, as defined in subsections (o) and (p), section twenty-seven, article five, chapter twenty-eight of this code, shall not be eligible for treatment supervision.

(b) As a condition of drug court, a condition of probation or as a modification of probation, a circuit court judge may impose treatment supervision on an eligible drug offender convicted of a felony: *Provided*, That a judge may impose treatment supervision on an eligible drug offender convicted of a felony, notwithstanding the results of the risk assessment, upon making specific written findings of fact as to the reason for the departure.

(c) Whenever a circuit court judge determines that a treatment supervision participant has violated the conditions of his or her treatment supervision involving the participant's use of alcohol or a controlled substance, the judge may order a period of incarceration to encourage compliance with program requirements.

(1) Upon written finding by the circuit court judge that the participant would otherwise be sentenced to the custody of the Commissioner of Corrections for service of the underlying sentence, the cost of the incarceration order under this subsection, not to exceed a period of thirty days in any one instance, shall be paid by the Division of Corrections.

(2) Whenever a circuit court judge orders the incarceration of a treatment supervision participant pursuant to this subsection, a copy of the order of confinement shall be provided by the clerk of the circuit court within five days to the Commissioner of Corrections.

(d) The Division of Justice and Community Services shall in consultation with the Governor's Advisory Council on Substance Abuse, created by Executive Order No. 5-11, use appropriated funds to develop proposed substance abuse treatment plans to

serve those offenders under treatment supervision in each judicial circuit and on parole supervision.

(e) The Division of Justice and Community Services, in consultation with the Governor's Advisory Committee on Substance Abuse, shall develop:

(1) Qualifications for provider certification to deliver a continuum of care to offenders;

(2) Fee reimbursement procedures; and

(3) Other matters related to the quality and delivery of services.

(f) The Division of Justice and Community Services shall require education and training for providers which shall include, but not be limited to, cognitive behavioral training. The duties of providers who provide services under this section may include: Notifying the probation department and the court of any offender failing to meet the conditions of probation or referrals to treatment; appearing at revocation hearings when required; and providing assistance with data reporting and treatment program quality evaluation.

(g) The cost for all drug abuse assessments and certified drug treatment under this section and subsection (e), section seventeen, article twelve of this chapter shall be paid by the Division of Justice and Community Services from funds appropriated for that purpose. The Division of Justice and Community Services shall contract for payment for the services provided to eligible offenders.

(h) The Division of Justice and Community Services, in consultation with the Governor's Advisory Council on Substance Abuse, shall submit an annual report on or before September 30 to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature containing:

(1) The dollar amount and purpose of funds provided for the fiscal year;

(2) The number of people on treatment supervision who received services and whether their participation was the result of a direct sentence or in lieu of revocation;

(3) The number of people on treatment supervision who, pursuant to a judge's specific written findings of fact, received services despite the risk assessment

indicating less than high risk for reoffending and a need for substance abuse treatment;

(4) The type of services provided;

(5) The rate of revocations and successful completions for people who received services;

(6) The number of people under supervision receiving treatment under this section who were rearrested and confined within two years of being placed under supervision;

(7) The dollar amount needed to provide services in the upcoming year to meet demand and the projected impact of reductions in program funding on cost and public safety measures; and

(8) Other appropriate measures used to measure the availability of treatment and the effectiveness of services.

(i) Subsections (a), (b), and (c) of this section shall take effect on January 1, 2014. The remaining provisions of this section shall take effect on July 1, 2013.