

SB 634

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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



# ENROLLED

*Committee Substitute for*

SENATE BILL NO. 634

(By Senator Kessler, et al )



PASSED March 11, 2000

In Effect ninety days from Passage

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 634

(SENATORS KESSLER, EDGELL, HUNTER, MITCHELL  
AND FANNING, *original sponsors*)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section one-a, article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing a sentencing alternative under which persons would be required to report to a day-reporting center for alcohol or drug testing or other medical testing where such monitoring is required on a regular basis.

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

That section one-a, article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.**

**§62-11A-1a. Other sentencing alternatives.**

1 (a) Any person who has been convicted in a circuit court  
2 or in a magistrate court under any criminal provision of  
3 this code of a misdemeanor or felony, which is punishable  
4 by imposition of a fine or confinement in the county or  
5 regional jail or a state correctional facility, or both fine  
6 and confinement, may, in the discretion of the sentencing  
7 judge or magistrate, as an alternative to the sentence  
8 imposed by statute for the crime, be sentenced under one  
9 of the following programs:

10 (1) The weekend jail program under which persons  
11 would be required to spend weekends or other days  
12 normally off from work in jail;

13 (2) The work program under which sentenced persons  
14 would be required to spend the first two or more days of  
15 their sentence in jail and then, in the discretion of the  
16 court, would be assigned to a county agency to perform  
17 labor within the jail, or in and upon the buildings,  
18 grounds, institutions, bridges, roads, including orphaned  
19 roads used by the general public and public works within  
20 the county. Eight hours of labor shall be credited as one  
21 day of the sentence imposed. Persons sentenced under this  
22 program may be required to provide their own transporta-  
23 tion to and from the work site, lunch and work clothes;

24 (3) The community service program under which persons  
25 sentenced would spend no time in jail but would be  
26 sentenced to a number of hours or days of community  
27 service work with government entities or charitable or  
28 nonprofit entities approved by the circuit court. Regard-  
29 ing any portion of the sentence designated as confinement,  
30 eight hours of community service work shall be credited as  
31 one day of the sentence imposed. Regarding any portion  
32 of the sentence designated as a fine, the fine shall be

33 credited at an hourly rate equal to the prevailing federal  
34 minimum wage at the time the sentence was imposed. In  
35 the discretion of the court, the sentence credits may run  
36 concurrently or consecutively. Persons sentenced under  
37 this program may be required to provide their own trans-  
38 portation to and from the work site, lunch and work  
39 clothes; or

40 (4) A day-reporting center program if the program has  
41 been implemented in the sentencing court's jurisdiction or  
42 in the area where the offender resides. For purposes of this  
43 subdivision "day-reporting center" means a court-oper-  
44 ated or court-approved facility where persons ordered to  
45 serve a sentence in such a facility are required to report  
46 under the terms and conditions set by the court for pur-  
47 poses which include but are not limited to counseling,  
48 employment training, alcohol or drug testing or other  
49 medical testing.

50 (b) In no event may the duration of the alternate sen-  
51 tence exceed the maximum period of incarceration other-  
52 wise allowed.

53 (c) In imposing a sentence under the provisions of this  
54 section, the court shall first make the following findings of  
55 fact and incorporate them into the court's sentencing  
56 order:

57 (1) The person sentenced was not convicted of an offense  
58 for which a mandatory period of confinement is imposed  
59 by statute;

60 (2) In circuit court cases, that the person sentenced is not  
61 a habitual criminal within the meaning of sections eigh-  
62 teen and nineteen, article eleven, chapter sixty-one of this  
63 code;

64 (3) In circuit court cases, that the offense underlying the  
65 sentence is not a felony offense for which violence or the

66 threat of violence to the person is an element of the  
67 offense;

68 (4) In circuit court cases, that adequate facilities for the  
69 administration and supervision of alternative sentencing  
70 programs are available through the court's probation  
71 officers or the county sheriff or, in magistrate court cases,  
72 that adequate facilities for the administration and supervi-  
73 sion of alternative sentencing programs are available  
74 through the county sheriff; and

75 (5) That an alternative sentence under provisions of this  
76 article will best serve the interests of justice.

77 (d) Persons sentenced by the circuit court under the  
78 provisions of this article shall remain under the adminis-  
79 trative custody and supervision of the court's probation  
80 officers or the county sheriff. Persons sentenced by a  
81 magistrate shall remain under the administrative custody  
82 and supervision of the county sheriff.

83 (e) Persons sentenced under the provisions of this section  
84 may be required to pay the costs of their incarceration,  
85 including meal costs, at the discretion of the court.

86 (f) Persons sentenced under the provisions of this section  
87 remain under the jurisdiction of the court. The court may  
88 withdraw any alternative sentence at any time by order  
89 entered with or without notice and require that the  
90 remainder of the sentence be served in the county jail,  
91 regional jail or a state correctional facility: *Provided,*  
92 That no alternative sentence directed by the sentencing  
93 judge or magistrate or administered under the supervision  
94 of the sheriff, his or her deputies, a jailer or a guard, shall  
95 require the convicted person to perform duties which  
96 would be considered detrimental to the convicted person's  
97 health as attested by a physician.

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

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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

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

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

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

The within..... *approved* ..... this the *5th*  
Day of..... *April* ....., 2000

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/00

Time 4:15pm