

SB 105

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 105

(By Senators JACKSON, KESSLER & STARRS)



PASSED MARCH 14, 1998

In Effect NINETY DAYS FROM Passage

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SENATE WEST VIRGINIA

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 105

(SENATORS JACKSON, KESSLER AND SHARPE, *original sponsors*)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact section sixteen, article four, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one-a, article eleven-a of said chapter, all relating to community service being credited against criminal fine or confinement; limitations; provisions for punishing willful failure to perform community service; approval of entities for which work may be performed; and standards of proof.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article four, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted; and that section one-a, article eleven-a of said chapter be amended and reenacted, all to read as follows:

ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.

§62-4-16. Community service work may be substituted in lieu of a fine in municipal court.

1 (a) Notwithstanding any provision of this code to the
2 contrary, a municipal judge may substitute in lieu of the
3 imposition of a sentence of incarceration or imposition of
4 a fine, substitute community service work for such
5 incarceration or fine. Where community service work is
6 ordered as a substitute on a sentence of incarceration an
7 eight hour work day shall extinguish one day of any
8 sentence of incarceration. The minimum wage established
9 by the prevailing federal minimum wage in effect at the
10 time of sentencing is imposed shall be used to compute the
11 amount of community service work necessary to extin-
12 guish the fine. In the discretion of the court, the sentence
13 credits may run concurrently or consecutively.

14 (b) Any community service ordered pursuant to the
15 provisions of this section shall be performed for govern-
16 ment entities or charitable or nonprofit entities and be
17 supervised by the chief of police of the municipality or his
18 or her designee.

19 (c) Persons sentenced under the provisions of this section
20 remain under the jurisdiction of the municipal court. The
21 court may withdraw the community service sentence at
22 any time by order entered with or without notice and
23 order a person previously sentenced to community service
24 to serve the term of incarceration or to pay the fine
25 available to the court upon the person's conviction:
26 *Provided*, That any community service work performed
27 before the community service sentence is withdrawn shall
28 be credited against any term of incarceration or fine
29 imposed.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.**§62-11A-1a. Other sentencing alternatives.**

1 (a) Any person who has been convicted in a circuit court
2 or in a magistrate court under any criminal provision of
3 this code of a misdemeanor or felony, which is punishable
4 by imposition of a fine or confinement in the county or
5 regional jail or the state penitentiary, or both fine and
6 confinement, may, in the discretion of the sentencing
7 judge or magistrate, as an alternative to the sentence
8 imposed by statute for the crime, be sentenced under one
9 of the following programs:

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

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

24 (3) The community service program under which persons
25 sentenced would spend no time in jail but would be
26 sentenced to a number of hours or days of community
27 service work with government entities or charitable or
28 nonprofit entities approved by the circuit court. Regard-
29 ing any portion of the sentence designated as confinement,
30 eight hours of community service work shall be credited as
31 one day of the sentence imposed. Regarding any portion
32 of the sentence designated as a fine, the fine shall be
33 credited at an hourly rate equal to the prevailing federal
34 minimum wage at the time the sentence was imposed. In

35 the discretion of the court, the sentence credits may run
36 concurrently or consecutively. Persons sentenced under
37 this program may be required to provide their own
38 transportation to and from the work site, lunch and work
39 clothes.

40 (b) In no event may the duration of the alternate sen-
41 tence exceed the maximum period of incarceration
42 otherwise allowed.

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

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

50 (2) In circuit court cases, that the person sentenced is not
51 a habitual criminal within the meaning of sections eigh-
52 teen and nineteen, article eleven, chapter sixty-one of this
53 code;

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

58 (4) In circuit court cases, that adequate facilities for the
59 administration and supervision of alternative sentencing
60 programs are available through the court's probation
61 officers or the county sheriff or, in magistrate court cases,
62 that adequate facilities for the administration and super-
63 vision of alternative sentencing programs are available
64 through the county sheriff; and

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

67 (d) Persons sentenced by the circuit court under the
68 provisions of this article shall remain under the adminis-

69 trative custody and supervision of the court's probation
70 officers or the county sheriff. Persons sentenced by a
71 magistrate shall remain under the administrative custody
72 and supervision of the county sheriff.

73 (e) Persons sentenced under the provisions of this section
74 may be required to pay the costs of their incarceration,
75 including meal costs, at the discretion of the court.

76 (f) Persons sentenced under the provisions of this section
77 remain under the jurisdiction of the court. The court may
78 withdraw any alternative sentence at any time by order
79 entered with or without notice and require that the
80 remainder of the sentence be served in the county jail,
81 regional jail or penitentiary: *Provided*, That no alterna-
82 tive sentence directed by the sentencing judge or magis-
83 trate or administered under the supervision of the sheriff,
84 his or her deputies, a jailer or a guard, shall require the
85 convicted person to perform duties which would be
86 considered detrimental to the convicted person's health as
87 attested by a physician.

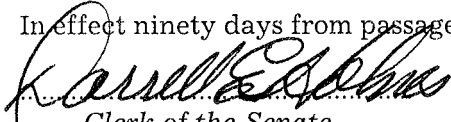
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

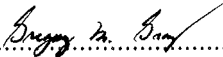

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Chairman Senate Committee

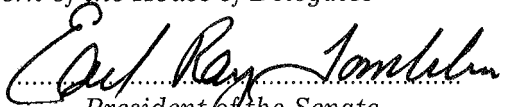

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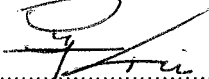
Originated in the Senate.

In effect ninety days from passage.

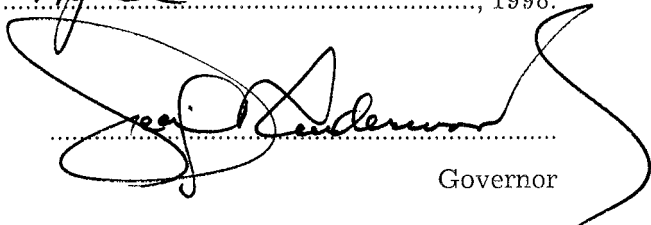

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within approved this the 6th
day of April, 1998.


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Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/98

Time 12:00pm