

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 492**

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

reported on March 8, 2017]



1 A BILL to amend and reenact §62-15-4 of the Code of West Virginia, 1931, as amended, relating  
2 to eliminating requirement that every judicial circuit participate in a drug court program;  
3 and expressing legislative intent in removing requirement to continue legislative  
4 authorization for drug courts in circuits where judges have found them effective.

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

1 That §62-15-4 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

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

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

1 (a) Each judicial circuit, or two or more adjoining judicial circuits, may establish a drug  
2 court or regional drug court program under which drug offenders will be processed to address  
3 appropriately, the identified substance abuse problem as a condition of pretrial release, probation,  
4 incarceration, parole or other release from a correctional facility; ~~Provided, That all judicial circuits~~  
5 ~~must be participating in a drug court or regional drug court program in accordance with the~~  
6 ~~provisions of this article by July 1, 2016~~

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

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

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

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

- 15 (1) Is performing satisfactorily in drug court;
- 16 (2) Is benefitting from education, treatment and rehabilitation;
- 17 (3) Has not engaged in criminal conduct; or

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

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

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

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

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

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

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

27 (g) Upon successful completion of drug court, a drug offender's case shall be disposed of  
28 by the judge in the manner prescribed by the agreement and by the applicable policies and  
29 procedures adopted by the drug court. This may include, but is not limited to, withholding criminal  
30 charges, dismissal of charges, probation, deferred sentencing, suspended sentencing, split  
31 sentencing or a reduced period of incarceration.

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

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

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

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

43           (l) In enacting the amendment to this section during the 2017 regular session of the  
44 Legislature, it is the Legislature's intent, consistent with the provisions of section three of this  
45 article, to continue to authorize the operation of drug courts in circuits where the circuit court has  
46 found treatment courts to be effective.