

No. 43

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1985



**ENROLLED**  
*Committee Substitute for*  
SENATE BILL NO. 43

(By Mr. Holliday)



PASSED March 18 1985  
In Effect from Passage



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## Senate Bill No. 43

(BY MR. HOLLIDAY, *original sponsor*)

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[Passed March 18, 1985; in effect from passage.]

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AN ACT to amend article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections one-a and three, relating to sentencing alternatives; required findings; custody of sheriff; costs of confinement; continuing jurisdiction; substantiation by physician of health status; personnel status; and limitation on liability of public officials and county and community service work agencies.

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

That article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections one-a and three, 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 court of
- 2 record under any criminal provision of this code of a
- 3 misdemeanor or felony, which may be punishable by
- 4 confinement in the county jail, may, in the discretion of
- 5 the sentencing judge, as an alternative to the sentence
- 6 imposed by statute for such crime, be sentenced under
- 7 one of the following programs:

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

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

23 (3) The community service program under which  
24 persons sentenced would spend no time in jail but would  
25 be sentenced to a number of hours or days of community  
26 service work with tax supported agencies. Eight hours  
27 of service work shall be credited as one day of the sen-  
28 tence imposed. Persons sentenced under this program  
29 may be required to provide their own transportation to  
30 and from the work site, lunch and work clothes.

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

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

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

41 (2) The person sentenced is not a habitual criminal  
42 within the meaning of sections eighteen and nineteen of  
43 article eleven, chapter sixty-one of this code;

44 (3) That adequate facilities for the administration and  
45 supervision of alternative sentencing programs are avail-  
46 able through the court's probation officers or the county  
47 sheriff; and,

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

50 (d) Persons sentenced under the provisions of this  
51 article shall remain under the administrative custody and  
52 supervision of the court's probation officers or the county  
53 sheriff.

54 (e) Persons sentenced under the provisions of this  
55 section may be required to pay the costs of their con-  
56 finement, including meal costs, at the discretion of the  
57 court.

58 (f) Persons sentenced under the provisions of this  
59 section remain under the jurisdiction of the court. The  
60 court may withdraw any alternative sentence at any time  
61 by order entered with or without notice and require that  
62 the remainder of the sentence be served in the county  
63 jail: *Provided*, That no alternative sentence directed by  
64 the sentencing judge or administered under the supervi-  
65 sion of the sheriff, his deputies, a jailer or a guard, shall  
66 require the convicted person to perform duties which  
67 would be considered detrimental to the convicted  
68 person's health as attested by a physician.

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

1 (a) No person sentenced under any provision of this  
2 article shall be regarded as an employee of the sheriff,  
3 county commission or the county or community service  
4 work agency to which the person sentenced is assigned  
5 for any purpose, including but not limited to workers'  
6 compensation, civil service, unemployment compensation,  
7 public employees insurance or public employees retire-  
8 ment.

9 (b) Neither the sheriff, the county commission or com-  
10 munity service agency to which the person is assigned  
11 shall be liable for injury or damage to third parties in-  
12 tententionally committed by the person so sentenced or for  
13 any action on behalf of the person so sentenced except  
14 in the case of gross negligence on the part of the sheriff,  
15 county commission or community service agency or the

16 supervisor of the person so sentenced: *Provided*, That  
17 nothing herein shall bar a claim by a third party for  
18 injury or damage resulting from the negligent act of the  
19 person so sentenced committed outside the confines of a  
20 county jail and within the scope of the work required by  
21 the alternative sentence.

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

Bruce O. Williams  
Chairman Senate Committee

Floyd Fuller  
Chairman House Committee

Originated in the Senate.

In effect from passage.

Todd C. Melts  
Clerk of the Senate

Donald L. Hopp  
Clerk of the House of Delegates

Don Tonkovich  
President of the Senate

Joseph Albright  
Speaker House of Delegates

The within approved this the 26th  
day of March, 1985.

Arch A. Moore, Jr.  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/85

Time 4:00 p.m.

RECEIVED

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE