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**H. B. 2182**

(By Delegate Manypenny)  
[Introduced January 12, 2011; referred to the  
Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

10 A BILL to amend and reenact §62-11C-4 and §62-11C-5 of the Code of  
11 West Virginia, 1931, as amended, all relating to mandatory  
12 funding of community corrections programs; mandating that the  
13 crimes of shoplifting and petit larceny be to community  
14 corrections programs; and mandating that the crime of  
15 possession of marijuana, first offense, may be sentenced to a  
16 community corrections program.

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

18 That §62-11C-4 and §62-11C-5 of the Code of West Virginia,  
19 1931, as amended, be amended and reenacted, all to read as follows:

20 **ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.**

21 **§62-11C-4. Special revenue account.**

22 (a) There is hereby created in the State Treasury a special  
23 revenue account to be known as the West Virginia Community

1 Corrections Fund. Expenditures from the fund are for the purposes  
2 set forth in subsection (e) of this section and are not authorized  
3 from collections but are to be made only in accordance with  
4 appropriation by the Legislature and in accordance with the  
5 provisions of article three, chapter twelve of this code and upon  
6 the fulfillment of the provisions set forth in article two, chapter  
7 five-a of this code. The West Virginia Community Corrections Fund  
8 may receive any gifts, grants, contributions or other money from  
9 any source which is specifically designated for deposit in the  
10 fund.

11 (b) In addition to the fee required in section nine, article  
12 twelve of this chapter, a fee not to exceed ~~\$35~~ \$50 per month,  
13 unless modified by legislative rule as provided in section three of  
14 this article, is also to be collected from those persons on  
15 probation. This fee is to be based upon the person's ability to  
16 pay. The magistrate or circuit judge shall conduct a hearing prior  
17 to imposition of probation and make a determination on the record  
18 that the offender is able to pay the fee without undue hardship.  
19 The magistrate clerk, deputy magistrate clerk, magistrate  
20 assistant, circuit clerk or deputy circuit clerk shall collect all  
21 fees imposed pursuant to this subsection and deposit them in a  
22 separate account. Within ten calendar days following the beginning  
23 of the calendar month, the magistrate clerk or circuit clerk shall  
24 forward the amount deposited to the State Treasurer to be credited

1 to the West Virginia Community Corrections Fund.

2 (c) In addition to the fee required in section five, article  
3 eleven-b of this chapter, a fee of \$2.50 per day is to be collected  
4 from those persons on home incarceration. The circuit judge,  
5 magistrate or municipal court judge shall consider the person's  
6 ability to pay in determining the imposition of the fee. The  
7 circuit clerk, magistrate clerk, municipal court clerk or his or  
8 her designee shall collect all fees imposed pursuant to this  
9 subsection and deposit them in a separate account. Within ten  
10 calendar days following the beginning of the calendar month, the  
11 circuit clerk, magistrate clerk or municipal court clerk shall  
12 forward the amount deposited to the State Treasurer to be credited  
13 to the West Virginia Community Corrections Fund.

14 (d) In addition to the usual court costs in any criminal case  
15 taxed against any defendant convicted in a municipal, magistrate or  
16 circuit court, excluding municipal parking ordinances, a ~~\$10~~ \$20  
17 fee shall be added. The circuit clerk, magistrate clerk, municipal  
18 court clerk or his or her designee shall collect all fees imposed  
19 pursuant to this subsection and deposit them in a separate account.  
20 Within ten calendar days following the beginning of the calendar  
21 month, the circuit clerk, magistrate court clerk and the municipal  
22 court clerk shall forward the amount deposited to the State  
23 Treasurer to be credited to the West Virginia Community Corrections  
24 Fund.

1 (e) The moneys of the West Virginia Community Corrections Fund  
2 are to be disbursed by the Governor's Committee on Crime,  
3 Delinquency and Correction, upon recommendation by the community  
4 corrections subcommittee, for the funding of community corrections  
5 programs and to pay expenses of the Governor's committee in  
6 administering the provisions of this article, which expenses may  
7 not in any fiscal year exceed ten percent of the funds deposited to  
8 the special revenue account during that fiscal year.

9 (f) All moneys appropriated for the establishment and  
10 maintenance of community corrections programs in any county or  
11 combination of counties or a county or counties and a Class I or  
12 Class II municipality that wishes to establish such a program shall  
13 be disbursed by the Governor's Committee on Crime, Delinquency and  
14 Correction.

15 ~~(f)~~(g) Any disbursements from the West Virginia Community  
16 Corrections Fund allocated for community corrections programs by the  
17 Governor's committee may be made contingent upon local  
18 appropriations or gifts in money or in kind for the support of the  
19 programs. Any county commission of any county or the governing body  
20 of a municipality may appropriate and expend money for establishing  
21 and maintaining community corrections programs.

22 **§62-11C-5. Establishment of programs.**

23 (a) Any county or combination of counties or a county or  
24 counties and a Class I or II municipality may establish and operate

1 community corrections programs, as provided ~~for~~ in this section, to  
2 be used both prior to trial as a condition of bond in circuit and  
3 magistrate court, as well as an alternative sentencing option for  
4 those offenders sentenced within the jurisdiction of the county or  
5 counties which establish and operate the program: *Provided, That*  
6 the chief judge must certify that the community corrections facility  
7 is available for use in connection with the imposition of pretrial  
8 bond conditions.

9 (b) Any county or combination of counties or a county or  
10 counties and a Class I or II municipality that seek to establish  
11 programs as authorized in this section shall submit plans and  
12 specifications for the programs to be established, including  
13 proposed budgets, for review and approval by the community  
14 corrections subcommittee established in section three of this  
15 article.

16 (c) Any county or combination of counties or a county or  
17 counties and a Class I or II municipality may establish and operate  
18 an approved community corrections program to provide alternative  
19 sanctioning options for an offender who is convicted of an offense  
20 for which he or she may be sentenced to a period of incarceration  
21 in a ~~county or~~ regional jail or a state correctional facility and  
22 for which probation or home incarceration may be imposed as an  
23 alternative to incarceration: *Provided, That an offender may only*  
24 be sentenced to a community corrections program as an alternative

1 to incarceration if a community corrections program is established  
2 in the jurisdiction in which the offense occurred.

3       (1) An offender who is convicted of shoplifting, as provided  
4 in article three-a, chapter sixty-one of this code, or petit  
5 larceny, as provided in section thirteen, article three, chapter  
6 sixty-one of this code, shall be sentenced to a term in a community  
7 corrections program as an alternative to incarceration. The term  
8 shall be equal in length to the sentence provided for shoplifting  
9 in section three, article three-a, chapter sixty-one of this code,  
10 and for petit larceny in section thirteen, article three, chapter  
11 sixty-one of this code.

12       (2) An offender who is convicted of possession of marijuana as  
13 provided in subsection (c), section four hundred one, article four,  
14 chapter sixty-a of this code, may be sentenced to a community  
15 corrections program for a term equal in length to the term of  
16 incarceration as set forth in said section as an alternative to  
17 incarceration, or as an alternative to a conditional discharge for  
18 first offense of possession of marijuana as provided in section four  
19 hundred seven, article four, chapter sixty-a of this code.

20       (d) Community corrections programs authorized by subsection (a)  
21 of this section may provide, but are not limited to providing, any  
22 of the following services:

23       (1) Probation supervision programs;

24       (2) Day fine programs;

1 (3) Community service restitution programs;

2 (4) Home incarceration programs;

3 (5) Substance abuse treatment programs;

4 (6) Sex offender containment programs;

5 (7) Licensed domestic violence offender treatment programs;

6 (8) Day reporting centers;

7 (9) Educational or counseling programs; or

8 (10) Drug courts.

9 (e) A county or combination of counties or a county or counties  
10 and a Class I or II municipality which establish and operate  
11 community corrections programs as provided ~~for~~ in this section may  
12 contract with other counties to provide community corrections  
13 services.

14 (f) For purposes of this section, the phrase "may be sentenced  
15 to a period of incarceration" means that the statute defining the  
16 offense provides for a period of incarceration as a possible  
17 penalty.

18 (g) No provision of this article may be construed to allow a  
19 person participating in or under the supervision of a community  
20 corrections program to earn "good time" or any other reduction in  
21 sentence.

NOTE: The purpose of this bill is to expand the community  
corrections programs throughout the state by increasing the funding

for such programs. It further provides that offenders convicted of the crimes of shoplifting and petit larceny be placed in community corrections programs, as well as offenders convicted of first offense possession of marijuana to be placed in community corrections programs.

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