

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 307**

5 (SENATORS CANN, WILLIAMS, COOKMAN AND PALUMBO, *original sponsors*)

6 \_\_\_\_\_  
7 [Passed March 8, 2014; in effect ninety days from passage.]  
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10  
11 AN ACT to amend and reenact §51-10-1, §51-10-2, §51-10-3, §51-10-4,  
12 §51-10-5, §51-10-6, §51-10-7, §51-10-8, §51-10-9 and §51-10-10  
13 of the Code of West Virginia, 1931, as amended; to amend said  
14 code by adding thereto a new section, designated §51-10-5a; to  
15 amend and reenact §62-11C-5 and §62-11C-7 of said code; and to  
16 amend said code by adding thereto a new article, designated  
17 §62-11F-1, §62-11F-2, §62-11F-3, §62-11F-4 and §62-11F-5, all  
18 relating to the disposition of persons charged with committing  
19 a crime; regulating bail bondsmen in criminal cases;  
20 prohibiting certain conduct by bail bondsmen; regulating fees  
21 charged by bail bondsmen; requiring the posting of the names  
22 of licensed bail bondsmen; authorizing the Commissioner of the  
23 West Virginia Insurance Commission to regulate bail bondsmen;  
24 authorizing the Insurance Commissioner to propose legislative

1 rules; updating penalties for violations; establishing an  
2 internal effective date for bail bondsman compliance;  
3 requiring judges and magistrates to enforce the provisions of  
4 law related to the regulation of bail bondsmen; authorizing  
5 pretrial release programs; permitting certain fees to be  
6 assessed to county commissions; permitting certain fees to be  
7 assessed to persons on pretrial release upon subsequent  
8 conviction; stating applicability of pretrial release  
9 programs; establishing guidelines for pretrial release  
10 programs; providing for potential funding sources; requiring  
11 community pretrial committees to recommend release of certain  
12 persons facing criminal charges who are in regional jails  
13 prior to adjudication; setting forth the duties of pretrial  
14 release programs; clarifying that a circuit judge or a  
15 magistrate may impose a secured bond on participants in  
16 pretrial release programs; and removing day fine programs from  
17 the list of authorized community corrections programs.

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

19 That §51-10-1, §51-10-2, §51-10-3, §51-10-4, §51-10-5,  
20 §51-10-6, §51-10-7, §51-10-8, §51-10-9 and §51-10-10 of the Code of  
21 West Virginia, 1931, as amended, be amended and reenacted; to amend  
22 said code by adding thereto a new section, designated §51-10-5a,  
23 that §62-11C-5 and §62-11C-7 of said code be amended and reenacted;  
24 and to amend said code by adding thereto a new article, designated

1 §62-11F-1, §62-11F-2, §62-11F-3, §62-11F-4 and §62-11F-5; all to  
2 read as follows:

3 **CHAPTER 51. COURTS AND THEIR OFFICERS.**

4 **ARTICLE 10. BAIL BONDSMEN IN CRIMINAL CASES.**

5 **§51-10-1. Definitions.**

6 When used in this article, these words and terms mean the  
7 following:

8 (1) "Bonding business" means the business of becoming surety  
9 for compensation upon bonds in criminal cases.

10 (2) "Bail bondsman" means any person engaged in the bonding  
11 business who has satisfied the requirements for being a property  
12 and casualty insurance producer as set forth by the Insurance  
13 Commission.

14 (3) "Insurer" means any domestic, foreign or alien surety  
15 company which has been qualified generally to transact surety  
16 business.

17 (4) "Self insurer" means any person engaged in the bonding  
18 business as a bail bondsman who pledges his or her own property as  
19 collateral for the bonds on which they serve as surety for  
20 compensation.

21 **§51-10-2. Business impressed with public interest.**

22 The business of becoming surety for compensation upon bonds in  
23 criminal cases is a public interest.

24 **§51-10-3. Procuring business through official or attorney for**

1           **consideration prohibited.**

2           (a) It shall be unlawful for any person engaged, either as  
3 principal or as the clerk, agent or representative of a  
4 corporation, or another person in the bonding business either  
5 directly or indirectly, to give, donate, lend, contribute or to  
6 promise to give, donate, lend or contribute any money, property,  
7 entertainment or other thing of value to any attorney at law,  
8 police officer, sheriff, deputy sheriff, jailer, probation officer,  
9 clerk or other attache of a criminal court or public official for  
10 procuring or assisting in procuring any person to employ the  
11 bondsman to execute as surety any bond for compensation in any  
12 criminal case.

13           (b) It shall be unlawful for any attorney at law, police  
14 officer, sheriff, deputy sheriff, jailer, probation officer, clerk,  
15 bailiff or other attache of a criminal court or public official to  
16 accept or receive from any person engaged in the bonding business  
17 any money, property, entertainment or other thing of value for  
18 procuring or assisting in procuring any person to employ any  
19 bondsman to execute as surety any bond for compensation in any  
20 criminal case.

21 **§51-10-4. Attorneys procuring employment through official or**  
22 **bondsman for consideration prohibited.**

23           It is unlawful for any attorney at law, either directly or  
24 indirectly, to give, loan, donate, contribute or to promise to

1 give, loan, donate or contribute any money, property, entertainment  
2 or other thing of value to, or to split or divide any fee or  
3 commission with, any bondsman, police officer, sheriff, deputy  
4 sheriff, probation officer, assistant probation officer, bailiff,  
5 clerk or other attache of any criminal court for causing or  
6 procuring or assisting in causing or procuring any person to employ  
7 the attorney to represent him in any criminal case in the State of  
8 West Virginia.

9 **§51-10-5. Receiving other than regular fee for bonding prohibited;**  
10 **bondsman prohibited from endeavoring to secure dismissal or**  
11 **settlement.**

12 (a) It is lawful to charge for executing any bond in a  
13 criminal case.

14 (b) It is unlawful for any person or corporation engaged in  
15 the bonding business, either as principal, or clerk, agent or  
16 representative of another, either directly or indirectly, to  
17 charge, accept or receive any sum of money, or other thing of  
18 value, other than the bonding fee from any person for whom he has  
19 executed bond, for any other service whatever performed in  
20 connection with any indictment or charge, upon which the person is  
21 bailed or in any counties where the court has regulated bonding  
22 fees pursuant to section nine of this article.

23 (c) It is unlawful for any person or corporation engaged in  
24 the bonding business, either as principal, clerk, agent or

1 representative of another, either directly or indirectly, to  
2 charge, accept or receive any sum of money or other thing of value  
3 other than the duly authorized maximum bonding fee, from any person  
4 for whom he or she has executed bond, for any other service  
5 whatever performed in connection with any indictment or charge upon  
6 which the person is bailed or held in West Virginia.

7 (d) It is unlawful for any person or corporation engaged  
8 either as principal or as agent, clerk or representative of another  
9 in the bonding business to settle, or attempt to settle, or to  
10 procure or attempt to procure the dismissal of any indictment,  
11 information, or charge against any person in custody or held upon  
12 bond in West Virginia, with any court, or with the prosecuting  
13 attorney, or with any police officer in any court.

14 **§51-10-5a. Fees and collateral security required by bondsmen.**

15 (a) The fee required by bail bondsmen shall be at least ten  
16 percent of the amount of the bond. Fees (including personal  
17 property, real property, indemnity agreement and guarantee)  
18 received by such licensee shall not, in the aggregate, exceed the  
19 amount of the bond.

20 At the discretion of the bail bondsman, the fee may be paid as  
21 follows:

22 (1) A minimum of a three-percent down payment shall be  
23 required at the issuance of bond;

24 (2) The remaining percentage shall be paid over a period not

1 to exceed twelve months;

2 (b) When collateral or security is received by a bail bondsman  
3 a receipt shall be furnished to the defendant. Copies of all  
4 receipts issued shall be kept by the bail bondsman. All receipts  
5 issued shall:

6 (1) Be prenumbered by the printer and used and filed in  
7 consecutive numerical order;

8 (2) Show the name and address of the bail bondsman;

9 (3) Show the amount of collateral and date received;

10 (4) Show the name of the person accepting collateral; and

11 (5) Show the total amount of the bond for which the collateral  
12 is being accepted and the name of the defendant.

13 (c) When a bail bond is to be forfeited, the court is to give  
14 notification to the bail bondsman within twenty-four<sup>4</sup> hours of  
15 failure to appear.

16 **§51-10-6. Posting names of authorized bondsmen; list to be  
17 furnished to prisoners; prisoner may communicate with  
18 bondsman; record to be kept by police.**

19 (a) An alphabetical list of all persons engaged in the bail  
20 bonding business and licensed by the Insurance Commission shall be  
21 posted in a conspicuous place in each police precinct, jail,  
22 prisoner's dock, house of detention, municipal court and magistrate  
23 court. Copies of such list shall be kept on hand by the person in  
24 charge of the office.

1 (b) When any person detained in custody in any place of  
2 detention requests bail bondsman information, the alphabetical list  
3 shall be furnished to the person. The person in charge of the  
4 place of detention shall within a reasonable time put the person so  
5 detained in communication with the bondsman so selected by the  
6 person in detention.

7 (c) The person in charge of the place of detention shall  
8 contemporaneously with the transaction make in the blotter or book  
9 of record kept in the place of detention a record showing the name  
10 of the person requesting the bondsman, the offense with which the  
11 person is charged, the time at which the request was made, the  
12 bondsman requested and the person by whom the bondsman was called,  
13 and preserve the same as a permanent record in the book or blotter  
14 in which entered.

15 (d) The person in charge or any other employee, contractor,  
16 agent, assign or staff member of the place of detention shall not  
17 make any recommendation, direct or indirect, to the person in  
18 detention regarding a preference for a bondsman.

19 **§51-10-7. Bondsman prohibited from entering place of detention**  
20 **unless requested by prisoner; record of visit to be kept.**

21 (a) It is unlawful for any bondsman, agent, clerk or  
22 representative of any bondsman to enter a police precinct, jail,  
23 prisoner's dock, house of detention, magistrate court or other  
24 place where persons in the custody of the law are detained:



1 (1) For the purpose of obtaining employment as a bondsman;

2 (2) Without having been previously called by a person so  
3 detained, or by some relative or other authorized person acting for  
4 or on behalf of the person so detained.

5 (b) When any person engaged in the bonding business as  
6 principal, or as clerk, or representative of another, enters a  
7 police precinct, jail, prisoner's dock, house of detention,  
8 magistrate court or other place where persons in the custody of the  
9 law are detained, he or she shall immediately give to the person in  
10 charge his or her purpose, the name of the person calling him or  
11 her, and requesting him or her to come, and the same shall be  
12 recorded by the person in charge of the place of detention and  
13 preserved as a public record.

14 (c) Failure to provide the information, or the failure of the  
15 person in charge of the place of detention to make and preserve a  
16 record, shall constitute a violation of this article.

17 **§51-10-8. Qualifications of bondsmen; rules to be prescribed by**  
18 **Supreme Court of Appeals; lists of agents to be furnished;**  
19 **renewal of authority to act; false swearing.**

20 (a) The commissioner shall promulgate legislative rules as he  
21 or she considers necessary to carry out the intent, the  
22 administration and enforcement of this article, which rules shall  
23 be promulgated in accordance with article three, chapter twenty-  
24 nine-a of this code.

1           (b) The rules shall provide for the qualifications of persons  
2 applying for authority to engage in the bonding business in  
3 criminal cases and the terms and conditions upon which the business  
4 may be carried on.

5           (c) The commissioner, in making the rules, and in granting  
6 authority to persons engaged in the bonding business, shall take  
7 into consideration both the financial responsibility and the moral  
8 qualities of the person so applying, and no person may be permitted  
9 to engage, either as principal or agent, in the business of  
10 becoming surety upon bonds for compensation in criminal cases, who  
11 has ever been convicted of any offense involving moral turpitude,  
12 or who is not known to be a person of good moral character.

13           (d) That the applicant shall provide a qualifying power of  
14 attorney from an insurer or deliver a mortgage or lien on real  
15 property or negotiable instruments, upon which he or she may  
16 provide bail bonds equivalent to two times the amount of such  
17 collateral. Such limitations shall not apply where a qualified  
18 power of attorney is provided by a regulated insurer or surety  
19 company.

20           (e) That the applicant shall provide a criminal background  
21 check summary which displays the moral qualities of the person so  
22 applying.

23           (f) The commission shall require every person qualifying to  
24 engage in the bonding business as principal:

1 To file with the court a list showing the name, age and  
2 residence of each person employed by the bondsman as agent, clerk  
3 or representative in the bonding business, and require an affidavit  
4 from each of the persons stating that the person will abide by the  
5 terms and provisions of this article.

6 (g) The commission shall require each person authorized as a  
7 bail bondsman to renew every three years and file:

8 (1) An affidavit stating that since his or her previous  
9 qualifications to engage in the bonding business he or she has  
10 abided by the provisions of this article, and any person swearing  
11 falsely in any of the affidavits is guilty of false swearing; and

12 (2) No person seeking to renew his or her qualifications shall  
13 be required to submit to the property and casualty licensing  
14 procedures for a second time, unless he or she has voluntarily  
15 terminated his or her qualifications.

16 (h) A person operating as a self-insured producer shall  
17 provide a monthly report indicating:

18 (1) The total number of bail bonds provided in the preceding  
19 month; and

20 (2) The value of those bonds and the total amount of  
21 outstanding collateral remaining upon which bonds may be secured.  
22 If the total value of bonds exceeds two times the value of the  
23 collateral, the bondsman shall cease operating until the following  
24 quarter when he or she provides a report to the commission

1 indicating unencumbered collateral exists to secure the bonds  
2 provided by him or her.

3 (i) The commission shall furnish an alphabetical list of all  
4 approved bail bondsmen to each place of detention.

5 (j) After September 1, 2015, no persons may, either as  
6 principal, or as agent, clerk or representative of another, engage  
7 in the bonding business in any court regularly exercising criminal  
8 jurisdiction until qualified pursuant to the rules.

9 **§51-10-9. Penalties.**

10 Any person violating any provisions of this article other than  
11 in the commission of false swearing shall be punished by a fine of  
12 not more than \$2,000, or by imprisonment not exceeding six months  
13 in the county jail, or both, where no other penalty is provided by  
14 this article; and if the person so convicted is a police officer or  
15 other public official, he or she shall upon recommendation of the  
16 judge be removed from office; if a bondsman, or the agent, clerk or  
17 representative of a bondsman, he or she shall be disqualified from  
18 thereafter engaging in any manner in the bonding business and, if  
19 an attorney at law, shall be subject to suspension or disbarment.

20 **§51-10-10. Enforcement of article.**

21 It shall be the duty of the judges of the criminal courts of  
22 record, the municipal courts and magistrates where a person  
23 authorized to engage in the bail bonding business conducts his or  
24 her business to see that this article is enforced, and upon the

1 impaneling of each grand jury it shall be the duty of the judge  
2 impaneling said jury to give it in charge to the jury to  
3 investigate the manner in which this article is enforced and all  
4 violations thereof. If an individual is found in violation of the  
5 terms of this article and sentenced pursuant to this section, then  
6 the clerk of the court shall send a copy of the order of conviction  
7 to the commission which shall terminate the license of the  
8 sentenced individual.

9 **CHAPTER 62. CRIMINAL PROCEDURE.**

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

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

12 (a) Any county or combination of counties or a county or  
13 counties and a Class I or II municipality may establish and operate  
14 community corrections programs, as provided in this section, to be  
15 used both prior to trial as a condition of bond in circuit and  
16 magistrate court, as well as an alternative sentencing option for  
17 those offenders sentenced within the jurisdiction of the county or  
18 counties which establish and operate the program: *Provided*, That  
19 the chief judge must certify that the community corrections  
20 facility is available for use in connection with the imposition of  
21 pretrial bond conditions.

22 (b) Any county or combination of counties or a county or  
23 counties and a Class I or II municipality that seek to establish  
24 programs as authorized in this section shall submit plans and

1 specifications for the programs to be established, including  
2 proposed budgets, for review and approval by the community  
3 corrections subcommittee established in section three of this  
4 article.

5 (c) Any county or combination of counties or a county or  
6 counties and a Class I or II municipality may establish and operate  
7 an approved community corrections program to provide alternative  
8 sanctioning options for an offender who is convicted of an offense  
9 for which he or she may be sentenced to a period of incarceration  
10 in a county or regional jail or a state correctional facility and  
11 for which probation or home incarceration may be imposed as an  
12 alternative to incarceration.

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

- 16 (1) Probation supervision programs;
- 17 (2) Community service restitution programs;
- 18 (3) Home incarceration programs;
- 19 (4) Substance abuse treatment programs;
- 20 (5) Sex offender containment programs;
- 21 (6) Licensed domestic violence offender treatment programs;
- 22 (7) Day reporting centers;
- 23 (8) Educational or counseling programs;
- 24 (9) Drug courts;

1 (10) Community beautification and reclamation programs for  
2 state highways, municipal, county and state parks and recreation  
3 areas and community gardens; and

4 (11) Pretrial release programs.

5 (e) A county or combination of counties or a county or  
6 counties and a Class I or II municipality which establish and  
7 operate community corrections programs as provided in this section  
8 may contract with other counties to provide community corrections  
9 services.

10 (f) For purposes of this section, the phrase "may be sentenced  
11 to a period of incarceration" means that the statute defining the  
12 offense provides for a period of incarceration as a possible  
13 penalty.

14 (g) No provision of this article may be construed to allow a  
15 person participating in or under the supervision of a community  
16 corrections program to earn good time or any other reduction in  
17 sentence.

18 (h) Nothing in this section should be construed as to prohibit  
19 a court from imposing a surety bond as a condition of a pretrial  
20 release.

21 **§62-11C-7. Supervision or participation fee.**

22 (a) A circuit judge, magistrate, municipal court judge or  
23 community criminal justice board may require the payment of a  
24 supervision or participation fee from any person required to be

1 supervised by or participate in a community corrections program.  
2 The circuit judge, magistrate, municipal court judge or community  
3 criminal justice board shall consider the person's ability to pay  
4 in determining the imposition and amount of the fee.

5 (b) A circuit judge, magistrate or community criminal justice  
6 board may require payment of a supervision or participation fee of  
7 \$7 per person per day of pretrial supervision from the county  
8 commission pursuant to a pretrial release program established  
9 pursuant to article eleven-f of this chapter.

10 (c) A person supervised pursuant to the provisions of article  
11 eleven-f of this chapter who is later convicted of an offense or  
12 offenses underlying the person's participation in the pretrial  
13 release program may be assessed by the sentencing court, as a cost  
14 of prosecution, a fee not to exceed \$30 per month for each month  
15 the person was in the pretrial supervision program.

16 (d) All fees ordered by the circuit court, magistrate court,  
17 municipal court or community criminal justice board pursuant to  
18 this section are to be paid to the community criminal justice  
19 board, who shall remit the fees monthly to the treasurer of the  
20 county designated as the fiscal agent for the board pursuant to  
21 section six of this article.

22 **ARTICLE 11F. PRETRIAL RELEASE PROGRAMS.**

23 **§62-11F-1. Applicability.**

24 This article applies to adults charged with one or more



1 misdemeanors or felonies and who are incarcerated in a regional  
2 jail prior to adjudication due to their inability to post bond.

3 **§62-11F-2. Establishment of pretrial release programs.**

4 (a) *Legislative findings and purpose.* -- It is the purpose of  
5 pretrial release programs to employ recommendations from the  
6 Council of State Government's Justice Center's Analyses and Policy  
7 Options to Reduce Spending on Corrections and Reinvest in  
8 Strategies to Increase Public Safety, by providing for uniform  
9 statewide risk assessment and monitoring of those released prior to  
10 trial, facilitating a statewide response to the problem of  
11 overcrowded regional jails and costs to county commissions.

12 (b) Any county, circuit or combination thereof that  
13 establishes a pretrial program pursuant to this article shall  
14 establish a local community pretrial committee that consists of:

15 (1) A prosecutor, or his or her designee;

16 (2) A county commissioner, or his or her designee;

17 (3) A sheriff, or his or her designee;

18 (4) An executive director of a community corrections program,  
19 or his or her designee;

20 (5) A chief probation officer, or his or her designee; and

21 (6) A member of the criminal defense bar.

22 (c) Pretrial release programs may monitor, supervise and  
23 assist defendants released prior to trial.

24 (d) Nothing in this article should be construed to prohibit a

1 court from requiring a defendant to post a secured bond as a  
2 condition of pretrial release.

3 (e) In addition to funding provided pursuant to subsection  
4 (c), section three of this article, pretrial release programs may  
5 be funded by appropriations made to the Supreme Court of Appeals  
6 for such purpose.

7 **§62-11F-3. Pretrial release program guidelines.**

8 (a) The Supreme Court of Appeals has complete oversight and  
9 authority over all pretrial services.

10 (b) The Supreme Court of Appeals shall establish recommended  
11 guidelines for pretrial programs to use when ordering pretrial  
12 release for defendants whose pretrial risk assessment indicate that  
13 they are an appropriate candidate for pretrial release.

14 (c) The Community Corrections Subcommittee of the Governor's  
15 Committee on Crime, Delinquency and Correction, pursuant to section  
16 two, article eleven-c, chapter sixty-two of this code, shall  
17 approve policy and funding for the development, maintenance and  
18 evaluation of pretrial release programs. Any county, circuit or  
19 combination thereof that establishes a pretrial program intended to  
20 provide pretrial release services shall submit a grant proposal to  
21 the Community Corrections Subcommittee of the Governor's Committee  
22 on Crime, Delinquency and Correction for review and approval.

23 **§62-11F-4. Pretrial release assessment.**

24 The Supreme Court of Appeals of West Virginia may adopt a

1 standardized pretrial risk assessment for use by pretrial release  
2 programs to aid in making pretrial decisions under article one-c of  
3 this chapter.

4 **§62-11F-5. Role of pretrial release programs.**

5 A pretrial release program established pursuant to this  
6 article shall:

7 (1) Collect and present the necessary information, present  
8 risk assessment and make release recommendations to the court;

9 (2) Present information to the court relating to the risk  
10 defendants may pose in failing to appear in court or of threatening  
11 the safety of the community or any other person and, consistent  
12 with court policy, develop release recommendations responding to  
13 risk;

14 (3) Develop and provide appropriate and effective supervision  
15 for all persons released pending adjudication who are assigned  
16 supervision as a condition of release;

17 (4) Monitor compliance of released defendants with the  
18 requirements of assigned release conditions;

19 (5) Promptly inform the court of all apparent violations of  
20 pretrial release conditions or arrests of persons released pending  
21 trial, including those directly supervised by pretrial services as  
22 well as those released under other forms of conditional release,  
23 and recommend appropriate modifications of release conditions;

24 (6) Coordinate the services of other agencies, individuals or

1 organizations that may serve as custodians for released defendants,  
2 and advise the court as to their appropriateness, availability,  
3 reliability and capacity relating to pretrial release conditions;

4       (7) Review the status of detained defendants on ongoing basis  
5 for any changes in eligibility for release options and facilitate  
6 their release as soon as feasible and appropriate;

7       (8) Develop and operate an accurate information management  
8 system to support prompt identification, information collections  
9 and presentation, risk assessment, release conditions selection,  
10 compliance monitoring and detention review functions essential to  
11 an effective pretrial release program; and

12       (9) Remind persons released before trial of their court dates  
13 to attempt to facilitate their court appearance.