
WEST VIRGINIA CODE CHAPTER 62
ARTICLE 11A

WV Legislature

§62-11A-1. Release for work and other purposes by courts of record with criminal jurisdiction.

(a) When a defendant is sentenced or committed for a term of one year or less by a court of record having criminal jurisdiction, the court may in its order grant to the defendant the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

(1) To work at his or her employment;

(2) To seek employment;

(3) To conduct his or her own business or to engage in other self-employment, including housekeeping and attending to the needs of his or her family;

(4) To attend an educational institution;

(5) To obtain medical treatment;

(6) To devote time to any other purpose approved of or ordered by the court, including participation in the litter control program of the county unless the court specifically finds that this alternative service would be inappropriate.

(b) When a defendant is sentenced or committed for a term of one year or less by a magistrate of the state of West Virginia having criminal jurisdiction, the court may in its order grant to the defendant the privilege of leaving the jail during necessary and reasonable hours to work at his or her employment.

(c) Whenever an inmate who has been granted the privilege of leaving the jail under this section is not engaged in the activity for which the leave is granted, he or she shall be confined in jail.

(d) An inmate sentenced to ordinary confinement may petition the court at any time after sentence for the privilege of leaving jail under this section and may renew his or her petition in the discretion of the court. The court may withdraw the privilege at any time by order entered with or without notice.

(e) If the inmate has been granted permission to leave the jail to seek or take employment, the court's probation officers or, if none, the jail shall assist him or her in obtaining suitable employment and in making certain that employment already obtained is suitable. Employment shall not be deemed suitable if the wages or working conditions or other circumstances present a danger of exploitation or of interference in a labor dispute in the establishment in which the inmate would be employed.

(f) An inmate who is serving his or her sentence pursuant to this section shall be eligible for

a reduction of his or her term for good behavior and faithful performance of duties in the same manner as if he or she had served his or her term in ordinary confinement.

(g) The court shall not make an order granting the privilege of leaving the institution under this section unless it is satisfied that there are adequate facilities for the administration of such privilege in the jail or other institution in which the defendant will be confined.

(h) In every case wherein the defendant has been convicted of an offense, defined in section twelve, article eight, chapter sixty-one of this code or in article eight-b or eight-d of said chapter against a child, the defendant shall not live in the same residence as any minor child, nor exercise visitation with any minor child and shall have no contact with the victim of the offense: Provided, That the defendant may petition the court of the circuit wherein he or she was so convicted for a modification of this term and condition of this probation and the burden shall rest upon the defendant to demonstrate that a modification is in the best interest of the child.

§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 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 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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§62-11A-2. Employment by county.

With the approval of the county sheriff, the county court of any county is hereby authorized to employ any person imprisoned upon conviction for a misdemeanor in a county jail to work within the county as the county court may decide. In such instance the wages to be paid to the prisoner shall be no less than \$1 per hour. Such prisoners shall remain in the custody of and be supervised by said sheriff. No imprisoned person shall be required to work without his consent.

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§62-11A-3. Personnel status; limitation on liability of public officials and county and community service work agencies.

(a) No person sentenced under any provision of this article shall be regarded as an employee of the sheriff, county commission or the county or community service work agency to which the person sentenced is assigned for any purpose, including, but not limited to, workers' compensation, civil service, unemployment compensation, public employees insurance or public employees retirement.

(b) Neither the sheriff, the county commission or community service agency to which the person is assigned shall be liable for injury or damage to third parties intentionally committed by the person so sentenced or for any action on behalf of the person so sentenced except in the case of gross negligence on the part of the sheriff, county commission or community service agency or the supervisor of the person so sentenced: Provided, That nothing herein shall bar a claim by a third party for injury or damage resulting from the negligent act of the person so sentenced committed outside the confines of a county jail and within the scope of the work required by the alternative sentence.

§62-11A-4. Violations; penalties.

(a) Any person lawfully confined in jail on conviction of one or more felonies, or on conviction of one or more felonies and one or more misdemeanors, who has been granted release for work or other purposes under section one-a of this article, and who fails to return to jail at the times designated in the release order with the intent to evade lawful detention, shall be guilty of an additional felony, and, upon conviction, may be confined in the penitentiary for not less than one nor more than five years.

(b) Any person lawfully confined in jail on conviction of one or more misdemeanors, who has been granted release for work or other purposes under section one-a of this article, and who fails to return to jail at the times designated in the release order with the intent to evade lawful detention, shall be guilty of a misdemeanor and, upon conviction, may be confined in jail for up to one year.