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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

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ENROLLED

Com. Sub. For
HOUSE BILL No. *2277*

(By Delegates *Douglas Faircloth,*
Staton, Beane and Manuel)

— ● —

Passed *April 10,* 1993

In Effect *Ninety Days From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2277

(By DELEGATES DOUGLAS, FAIRCLOTH, STATON,
BEANE AND MANUEL.)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact section one-a, article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections four, five, six, seven, nine, ten and eleven, article eleven-b of said chapter; and to further amend said article by adding thereto two new sections, designated sections seven-a and twelve, all relating to permitting magistrates to impose alternative sentences upon convicted offenders; authorizing circuit courts to order home confinement in lieu of jail; authorizing magistrates to order certain offenders confined to home for a period of electronically monitored home confinement as an alternative sentence to incarceration in jail; exception for electronic monitoring requirement in magistrate court cases; requirements for home confinement; specifying sole offenders for which offenders may not be sentenced to home confinement; home confinement fees; appointment and authority of home confinement supervisors; violations of terms and conditions of home confinement order and procedures for revocation of home confinement; penalties when home confinement revoked; information to be provided to certain law-enforcement agencies regarding offenders

sentenced to home confinement; and vesting circuit judges with the authority of the board of probation and parole in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That section one-a, article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections four, five, six, seven, nine, ten and eleven, article eleven-b of said chapter be amended and reenacted; and that said article eleven-b be further amended by adding thereto two new sections, designated sections seven-a and twelve, all 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 circuit
2 court or in a magistrate court under any criminal
3 provision of this code of a misdemeanor or felony, which
4 is punishable by confinement in the county jail, may, in
5 the discretion of the sentencing judge or magistrate, as
6 an alternative to the sentence imposed by statute for
7 such crime, be sentenced under one of the following
8 programs:

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

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

24 (3) The community service program under which

25 persons sentenced would spend no time in jail but would
26 be sentenced to a number of hours or days of community
27 service work with tax supported agencies. Eight hours
28 of service work shall be credited as one day of the
29 sentence imposed. Persons sentenced under this pro-
30 gram may be required to provide their own transpor-
31 tation to and from the work site, lunch and work clothes.

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

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

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

42 (2) In circuit court cases, that the person sentenced is
43 not a habitual criminal within the meaning of sections
44 eighteen and nineteen, article eleven, chapter sixty-one
45 of this code;

46 (3) In circuit court cases, that adequate facilities for
47 the administration and supervision of alternative
48 sentencing programs are available through the court's
49 probation officers or the county sheriff or, in magistrate
50 court cases, that adequate facilities for the administra-
51 tion and supervision of alternative sentencing programs
52 are available through the county sheriff; and

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

55 (d) Persons sentenced by the circuit court under the
56 provisions of this article shall remain under the
57 administrative custody and supervision of the court's
58 probation officers or the county sheriff. Persons sent-
59 enced by a magistrate shall remain under the adminis-
60 trative custody and supervision of the county sheriff.

61 (e) Persons sentenced under the provisions of this
62 section may be required to pay the costs of their

63 incarceration, including meal costs, at the discretion of
64 the court.

65 (f) Persons sentenced under the provisions of this
66 section remain under the jurisdiction of the court. The
67 court may withdraw any alternative sentence at any
68 time by order entered with or without notice and
69 require that the remainder of the sentence be served in
70 the county jail: *Provided*, That no alternative sentence
71 directed by the sentencing judge or magistrate or
72 administered under the supervision of the sheriff, his
73 deputies, a jailer or a guard, shall require the convicted
74 person to perform duties which would be considered
75 detrimental to the convicted person's health as attested
76 by a physician.

ARTICLE 11B. HOME CONFINEMENT ACT.

§62-11B-4. Home confinement; period of home confinement; applicability.

1 (a) As a condition of probation or bail or as an
2 alternative sentence to another form of incarceration for
3 any criminal violation of this code over which a circuit
4 court has jurisdiction, a circuit court may order an
5 offender confined to the offender's home for a period of
6 home confinement. As an alternative sentence to
7 incarceration in jail, a magistrate may order an adult
8 offender convicted of any criminal violation under this
9 code over which a magistrate court has jurisdiction, be
10 confined to the offender's home for a period of electronically
11 monitored home confinement: *Provided*, That
12 electronic monitoring may not be required in a specific
13 case if a circuit court upon petition thereto finds by
14 order that electronic monitoring is not necessary.

15 (b) The period of home confinement may be continuous
16 or intermittent, as the circuit court orders, or continuous
17 except as provided by section five of this article if
18 ordered by a magistrate. However, the aggregate time
19 actually spent in home confinement may not exceed the
20 term of imprisonment or incarceration prescribed by
21 this code for the offense committed by the offender.

22 (c) A grant of home confinement under this article

23 constitutes a waiver of any entitlement to deduction
24 from a sentence for good conduct under the provisions
25 of section twenty-seven, article five, chapter twenty-
26 eight of this code.

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

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

4 (1) A requirement that the offender be confined to the
5 offender's home at all times except when the offender
6 is:

7 (A) Working at employment approved by the circuit
8 court or magistrate, or traveling to or from approved
9 employment;

10 (B) Unemployed and seeking employment approved
11 for the offender by the circuit court or magistrate;

12 (C) Undergoing medical, psychiatric, mental health
13 treatment, counseling or other treatment programs
14 approved for the offender by the circuit court or
15 magistrate;

16 (D) Attending an educational institution or a program
17 approved for the offender by the circuit court or
18 magistrate;

19 (E) Attending a regularly scheduled religious service
20 at a place of worship;

21 (F) Participating in a community work release or
22 community service program approved for the offender
23 by the circuit court, in circuit court cases; or

24 (G) Engaging in other activities specifically approved
25 for the offender by the circuit court or magistrate.

26 (2) Notice to the offender of the penalties which may
27 be imposed if the circuit court or magistrate subse-
28 quently finds the offender to have violated the terms and
29 conditions in the order of home detention.

30 (3) A requirement that the offender abide by a

31 schedule, prepared by the probation officer in circuit
32 court cases; or by the supervisor or sheriff in magistrate
33 court cases, specifically setting forth the times when the
34 offender may be absent from the offender's home and
35 the locations the offender is allowed to be during the
36 scheduled absences.

37 (4) A requirement that the offender is not to commit
38 another crime during the period of home confinement
39 ordered by the circuit court or magistrate.

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

44 (6) A requirement that the offender maintain:

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

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

49 (C) Electric service in the offender's home if use of a
50 monitoring device is ordered by the circuit court or
51 anytime home confinement is ordered by the magistrate.

52 (7) A requirement that the offender pay a home
53 confinement fee set by the circuit court or magistrate.
54 If a magistrate orders home confinement for an
55 offender, the magistrate shall follow a fee schedule
56 established by the supervising circuit judge in setting
57 the home confinement fee.

58 (8) A requirement that the offender abide by other
59 conditions set by the circuit court or by the magistrate.

§62-11B-6. Circumstances under which home confinement may not be ordered.

1 (a) A circuit court or magistrate may not order home
2 confinement for an offender unless the offender agrees
3 to abide by all of the requirements set forth in the
4 court's order issued under this article.

5 (b) A circuit court or magistrate may not order home
6 confinement for an offender who is being held under a

7 detainer, warrant or process issued by a court of another
8 jurisdiction.

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

19 (d) A magistrate may not order home confinement for
20 an offender convicted of a crime of violence against the
21 person.

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

1 All home detention fees ordered by the circuit court
2 shall be paid to the circuit clerk, who shall monthly
3 remit the fees to the sheriff. All home detention fees
4 ordered by a magistrate shall be paid to the magistrate
5 court clerk, who shall monthly remit the fees to the
6 county sheriff. The county sheriff shall establish a
7 special fund designated the home confinement services
8 fund, in which the sheriff shall deposit all home
9 confinement fees remitted by the clerks. The county
10 commission shall appropriate money from the fund to
11 administer a home confinement program, including the
12 purchase of electronic monitoring devices and other
13 supervision expenses, and may as necessary supplement
14 the fund with additional appropriations.

**§62-11B-7a. Employment by county commission of home
confinement supervisors; authority of
supervisors.**

1 The county commission may employ one or more
2 persons with the approval of the circuit court and who
3 shall be subject to the supervision of the sheriff as a
4 home confinement supervisor or may designate the
5 county sheriff to supervise offenders ordered to undergo
6 home confinement and to administer the county's home

7 confinement program. Any person so supervising shall
8 have authority, equivalent to that granted to a probation
9 officer pursuant to section ten, article twelve of this
10 chapter, to arrest a home confinement participant when
11 reasonable cause exists to believe that such participant
12 has violated the conditions of his or her home detention.
13 Unless otherwise specified, the use of the term "super-
14 visor" in this article shall refer to a home confinement
15 supervisor.

**§62-11B-9. Violation of order of home confinement;
procedures; penalties.**

1 (a) If at any time during the period of home detention
2 there is reasonable cause to believe that a participant
3 in a home confinement program has violated the terms
4 and conditions of the circuit court's home confinement
5 order, he or she shall be subject to the procedures and
6 penalties set forth in section ten, article twelve of this
7 chapter.

8 (b) If at any time during the period of home confine-
9 ment there is reasonable cause to believe that a
10 participant sentenced to home confinement by the
11 circuit court has violated the terms and conditions of the
12 court's order of home confinement and said participant's
13 participation was imposed as an alternative sentence to
14 another form of incarceration, said participant shall be
15 subject to the same procedures involving revocation as
16 would a probationer charged with a violation of the
17 order of home confinement. Any participant under an
18 order of home confinement shall be subject to the same
19 penalty or penalties, upon the circuit court's finding of
20 a violation of the order of home confinement, as he or
21 she could have received at the initial disposition hearing:
22 *Provided*, That the participant shall receive credit
23 towards any sentence imposed after a finding of
24 violation for the time spent in home confinement.

25 (c) If at any time during the period of home confine-
26 ment there is reasonable cause to believe that a
27 participant sentenced to home confinement by a mag-
28 istrate has violated the terms and conditions of the
29 magistrate's order of home confinement as an alterna-

30 tive sentence to incarceration in jail, the supervising
31 authority may arrest the participant upon the obtaining
32 of an order or warrant and take the offender before a
33 magistrate within the county of the offense. The
34 magistrate shall then conduct a prompt and summary
35 hearing on whether the participant's home confinement
36 should be revoked. If it appears to the satisfaction of the
37 magistrate that any condition of home confinement has
38 been violated, the magistrate may revoke the home
39 confinement and order that the sentence of incarceration
40 be executed. Any participant under an order of home
41 confinement shall be subject to the same penalty or
42 penalties, upon the magistrate's finding of a violation of
43 the order of home confinement, as the participant could
44 have received at the initial disposition hearing: *Pro-*
45 *vided*, That the participant shall receive credit towards
46 any sentence imposed after a finding of violation for the
47 time spent in home confinement.

§62-11B-10. Information to be provided law-enforcement agencies.

1 A probation department charged by a circuit court or
2 a supervisor or sheriff charged by a magistrate with
3 supervision of offenders ordered to undergo home
4 confinement shall provide all law-enforcement agencies
5 having jurisdiction in the place where the probation
6 department or the office of the supervisor or sheriff is
7 located with a list of offenders under home confinement
8 supervised by the probation department, supervisor or
9 sheriff. The list must include the following information
10 about each offender:

11 (1) The offender's name, any known aliases, and the
12 location of the offender's home confinement;

13 (2) The crime for which the offender was convicted;

14 (3) The date the offender's home confinement expires;
15 and

16 (4) The name, address and telephone number of the
17 offender's supervising probation officer or supervisor, as
18 the case may be, for home confinement.

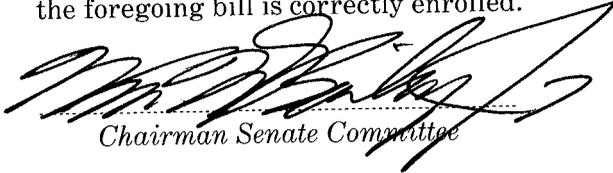
§62-11B-11. Provisions of article not exclusive; discretion of the circuit court.

1 The provisions of this article may be applied at the
2 discretion of the circuit or magistrate court as an
3 alternate means of confinement but shall not be
4 considered an exclusive means of alternative sentencing.

§62-11B-12. Supervision of home confinement by circuit court.

1 Notwithstanding any provision of this code to the
2 contrary, in any case where a person has been ordered
3 to home confinement where that person is not in the
4 custody or control of the division of corrections, the
5 circuit court shall have the authority of the board of
6 probation and parole regarding the release, early
7 release, or release on parole of the person.

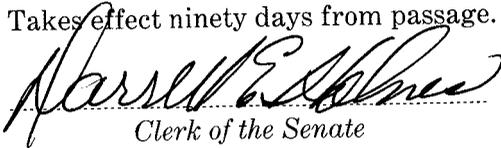
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

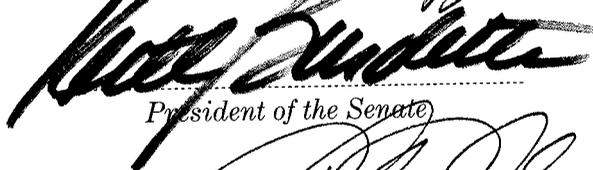

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

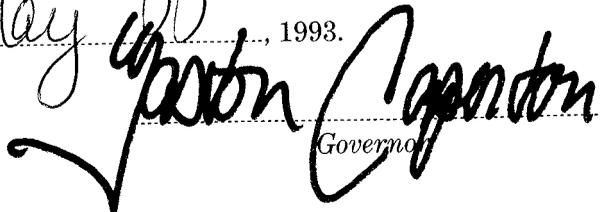

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 12th
day of May, 1993.


Governor

PRESENTED TO THE
GOVERNOR

Date 4/27/93

Time 2:20 PM