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H. B. 2028

(By Delegates Rodighiero and Staggers)
[Introduced January 12, 2011; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §31-20-31 of the Code of West Virginia, 1931, as amended, relating to allowing the Executive Director of the West Virginia Regional Jail and Correctional Facility Authority to establish a work program only for qualified inmates sentenced to a regional jail facility and not awaiting transfer to a state correctional facility; and specifying minimum requirements for the program.

Be it enacted by the Legislature of West Virginia:

That §31-20-31 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY
AUTHORITY.**

§31-20-31. Work program.

(a) The Executive Director of the West Virginia Regional Jail

1 and Correctional Facility Authority may propose rules for
2 legislative approval in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code to establish ~~at each~~
4 ~~regional jail facility~~ a work program for qualified inmates
5 sentenced to a regional jail facility and not awaiting transfer to
6 a state correctional facility, and to establish at each regional
7 jail facility under his or her jurisdiction an inmate trustee
8 account. The authority shall establish guidelines and
9 qualifications to allow ~~inmates sentenced to a regional jail~~
10 ~~facility~~ a qualified inmate to be gainfully employed with local
11 businesses and governmental entities, ~~as part of a job program:~~
12 including county commissions or other qualified city or county
13 government agencies, with the consent of the inmate. Provided,
14 ~~That with regard to an inmate sentenced to the Division of~~
15 ~~Corrections that is domiciled at a regional jail facility under the~~
16 ~~supervision of the authority, the Commissioner of the Division of~~
17 ~~Corrections or designee shall first determine the eligibility of~~
18 ~~such inmate for participation in the work program authorized by~~
19 ~~this section and consent to such inmate's participation therein~~ A
20 qualified inmate does not include an inmate convicted of a sexual
21 offense or a violent felony, or otherwise known to be a danger to
22 the general public.

23 Inmates participating in a work release program pursuant to
24 this section may be granted up to sixty days of good time and may

1 be released from incarceration up to sixty days immediately prior
2 to the scheduled completion of their respective sentence or period
3 of incarceration.

4 (b) The administrator or designee of each regional jail
5 facility shall receive and take charge of the money of all inmates
6 in his or her regional jail and all money sent to the inmates or
7 earned by the inmates as compensation for work performed under this
8 section. The administrator or designee shall credit the money and
9 earnings to the inmate entitled to it and shall keep an accurate
10 account of all the money so received, which account is subject to
11 examination by the executive director or designee. The
12 administrator or designee shall deposit the moneys in one or more
13 responsible banks in accounts to be designated inmate trustee
14 account.

15 (c) For each inmate sentenced to the Division of Corrections
16 participating in a work program authorized by this section, the
17 administrator or designee of the regional jail facility shall keep
18 in an account at least ten percent of all money earned during the
19 inmate's incarceration and pay the money to the inmate at the time
20 of the inmate's release. The administrator may authorize the
21 inmate to withdraw money from his or her mandatory savings for the
22 purpose of preparing the inmate for reentry into society.

23 (d) An inmate who works in work programs established under
24 this section shall make reimbursement to the authority toward the

1 cost of his or her incarceration to be credited to the agency
2 billed for that incarceration. ~~Provided, That~~ Prior to directing
3 a qualified inmate to make reimbursement under this section, the
4 executive director or designee shall consider the following:

5 (1) The inmate's ability to pay;

6 (2) The nature and extent of the inmate's responsibilities to
7 his or her dependents, if any;

8 (3) The length of probable incarceration under the court's
9 sentence; and

10 (4) The effect, if any, that reimbursement might have on the
11 inmate's rehabilitation.

12 (e)(1) The administrator shall deduct from the earnings of
13 each qualified inmate legitimate court-ordered financial
14 obligations including, but not limited to, child support payments,
15 liens and any other court-ordered financial obligation. The
16 executive director shall develop a policy that outlines the formula
17 for the distribution of the qualified inmate's income and the
18 formula shall include a percentage deduction, not to exceed forty
19 percent in the aggregate, for any court ordered victim restitution,
20 court fees and child support obligations owed under a support
21 order, including an administrative fee not to exceed one dollar,
22 consistent with the provisions of subsection (c), section four,
23 article fourteen, chapter forty-eight, to support the authority's
24 administration of this financial service.

1 (2) In the event that the qualified inmate's income is subject
2 to garnishment for child support enforcement deductions, it shall
3 be calculated on the net wages after taxes, legal financial
4 obligations and garnishment. ~~Provided, That~~ However, nothing in
5 this section limits the authority of the Bureau for Child Support
6 Enforcement of the Department of Health and Human Resources from
7 taking collection action against an inmate's moneys, assets or
8 property.

9 (f) The administrator or designee of a regional jail facility,
10 upon request of an inmate to release funds, on behalf of the family
11 of the inmate, may authorize the release of funds up to one half of
12 the money earned by the inmate participating in a work program as
13 authorized by this section ~~Provided, That~~ if the court-ordered
14 financial obligations provided in subsection (e) of this section
15 and other fees owed by the inmate including, but not limited to,
16 the costs of incarceration and any restitution for facility rule
17 infractions, have been paid. The remainder of the money earned,
18 after deducting amounts expended as authorized, shall be
19 accumulated to the credit of the inmate and be paid to the inmate
20 at times as may be prescribed by rules. The funds so accumulated
21 on behalf of inmates shall be held by the administrator or designee
22 of each institution under a bond approved by the Attorney General.

23 (g) The administrator or designee shall deliver to the inmate
24 at the time he or she leaves the regional jail facility, or as soon

1 as practicable after departure, moneys and earnings then credited
2 to the inmate. ~~Provided, That~~ However, if an inmate is transferred
3 to the physical custody of the Commissioner of the Division of
4 Corrections, as defined in section two of this article, at the time
5 he or she leaves the regional jail facility, the administrator or
6 designee shall deliver moneys and earnings then credited to the
7 inmate to the Commissioner of the Division of Corrections for
8 administration in accordance with the provisions of section three-
9 a, article one, chapter twenty-five. In case of the death of the
10 inmate before authorized release from the regional jail facility,
11 the administrator or designee shall deliver the property to the
12 inmate's lawful representative. In case a conservator is appointed
13 for the inmate while he or she is domiciled at the regional jail
14 facility, the administrator shall deliver to the conservator, upon
15 proper demand, all moneys and personal property belonging to the
16 inmate ~~that are~~ in the custody of the administrator.

17 (h) The executive director shall propose rules for legislative
18 approval in accordance with article three, chapter twenty-nine-a of
19 this code to administer and establish the work programs authorized
20 by this section.

21 (i) Notwithstanding any provision of this code to the
22 contrary, the county commission, its members and agents, the
23 Executive Director of the West Virginia Regional Jail and
24 Correctional Facility Authority or designee its members or agents,

1 the sheriff, his or her deputies, correctional officers and agents
2 shall be immune from all liability of any kind except for accident,
3 injury or death resulting directly from gross negligence or
4 malfeasance.

NOTE: The purpose of this bill is to allow the Executive Director of the West Virginia Regional Jail and Correctional Facility Authority to establish a work program for qualified inmates sentenced to a regional jail facility. It includes provisions specifying minimum requirements for the program.

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