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OFFICE WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

SENATE BILL NO. 711

(By Senator Wooten, et al)

PASSED March 9, 2002

In Effect 90 days from **Passage**

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OFFICE OF THE CLERK OF THE SENATE
WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 711

(BY SENATORS WOOTON, BURNETTE, CALDWELL, HUNTER,
MINARD, ROSS, ROWE, SNYDER, DEEM AND FACEMYER)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact section ten, article five, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three, four, six and seven, article eleven-c of said chapter, all relating to community corrections generally; adding community corrections boards to list of persons or entities which set participation fees in community corrections programs; imposing a twenty-five dollar mandatory special assessment against convicted felons for deposit in the community corrections fund; adding three dollars to court costs in criminal proceedings in municipal, magistrate or circuit court; excluding parking ordinances; and directing clerks of respective courts to collect the fee for deposit in the community corrections fund.

Be it enacted by the Legislature of West Virginia:

That section ten, article five, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, three, four, six and seven, article eleven-c of said chapter be amended and reenacted, all to read as follows:

ARTICLE 5. COSTS IN CRIMINAL CASES.

§62-5-10. Mandatory cost assessed upon conviction of a felony.

1 (a) Every circuit court shall assess, in every felony
2 criminal matter as a cost to the defendant, an assessment
3 in the sum of seventy-five dollars for each felony count of
4 conviction. The assessment referred to herein shall be paid
5 upon adjudication of guilt unless the court determines that
6 the defendant is unable to pay in such a manner in which
7 case payment of the assessment shall be paid prior to final
8 disposition. If the circuit court determines that a defen-
9 dant is financially unable to pay the assessment prior to
10 final disposition, payment of the assessment shall be a
11 mandatory condition of probation or parole.

12 (b) The clerk of the circuit court wherein the assessment
13 is imposed under the provisions of subsection (a) of this
14 section shall, on or before the last day of each month,
15 transmit all costs received pursuant to this section to the
16 state treasurer for deposit as follows: Fifty dollars to the
17 credit of the crime victims compensation fund created by
18 the provisions of section four, article two-a, chapter
19 fourteen of this code and twenty-five dollars to the credit
20 of the West Virginia community corrections fund created
21 by the provisions of section four, article eleven-c of this
22 chapter.

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-2. Community corrections subcommittee.

1 (a) A community corrections subcommittee of the gover-
2 nor's committee on crime, delinquency and correction is
3 hereby created and assigned responsibility for screening
4 community corrections programs submitted by community

5 criminal justice boards or from other entities authorized
6 by the provisions of this article to do so for approval for
7 funding by the governor's committee and for making
8 recommendations as to the disbursement of funds for
9 approved community corrections programs. The subcom-
10 mittee is to be comprised of fifteen members of the gover-
11 nor's committee including: A representative of the division
12 of corrections, a representative of the regional jail and
13 correctional facility authority, a person representing the
14 interests of victims of crime, an attorney employed by a
15 public defender corporation, an attorney who practices
16 criminal law, a prosecutor and a representative of the West
17 Virginia coalition against domestic violence. At the
18 discretion of the West Virginia supreme court of appeals,
19 the administrator of the supreme court of appeals, a
20 probation officer and a circuit judge may serve on the
21 subcommittee as ex officio, nonvoting members.

22 (b) The subcommittee shall elect a chairperson and a vice
23 chairperson. Special meetings may be held upon the call
24 of the chairperson, vice chairperson or a majority of the
25 members of the subcommittee. A majority of the members
26 of the subcommittee constitute a quorum.

27 (c) A working group of the community corrections
28 subcommittee is hereby created to study safe and effective
29 pretrial diversion programs for persons charged with
30 domestic violence offenses and to recommend, based upon
31 its findings, programs considered to be safe and effective
32 in reducing incidences of domestic violence and educating
33 persons charged with a domestic violence offense. The
34 working group is to be comprised of the following mem-
35 bers of the subcommittee: (1) If approved by the West
36 Virginia supreme court of appeals, the circuit judge; (2) the
37 prosecuting attorney; (3) the public defender or the
38 criminal defense attorney; (4) the probation officer; and (5)
39 the representative of the West Virginia coalition against
40 domestic violence. The working group is to report its

41 findings and recommendations to the subcommittee on or
42 before the first day of July, two thousand two.

**§62-11C-3. Duties of the governor's committee and the commu-
nity corrections subcommittee.**

1 (a) Upon recommendation of the community corrections
2 subcommittee, the governor's committee shall propose for
3 legislative promulgation in accordance with the provisions
4 of article three, chapter twenty-nine-a of this code,
5 emergency and legislative rules to:

6 (1) Establish standards for approval of community
7 corrections programs submitted by community criminal
8 justice boards or other entities authorized by the provi-
9 sions of this article to do so;

10 (2) Establish minimum standards for community correc-
11 tions programs to be funded, including requiring annual
12 program evaluations;

13 (3) Make any necessary adjustments to the fees estab-
14 lished in section four of this article;

15 (4) Establish reporting requirements for community
16 corrections programs; and

17 (5) Carry out the purpose and intent of this article.

18 (b) Upon recommendation of the community corrections
19 subcommittee, the governor's committee shall:

20 (1) Maintain records of community corrections programs
21 including the corresponding community criminal justice
22 board or other entity contact information and annual
23 program evaluations, when available;

24 (2) Seek funding for approved community corrections
25 programs from sources other than the fees collected
26 pursuant to section four of this article; and

27 (3) Provide funding for approved community corrections
28 programs, as available.

29 (c) The governor's committee shall submit, on or before
30 the thirtieth day of September of each year, to the gover-
31 nor, the speaker of the House of Delegates, the president
32 of the Senate and, upon request, to any individual member
33 of the Legislature a report on its activities during the
34 previous year and an accounting of funds paid into and
35 disbursed from the special revenue account established
36 pursuant to section four of this article.

§62-11C-4. Special revenue account.

1 (a) There is hereby created in the state treasury a special
2 revenue account to be known as the "West Virginia
3 community corrections fund." Expenditures from the fund
4 are for the purposes set forth in subsection (d) of this
5 section and are not authorized from collections but are to
6 be made only in accordance with appropriation by the
7 Legislature and in accordance with the provisions of
8 article three, chapter twelve of this code and upon the
9 fulfillment of the provisions set forth in article two,
10 chapter five-a of this code: *Provided*, That for the fiscal
11 year ending the thirtieth day of June, two thousand two,
12 expenditures are authorized from collections rather than
13 pursuant to an appropriation by the Legislature. The West
14 Virginia community corrections fund may receive any
15 gifts, grants, contributions or other money from any source
16 which is specifically designated for deposit in the fund.

17 (b) Beginning on the effective date of this article, in
18 addition to the fee required in section nine, article twelve
19 of this chapter, a fee not to exceed thirty dollars per
20 month, unless modified by legislative rule as provided in
21 section three of this article, is also to be collected from
22 those persons on probation. This fee is to be based upon
23 the person's ability to pay. The magistrate or circuit judge
24 shall conduct a hearing prior to imposition of probation
25 and make a determination on the record that the offender
26 is able to pay the fee without undue hardship. The magis-
27 trate clerk or circuit clerk shall collect all fees imposed
28 pursuant to this subsection and deposit them in a separate

29 account. Within ten calendar days following the beginning
30 of the calendar month, the magistrate clerk or circuit clerk
31 shall forward the amount deposited to the state treasurer
32 to be credited to the West Virginia community corrections
33 fund.

34 (c) Beginning on the effective date of this article, in
35 addition to the fee required in section five, article eleven-b
36 of this chapter, a fee not to exceed five dollars per day,
37 unless modified by legislative rule as provided in section
38 three of this article, is also to be collected from those
39 persons on home incarceration. The circuit judge, magis-
40 trate or municipal court judge shall consider the person's
41 ability to pay in determining the imposition and amount of
42 the fee. The circuit clerk, magistrate clerk or municipal
43 court clerk shall collect all fees imposed pursuant to this
44 subsection and deposit them in a separate account. Within
45 ten calendar days following the beginning of the calendar
46 month, the circuit clerk or municipal court clerk shall
47 forward the amount deposited to the state treasurer to be
48 credited to the West Virginia community corrections fund.

49 (d) Beginning on the first day of July, two thousand two,
50 in addition to the usual court costs in any criminal case
51 taxed against any defendant convicted in a municipal,
52 magistrate or circuit court, excluding municipal parking
53 ordinances, a three-dollar fee shall be added. The circuit
54 clerk, magistrate clerk or municipal court clerk shall
55 collect all fees imposed pursuant to this subsection and
56 deposit them in a separate account. Within ten calendar
57 days following the beginning of the calendar month, the
58 circuit clerk, magistrate court clerk and the municipal
59 court clerk shall forward the amount deposited to the state
60 treasurer to be credited to the West Virginia community
61 corrections fund.

62 (e) The moneys of the West Virginia community correc-
63 tions fund are to be disbursed by the governor's committee
64 on crime, delinquency and correction, upon recommenda-
65 tion by the community corrections subcommittee, for the

66 funding of community corrections programs and to pay
67 expenses of the governor's committee in administering the
68 provisions of this article, which expenses may not in any
69 fiscal year exceed ten percent of the funds deposited to the
70 special revenue account during that fiscal year.

71 (f) Any disbursements from the West Virginia community
72 corrections fund allocated for community corrections
73 programs by the governor's committee may be made
74 contingent upon local appropriations or gifts in money or
75 in kind for the support of the programs. Any county
76 commission of any county or the governing body of a
77 municipality may appropriate and expend money for
78 establishing and maintaining community corrections
79 programs.

80 (g) Nothing in this article may be construed to mandate
81 funding for the West Virginia community corrections fund
82 or to require any appropriation by the Legislature.

§62-11C-6. Community criminal justice boards.

1 (a) Each county or combination of counties or a county
2 or counties and a Class I or II municipality that seek to
3 establish community-based corrections services shall
4 establish a community criminal justice board: *Provided,*
5 That if a county has not established a community criminal
6 justice board by the first day of July, two thousand two,
7 the chief probation officer of such county, with the
8 approval of the chief judge of the circuit, may apply for
9 and receive approval and funding from the governor's
10 committee for such programs as are authorized by the
11 provisions of section five of this article. Any county which
12 chooses to operate without a community criminal justice
13 board shall be subject to the regulations and requirements
14 established by the community corrections subcommittee
15 and the governor's committee.

16 (b) The community criminal justice board is to consist of
17 no more than fifteen voting members.

18 (c) All members of the community criminal justice board
19 are to be residents of the county or counties represented.

20 (d) The community criminal justice board is to consist of
21 the following members:

22 (1) The sheriff or chief of police or, if the board repre-
23 sents more than one county or municipality, at least one
24 sheriff or chief of police from the counties represented;

25 (2) The prosecutor or, if the board represents more than
26 one county, at least one prosecutor from the counties
27 represented;

28 (3) If a public defender corporation exists in the county
29 or counties represented, at least one attorney employed by
30 any public defender corporation existing in the counties
31 represented or, if no public defender office exists, one
32 criminal defense attorney from the counties represented;

33 (4) One member to be appointed by the local board of
34 education or, if the board represents more than one
35 county, at least one member appointed by a board of
36 education of the counties represented;

37 (5) One member with a background in mental health care
38 and services to be appointed by the commission or com-
39 missions of the county or counties represented by the
40 board;

41 (6) Two members who can represent organizations or
42 programs advocating for the rights of victims of crimes
43 with preference given to organizations or programs
44 advocating for the rights of victims of the crimes of
45 domestic violence or driving under the influence; and

46 (7) Three at-large members to be appointed by the
47 commission or commissions of the county or counties
48 represented by the board.

49 (e) At the discretion of the West Virginia supreme court
50 of appeals, any or all of the following people may serve on

51 a community criminal justice board as ex officio, nonvot-
52 ing members:

53 (1) A circuit judge from the county or counties repre-
54 sented;

55 (2) A magistrate from the county or counties represented;
56 or

57 (3) A probation officer from the county or counties
58 represented.

59 (f) Community criminal justice boards may:

60 (1) Provide for the purchase, development and operation
61 of community corrections services;

62 (2) Coordinate with local probation departments in
63 establishing and modifying programs and services for
64 offenders;

65 (3) Evaluate and monitor community corrections pro-
66 grams, services and facilities to determine their impact on
67 offenders; and

68 (4) Develop and apply for approval of community
69 corrections programs by the governor's committee on
70 crime, delinquency and correction.

71 (g) If a community criminal justice board represents
72 more than one county, the appointed membership of the
73 board, excluding any ex officio members, shall include an
74 equal number of members from each county, unless the
75 county commissions of each county agree in writing
76 otherwise.

77 (h) If a community criminal justice board represents
78 more than one county, the board shall, in consultation
79 with the county commissions of each county represented,
80 designate one county commission as the fiscal agent of the
81 board.

82 (i) Any political subdivision of this state operating a
83 community corrections program shall, regardless of
84 whether or not the program has been approved by the
85 governor's committee on crime, delinquency and correc-
86 tion, provide to the governor's committee required infor-
87 mation regarding the program's operations as required by
88 legislative rule.

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

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

1 (a) A circuit judge, magistrate, municipal court judge or
2 community criminal justice board may require the pay-
3 ment of a supervision or participation fee from any person
4 required to be supervised by or participate in a community
5 corrections program. The circuit judge, magistrate,
6 municipal court judge or community criminal justice
7 board shall consider the person's ability to pay in deter-
8 mining the imposition and amount of the fee.

9 (b) All fees ordered by the circuit court or community
10 criminal justice board pursuant to this section are to be
11 paid to the circuit clerk, who shall monthly remit the fees
12 to the treasurer of the county designated as the fiscal agent
13 for the board pursuant to section six of this article. All
14 fees ordered by the magistrate court pursuant to this
15 section are to be paid to the magistrate clerk, who shall
16 monthly remit the fees to the treasurer of the county
17 designated as the fiscal agent for the board pursuant to
18 said section. All fees ordered by the municipal court judge
19 pursuant to this section are to be paid to the municipal
20 court clerk who shall monthly remit the fees to the trea-
21 surer of the county designated as the fiscal agent for the
22 board pursuant to section six of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within is approved this the 3rd
Day of April, 2002.

[Signature]
.....
Governor

PAID BY THE

DATE

BY

TIME

3/25/02

11:35 AM