WEST VIRGINIA CODE CHAPTER 62 ARTICLE 15

WV Legislature

§62-15-1. Short title.

This article shall be known and may be cited as the "West Virginia Drug Offender Accountability and Treatment Act".

WV Legislature

§62-15-2. Definitions.

For the purposes of this article:

(1) "Assessment" means a diagnostic evaluation to determine whether and to what extent a person is a drug offender under this article and would benefit from its provisions. The assessment shall be conducted in accordance with the standardized risk and needs assessment and risk cut-off scores adopted by the West Virginia Supreme Court of Appeals. The results of all standardized risk and needs assessments and risk cut-off scores are confidential.

(2) "Continuum of care" means a seamless and coordinated course of substance abuse education and treatment designed to meet the needs of drug offenders as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) "Controlled substance" means a drug or other substance for which a medical prescription or other legal authorization is required for purchase or possession.

(4) "Drug" means a controlled substance, an illegal drug or other harmful substance.

(5) "Drug court" means a judicial intervention process that incorporates the Ten Key Components and may include preadjudication or post-adjudication participation.

(6) "Drug court team" shall consist of the following members who are assigned to the drug court:

(A) The drug court judge, which may include a magistrate, mental hygiene commissioner or other hearing officer;

(B) The prosecutor;

(C) The public defender or a member of the criminal defense bar;

(D) A representative from the day report center or community corrections program, if operating in the jurisdiction;

(E) A law-enforcement officer;

(F) The drug court coordinator;

(G) A representative from a circuit court probation office or the division of parole supervision or both;

(H) One or more substance abuse treatment providers; and

(I) Any other persons selected by the drug court team.

WV Legislature

(7) "Drug offender" means an adult person charged with a drug-related offense or an offense in which substance abuse is determined from the evidence to have been a factor in the commission of the offense.

(8) "Dual diagnosis" means a substance abuse and cooccurring mental health disorder.

(9) "Local advisory committee" may consist of the following members or their designees:

(A) A drug court circuit judge, who shall serve as chair;

(B) Drug court magistrates;

(C) The prosecutor;

(D) A public defender;

(E) The drug court coordinator;

(F) A member of the criminal defense bar;

(G) The circuit clerk;

(H) A day report center director;

(I) A circuit court probation officer, parole officer or both;

(J) Law enforcement;

(K) One or more substance abuse treatment providers;

(L) A corrections representative; and

(M) Any such other person or persons the chair considers appropriate.

(10) "Illegal drug" means a drug whose manufacture, sale, use or possession is forbidden by law.

(11) "Memorandum of understanding" means a written document setting forth an agreed upon procedure.

(12) "Offender" means an adult charged with a criminal offense punishable by incarceration.

(13) "Other harmful substance" means a misused substance otherwise legal to possess, including alcohol.

(14) "Preadjudication order" means a court order requiring a drug offender to participate in drug court before charges are filed or before conviction.

WV Legislature

(15) "Post adjudication" means a court order requiring a drug offender to participate in drug court after having entered a plea of guilty or nolo contendre or having been found guilty.

(16) "Recidivism" means any subsequent arrest for a serious offense (carrying a sentence of at least one year) resulting in the filing of a charge.

(17) "Relapse" means a return to substance use after a period of abstinence.

(18) "Split sentencing" means a sentence which includes a period of incarceration followed by a period of supervision.

(19) "Staffing" means the meeting before a drug offender's appearance in drug court in which the drug court team discusses a coordinated response to the drug offender's behavior.

(20) "Substance" means drugs or alcohol.

(21) "Substance abuse" means the illegal or improper consumption of a substance.

(22) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance usage, through a continuum of care, including: Treatment of cooccurring substance abuse and mental health issues; outpatient care; intensive outpatient care; residential care; peer support; relapse prevention; and cognitive behavioral programming, based on research about effective treatment/recovery models for the offender population.

(23) "Ten Key Components" means the following benchmarks intended to describe the very best practices, designs, and operations of drug courts. These benchmarks are meant to serve as a practical, yet flexible framework for developing effective drug courts in vastly different jurisdictions and to provide a structure for conducting research and evaluation for program accountability:

(A) Drug courts integrate alcohol and other drug treatment services with justice system case processing;

(B) Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights;

(C) Eligible participants are identified early and promptly placed in the drug court program;

(D) Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services;

(E) Abstinence is monitored by frequent alcohol and other drug testing;

(F) A coordinated strategy governs drug court responses to participants' compliance;

WV Legislature

(G) Ongoing judicial interaction with each drug court participant is essential;

(H) Monitoring and evaluation measure the achievement of program goals and gauge effectiveness;

(I) Continuing interdisciplinary education promotes effective drug court planning, implementation and operations; and

(J) Forging partnerships among drug courts, public agencies and community-based organizations generates local support and enhances drug court effectiveness.

(24) "Treatment supervision" means a program under which an eligible felony drug offender, pursuant to section six-a of this article, is ordered to undergo treatment for substance abuse by a circuit court judge as a condition of drug court, a condition of probation or as a modification of probation.

WV Legislature

§62-15-3. Policy and goals.

The Legislature recognizes that a critical need exists in this state for the criminal justice system to reduce the incidence of substance abuse and the crimes resulting from it. For the criminal justice system to maintain credibility, all drug offenders must be held accountable for their actions. A growing body of research demonstrates the impact of substance abuse on public safety, personal health and health care costs, the spread of communicable disease, educational performance and attainment, workforce reliability and productivity, family safety and financial stability. Requiring that accountability and rehabilitating treatment, in addition to or in place of, conventional and expensive incarceration, will promote public safety, the welfare of the individuals involved, reduce the burden upon the public treasury and benefit the common welfare of this state. The goals of this article shall include:

(1) Enhancing community safety and quality of life for citizens;

(2) Reducing recidivism;

(3) Reducing substance abuse;

(4) Increasing the personal, familial, and societal accountability of drug offenders;

(5) Restoring drug offenders to productive, law-abiding, and taxpaying citizens;

(6) Promoting effective interaction and use of resources among criminal justice and community agencies;

(7) Reducing the costs of incarceration; and

(8) Improving the efficiency of the criminal justice system by enacting an effective methodology.

WV Legislature

§62-15-4. Court authorization and structure.

(a) Each judicial circuit or two or more adjoining judicial circuits may establish a drug court or regional drug court program under which drug offenders will be processed to address appropriately, the identified substance abuse problem as a condition of pretrial release, probation, incarceration, parole or other release from a correctional facility: Provided, That all judicial circuits must be participating in a drug court or regional drug court program in accordance with the provisions of this article by July 1, 2016.

(b) The structure, method, and operation of each drug court program may differ and should be based upon the specific needs of and resources available to the judicial circuit or circuits where the drug court program is located.

(c) A drug court program may be preadjudication or post-adjudication for an adult offender.

(d) Participation in drug court, with the consent of the prosecution and the court, shall be pursuant to a written agreement.

(e) A drug court may grant reasonable incentives under the written agreement if it finds that the drug offender:

(1) Is performing satisfactorily in drug court;

(2) Is benefitting from education, treatment and rehabilitation;

(3) Has not engaged in criminal conduct; or

(4) Has not violated the terms and conditions of the agreement.

(f) A drug court may impose reasonable sanctions on the drug offender, including incarceration for the underlying offense or expulsion from the program, pursuant to the written agreement, if it finds that the drug offender:

(1) Is not performing satisfactorily in drug court;

(2) Is not benefitting from education, treatment or rehabilitation;

(3) Has engaged in conduct rendering him or her unsuitable for the program;

(4) Has otherwise violated the terms and conditions of the agreement; or

(5) Is for any reason unable to participate.

(g) Upon successful completion of drug court, a drug offender's case shall be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the drug court. This may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred sentencing, suspended

WV Legislature

sentencing, split sentencing, or a reduced period of incarceration.

(h) Drug court shall include the Ten Key Components and the drug court team shall act to ensure compliance with them.

(i) Nothing contained in this article confers a right or an expectation of a right to participate in a drug court nor does it obligate a drug court to accept every drug offender.

(j) Neither the establishment of a drug court nor anything herein may be construed as limiting the discretion of the jurisdiction's prosecutor to act on any criminal case which he or she deems advisable to prosecute.

(k) Each drug court judge may establish rules and may make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals which has administrative authority over the courts. The Supreme Court of Appeals shall provide uniform referral, procedure and order forms that shall be used in all drug courts in this state.

WV Legislature

§62-15-5. Drug court teams.

(a) Each local jurisdiction that intends to establish a drug court, or continue the operation of an existing drug court, shall establish a local drug court team.

(b) The drug court team shall, when practicable, conduct a staffing prior to each drug court session to discuss and provide updated information regarding drug offenders. After determining their progress or lack thereof, the drug court team shall recommend the appropriate incentive or sanction to be applied. If the drug court team cannot agree on the appropriate action, the court shall make the decision based on information presented in the staffing.

WV Legislature

§62-15-6. Eligibility.

(a) A drug offender shall not be eligible for the drug court program if:

(1) The underlying offense involves a felony crime of violence, unless there is a specific treatment program available designed to address violent offenders;

(2) The underlying offense involves an offense that requires registration as a sex offender pursuant to the article twelve, chapter fifteen of this Code;

(3) The drug offender has a prior felony conviction in this state or another state for a felony crime of violence; or

(4) The drug offender has a prior conviction in this state or another state for a crime that requires registration as a sex offender pursuant to article twelve, chapter fifteen of this Code.

(b) Eligible offenses may be further restricted by the rules of a specific drug court program.

(c) Nothing in this section shall require a drug court judge to consider or accept every offender with a treatable condition or addiction, regardless of the fact that the controlling offense is eligible for consideration in the program.

WV Legislature

§62-15-6a. Treatment supervision.

(a) A felony drug offender is eligible for treatment supervision only if the offender would otherwise be sentenced to prison, and the standardized risk and needs assessment indicates the offender has a high risk for reoffending and a need for substance abuse treatment: Provided, That an inmate who is, or has been, convicted for a felony crime of violence against the person, a felony offense where the victim was a minor child or a felony offense involving the use of a firearm, as defined in subsections (o) and (p), section twenty-seven, article five, chapter twenty-eight of this code, shall not be eligible for treatment supervision.

(b) As a condition of drug court, a condition of probation or as a modification of probation, a circuit court judge may impose treatment supervision on an eligible drug offender convicted of a felony: Provided, That a judge may impose treatment supervision on an eligible drug offender convicted of a felony, notwithstanding the results of the risk assessment, upon making specific written findings of fact as to the reason for the departure.

(c) Whenever a circuit court judge determines that a treatment supervision participant has violated the conditions of his or her treatment supervision involving the participant's use of alcohol or a controlled substance, the judge may order a period of incarceration to encourage compliance with program requirements.

(1) Upon written finding by the circuit court judge that the participant would otherwise be sentenced to the custody of the Commissioner of Corrections for service of the underlying sentence, the cost of the incarceration order under this subsection, not to exceed a period of thirty days in any one instance, shall be paid by the Division of Corrections.

(2) Whenever a circuit court judge orders the incarceration of a treatment supervision participant pursuant to this subsection, a copy of the order of confinement shall be provided by the clerk of the circuit court within five days to the Commissioner of Corrections.

(d) The Division of Justice and Community Services shall in consultation with the Governor's Advisory Council on Substance Abuse, created by Executive Order No. 5-11, use appropriated funds to develop proposed substance abuse treatment plans to serve those offenders under treatment supervision in each judicial circuit and on parole supervision.

(e) The Division of Justice and Community Services, in consultation with the Governor's Advisory Committee on Substance Abuse, shall develop:

(1) Qualifications for provider certification to deliver a continuum of care to offenders;

(2) Fee reimbursement procedures; and

(3) Other matters related to the quality and delivery of services.

(f) The Division of Justice and Community Services shall require education and training for providers which shall include, but not be limited to, cognitive behavioral training. The duties

WV Legislature

of providers who provide services under this section may include: Notifying the probation department and the court of any offender failing to meet the conditions of probation or referrals to treatment; appearing at revocation hearings when required; and providing assistance with data reporting and treatment program quality evaluation.

(g) The cost for all drug abuse assessments and certified drug treatment under this section and subsection (e), section seventeen, article twelve of this chapter shall be paid by the Division of Justice and Community Services from funds appropriated for that purpose. The Division of Justice and Community Services shall contract for payment for the services provided to eligible offenders.

(h) The Division of Justice and Community Services, in consultation with the Governor's Advisory Council on Substance Abuse, shall submit an annual report on or before September 30 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 containing:

(1) The dollar amount and purpose of funds provided for the fiscal year;

(2) The number of people on treatment supervision who received services and whether their participation was the result of a direct sentence or in lieu of revocation;

(3) The number of people on treatment supervision who, pursuant to a judge's specific written findings of fact, received services despite the risk assessment indicating less than high risk for reoffending and a need for substance abuse treatment;

(4) The type of services provided;

(5) The rate of revocations and successful completions for people who received services;

(6) The number of people under supervision receiving treatment under this section who were rearrested and confined within two years of being placed under supervision;

(7) The dollar amount needed to provide services in the upcoming year to meet demand and the projected impact of reductions in program funding on cost and public safety measures; and

(8) Other appropriate measures used to measure the availability of treatment and the effectiveness of services.

(i) Subsections (a), (b), and (c) of this section shall take effect on January 1, 2014. The remaining provisions of this section shall take effect on July 1, 2013.

WV Legislature

§62-15-6b. Intermediate incarceration sanctions for drug court participants; responsibility for costs of incarceration.

(a) Whenever a judge of a drug court determines that a participant who has pled to a felony offense has committed a violation of his or her conditions of participation which would, in the judge's opinion, warrant a period of incarceration to encourage compliance with program requirements, the cost of the incarceration, not to exceed a period of thirty days in any one instance, shall be paid by the Division of Corrections. The judge must make a written finding that the participant would otherwise be sentenced to the custody of the Commissioner of Corrections for service of the underlying sentence.

(b) Whenever a drug court judge incarcerates a participant pursuant to subsection (a) of this section, the clerk of the circuit court shall provide a copy of the order of confinement within five days to the Commissioner of Corrections.

WV Legislature

§62-15-7. Treatment and support services.

(a) As part of any diagnostic assessments, the individual assessment should make specific recommendations to the drug court team regarding the type of treatment program and duration necessary so that a drug offender's individualized needs can be addressed. These assessments and resulting recommendations should be based upon objective medical diagnostic criteria. Treatment recommendations accepted by the court, pursuant to the provisions of this article, shall be deemed to be reasonable and necessary.

(b) A drug court making a referral for substance abuse treatment shall refer the drug offender to a program that is licensed, certified, or approved by the court.

(c) The court shall determine which treatment programs are authorized to provide the recommended treatment to drug offenders. The relationship between the treatment program and the court should be governed by a Memorandum of Understanding, which should include the timely reporting of the drug offender's progress or lack thereof to the drug court.

(d)It is essential to provide offenders with adequate support services and aftercare.

(e) Recognizing that drug offenders are frequently dually diagnosed, appropriate services should be made available, where practicable.

(f) Recognizing that the longer a drug offender stays in treatment, the better the outcome, the length of stay in treatment should be determined by the drug court team based on individual needs and accepted practices: Provided, That drug court participation shall not be less than one year duration.

WV Legislature

§62-15-8. Drug testing.

(a) The drug court team shall ensure fair, accurate, and reliable drug testing procedures, following collection procedures approved by the Supreme Court of Appeals.

(b) The drug offender shall be ordered to submit to frequent, random, and observed drug testing to monitor abstinence.

(c) Anyone in receipt of drug test results shall maintain the information in compliance with the requirements of federal and state confidentially laws.

WV Legislature

§62-15-9. Governance.

(a) The Supreme Court of Appeals will be responsible for court funding, administration, and continuance or discontinuance of drug courts, mental health courts, or other problem-solving courts. The administrative director, or his or her designee, will oversee the planning, implementation, and development of these courts as the administrative arm of the Supreme Court of Appeals.

(b) The administering drug court judge in each drug court's jurisdiction shall appoint a local advisory committee. The advisory committee shall ensure quality, efficiency, and fairness in planning, implementing, and operating drug courts that serve the jurisdiction, and the provision of a full continuum of care for drug offenders.

(c) The local advisory committee shall annually report to the Supreme Court of Appeal's administrative director, or designee, by December 31, of each year. The report shall include:

(1) A description of all drug courts operating within the jurisdiction;

(2) Participating judges and magistrates if applicable;

(3) Community involvement;

(4) Education and training;

(5) Use of existing resources;

(6) Collaborative efforts; and

(7) An evaluation of the critical data elements required by subsection (a), section ten of this article.

WV Legislature

§62-15-9a. Adult Drug Court Participation Fund.

(a) The special revenue fund created within the State Treasury designated the Adult Drug Court Participation Fund to be administered by the West Virginia Supreme Court of Appeals is hereby continued. The fund shall consist of moneys received from individuals participating in an adult drug court program.

(b) All moneys collected by the Administrator of the Supreme Court of Appeals for participation in the court's adult drug court program shall be deposited into the Adult Drug Court Participation Fund. Any moneys remaining in the fund at the end of a fiscal year shall remain in the fund and be available for expenditure during the ensuing fiscal year.

(c) All moneys deposited into the State Treasury and credited to the Adult Drug Court Participation Fund shall be used to pay the costs associated with maintaining and administering the court's adult drug court programs.

WV Legislature

§62-15-10. Program integrity and offender accountability.

(a) Drug courts shall collect and maintain the following information and any other information required by the Supreme Court of Appeals or its administrative office:

(1) Prior criminal history;

(2) Prior substance abuse treatment history, including information on the drug offender's success or failure in those programs;

(3) Employment, education, and income histories;

(4) Gender, race, ethnicity, marital and family status, and any child custody and support obligations;

(5) The number of babies, both addicted and healthy, born to female drug offenders during participation in drug court;

(6) Instances of relapse occurring during participation in drug court;

(7) Instances of recidivism occurring during and after participation in drug court. Recidivism shall be measured at intervals of six months, one year, two years, and five years after successful graduation from drug court;

(8) The number of offenders screened for eligibility, the number of eligible drug offenders who were and were not admitted and their case dispositions;

(9) The drug of choice and the estimated daily financial cost to the drug offender at the time of entry into the program; and

(10) The costs of operation and sources of funding.

(b) A drug offender may be required as a condition of pretrial diversion, probation, or parole to provide the information described in this section. The collection and maintenance of information under this section shall be collected in a standardized format according to applicable guidelines set forth by the Supreme Court of Appeals.

(c) To protect drug offenders' privacy in accordance with federal and state confidentiality laws, treatment records must be kept in a secure environment, separated from the court records to which the public has access.

WV Legislature

§62-15-11. Funding.

(a) Each drug court with the guidance of the Supreme Court of Appeals may establish a schedule for the payment of reasonable fees and costs necessary to conduct the program;

(b) Nothing in this article shall prohibit local advisory committees or drug court teams from obtaining supplemental funds or exploring grants to support drug courts.

(c) Nothing in this article shall be construed to supplant funds currently utilized for drug courts.

WV Legislature

§62-15-12. Immunity from liability.

(a) Any individual who, in good faith, provides services pursuant to this article shall not be liable in any civil action. The grant of immunity provided in this subsection shall extend to all employees and administrative personnel.

(b) Any qualified person who obtains, in a medically accepted manner, a specimen of breath, blood, urine, or other bodily substance pursuant to any provision of this article shall not be liable in any civil action.

WV Legislature

§62-15-13. Statutory construction.

The provisions of this article shall be construed to effectuate its remedial purposes.

WV Legislature