

SB 263

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

SENATE BILL NO. 263

(By Senator Holliday, et al)



PASSED March 10, 1994

In Effect from Passage

E N R O L L E D

Senate Bill No. 263

(BY SENATORS HOLLIDAY, WIEDEBUSCH, HUMPHREYS,
YODER, WAGNER, DITTMAR, MINARD AND ANDERSON)

[Passed March 10, 1994; in effect from passage.]

AN ACT to amend and reenact article eleven-b, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the home incarceration act; redesignating references to the words "confinement" and "detention" as the word "incarceration"; clarifying that home incarceration is an alternative sentence for any offense unless the statute which provides the penalty for such offense provides that home incarceration is not to be imposed as an alternative sentence; and clarifying that the alternative sentence of home incarceration is not the only alternative sentence available for an offense unless the statute which provides the penalty for such offense requires mandatory incarceration.

Be it enacted by the Legislature of West Virginia:

That article eleven-b, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-1. Short title.

1 This article may be cited as the “Home Incarcera-
2 tion Act”.

§62-11B-2. Applicability.

1 This article applies to adult offenders and to juve-
2 niles who have committed a delinquent act that would
3 be a crime if committed by an adult.

§62-11B-3. Definitions.

1 As used in this article:

2 (1) “Home” means the actual living area of the
3 temporary or permanent residence of an offender. The
4 term includes, but is not limited to, a hospital, health
5 care facility, hospice, group home, residential treat-
6 ment facility and boarding house.

7 (2) “Monitoring device” means an electronic device
8 that is:

9 (A) Limited in capability to the recording or trans-
10 mitting of information regarding an offender’s pres-
11 ence or absence from the offender’s home;

12 (B) Minimally intrusive upon the privacy of the
13 offender or other persons residing in the offender’s
14 home; and

15 (C) Incapable of recording or transmitting:

16 (i) Visual images;

17 (ii) Oral or wire communications or any auditory
18 sound; or

19 (iii) Information regarding the offender’s activities
20 while inside the offender’s home.

21 (3) “Offender” means any adult convicted of a crime
22 punishable by imprisonment or detention in a county
23 jail or state penitentiary; or a juvenile convicted of a
24 delinquent act that would be a crime punishable by
25 imprisonment or incarceration in the state penitenti-
26 ary or county jail, if committed by an adult.

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

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

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

24 (c) A grant of home incarceration under this article
25 constitutes a waiver of any entitlement to deduction
26 from a sentence for good conduct under the provisions
27 of section twenty-seven, article five, chapter twenty-
28 eight of this code.

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

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

4 (1) A requirement that the offender be confined to
5 the offender's home at all times except when the
6 offender 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 pro-
17 gram 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
29 and conditions in the order of home incarceration.

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 magis-
33 trate court cases, specifically setting forth the times
34 when the offender may be absent from the offender's
35 home and the locations the offender is allowed to be
36 during the scheduled absences.

37 (4) A requirement that the offender is not to commit
38 another crime during the period of home incarceration
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
42 before the offender changes residence or the schedule
43 described 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;
49 and

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

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

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

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

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

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

9 (c) A magistrate may order home incarceration for
10 an offender only with electronic monitoring and only
11 if the 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
14 sheriff for the purpose of supervising participants in a
15 home incarceration program: *Provided*, That electron-
16 ic monitoring may not be required in a specific case if
17 a circuit court upon petition thereto finds by order
18 that electronic monitoring is not necessary.

19 (d) A magistrate may not order home incarceration
20 for an offender convicted of a crime of violence against

21 the person.

22 (e) Home incarceration shall not be available as a
23 sentence if the language of a criminal statute expressly
24 prohibits its application.

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

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

**§62-11B-7a. Employment by county commission of home
incarceration 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 incarceration supervisor or may designate the
5 county sheriff to supervise offenders ordered to
6 undergo home incarceration and to administer the
7 county's home incarceration program. Any person so
8 supervising shall have authority, equivalent to that
9 granted to a probation officer pursuant to section ten,
10 article twelve of this chapter, to arrest a home
11 incarceration participant when reasonable cause exists
12 to believe that such participant has violated the
13 conditions of his or her home incarceration. Unless
14 otherwise specified, the use of the term "supervisor"
15 in this article shall refer to a home incarceration
16 supervisor.

§62-11B-8. Offender responsible for certain expenses.

1 An offender ordered to undergo home incarceration
2 under section four of this article is responsible for
3 providing his own food, housing, clothing, medical care
4 and other treatment expenses. The offender is eligible
5 to receive government benefits allowable for persons
6 on probation, parole or other conditional discharge
7 from confinement or incarceration.

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

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

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

26 (c) If at any time during the period of home incar-
27 ceration there is reasonable cause to believe that a
28 participant sentenced to home incarceration by a
29 magistrate has violated the terms and conditions of the
30 magistrate's order of home incarceration as an alter-

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

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

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

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

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

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


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

§62-11B-11. Discretion of the court; provisions of article not exclusive.

1 Home incarceration pursuant to the provisions of
2 this article may be imposed at the discretion of the
3 circuit court or magistrate court as an alternative
4 means of incarceration for any offense. Except for
5 offenses for which the penalty includes mandatory
6 incarceration, home incarceration shall not be consid-
7 ered an exclusive means of alternative sentencing.

§62-11B-12. Supervision of home incarceration 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 incarceration 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.

[Handwritten signature]
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Carroll E. Johns
.....
Clerk of the Senate

Donald J. Papp
.....
Clerk of the House of Delegates

Kell Bennett
.....
President of the Senate

Bill Brown
.....
Speaker House of Delegates

The within *is approved* this the *25th*
day of *March*, 1994.

Winston
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/8/94

Time 4:33 pm