

HB 2684
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2009



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2684

(By Delegates Moore, Webster, Brown,
Overington and Schadler)



Passed April 9, 2009

In Effect Ninety Days from Passage

FILED

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E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 2684

(BY DELEGATES MOORE, WEBSTER, BROWN,
OVERINGTON AND SCHADLER)

[Passed April 9, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §61-11-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §62-15-1, §62-15-2, §62-15-3, §62-15-4, §62-15-5, §62-15-6, §62-15-7, §62-15-8, §62-15-9, §62-15-10, §62-15-11, §62-15-12, and §62-15-13, all relating to the enactment of the "West Virginia Drug Offender Accountability and Treatment Act"; removing conflicting provisions related to drug court from the code; explaining the policy and goals of the Act; authorizing drug courts; providing for the structure of drug courts; authorizing drug court teams; establishing eligibility requirements for drug courts; providing treatment and services to participants; establishing drug testing procedures; providing for oversight and rule-making authority of the supreme court of appeals; collecting and maintaining information on drug court candidates and participants; funding; providing for immunity from liability; and establishing the manner in which the Act is to be construed.

Be it enacted by the Legislature of West Virginia:

That §61-11-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §62-15-1, §62-15-2, §62-15-3, §62-15-4, §62-15-5, §62-15-6, §62-15-7, §62-15-8, §62-15-9, §62-15-10, §62-15-11, §62-15-12, and §62-15-13, all to read as follows:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-22. Pretrial diversion agreements; conditions; drug court programs.

1 (a) A prosecuting attorney of any county of this state or
2 a person acting as a special prosecutor may enter into a
3 pretrial diversion agreement with a person under
4 investigation or charged with an offense against the state of
5 West Virginia, when he or she considers it to be in the
6 interests of justice. The agreement is to be in writing and is
7 to be executed in the presence of the person's attorney, unless
8 the person has executed a waiver of counsel.

9 (b) Any agreement entered into pursuant to the provisions
10 of subsection (a) of this section may not exceed twenty-four
11 months in duration. The duration of the agreement must be
12 specified in the agreement. The terms of any agreement
13 entered into pursuant to the provisions of this section may
14 include conditions similar to those set forth in section nine,
15 article twelve, chapter sixty-two of this code relating to
16 conditions of probation. The agreement may require
17 supervision by a probation officer of the circuit court, with
18 the consent of the court. An agreement entered into pursuant

19 to this section must include a provision that the applicable
20 statute of limitations be tolled for the period of the
21 agreement.

22 (c) A person who has entered into an agreement for
23 pretrial diversion with a prosecuting attorney and who has
24 successfully complied with the terms of the agreement is not
25 subject to prosecution for the offense or offenses described
26 in the agreement or for the underlying conduct or transaction
27 constituting the offense or offenses described in the
28 agreement, unless the agreement includes a provision that
29 upon compliance the person agrees to plead guilty or nolo
30 contendere to a specific related offense, with or without a
31 specific sentencing recommendation by the prosecuting
32 attorney.

33 (d) No person charged with a violation of the provisions
34 of section two, article five, chapter seventeen-c of this code
35 may participate in a pretrial diversion program. No person
36 charged with a violation of the provisions of section
37 twenty-eight, article two of this chapter may participate in a
38 pretrial diversion program unless the program is part of a
39 community corrections program approved pursuant to the
40 provisions of article eleven-c, chapter sixty-two of this code.
41 No person indicted for a felony crime of violence against the
42 person where the alleged victim is a family or household
43 member as defined in section two hundred three, article
44 twenty-seven, chapter forty-eight of this code or indicted for
45 a violation of the provisions of sections three, four or seven,
46 article eight-b of this chapter is eligible to participate in a
47 pretrial diversion program. No defendant charged with a
48 violation of the provisions of section twenty-eight, article two
49 of this chapter or subsections (b) or (c), section nine, article
50 two of this chapter where the alleged victim is a family or
51 household member is eligible for pretrial diversion programs
52 if he or she has a prior conviction for the offense charged or

53 if he or she has previously been granted a period of pretrial
54 diversion pursuant to this section for the offense charged.
55 Notwithstanding any provision of this code to the contrary,
56 defendants charged with violations of the provisions of
57 section twenty-eight, article two, chapter sixty-one of this
58 code or the provisions of subsection (b) or (c), section nine,
59 article two of said chapter where the alleged victim is a
60 family or household member as defined by the provisions of
61 section two hundred three, article twenty-seven, chapter
62 forty-eight of this code are ineligible for participation in a
63 pretrial diversion program before the July 1, 2002, and before
64 the community corrections subcommittee of the Governor's
65 Committee on Crime, Delinquency and Correction
66 established pursuant to the provisions of section two, article
67 eleven-c, chapter sixty-two of this code, in consultation with
68 the working group of the subcommittee, has approved
69 guidelines for a safe and effective program for diverting
70 defendants charged with domestic violence.

71 (e) The provisions of section twenty-five of this article
72 are inapplicable to defendants participating in pretrial
73 diversion programs who are charged with a violation of the
74 provisions of section twenty-eight, article two, chapter
75 sixty-one of this code. The community corrections
76 subcommittee of the Governor's Committee on Crime,
77 Delinquency and Correction established pursuant to the
78 provisions of section two, article eleven-c, chapter sixty-two
79 of this code shall, upon approving any program of pretrial
80 diversion for persons charged with violations of the
81 provisions of section twenty-eight, article two, chapter
82 sixty-one of this code, establish and maintain a central
83 registry of the participants in the programs which may be
84 accessed by judicial officers and court personnel.

CHAPTER 62. CRIMINAL PROCEDURE.

**ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND
TREATMENT ACT.**

§62-15-1. Short Title.

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

§62-15-2. Definitions.

1 For the purposes of this article:

2 (1) "Assessment" means a diagnostic evaluation to
3 determine whether and to what extent a person is a drug
4 offender under this article and would benefit from its
5 provisions. The assessment shall be conducted in accordance
6 with the standards, procedures, and diagnostic criteria
7 designed to provide effective and cost-beneficial use of
8 available resources.

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

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

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

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

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

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

27 (B) The prosecutor;

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

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

33 (E) A law-enforcement officer;

34 (F) The drug court coordinator;

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

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

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

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

44 (8) "Dual Diagnosis" means a substance abuse and co-
45 occurring mental health disorder.

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

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

49 (B) Drug court magistrate(s);

50 (C) Prosecutor;

51 (D) Public defender;

52 (E) Drug court coordinator;

53 (F) Criminal defense bar;

54 (G) Circuit clerk;

55 (H) Day report center director;

56 (I) Circuit court probation officer, parole officer or both;

57 (J) Law enforcement;

58 (K) One or more substance abuse treatment providers;

59 (L) Corrections representative; and

60 (M) Such other person or persons the chair deems
61 appropriate.

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

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

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

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

70 (14) "Pre-adjudication" means a court order requiring a
71 drug offender to participate in drug court before charges are
72 filed or before conviction.

73 (15) "Post-adjudication" means a court order requiring a
74 drug offender to participate in drug court after having entered
75 a plea of guilty or *nolo contendere* or having been found
76 guilty.

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

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

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

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

88 (20) "Substance" means drug.

89 (21) "Substance abuse" means the illegal or improper
90 consumption of a drug.

91 (22) "Substance abuse treatment" means a program
92 designed to provide prevention, education, and therapy
93 directed toward ending substance abuse and preventing a
94 return to substance usage.

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

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

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

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

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

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

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

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

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

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

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

§62-15-3. Policy and Goals.

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

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

19 (2) Reducing recidivism;

20 (3) Reducing substance abuse;

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

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

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

27 (7) Reducing the costs of incarceration; and

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

§62-15-4. Court Authorization and Structure.

1 (a) Each judicial circuit or two or more adjoining judicial
2 circuits may establish a drug court or regional drug court
3 program under which drug offenders will be processed to
4 address appropriately, the identified substance abuse problem
5 as a condition of pretrial release, probation, incarceration,
6 parole or other release from a correctional facility.

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

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

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

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

18 (1) Is performing satisfactorily in drug court;

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

21 (3) Has not engaged in criminal conduct; or

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

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

28 (1) Is not performing satisfactorily in drug court;

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

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

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

35 (5) Is for any reason unable to participate.

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

41 dismissal of charges, probation, deferred sentencing,
42 suspended sentencing, split sentencing, or a reduced period
43 of incarceration.

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

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

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

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

§62-15-5. Drug Court Teams.

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

4 (b) The drug court team shall, when practicable, conduct
5 a staffing prior to each drug court session to discuss and
6 provide updated information regarding drug offenders. After
7 determining their progress or lack thereof, the drug court
8 team shall recommend the appropriate incentive or sanction

9 to be applied. If the drug court team cannot agree on the
10 appropriate action, the court shall make the decision based on
11 information presented in the staffing.

§62-15-6. Eligibility.

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

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

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

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

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

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

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

§62-15-7. Treatment and Support Services.

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

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

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

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

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

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

§62-15-8. Drug Testing.

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

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

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

§62-15-9. Governance.

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

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

14 (c) The local advisory committee shall annually report to
15 the Supreme Court of Appeal's administrative director, or
16 designee, by the thirty-first day of December of each year.
17 The report shall include:

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

20 (2) Participating judges and magistrates if applicable;

21 (3) Community involvement;

22 (4) Education and training;

23 (5) Use of existing resources;

24 (6) Collaborative efforts; and

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

§62-15-10. Program Integrity and Offender Accountability.

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

4 (1) Prior criminal history;

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

8 (3) Employment, education, and income histories;

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

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

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

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

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

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

26 (10) the costs of operation and sources of funding.

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

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

§62-15-11. Funding.

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

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

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

§62-15-12. Immunity from Liability.

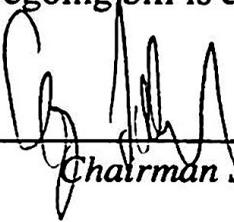
1 (a) Any individual who, in good faith, provides services
2 pursuant to this article shall not be liable in any civil action.
3 The grant of immunity provided in this subsection shall
4 extend to all employees and administrative personnel.

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

§62-15-13. Statutory Construction.

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

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



Chairman Senate Committee



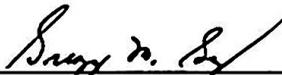
Chairman House Committee

Originating in the House.

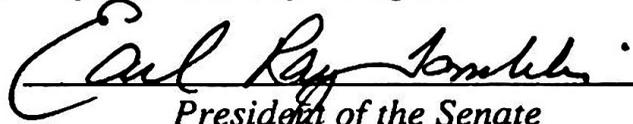
In effect ninety days from passage.



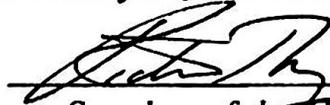
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th
day of April, 2009.



Governor

PRESENTED TO THE
GOVERNOR

APR 28 2009

Time 2:14p