

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 307

(SENATORS CANN, WILLIAMS, COOKMAN AND PALUMBO,
ORIGINAL SPONSORS)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 307 (veto)

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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E N R O L L E D

COMMITTEE SUBSTITUTE

**OFFICE WEST VIRGINIA
SECRETARY OF STATE**

FOR

Senate Bill No. 307

**(SENATORS CANN, WILLIAMS, COOKMAN AND PALUMBO,
original sponsors)**

[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §51-10-1, §51-10-2, §51-10-3, §51-10-4, §51-10-5, §51-10-6, §51-10-7, §51-10-8, §51-10-9 and §51-10-10 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §51-10-5a; to amend and reenact §62-11C-5 and §62-11C-7 of said code; and to amend said code by adding thereto a new article, designated §62-11F-1, §62-11F-2, §62-11F-3, §62-11F-4 and §62-11F-5, all relating to the disposition of persons charged with committing a crime; regulating bail bondsmen in criminal cases; prohibiting certain conduct by bail bondsmen; regulating fees charged by bail bondsmen; requiring the posting of the names of licensed bail bondsmen; authorizing the Commissioner of the West Virginia Insurance Commission to regulate bail bondsmen; authorizing the Insurance Commissioner to propose legislative rules; updating penalties for violations; establishing an internal effective date for bail bondsman compliance; requiring judges and magistrates to enforce the provisions of law related to the regulation of bail bondsmen; authorizing pretrial release programs; permitting

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certain fees to be assessed to county commissions; permitting certain fees to be assessed to persons on pretrial release upon subsequent conviction; stating applicability of pretrial release programs; establishing guidelines for pretrial release programs; providing for potential funding sources; requiring community pretrial committees to recommend release of certain persons facing criminal charges who are in regional jails prior to adjudication; setting forth the duties of pretrial release programs; clarifying that a circuit judge or a magistrate may impose a secured bond on participants in pretrial release programs; and removing day fine programs from the list of authorized community corrections programs.

Be it enacted by the Legislature of West Virginia:

That §51-10-1, §51-10-2, §51-10-3, §51-10-4, §51-10-5, §51-10-6, §51-10-7, §51-10-8, §51-10-9 and §51-10-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §51-10-5a; that §62-11C-5 and §62-11C-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §62-11F-1, §62-11F-2, §62-11F-3, §62-11F-4 and §62-11F-5, all to read as follows:

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 10. BAIL BONDSMEN IN CRIMINAL CASES.

§51-10-1. Definitions.

1 When used in this article, these words and terms mean the
2 following:

3 (1) "Bonding business" means the business of becoming
4 surety for compensation upon bonds in criminal cases.

5 (2) "Bail bondsman" means any person engaged in the
6 bonding business that has satisfied the requirements for being
7 a property and casualty insurance producer as set forth by the
8 Insurance Commission.

9 (3) "Insurer" means any domestic, foreign or alien surety
10 company which has been qualified generally to transact
11 surety business.

12 (4) "Self insurer" means any person engaged in the
13 bonding business as a bail bondsman who pledges his or her
14 own property as collateral for the bonds on which they serve
15 as surety for compensation.

§51-10-2. Business impressed with public interest.

1 The business of becoming surety for compensation upon
2 bonds in criminal cases is a public interest.

§51-10-3. Procuring business through official or attorney for consideration prohibited.

1 (a) It shall be unlawful for any person engaged, either as
2 principal or as the clerk, agent or representative of a
3 corporation, or another person in the bonding business either
4 directly or indirectly, to give, donate, lend, contribute or to
5 promise to give, donate, lend or contribute any money,
6 property, entertainment or other thing of value to any
7 attorney at law, police officer, sheriff, deputy sheriff, jailer,
8 probation officer, clerk or other attache of a criminal court or
9 public official for procuring or assisting in procuring any
10 person to employ the bondsman to execute as surety any
11 bond for compensation in any criminal case.

12 (b) It shall be unlawful for any attorney at law, police
13 officer, sheriff, deputy sheriff, jailer, probation officer, clerk,

14 bailiff or other attache of a criminal court or public official to
15 accept or receive from any person engaged in the bonding
16 business any money, property, entertainment or other thing of
17 value for procuring or assisting in procuring any person to
18 employ any bondsman to execute as surety any bond for
19 compensation in any criminal case.

**§51-10-4. Attorneys procuring employment through official or
bondsman for consideration prohibited.**

1 It is unlawful for any attorney at law, either directly or
2 indirectly, to give, loan, donate, contribute or to promise to
3 give, loan, donate or contribute any money, property,
4 entertainment or other thing of value to, or to split or divide
5 any fee or commission with, any bondsman, police officer,
6 sheriff, deputy sheriff, probation officer, assistant probation
7 officer, bailiff, clerk or other attache of any criminal court for
8 causing or procuring or assisting in causing or procuring any
9 person to employ the attorney to represent him in any
10 criminal case in the State of West Virginia.

**§51-10-5. Receiving other than regular fee for bonding
prohibited; bondsman prohibited from
endeavoring to secure dismissal or settlement.**

1 (a) It is lawful to charge for executing any bond in a
2 criminal case.

3 (b) It is unlawful for any person or corporation engaged
4 in the bonding business, either as principal, or clerk, agent or
5 representative of another, either directly or indirectly, to
6 charge, accept or receive any sum of money, or other thing of
7 value, other than the bonding fee from any person for whom
8 he has executed bond, for any other service whatever
9 performed in connection with any indictment or charge, upon
10 which the person is bailed or in any counties where the court

11 has regulated bonding fees pursuant to section nine of this
12 article.

13 (c) It is unlawful for any person or corporation engaged
14 in the bonding business, either as principal, clerk, agent or
15 representative of another, either directly or indirectly, to
16 charge, accept or receive any sum of money or other thing of
17 value other than the duly authorized maximum bonding fee,
18 from any person for whom he or she has executed bond, for
19 any other service whatever performed in connection with any
20 indictment or charge upon which the person is bailed or held
21 in West Virginia.

22 (d) It is unlawful for any person or corporation engaged
23 either as principal or as agent, clerk or representative of
24 another in the bonding business to settle, or attempt to settle,
25 or to procure or attempt to procure the dismissal of any
26 indictment, information, or charge against any person in
27 custody or held upon bond in West Virginia, with any court,
28 or with the prosecuting attorney, or with any police officer in
29 any court.

§51-10-5a. Fees and collateral security required by bondsmen.

1 (a) The fee required by bail bondsmen shall be at least ten
2 percent of the amount of the bond. Fees (including personal
3 property, real property, indemnity agreement and guarantee)
4 received by such licensee shall not, in the aggregate, exceed
5 the amount of the bond.

6 At the discretion of the bail bondsman, the fee may be
7 paid as follows:

8 (1) A minimum of a three-percent down payment shall be
9 required at the issuance of bond;

10 (2) The remaining percentage shall be paid over a period
11 not to exceed twelve months;

12 (b) When collateral or security is received by a bail
13 bondsman a receipt shall be furnished to the defendant.
14 Copies of all receipts issued shall be kept by the bail
15 bondsman. All receipts issued shall:

16 (1) Be prenumbered by the printer and used and filed in
17 consecutive numerical order;

18 (2) Show the name and address of the bail bondsman;

19 (3) Show the amount of collateral and date received;

20 (4) Show the name of the person accepting collateral; and

21 (5) Show the total amount of the bond for which the
22 collateral is being accepted and the name of the defendant.

23 (c) When a bail bond is to be forfeited, the court is to give
24 notification to the bail bondsman within twenty-four hours of
25 failure to appear.

**§51-10-6. Posting names of authorized bondsmen; list to be
furnished to prisoners; prisoner may
communicate with bondsman; record to be kept
by police.**

1 (a) An alphabetical list of all persons engaged in the bail
2 bonding business and licensed by the Insurance Commission
3 shall be posted in a conspicuous place in each police precinct,
4 jail, prisoner's dock, house of detention, municipal court and
5 magistrate court. Copies of such list shall be kept on hand by
6 the person in charge of the office.

7 (b) When any person is detained in custody in any place
8 of detention requests bail bondsman information, the
9 alphabetical list shall be furnished to the person. The person
10 in charge of the place of detention shall within a reasonable
11 time put the person so detained in communication with the
12 bondsman so selected by the person in detention.

13 (c) The person in charge of the place of detention shall
14 contemporaneously with the transaction make in the blotter
15 or book of record kept in the place of detention a record
16 showing the name of the person requesting the bondsman,
17 the offense with which the person is charged, the time at
18 which the request was made, the bondsman requested and
19 the person by whom the bondsman was called, and preserve
20 the same as a permanent record in the book or blotter in
21 which entered.

22 (d) The person in charge or any other employee,
23 contractor, agent, assign or staff member of the place of
24 detention shall not make any recommendation, direct or
25 indirect, to the person in detention regarding a preference for
26 a bondsman.

**§51-10-7. Bondsman prohibited from entering place of
detention unless requested by prisoner; record of
visit to be kept.**

1 (a) It is unlawful for any bondsman, agent, clerk or
2 representative of any bondsman to enter a police precinct,
3 jail, prisoner's dock, house of detention, magistrate court or
4 other place where persons in the custody of the law are
5 detained:

6 (1) For the purpose of obtaining employment as a
7 bondsman;

8 (2) Without having been previously called by a person so
9 detained, or by some relative or other authorized person
10 acting for or on behalf of the person so detained.

11 (b) When any person engaged in the bonding business as
12 principal, or as clerk, or representative of another, enters a
13 police precinct, jail, prisoner's dock, house of detention,
14 magistrate court or other place where persons in the custody
15 of the law are detained, he or she shall immediately give to
16 the person in charge his or her purpose, the name of the
17 person calling him or her, and requesting him or her to come,
18 and the same shall be recorded by the person in charge of the
19 place of detention and preserved as a public record.

20 (c) Failure to provide the information, or the failure of the
21 person in charge of the place of detention to make and
22 preserve a record, shall constitute a violation of this article.

**§51-10-8. Qualifications of bondsmen; rules to be prescribed by
Supreme Court of Appeals; lists of agents to be
furnished; renewal of authority to act; false
swearing.**

1 (a) The commissioner shall promulgate legislative rules
2 as he or she considers necessary to carry out the intent, the
3 administration and enforcement of this article, which rules
4 shall be promulgated in accordance with article three, chapter
5 twenty-nine-a of this code.

6 (b) The rules shall provide for the qualifications of
7 persons applying for authority to engage in the bonding
8 business in criminal cases and the terms and conditions upon
9 which the business may be carried on.

10 (c) The commissioner, in making the rules, and in
11 granting authority to persons engaged in the bonding

12 business, shall take into consideration both the financial
13 responsibility and the moral qualities of the person so
14 applying, and no person may be permitted to engage, either
15 as principal or agent, in the business of becoming surety upon
16 bonds for compensation in criminal cases, who has ever been
17 convicted of any offense involving moral turpitude, or who
18 is not known to be a person of good moral character.

19 (d) That the applicant shall provide a qualifying power of
20 attorney from an insurer or deliver a mortgage or lien on real
21 property or negotiable instruments, upon which he or she
22 may provide bail bonds equivalent to two times the amount
23 of such collateral. Such limitations shall not apply where a
24 qualified power of attorney is provided by a regulated insurer
25 or surety company.

26 (e) That the applicant shall provide a criminal
27 background check summary which displays the moral
28 qualities of the person so applying.

29 (f) The commission shall require every person qualifying
30 to engage in the bonding business as principal:

31 To file with the court a list showing the name, age and
32 residence of each person employed by the bondsman as
33 agent, clerk or representative in the bonding business, and
34 require an affidavit from each of the persons stating that the
35 person will abide by the terms and provisions of this article.

36 (g) The commission shall require each person authorized
37 as a bail bondsman to renew every three years and file:

38 (1) An affidavit stating that since his or her previous
39 qualifications to engage in the bonding business he or she has
40 abided by the provisions of this article, and any person
41 swearing falsely in any of the affidavits is guilty of false
42 swearing; and

43 (2) No person seeking to renew his or her qualifications
44 shall be required to submit to the property and casualty
45 licensing procedures for a second time, unless he or she has
46 voluntarily terminated his or her qualifications.

47 (h) A person operating as a self-insured producer shall
48 provide a monthly report indicating:

49 (1) The total number of bail bonds provided in the
50 preceding month; and

51 (2) The value of those bonds and the total amount of
52 outstanding collateral remaining upon which bonds may be
53 secured. If the total value of bonds exceeds two times the
54 value of the collateral, the bondsman shall cease operating
55 until the following quarter when he or she provides a report
56 to the commission indicating unencumbered collateral exists
57 to secure the bonds provided by him or her.

58 (i) The commission shall furnish an alphabetical list of all
59 approved bail bondsmen to the each place of detention.

60 (j) After September 1, 2015, no persons may, either as
61 principal, or as agent, clerk or representative of another,
62 engage in the bonding business in any court regularly
63 exercising criminal jurisdiction until qualified pursuant to the
64 rules.

§51-10-9. Penalties.

1 Any person violating any provisions of this article other
2 than in the commission of false swearing shall be punished by
3 a fine of not more than \$2,000, or by imprisonment not
4 exceeding six months in the county jail, or both, where no
5 other penalty is provided by this article; and if the person so
6 convicted is a police officer or other public official, he or she

7 shall upon recommendation of the judge be removed from
8 office; if a bondsman, or the agent, clerk or representative of
9 a bondsman, he or she shall be disqualified from thereafter
10 engaging in any manner in the bonding business and, if an
11 attorney at law, shall be subject to suspension or disbarment.

§51-10-10. Enforcement of article.

1 It shall be the duty of the judges of the criminal courts of
2 record, the municipal courts and magistrates where a person
3 authorized to engage in the bail bonding business conducts
4 his or her business to see that this article is enforced, and
5 upon the impaneling of each grand jury it shall be the duty of
6 the judge impaneling said jury to give it in charge to the jury
7 to investigate the manner in which this article is enforced and
8 all violations thereof. If an individual is found in violation of
9 the terms of this article and sentenced pursuant to this
10 section, then the clerk of the court shall send a copy of the
11 order of conviction to the commission which shall terminate
12 the license of the sentenced individual.

CHAPTER 62. CRIMINAL PROCEDURE.

**ARTICLE 11C. THE WEST VIRGINIA COMMUNITY
CORRECTIONS ACT.**

§62-11C-5. Establishment of programs.

1 (a) Any county or combination of counties or a county or
2 counties and a Class I or II municipality may establish and
3 operate community corrections programs, as provided in this
4 section, to be used both prior to trial as a condition of bond
5 in circuit and magistrate court, as well as an alternative
6 sentencing option for those offenders sentenced within the
7 jurisdiction of the county or counties which establish and
8 operate the program: *Provided*, That the chief judge must

9 certify that the community corrections facility is available for
10 use in connection with the imposition of pretrial bond
11 conditions.

12 (b) Any county or combination of counties or a county or
13 counties and a Class I or II municipality that seek to establish
14 programs as authorized in this section shall submit plans and
15 specifications for the programs to be established, including
16 proposed budgets, for review and approval by the community
17 corrections subcommittee established in section three of this
18 article.

19 (c) Any county or combination of counties or a county or
20 counties and a Class I or II municipality may establish and
21 operate an approved community corrections program to
22 provide alternative sanctioning options for an offender who
23 is convicted of an offense for which he or she may be
24 sentenced to a period of incarceration in a county or regional
25 jail or a state correctional facility and for which probation or
26 home incarceration may be imposed as an alternative to
27 incarceration.

28 (d) Community corrections programs authorized by
29 subsection (a) of this section may provide, but are not limited
30 to providing, any of the following services:

31 (1) Probation supervision programs;

32 (2) Community service restitution programs;

33 (3) Home incarceration programs;

34 (4) Substance abuse treatment programs;

35 (5) Sex offender containment programs;

36 (6) Licensed domestic violence offender treatment
37 programs;

38 (7) Day reporting centers;

39 (8) Educational or counseling programs;

40 (9) Drug courts;

41 (10) Community beautification and reclamation programs
42 for state highways, municipal, county and state parks and
43 recreation areas and community gardens; and

44 (11) Pretrial release programs.

45 (e) A county or combination of counties or a county or
46 counties and a Class I or II municipality which establish and
47 operate community corrections programs as provided in this
48 section may contract with other counties to provide
49 community corrections services.

50 (f) For purposes of this section, the phrase “may be
51 sentenced to a period of incarceration” means that the statute
52 defining the offense provides for a period of incarceration as
53 a possible penalty.

54 (g) No provision of this article may be construed to allow
55 a person participating in or under the supervision of a
56 community corrections program to earn good time or any
57 other reduction in sentence.

58 (h) Nothing in this section should be construed as to
59 prohibit a court from imposing a surety bond as a condition
60 of a pretrial release.

§62-11C-7. Supervision or participation fee.

1 (a) A circuit judge, magistrate, municipal court judge or
2 community criminal justice board may require the payment
3 of a supervision or participation fee from any person required
4 to be supervised by or participate in a community corrections
5 program. The circuit judge, magistrate, municipal court
6 judge or community criminal justice board shall consider the
7 person's ability to pay in determining the imposition and
8 amount of the fee.

9 (b) A circuit judge, magistrate or community criminal
10 justice board may require payment of a supervision or
11 participation fee of \$7 per person per day of pretrial
12 supervision from the county commission pursuant to a
13 pretrial release program established pursuant to article
14 eleven-f of this chapter.

15 (c) A person supervised pursuant to the provisions of
16 article eleven-f of this chapter who is later convicted of an
17 offense or offenses underlying the person's participation in
18 the pretrial release program may be assessed by the
19 sentencing court, as a cost of prosecution, a fee not to exceed
20 \$30 per month for each month the person was in the pretrial
21 supervision program.

22 (d) All fees ordered by the circuit court, magistrate court,
23 municipal court or community criminal justice board pursuant
24 to this section are to be paid to the community criminal
25 justice board, who shall remit the fees monthly to the
26 treasurer of the county designated as the fiscal agent for the
27 board pursuant to section six of this article.

ARTICLE 11F. PRETRIAL RELEASE PROGRAMS.

§62-11F-1. Applicability.

1 This article applies to adults charged with one or more
2 misdemeanors or felonies and who are incarcerated in a
3 regional jail prior to adjudication due to their inability to post
4 bond.

§62-11F-2. Establishment of pretrial release programs.

1 (a) *Legislative Findings and Purpose.* – It is the purpose
2 of pretrial release programs to employ recommendations from
3 the Council of State Government’s Justice Center’s Analyses
4 and Policy Options to Reduce Spending on Corrections and
5 Reinvest in Strategies to Increase Public Safety, by providing
6 for uniform statewide risk assessment and monitoring of
7 those released prior to trial, facilitating a statewide response
8 to the problem of overcrowded regional jails and costs to
9 county commissions.

10 (b) Any county, circuit or combination thereof that
11 establishes a pretrial program pursuant to this article shall
12 establish a local community pretrial committee that consists of:

13 (1) a prosecutor or his or her designee;

14 (2) a county commissioner, or his or her designee;

15 (3) a sheriff, or his or her designee;

16 (4) an executive director of a community corrections
17 program, or his or her designee;

18 (5) a chief probation officer, or his or her designee; and

19 (6) a member of the criminal defense bar.

20 (c) Pretrial release programs may monitor, supervise and
21 assist defendants released prior to trial.

22 (d) Nothing in this article should be construed to prohibit
23 a court from requiring a defendant to post a secured bond as
24 a condition of pretrial release.

25 (e) In addition to funding provided pursuant to subsection
26 (c), section three of this article, pretrial release programs may
27 be funded by appropriations made to the Supreme Court of
28 Appeals for such purpose.

§62-11F-3. Pretrial release program guidelines.

1 (a) The Supreme Court of Appeals has complete
2 oversight and authority over all pretrial services.

3 (b) The Supreme Court of Appeals shall establish
4 recommended guidelines for pretrial programs to use when
5 ordering pretrial release for defendants whose pretrial risk
6 assessment indicates that they are an appropriate candidate
7 for pretrial release.

8 (c) The Community Corrections Subcommittee of the
9 Governor's Committee on Crime, Delinquency and
10 Correction, pursuant to section two, article eleven-c, chapter
11 sixty-two of this code, shall approve policy and funding for
12 the development, maintenance and evaluation of pretrial
13 release programs. Any county, circuit or combination thereof
14 that establishes a pretrial program intended to provide pretrial
15 release services shall submit a grant proposal to the
16 Community Corrections Subcommittee of the Governor's
17 Committee on Crime, Delinquency and Correction for review
18 and approval.

§62-11F-4. Pretrial release assessment.

1 The Supreme Court of Appeals of West Virginia may
2 adopt a standardized pretrial risk assessment for use by

3 pretrial release programs to aid in making pretrial decisions
4 under article one-c of this chapter.

§62-11F-5. Role of pretrial release programs.

1 A pretrial release program established pursuant to this
2 article shall:

3 (1) Collect and present the necessary information, present
4 risk assessment and make release recommendations to the
5 court;

6 (2) Present information to the court relating to the risk
7 defendants may pose in failing to appear in court or of
8 threatening the safety of the community or any other person
9 and, consistent with court policy, develop release
10 recommendations responding to risk;

11 (3) Develop and provide appropriate and effective
12 supervision for all persons released pending adjudication who
13 are assigned supervision as a condition of release;

14 (4) Monitor compliance of released defendants with the
15 requirements of assigned release conditions;

16 (5) Promptly inform the court of all apparent violations of
17 pretrial release conditions or arrests of persons released pending
18 trial, including those directly supervised by pretrial services as
19 well as those released under other forms of conditional release,
20 and recommend appropriate modifications of release conditions;

21 (6) Coordinate the services of other agencies, individuals or
22 organizations that may serve as custodians for released
23 defendants, and advise the court as to their appropriateness,
24 availability, reliability and capacity relating to pretrial release
25 conditions;

26 (7) Review the status of detained defendants on ongoing
27 basis for any changes in eligibility for release options and
28 facilitate their release as soon as feasible and appropriate;

29 (8) Develop and operate an accurate information
30 management system to support prompt identification,
31 information collections and presentation, risk assessment,
32 release conditions selection, compliance monitoring and
33 detention review functions essential to an effective pretrial
34 release program; and

35 (9) Remind persons released before trial of their court
36 dates to attempt to facilitate their court appearance.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

The within *is disapproved* this
the *14th* Day of *March*, 2014.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 14 2014

Time 11:10 am