

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 61**

4 (By Senator Foster)

5 _____
6 [Originating in the Committee on Finance;
7 reported February 11, 2011.]
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9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §49-5-2b; and to
12 amend and reenact §62-15-4 of said code, all relating
13 generally to juvenile drug courts; appointment of hearing
14 officers for juvenile drug courts; and authorizing additional
15 juvenile drug courts.

16 *Be it enacted by the Legislature of West Virginia:*

17 That the Code of West Virginia, 1931, as amended, be amended
18 by adding thereto a new section, designated §49-5-2b; and that §62-
19 15-4 of said code be amended and reenacted, all to read as follows:

20 **CHAPTER 49. CHILD WELFARE.**

21 **ARTICLE 5. JUVENILE PROCEEDINGS.**

22 **§49-5-2b. Juvenile drug courts.**

23 Juvenile drug courts shall be designed and operated
24 consistent with the developmental and rehabilitative needs of
25 juveniles as defined in this article. The Supreme Court shall

1 provide uniform referral, procedure and order forms that shall be
2 used in juvenile drug courts. The Supreme Court is further
3 authorized to appoint appropriate hearing officers in those
4 jurisdictions which choose to operate a juvenile drug court.
5 Hearing officers for juvenile drug courts shall be limited to
6 current or senior status circuit court judges or family court
7 judges.

8 **CHAPTER 62. CRIMINAL PROCEDURE.**

9 **ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.**

10 **§62-15-4. Court authorization and structure.**

11 (a) Each judicial circuit or two or more adjoining judicial
12 circuits may establish a drug court or regional drug court program
13 under which drug offenders will be processed to address
14 appropriately, the identified substance abuse problem as a
15 condition of pretrial release, probation, incarceration, parole or
16 other release from a correctional facility.

17 (b) The structure, method, and operation of each drug court
18 program may differ and should be based upon the specific needs of
19 and resources available to the judicial circuit or circuits where
20 the drug court program is located.

21 (c) A drug court program may be preadjudication or
22 post-adjudication for an adult offender.

23 (d) Participation in drug court, with the consent of the
24 prosecution and the court, shall be pursuant to a written
25 agreement.

1 (e) A drug court may grant reasonable incentives under the
2 written agreement if it finds that the drug offender:

3 (1) Is performing satisfactorily in drug court;

4 (2) Is benefitting from education, treatment and
5 rehabilitation;

6 (3) Has not engaged in criminal conduct; or

7 (4) Has not violated the terms and conditions of the
8 agreement.

9 (f) A drug court may impose reasonable sanctions on the drug
10 offender, including incarceration for the underlying offense or
11 expulsion from the program, pursuant to the written agreement, if
12 it finds that the drug offender:

13 (1) Is not performing satisfactorily in drug court;

14 (2) Is not benefitting from education, treatment or
15 rehabilitation;

16 (3) Has engaged in conduct rendering him or her unsuitable for
17 the program;

18 (4) Has otherwise violated the terms and conditions of the
19 agreement; or

20 (5) Is for any reason unable to participate.

21 (g) Upon successful completion of drug court, a drug
22 offender's case shall be disposed of by the judge in the manner
23 prescribed by the agreement and by the applicable policies and
24 procedures adopted by the drug court. This may include, but is not
25 limited to, withholding criminal charges, dismissal of charges,
26 probation, deferred sentencing, suspended sentencing, split

1 sentencing, or a reduced period of incarceration.

2 (h) Drug court shall include the Ten Key Components and the
3 drug court team shall act to ensure compliance with them.

4 (i) Nothing contained in this article confers a right or an
5 expectation of a right to participate in a drug court nor does it
6 obligate a drug court to accept every drug offender.

7 (j) Neither the establishment of a drug court nor anything
8 herein may be construed as limiting the discretion of the
9 jurisdiction's prosecutor to act on any criminal case which he or
10 she deems advisable to prosecute.

11 (k) Each drug court judge may establish rules and may make
12 special orders as necessary that do not conflict with rules and
13 orders promulgated by the Supreme Court of Appeals which has
14 administrative authority over the courts. The Supreme Court of
15 Appeals shall provide uniform referral, procedure and order forms
16 that shall be used in all drug courts in this state.

17 ~~(l) In addition to the number of juvenile drug courts~~
18 ~~operating on the effective date of this section, up to five~~
19 ~~additional juvenile drug courts or regional juvenile drug court~~
20 ~~programs may be established by January 1, 2012, as determined by~~
21 ~~the Supreme Court of Appeals.~~