

# 2014 Bill Text WV S.B. 307

Enacted, April 1, 2014

## Reporter

2014 Bill Text WV S.B. 307

## THE STATE OF WEST VIRGINIA BILL TEXT > WEST VIRGINIA 2ND SESSION OF THE 81ST LEGISLATURE > SENATE BILL 307

## Synopsis

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated Section 51-10-5a; to amend and reenact Section 62-11C-5 and Section 62-11C-7 of said code; and to amend said code by adding thereto a new article, designated Section 62-11F-1, Section 62-11F-2, Section 62-11F-3, Section 62-11F-4 and Section 62-11F-5, all relating to the pretrial management of persons charged with committing a crime; clarifying bonding fees for persons charged with a crime; establishing minimum fees for bail bonds; setting schedule for payment of bail bond fees; requiring written prenumbered receipts for bail bond fees; establishing content requirements for bail bond receipts; requiring bail bondsmen to maintain receipt records for not less than five years; requiring courts to notify bondsmen within twenty-four hours if bond is to be forfeited; authorizing pretrial release programs; permitting certain fees to be assessed to county commissions; permitting certain fees to be assessed to persons on pretrial release upon subsequent conviction; stating applicability of pretrial release programs; establishing guidelines for pretrial release programs; providing for potential funding sources; requiring community pretrial committees to recommend release of certain persons facing criminal charges who are in regional jails prior to adjudication; setting forth the duties of pretrial release programs; clarifying that a circuit judge or a magistrate may impose a secured bond on participants in pretrial release programs; and removing day fine programs from the list of authorized community corrections programs.

## Text

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated Section 51-10-5a; that 11C-5 Section 62- 11C-5 and Section 62-11C-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated Section 62-11F-1, Section 62-11F-2, Section 62-11F-3, Section 62-11F-4 and Section 62-11F-5, all to read as follows:

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 10. BAIL BONDSMEN IN CRIMINAL CASES.

Section 51-10-5a. Bonding fee and collateral security required by bail bondsmen.

- (a) The bonding fee required by a bail bondsman shall be at least ten percent of the amount of the bond. The bonding fee received by the bondsman shall not, in the aggregate, exceed the amount of the bond.
- (b) The bonding fee may be paid as follows:
  - (1) In full at the time of the issuance of the bond; or

- (2) At least three-percent paid at the issuance of the bond with the remaining percentage to be paid over a period not to exceed twelve months.
- (c) When collateral or security is received by a bail bondsman a receipt shall be furnished. Copies of all receipts issued shall be kept by the bail bondsman for a minimum of five years. All receipts issued shall:
  - (1) Be prenumbered and used and filed in consecutive numerical order;
  - (2) Show the name and address of the bail bondsman;
  - (3) Show the name and address of the person providing the collateral;
  - (4) Show the amount and nature of the collateral and the date received;
  - (5) Show the name of the person accepting collateral; and
  - (6) Show the total amount of the bond for which the collateral is being accepted and the name of the defendant.
- (d) When a bond is to be forfeited, the court is to give notification to the bail bondsman within twenty-four hours of the failure to appear.

## CHAPTER 62. CRIMINAL PROCEDURE.

### ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

#### Section 62-11C-5. Establishment of programs.

- (a) Any county or combination of counties, or a county or counties and a Class I or II municipality, may establish and operate community corrections programs, as provided in this section, to be used both prior to trial as a condition of bond in circuit and magistrate court, as well as an alternative sentencing option for those offenders sentenced within the jurisdiction of the county or counties which establish and operate the program: Provided, That the chief judge must certify that the community corrections facility is available for use in connection with the imposition of pretrial bond conditions.
- (b) Any county or combination of counties, or a county or counties and a Class I or II municipality, that seek to establish programs as authorized in this section shall submit plans and specifications for the programs to be established, including proposed budgets, for review and approval by the community corrections subcommittee established in section three of this article.
- (c) Any county or combination of counties, or a county or counties and a Class I or II municipality, may establish and operate an approved community corrections program to provide alternative sanctioning options for an offender who is convicted of an offense for which he or she may be sentenced to a period of incarceration in a county or regional jail or a state correctional facility and for which probation or home incarceration may be imposed as an alternative to incarceration.
- (d) Community corrections programs authorized by subsection (a) of this section may provide, but are not limited to providing, any of the following services:
  - (1) Probation supervision programs;
  - (2) Community service restitution programs;
  - (3) Home incarceration programs;
  - (4) Substance abuse treatment programs;
  - (5) Sex offender containment programs;
  - (6) Licensed domestic violence offender treatment programs;
  - (7) Day reporting centers;

- (8) Educational or counseling programs;
  - (9) Drug courts;
  - (10) Community beautification and reclamation programs for state highways, municipal, county and state parks and recreation areas and community gardens; and
  - (11) Pretrial release programs.
- (e) A county or combination of counties, or a county or counties and a Class I or II municipality, which establish and operate community corrections programs as provided in this section may contract with other counties to provide community corrections services.
  - (f) For purposes of this section, the phrase "may be sentenced to a period of incarceration" means that the statute defining the offense provides for a period of incarceration as a possible penalty.
  - (g) No provision of this article may be construed to allow a person participating in or under the supervision of a community corrections program to earn good time or any other reduction in sentence.
  - (h) Nothing in this section should be construed as to prohibit a court from imposing a surety bond as a condition of a pretrial release.

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

- (a) A circuit judge, magistrate, municipal court judge or community criminal justice board may require the payment of a supervision or participation fee from any person required to be supervised by or participate in a community corrections program. The circuit judge, magistrate, municipal court judge or community criminal justice board shall consider the person's ability to pay in determining the imposition and amount of the fee.
- (b) A circuit judge, magistrate or community criminal justice board may require payment of a supervision or participation fee of \$ 7 per person per day of pretrial supervision from the county commission pursuant to a pretrial release program established pursuant to article eleven-f of this chapter.
- (c) A person supervised pursuant to the provisions of article eleven-f of this chapter who is later convicted of an offense or offenses underlying the person's participation in the pretrial release program may be assessed by the sentencing court, as a cost of prosecution, a fee not to exceed \$ 30 per month for each month the person was in the pretrial supervision program.
- (d) All fees ordered by the circuit court, magistrate court, municipal court or community criminal justice board pursuant to this section are to be paid to the community criminal justice board, who shall remit the fees monthly to the treasurer of the county designated as the fiscal agent for the board pursuant to section six of this article.

ARTICLE 11F. PRETRIAL RELEASE PROGRAMS.

Section 62-11F-1. Applicability.

This article applies to adults charged with one or more misdemeanors or felonies and who are incarcerated in a regional jail prior to adjudication due to their inability to post bond.

Section 62-11F-2. Establishment of pretrial release programs.

- (a) Legislative findings and purpose. --It is the purpose of pretrial release programs to employ recommendations from the Council of State Government's Justice Center's Analyses and Policy Options to Reduce Spending on Corrections and Reinvest in Strategies to Increase Public Safety, by providing for uniform statewide risk assessment and monitoring of those released prior to

trial, facilitating a statewide response to the problem of overcrowded regional jails and costs to county commissions.

- (b) Any county, circuit or combination thereof that establishes a pretrial program pursuant to this article shall establish a local community pretrial committee that consists of:
  - (1) A prosecutor, or his or her designee;
  - (2) A county commissioner, or his or her designee;
  - (3) A sheriff, or his or her designee;
  - (4) An executive director of a community corrections program, or his or her designee;
  - (5) A chief probation officer, or his or her designee; and
  - (6) A member of the criminal defense bar.
- (c) Pretrial release programs may monitor, supervise and assist defendants released prior to trial.
- (d) Nothing in this article should be construed to prohibit a court from requiring a defendant to post a secured bond as a condition of pretrial release.
- (e) In addition to funding provided pursuant to subsection (c), section three of this article, pretrial release programs may be funded by appropriations made to the Supreme Court of Appeals for such purpose.

Section 62-11F-3. Pretrial release program guidelines.

- (a) The Supreme Court of Appeals has complete oversight and authority over all pretrial services.
- (b) The Supreme Court of Appeals shall establish recommended guidelines for pretrial programs to use when ordering pretrial release for defendants whose pretrial risk assessment indicate that they are an appropriate candidate for pretrial release.
- (c) The Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction, pursuant to section two, article eleven-c of this chapter, shall approve policy and funding for the development, maintenance and evaluation of pretrial release programs. Any county, circuit or combination thereof that establishes a pretrial program intended to provide pretrial release services shall submit a grant proposal to the Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction for review and approval.

Section 62-11F-4. Pretrial release assessment.

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

Section 62-11F-5. Role of pretrial release programs.

A pretrial release program established pursuant to this article shall:

- (1) Collect and present the necessary information, present risk assessment and make release recommendations to the court;
- (2) Present information to the court relating to the risk defendants may pose in failing to appear in court or of threatening the safety of the community or any other person and, consistent with court policy, develop release recommendations responding to risk;
- (3) Develop and provide appropriate and effective supervision for all persons released pending adjudication who are assigned supervision as a condition of release;
- (4) Monitor compliance of released defendants with the requirements of assigned release conditions;
- (5) Promptly inform the court of all apparent violations of pretrial release conditions or arrests of persons released pending trial, including those directly supervised by pretrial services as well as

those released under other forms of conditional release, and recommend appropriate modifications of release conditions;

- (6) Coordinate the services of other agencies, individuals or organizations that may serve as custodians for released defendants, and advise the court as to their appropriateness, availability, reliability and capacity relating to pretrial release conditions;
- (7) Review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible and appropriate;
- (8) Develop and operate an accurate information management system to support prompt identification, information collections and presentation, risk assessment, release conditions selection, compliance monitoring and detention review functions essential to an effective pretrial release program; and
- (9) Remind persons released before trial of their court dates to attempt to facilitate their court appearance.

## History

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 307

(SENATORS CANN, WILLIAMS, COOKMAN AND PALUMBO, ORIGINAL SPONSORS )

[PASSED MARCH 14, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

## Sponsor(s)

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## Classification

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**Subject:** COUNTY GOVERNMENT (95%); BAIL (93%); LEGISLATION (93%); ALTERNATIVE SENTENCING (93%); LEGISLATORS (92%); LITIGATION (90%); PRISONS (82%); SENTENCING (63%); BAIL BONDING SERVICES (63%); JUDGES (63%); CRIMINAL LAW (63%); CRIMINAL OFFENSES (63%); CITY GOVERNMENT (62%)

**Load-Date:** April 5, 2014

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