

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



ENROLLED

Committee Substitute for

SENATE BILL NO. 15

(By Senator *Sullivan*)



PASSED *March 9,* 1990

In Effect *90 days from* Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 15

(BY SENATOR HOLLIDAY, *original sponsor*)

[Passed March 9, 1990; in effect ninety days from passage.]

AN ACT to amend chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-b, relating to creating the home detention act; providing for a short title; providing definitions; providing the requirements for an order for home detention; describing circumstances for not granting an order for home detention; requiring fees; mandating the creation of a special fund; making offender responsible for certain expenses; describing information to be provided law enforcement agencies; prescribing penalties for violation of conditions of an order, procedures therein; and providing that provisions may be applied as an alternate means of detention.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-b, to read as follows:

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11B. HOME DETENTION ACT.

§62-11B-1. Short title.

1 This article may be cited as the “Home Detention
2 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 peniten-
26 tiary or county jail, if committed by an adult.

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

1 (a) As a condition of probation or as an alternative
2 sentence to another form of incarceration, a court may
3 order an offender confined to the offender's home for
4 a period of home detention.

5 (b) The period of home detention may be continuous
6 or intermittent, as the court orders. However, the
7 aggregate time actually spent in home detention may
8 not exceed the term of imprisonment or incarceration
9 prescribed by this code for the offense committed by
10 the offender.

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

1 An order for home detention 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
5 the offender's home at all times except when the
6 offender is:

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

9 (B) Unemployed and seeking employment approved
10 for the offender by the court;

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

14 (D) Attending an educational institution or a pro-
15 gram approved for the offender by the court;

16 (E) Attending a regularly scheduled religious service
17 at a place of worship;

18 (F) Participating in a community work release or
19 community service program approved for the offender
20 by the court; or

21 (G) Engaging in other activities specifically approved
22 for the offender by the court.

23 (2) Notice to the offender of the penalties which may
24 be imposed if the court subsequently finds the
25 offender to have violated the terms and conditions in
26 the order of home detention.

27 (3) A requirement that the offender abide by a
28 schedule prepared by the probation officer specifically
29 setting forth the times when the offender may be
30 absent from the offender's home and the locations the
31 offender is allowed to be during the scheduled
32 absences.

33 (4) A requirement that the offender is not to commit
34 another crime during the period of home detention
35 ordered by the court.

36 (5) A requirement that the offender obtain approval
37 from the probation officer before the offender changes
38 residence or the schedule described in subdivision (3)
39 of this section.

40 (6) A requirement that the offender maintain:

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

42 (B) If ordered by the court, a monitoring device in
43 the offender's home, or on the offender's person, or
44 both; and

45 (C) Electric service in the offender's home if use of
46 a monitoring device is ordered by the court.

47 (7) A requirement that the offender pay a home
48 detention fee set by the court.

49 (8) A requirement that the offender abide by other
50 conditions of probation set by the court.

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

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

5 (b) A court may not order home detention for an
6 offender who is being held under a detainer, warrant

7 or process issued by a court of another jurisdiction.

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

1 All home detention fees shall be deposited with the
2 circuit clerk who shall deposit the fees into the county
3 sheriff's special adult or juvenile probation services
4 fund, which fund is hereby mandated. The county
5 commission shall appropriate money from the fund to
6 administer a home detention program, including the
7 purchase of monitoring devices and other supervision
8 expenses, and may as necessary supplement the fund
9 with additional appropriations.

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

1 An offender ordered to undergo home detention
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.

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

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

8 (b) If at any time during the period of home deten-
9 tion there shall be reasonable cause to believe that a
10 participant has violated the terms and conditions of
11 the court's order of home detention and said partici-
12 pant's participation was imposed as an alternative
13 sentence to another form of incarceration, said partic-
14 ipant shall be subject to the same procedures involving
15 revocation as would a probationer charged with a
16 violation of the order of home detention. Any partic-
17 ipant under an order of home detention shall be
18 subject to the same penalty or penalties, upon the

19 court's finding of a violation of the order of home
20 detention, as he or she could have received at the
21 initial disposition hearing: *Provided*, That the partici-
22 pant shall receive credit towards any sentence
23 imposed after a finding of violation for the time spent
24 in home confinement.

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

1 A probation department charged by a court with
2 supervision of offenders ordered to undergo home
3 detention shall provide all law enforcement agencies
4 having jurisdiction in the place where the probation
5 department is located with a list of offenders under
6 home detention supervised by the probation depart-
7 ment. The list must include the following information
8 about each offender:

9 (1) The offender's name, any known aliases, and the
10 location of the offender's home detention;

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

12 (3) The date the offender's home detention expires;
13 and

14 (4) The name, address and telephone number of the
15 offender's supervising probation officer for home
16 detention.

§62-11B-11. Provisions of article not exclusive.

1 The provisions of this article are not to be consid-
2 ered exclusive nor do they supersede existing statutes
3 relating to the detention of adult or juvenile offenders.
4 The provisions of this article may be applied at the
5 discretion of the trial court as an alternate means of
6 detention.

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

Frederic J. Kim
.....
Chairman Senate Committee

Bernard V. Kelly.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Harrel E. Blane
.....
Clerk of the Senate

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

Keith S. Mitchell
.....
President of the Senate

Robert C. Call
.....
Speaker House of Delegates

The within is approved this the *26th*.....
day of *March*....., 1990.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/90

Time 10:07 am

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