WEST VIRGINIA CODE: §62-11A-1A

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

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

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

(2) The work program under which a sentenced person would be required to spend the first two or more days of his or her sentence in jail and then, in the discretion of the court, would be assigned to a municipal, county, or state agency to perform labor within the jail, or in and upon the buildings, grounds, institutions, bridges, and roads, including orphaned roads used by the general public and public works within the municipality, county, or state. Eight hours of labor are to be credited as one day of the sentence imposed. A person sentenced under this program may be required to provide his or her own transportation to and from the work site, lunch, and work clothes;

(3) The community service program under which a sentenced person would spend no time in jail, but would be sentenced to a number of hours or days of community service work with government entities or charitable or nonprofit entities approved by the circuit court. Regarding any portion of the sentence designated as confinement, eight hours of community service work is to be credited as one day of the sentence imposed. Regarding any portion of the sentence designated as a fine, the fine is to be credited at an hourly rate equal to the prevailing federal minimum wage at the time the sentence was imposed. In the discretion of the court, the sentence credits may run concurrently or consecutively. A person sentenced under this program may be required to provide his or her own transportation to and from the work site, lunch, and work clothes; or

(b) In no event may the duration of the alternate sentence exceed the maximum period of incarceration otherwise allowed.

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

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

(2) In circuit court cases, that the person sentenced is not a habitual criminal within the

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meaning of §61-11-18 and §61-11-19 of this code;

(3) In circuit court cases, that the offense underlying the sentence is not a felony offense for which violence or the threat of violence to the person is an element of the offense;

(4) In circuit court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the court's probation officers or the county sheriff or, in magistrate court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the county sheriff; and

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

(d) A person sentenced by the circuit court under the provisions of this article remains under the administrative custody and supervision of the court's probation officers or the county sheriff. A person sentenced by a magistrate remains under the administrative custody and supervision of the county sheriff. A person sentenced by a municipal judge would be under the supervision of the city department for whom work is performed.

(e) A person sentenced under the provisions of this section may be required to pay the costs of his or her incarceration, including meal costs: *Provided,* That the judge or magistrate considers the person's ability to pay the costs.

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

(g) No provision of this section may be construed to limit a circuit judge's ability to impose a period of supervision or participation in a community corrections program created pursuant to §62-11C-1 *et seq*. of this code, except that a person sentenced to a day report center must be identified as moderate to high risk of reoffending and moderate to high criminogenic need, as defined by the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under §62-12-6d of this code, and applied by a probation officer or day report staff: *Provided*, That a judge may impose a period of supervision or participation in a day report center, notwithstanding the results of the standardized risk and needs assessment, upon making specific written findings of fact as to the reason for departing from the requirements of this section.

(h) Magistrates may only impose a period of participation in a day report center with the

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consent by general administrative order of the supervising judge or chief judge of the judicial circuit in which he or she presides. The day report center staff shall determine which services a person receives based on the results of the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under §62-12-6d of this code, along with any other conditions of supervision set by the court.

(i) There is hereby authorized a program whereby a sentenced person in a regional jail or state correctional facility may be assigned to participate in performing requested tasks approved by the commissioner for municipal, county, and state agencies that could use such services as cleaning up streams, state parks, streets and highways, and similar services.

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