

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 307**

4 (By Senators Cann, Williams, Cookman and Palumbo)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported February 11, 2014.]
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11 A BILL to amend and reenact §62-11C-5 and §62-11C-7 of the Code of
12 West Virginia, 1931, as amended; and to amend said code by
13 adding thereto a new article, designated §62-11F-1, §62-11F-2,
14 §62-11F-3, §62-11F-4 and §62-11F-5, all relating to
15 authorizing community corrections programs to operate pretrial
16 release program; permitting certain fees to be assessed to
17 county commissions; permitting certain fees to be assessed to
18 persons on pretrial release upon subsequent conviction;
19 stating applicability of pretrial release programs;
20 establishing guidelines for pretrial release programs;
21 providing for potential funding sources; requiring community
22 pretrial committees to recommend release of certain persons
23 facing criminal charges who are in regional jails prior to
24 adjudication; setting forth the duties of pretrial release

1 programs; and clarifying that a circuit judge or a magistrate
2 may impose a secured bond on participants in pretrial release
3 programs.

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

5 That §62-11C-5 and §62-11C-7 of the Code of West Virginia,
6 1931, as amended, be amended and reenacted; and that said code be
7 amended by adding thereto a new article, designated §62-11F-1, §62-
8 11F-2, §62-11F-3, §62-11F-4 and §62-11F-5, all to read as follows:

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

10 **§62-11C-5. Establishment of programs.**

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

21 (b) Any county or combination of counties or a county or
22 counties and a Class I or II municipality that seek to establish
23 programs as authorized in this section shall submit plans and
24 specifications for the programs to be established, including

1 proposed budgets, for review and approval by the community
2 corrections subcommittee established in section three of this
3 article.

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

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

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

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

4 (12) 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 ~~for~~ in this
8 section may contract with other counties to provide community
9 corrections 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) Should a person supervised pursuant to the provisions of
11 article eleven-f of this chapter be convicted of an offense or
12 offenses underlying the person's participation, the sentencing
13 court may assess, as a cost of prosecution, a fee not to exceed \$30
14 per month for each month the person was in the pretrial supervision
15 program.

16 ~~(b)~~ (d) All fees ordered by the circuit court, magistrate
17 court, municipal court or community criminal justice board pursuant
18 to 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 adult defendants who have been charged

1 with one or more misdemeanors or felonies and are incarcerated in
2 a regional jail prior to adjudication.

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

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

12 (b) Any county, circuit or combination thereof which elects or
13 is required to establish a pretrial program pursuant to this
14 article shall establish a local community pretrial committee which
15 consists of a prosecutor, county commissioner, sheriff, executive
16 director of a community corrections program, chief probation
17 officer and a member of the criminal defense bar, or any of those
18 persons' designee. The committee shall meet, at a minimum, once
19 per week to review and recommend pretrial release of defendants to
20 the court.

21 (c) Pretrial release programs shall be funded by
22 appropriations made to the Supreme Court of Appeals for such
23 purpose.

24 **§62-11F-3. Pretrial release program guidelines.**

1 (a) The Supreme Court of Appeals of West Virginia has complete
2 oversight and authority over all pretrial services.

3 (b) The Supreme Court of Appeals of West Virginia shall
4 establish recommended guidelines for pretrial programs to use when
5 ordering pretrial release for defendants whose pretrial risk
6 assessment indicate that they are an appropriate candidate for
7 pretrial release.

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

17 **§62-11F-4. Pretrial release assessment.**

18 The Supreme Court of Appeals of West Virginia may adopt a
19 standardized pretrial risk assessment for use by pretrial release
20 programs to aid in making pretrial decisions under article one-c of
21 this chapter.

22 **§62-11F-5. Role of pretrial release programs.**

23 (a) A pretrial release program established by any county,
24 circuit or combination thereof, pursuant to this article, shall:

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

3 (2) Present information to the court relating to the risk
4 defendants may pose in failing to appear in court or of threatening
5 the safety of the community or any other person and, consistent
6 with court policy, develop release recommendations responding to
7 risk;

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

11 (4) Monitor compliance of released defendants with the
12 requirements of assigned release conditions;

13 (5) Promptly inform the court of all apparent violations of
14 pretrial release conditions or arrests of persons released pending
15 trial, including those directly supervised by pretrial services as
16 well as those released under other forms of conditional release,
17 and recommend appropriate modifications of release conditions;

18 (6) Coordinate the services of other agencies, individuals or
19 organizations that may serve as custodians for released defendants,
20 and advise the court as to their appropriateness, availability,
21 reliability and capacity relating to pretrial release conditions;

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

1 (8) Develop and operate an accurate information management
2 system to support prompt identification, information collections
3 and presentation, risk assessment, release conditions selection,
4 compliance monitoring and detention review functions essential to
5 an effective pretrial release program; and

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

8 (b) Pretrial release programs may monitor, supervise and
9 assist defendants released prior to trial.

10 (c) Nothing in this article should be construed to prohibit a
11 court from requiring a defendant to post a secured bond as a
12 condition of pretrial release.

(NOTE: The purpose of this bill is authorize pretrial release programs to evaluate and supervise persons on pretrial release as part of a community corrections program.

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

§62-11F-1, §62-11F-2, §62-11F-3, §62-11F-4 and §62-11F-5 are new; therefore, strike-throughs and underscoring have been omitted.)