WEST VIRGINIA CODE CHAPTER 62 ARTICLE 11C

WV Legislature

§62-11C-1. Legislative intent.

(a) The Legislature hereby declares that the purpose of this article is to enable any county or Class I or II municipality or any combination of counties and Class I or II municipalities to develop, establish and maintain community-based corrections programs to provide the judicial system with sentencing alternatives for those offenders who may require less than institutional custody.

(b) The goals of developing community-based corrections programs include:

(1) Allowing individual counties or combinations of a county or counties and a Class I or II municipality greater flexibility and involvement in responding to the problem of crime in their communities;

(2) Providing more effective protection of society and promoting efficiency and economy in the delivery of correctional services;

(3) Providing increased opportunities for offenders to make restitution to victims of crime through financial reimbursement;

(4) Permitting counties or combinations of a county or counties and a Class I or II municipality to operate programs specifically designed to meet the rehabilitative needs of offenders;

(5) Providing appropriate sentencing alternatives with the goal of reducing the incidence of repeat offenders;

(6) Permitting counties or combinations of a county or counties and a Class I or II municipality to designate community-based programs to address local criminal justice needs;

(7) Diverting offenders from the state regional jail or correctional facilities by punishing them with community-based sanctions, thereby reserving state regional jail or correctional facilities for those offenders who are deemed to be most dangerous to the community; and

(8) Promoting accountability of offenders to their community.

WV Legislature

§62-11C-2. Community Corrections Subcommittee.

(a) A Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction is continued and continues to be assigned responsibility for screening community corrections programs for approval for funding by the subcommittee and for making disbursement of funds for approved community corrections programs.

(b) The subcommittee shall be comprised of the following members:

(1) A representative of the Division of Corrections;

(2) A representative of the Regional Jail and Correctional Facility Authority;

(3) A representative of the Bureau for Behavioral Health and Health Facilities;

(4) A person representing the interests of victims of crime;

(5) An attorney employed by a public defender corporation;

(6) An attorney who is licensed to practice and practicing criminal law in this state;

(7) A prosecuting attorney or assistant prosecuting attorney actively engaged as such in this state;

(8) A representative of the West Virginia Coalition Against Domestic Violence; and

(9) At the discretion of the Supreme Court of Appeals, the Administrator of the Supreme Court of Appeals, a probation officer and a circuit judge may serve on the subcommittee as ex officio, nonvoting members.

(c) The subcommittee shall elect a chairperson and a vice chairperson. The subcommittee shall meet quarterly. Special meetings may be held upon the call of the chairperson, vice chairperson or a majority of the members of the subcommittee. A majority of the members of the subcommittee constitutes a quorum.

(d) The subcommittee may adopt bylaws, policies and procedures for the operation of the subcommittee.

(e) The subcommittee may propose legislative rules for legislative approval pursuant to article three, to chapter twenty-nine-a of this code for policies and procedures consistent with the duties and responsibilities which are or may be assigned to it.

(f) Any member appointed to the subcommittee who is a written designated representative has the full rights of a member, including the right to vote, serve on subcommittees or perform any other function.

WV Legislature

§62-11C-3. Duties of the subcommittee.

(a) The subcommittee shall propose for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code legislative rules to:

(1) Establish standards for approval of community corrections programs submitted by community criminal justice boards or other entities authorized by the provisions of this article to do so;

(2) Establish minimum standards for community corrections programs to be funded, including requiring annual program evaluations;

(3) Make any necessary adjustments to the fees established in section four of this article;

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

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

(b) The subcommittee shall:

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

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

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

(c) The subcommittee shall submit, on or before September 30 of each year, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account established pursuant to section four of this article. The subcommittee may make recommendations to the Governor's Committee on Crime, Delinquency and Correction for legislation related to the subcommittee's duties and responsibilities, or for research or studies by the Division of Justice and Community Services on topics related to the subcommittee's duties and responsibilities.

(d) The subcommittee shall review the implementation of evidence-based practices and conduct regular assessments for quality assurance of all community-based criminal justice services, including day report centers, probation, parole and home confinement. In consultation with the affected agencies, the subcommittee shall establish a process for reviewing performance. The process shall include review of agency performance measures and identification of new measures by the subcommittee, if necessary, for measuring the implementation of evidence-based practices or for quality assurance. After providing an

WV Legislature

opportunity for the affected agencies to comment, the subcommittee shall submit, on or before September 30 of each year, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature a report on its activities and results from assessments of performance during the previous year.

WV Legislature

§62-11C-4. Special revenue account.

(a) There is hereby created in the State Treasury a special revenue account to be known as the West Virginia Community Corrections Fund. Expenditures from the fund are for the purposes set forth in subsection (e) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. The West Virginia Community Corrections Fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the fund.

(b) In addition to the fee required in section nine, article twelve of this chapter, a fee not to exceed $35 per month, unless modified by legislative rule as provided in section three of this article, is also to be collected from those persons on probation. This fee is to be based upon the person's ability to pay. The magistrate or circuit judge shall conduct a hearing prior to imposition of probation and make a determination on the record that the offender is able to pay the fee without undue hardship. The magistrate clerk, deputy magistrate clerk, magistrate assistant, circuit clerk or deputy circuit clerk shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the magistrate clerk or circuit clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(c) In addition to the fee required in section five, article eleven-b of this chapter, a fee of $2.50 per day, unless modified by legislative rule as provided in section three of this article, is to be collected from those persons on home incarceration. The circuit judge, magistrate or municipal court judge shall consider the person's ability to pay in determining the imposition of the fee. The circuit clerk, magistrate clerk, municipal court clerk or his or her designee shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the circuit clerk, magistrate clerk or municipal court clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(d) In addition to the usual court costs in any criminal case taxed against any defendant convicted in a municipal, magistrate or circuit court, excluding municipal parking ordinances, a $10 fee shall be added, unless the fee is modified by legislative rule as provided in section three of this article. The circuit clerk, magistrate clerk, municipal court clerk or his or her designee shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the circuit clerk, magistrate court clerk and the municipal court clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(e) The moneys of the West Virginia Community Corrections Fund are to be disbursed by the subcommittee for the funding of community corrections programs and to pay expenses of the

WVLegislature

subcommittee in administering the provisions of this article, which expenses may not in any fiscal year exceed fifteen percent of the funds deposited to the special revenue account during that fiscal year.

(f) Any disbursements from the West Virginia Community Corrections Fund allocated for community corrections programs by the subcommittee may be made contingent upon local appropriations or gifts in money or in kind for the support of the programs. Any county commission of any county or the governing body of a municipality may appropriate and expend money for establishing and maintaining community corrections programs.

WV Legislature

§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

WV Legislature

(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.

WV Legislature

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

(a) Each county or combination of counties or a county or counties and a Class I or II municipality that seek to establish community-based corrections services shall establish a community criminal justice board. Any county which chooses to operate without a community criminal justice board is subject to the regulations and requirements established by the subcommittee.

(b) A community criminal justice board shall consist of no more than fifteen voting members.

(c) All members of a community criminal justice board shall be residents of the county or counties represented.

(d) A community criminal justice board shall consist of the following members:

(1) The sheriff or chief of police or, if the board represents more than one county or municipality, at least one sheriff or chief of police from the counties represented;

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

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

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

(5) One member with a background in mental health care and services to be appointed by the commission or commissions of the county or counties represented by the board;

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

(7) One member with a background in substance abuse treatment and services to be appointed by the commission or commissions of the county or counties represented by the board; and

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

(e) At the discretion of the Supreme Court of Appeals, any or all of the following people may serve on a community criminal justice board as ex officio, nonvoting members:

WV Legislature

(1) A circuit judge from the county or counties represented;

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

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

(f) Community criminal justice boards may:

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

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

(3) Evaluate and monitor community corrections programs, services and facilities to determine their impact on offenders; and

(4) Develop and apply for approval of community corrections programs by the Governor's Committee on Crime, Delinquency and Correction.

(g) If a community criminal justice board represents more than one county, the appointed membership of the board, excluding any ex officio members, shall include an equal number of members from each county, unless the county commission of each county agrees in writing otherwise.

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

(i) Any political subdivision of this state operating a community corrections program shall, regardless of whether or not the program has been approved by the Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction, provide to the subcommittee required information regarding the program's operations.

WV Legislature

§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.

WV Legislature

§62-11C-8. Local community criminal justice accounts.

(a) The treasurer of the county designated as the fiscal agent for the board pursuant to section six of this article shall establish a separate fund designated the community criminal justice fund. He or she shall deposit all fees remitted by the municipal, magistrate and circuit clerks pursuant to section seven of this article and all funds appropriated by a county commission pursuant to section seven, article eleven-b of this chapter or any other provision of this code and all funds provided by the subcommittee for approved community corrections programs in the community criminal justice fund. Funds in the community criminal justice account are to be expended by order of the designated county's commission upon recommendation of the community criminal justice board in furtherance of the operation of an approved community corrections program.

(b) A county commission representing the same county as a community criminal justice board may require the community criminal justice board to render an accounting, at intervals the county commission may designate, of the use of money, property, goods and services made available to the board by the county commission and to make available at quarterly intervals an itemized statement of receipts and disbursements, and its books, records and accounts during the preceding quarter, for audit and examination pursuant to article nine, chapter six of this code.

WV Legislature

§62-11C-9. Use of community corrections programs for those not under court supervision.

(a) Subject to the availability of community corrections programs in the county, a written pretrial diversion agreement, entered into pursuant to the provisions of §61-11-22 of this code, may require participation or supervision in a community corrections program as part of the prosecution and resolution of charges. A court ordered deferred adjudication proceeding, pursuant to the provisions of §61-11-22a of this code, may require, through terms and conditions imposed upon a defendant, participation or supervision in a community corrections program.

(b) Any pretrial diversion program for a defendant where the alleged victim is a family or household member, shall require the person charged to appear before the presiding judge or magistrate and acknowledge his or her understanding of the terms of the agreement to the charge or charges. Upon the defendant's motion, the court shall continue the matter for the period of time necessary for the person charged to complete the pretrial diversion program. If the person charged successfully completes the pretrial diversion program, the matter is to be resolved pursuant to the terms of the pretrial diversion agreement. If the person charged fails to successfully complete the pretrial diversion program, the matter shall be returned to the court's docket for resolution.

(c) No provision of this article may be construed to limit the prosecutor's discretion to prosecute an individual who has not fulfilled the terms of a written pretrial diversion by not completing the required supervision or participation in a community corrections program.

(d) Notwithstanding any provision of this code to the contrary, any person whose case is disposed of by entering into a pretrial diversion agreement, pursuant to the provisions of §61-11-22 of this code is liable for any applicable court costs. Payment of the court costs shall be made a condition of the pretrial diversion agreement: *Provided*, That financial inability to pay court costs may not be a basis for denying a person a pretrial diversion.

(e) Subject to the availability of community corrections programs in the county, a written pretrial diversion agreement, entered into pursuant to the provisions of §61-11-22 of this code, may require participation or supervision in a community corrections program as part of the prosecution and resolution of charges. A deferred adjudication proceeding, pursuant to the provisions of §61-11-22a of this code, may require, through terms and conditions imposed upon a defendant, participation or supervision in a community corrections program.

(f) Any deferred adjudication where the alleged victim is a family or household member, or the provisions of §17C-5-2 of this code shall require the person charged to appear before the presiding judge or magistrate and either acknowledge his or her understanding of the terms of the agreement and tender a plea of guilty or nolo contendere to the charge or charges. Upon the defendant's motion, the court shall continue the matter and defer adjudication for the period of time necessary for the person charged to complete the period of deferred adjudication. If the person charged successfully completes the period of deferred

WV Legislature

adjudication, the matter is to be resolved pursuant to the terms and conditions of the deferred adjudication as outlined by the court. If it is determined by the court that the defendant did not successfully complete the period of deferred adjudication, the court may accept the tendered plea of guilty or nolo contendere and proceed to sentencing or impose such other terms and conditions as the court deems appropriate, pursuant to the provisions of §61-11-22a of this code.

(g) Notwithstanding any provision of this code to the contrary, any person whose case is disposed of by entering into a deferred adjudication, pursuant to the provisions of §61-11-22a of this code is liable for any applicable court costs. Payment of the court costs shall be made a term and condition of the deferred adjudication. Payment of restitution may be made a term and condition of the deferred adjudication: *Provided*, That financial inability to pay court costs and restitution may not be a basis for denying a person deferred adjudication.

WV Legislature

§62-11C-10. Standardized risk and needs assessment; annual reviews; day report services.

The Division of Justice and Community Services shall:

(1) Require that staff of day reporting centers and other community corrections programs be trained in and use in each case a standardized risk and needs assessment as adopted by the Supreme Court of Appeals of West Virginia. The results of all standardized risk and needs assessments are confidential;

(2) Annually conduct a validation study of inter-rater reliability and risk cut-off scores by population to ensure that the standardized risk and needs assessment is sufficiently predictive of the risk of reoffending;

(3) Annually review the membership of all community criminal justice boards to ensure appropriate membership;

(4) Evaluate the services, sanctions and programs provided by each community corrections program to ensure that they address criminogenic needs and are evidence based;

(5) Encourage community criminal justice boards to develop programs in addition to or in lieu of day report centers through grants and more focused use of day report services; and

(6) Annually report to the Community Corrections Subcommittee on the results of duties required by this section.

WV Legislature