

1 instances where home incarceration is not available; and
2 allowing a county commission to use moneys from the special
3 fund to finance community corrections programs.

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

5 That §62-11B-4, §62-11B-5, §62-11B-6, §62-11B-7 and §62-11B-9
6 of the Code of West Virginia, 1931, as amended, be amended and
7 reenacted, all to read as follows:

8 **ARTICLE 11B. HOME INCARCERATION ACT.**

9 **§62-11B-4. Home incarceration; period of home incarceration;**
10 **applicability.**

11 (a) As a condition of probation or bail or as an alternative
12 sentence to another form of incarceration for any criminal
13 violation of this code over which a circuit court has jurisdiction,
14 an automatic home incarceration sentence shall be given for
15 nonviolent misdemeanors, except in those cases where the
16 prosecution demonstrates that the offender in question is an
17 ineligible candidate for home incarceration. A circuit court ~~may~~
18 shall order an offender confined to the offender's home for a
19 period of home incarceration. As an alternative sentence to
20 incarceration in jail for any criminal violation of this code over
21 which a magistrate court has jurisdiction, an automatic home
22 incarceration sentence shall be given for nonviolent misdemeanors,
23 except in those cases where the prosecution demonstrates that the

1 offender in question is an ineligible candidate for home
2 incarceration, or as a condition of bail for a criminal violation
3 of this code over which a magistrate court has jurisdiction to set
4 bail, a magistrate ~~may~~ shall order an offender confined to the
5 offender's home for a period of electronically monitored home
6 incarceration: *Provided,* That electronic monitoring may not be
7 required in a specific case if a circuit court upon petition
8 thereto finds by order that electronic monitoring is not necessary.

9 (b) The period of home incarceration may be continuous or
10 intermittent, as the circuit court or magistrate court orders.
11 However, the aggregate time actually spent in home incarceration
12 may not exceed the term of imprisonment or incarceration prescribed
13 by this code for the offense committed by the offender. An
14 individual may only be on home incarceration for six months
15 continuously. Any crime with a minimum sentence of greater than
16 six months is not eligible for home incarceration to serve as the
17 entirety of the sentence.

18 (c) A grant of home incarceration under this article
19 constitutes a waiver of any entitlement to deduction from a
20 sentence for good conduct under the provisions of section
21 twenty-seven, article five, chapter twenty-eight of this code.

22 (d) When imposing home incarceration as a condition of bail,
23 a magistrate shall do so consistent with guidelines promulgated by
24 the Supreme Court of Appeals.

1 **§62-11B-5. Requirements for order for home incarceration.**

2 An order for home incarceration of an offender under section
3 four of this article is to include, but not be limited to, the
4 following:

5 (1) A requirement that the offender be confined to the
6 offender's home or a home deemed suitable by the magistrate or
7 judge at all times except when the offender is:

8 (A) Working full time, thirty-six hours or more a week, at
9 employment approved by the circuit court or magistrate, or
10 traveling to or from approved employment;

11 (B) Unemployed and seeking employment approved for the
12 offender by the circuit court or magistrate: Provided, That those
13 who are unemployed shall complete twenty hours of supervised
14 community service weekly, for the time that they are participating
15 in home confinement. The supervised community service shall be
16 structured through the county's community corrections program and
17 approved by the circuit judge or magistrate;

18 (C) Undergoing medical, psychiatric, mental health treatment,
19 counseling or other treatment programs approved for the offender by
20 the circuit court or magistrate;

21 (D) Attending an educational institution or a program approved
22 for the offender by the circuit court or magistrate;

23 (E) Attending a sobriety program, such as Alcoholics
24 Anonymous, Narcotics Anonymous or a program approved for the

1 offender by the circuit court or magistrate: *Provided*, That an
2 offender who committed a crime involving alcohol, controlled
3 substances or drugs, or crimes committed under the influence
4 thereof shall attend a program at least once per week;

5 (F) Attending a regularly scheduled religious service at a
6 place of worship;

7 ~~(F)~~ (G) Participating in a community work release or community
8 service program approved for the offender by the circuit court, in
9 circuit court cases; or

10 ~~(G)~~ (H) Engaging in other activities specifically approved for
11 the offender by the circuit court or magistrate.

12 (2) Notice to the offender of the penalties which may be
13 imposed if the circuit court or magistrate subsequently finds the
14 offender to have violated the terms and conditions in the order of
15 home incarceration.

16 (3) A requirement that the offender abide by a schedule,
17 prepared by the probation officer in circuit court cases, or by the
18 supervisor or sheriff in magistrate court cases, specifically
19 setting forth the times when the offender may be absent from the
20 offender's home and the locations the offender is allowed to be
21 during the scheduled absences.

22 (4) A requirement that the offender is not to commit another
23 crime during the period of home incarceration ordered by the
24 circuit court or magistrate.

1 (5) A requirement that the offender obtain approval from the
2 probation officer or supervisor or sheriff before the offender
3 changes residence or the schedule described in subdivision (3) of
4 this section.

5 (6) A requirement that the offender maintain:

6 (A) A working telephone in the offender's home;

7 (B) If ordered by the circuit court or as ordered by the
8 magistrate, an electronic monitoring device in the offender's home,
9 or on the offender's person, or both; and

10 (C) Electric service in the offender's home if use of a
11 monitoring device is ordered by the circuit court or any time home
12 incarceration is ordered by the magistrate.

13 (7) A requirement that the offender pay a home incarceration
14 fee set by the circuit court or magistrate. If a magistrate orders
15 home incarceration for an offender, the magistrate shall follow a
16 fee schedule established by the supervising circuit judge in
17 setting the home incarceration fee. The magistrate or circuit
18 judge shall consider the person's ability to pay in determining the
19 imposition and amount of the fee;

20 (8) A requirement that the offender pay a fee authorized by
21 the provisions of section four, article eleven-c of this chapter:
22 *Provided*, That the magistrate or circuit judge considers the
23 person's ability to pay in determining the imposition and amount of
24 the fee; and

1 (9) A requirement that the offender abide by other conditions
2 set by the circuit court or by the magistrate.

3 **§62-11B-6. Circumstances under which home incarceration may not be**
4 **ordered; exceptions.**

5 (a) A circuit court or magistrate may not order home
6 incarceration for an offender unless the offender agrees to abide
7 by all of the requirements set forth in the court's order issued
8 under this article.

9 (b) A circuit court or magistrate may not order home
10 incarceration for an offender who is being held under a detainer,
11 warrant or process issued by a court of another jurisdiction.

12 (c) A magistrate may not order home incarceration for an
13 offender unless electronic monitoring is available and only if the
14 county of the offender's home has an established program of
15 electronic monitoring that is equipped, operated and staffed by the
16 county supervisor or sheriff for the purpose of supervising
17 participants in a home incarceration program: *Provided, That*
18 electronic monitoring may not be required in a specific case if a
19 circuit court upon petition thereto finds by order that electronic
20 monitoring is not necessary.

21 (d) A magistrate may only order home incarceration for an
22 offender convicted of a crime of violence against the person if the
23 offender does not occupy the same home as the victim of the crime.

24 (e) Home incarceration is not available as a sentence if the

1 language of a criminal statute expressly prohibits its application.

2 (f) Automatic home confinement is not available to violent
3 offenders, felony offenders, offenders guilty of a crime with a
4 minimum sentence greater than six months, or offenders deemed unfit
5 by the magistrate or circuit judge.

6 (g) Notwithstanding the provisions of subsection (c) of this
7 section, a magistrate may order home incarceration through the
8 imposition of supervision or participation in a community
9 corrections program created pursuant to article eleven-c, chapter
10 sixty-two of this code.

11 **§62-11B-7. Home incarceration fees; special fund.**

12 All home incarceration fees ordered by the circuit court or a
13 magistrate pursuant to subdivision (7), section five of this
14 article are to be paid to the county sheriff. The county sheriff
15 is to establish a special fund designated the home incarceration
16 services fund, in which the sheriff is to deposit all home
17 incarceration fees collected pursuant to this section. The county
18 commission shall appropriate money from the fund to administer a
19 home incarceration program, including the purchase of electronic
20 monitoring devices and other supervision expenses, and may as
21 necessary supplement the fund with additional appropriations. The
22 county commission may appropriate money from the fund to finance
23 community corrections programs. The county commission may also
24 appropriate any excess money from the fund to defray the costs of

1 housing county inmates or for community corrections programs, if
2 the sheriff or other person designated to administer the fund
3 certifies in writing to the county commission that a surplus exists
4 in the fund at the end of the fiscal year.

5 **§62-11B-9. Violation of order of home incarceration procedures;**
6 **penalties.**

7 (a) If at any time during the period of home incarceration
8 there is reasonable cause to believe that a participant in a home
9 incarceration program has violated the terms and conditions of the
10 circuit court's home incarceration order, he or she shall be
11 subject to the procedures and penalties set forth in section ten,
12 article twelve of this chapter.

13 (b) If at any time during the period of home incarceration
14 there is reasonable cause to believe that a participant sentenced
15 to home incarceration by the circuit court has violated the terms
16 and conditions of the court's order of home incarceration and said
17 participant's participation was imposed as an automatic sentence or
18 alternative sentence to another form of incarceration, said
19 participant shall be subject to the same procedures involving
20 revocation as would a probationer charged with a violation of the
21 order of home incarceration. Any participant under an order of
22 home incarceration shall be subject to the same penalty or
23 penalties, upon the circuit court's finding of a violation of the
24 order of home incarceration, as he or she could have received at

1 the initial disposition hearing: *Provided*, That the participant
2 shall receive credit towards any sentence imposed after a finding
3 of violation for the time spent in home incarceration.

4 (c) If at any time during the period of home incarceration
5 there is reasonable cause to believe that a participant sentenced
6 to home incarceration by a magistrate has violated the terms and
7 conditions of the magistrate's order of home incarceration as an
8 alternative sentence to incarceration in jail, the supervising
9 authority may arrest the participant upon the obtaining of an order
10 or warrant and take the offender before a magistrate within the
11 county of the offense. The magistrate shall then conduct a prompt
12 and summary hearing on whether the participant's home incarceration
13 should be revoked. If it appears to the satisfaction of the
14 magistrate that any condition of home incarceration has been
15 violated, the magistrate may revoke the home incarceration and
16 order that the sentence of incarceration in jail be executed. Any
17 participant under an order of home incarceration shall be subject
18 to the same penalty or penalties, upon the magistrate's finding of
19 a violation of the order of home incarceration, as the participant
20 could have received at the initial disposition hearing: *Provided*,
21 That the participant shall receive credit towards any sentence
22 imposed after a finding of violation for the time spent in home
23 incarceration.

NOTE: The purpose of this bill is to require an automatic home incarceration sentence for nonviolent misdemeanor crimes. It also provides that moneys from the special fund may be used for community corrections programs.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.