WEST VIRGINIA CODE CHAPTER 62 ARTICLE 11B

WV Legislature

§62-11B-1. Short title.

This article may be cited as the "Home Incarceration Act."

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§62-11B-2. Applicability.

This article applies to adult offenders and to juveniles who have committed a delinquent act that would be a crime if committed by an adult.

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§62-11B-3. Definitions.

As used in this article:

(1) "Home" means the actual living area of the temporary or permanent residence of an offender. The term includes, but is not limited to, a hospital, health care facility, hospice, group home, residential treatment facility and boarding house.

(2) "Monitoring device" means an electronic device that is:

(A) Limited in capability to the recording or transmitting of information regarding an offender's presence or absence from the offender's home and his or her use or lack of use of alcohol or controlled substances;

(B) Minimally intrusive upon the privacy of other persons residing in the offender's home; and

(C) Incapable of recording or transmitting:

(i) Visual images;

(ii) Oral or wire communications or any Auditory sound; or

(iii) Information regarding the offender's activities while inside the offender's home without the offender's knowledge or consent.

(3) "Offender" means any adult convicted of a crime punishable by imprisonment or detention in a county jail or state penitentiary; or a juvenile convicted of a delinquent act that would be a crime punishable by imprisonment or incarceration in the state penitentiary or county jail, if committed by an adult.

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

(a) As a condition of probation or bail or as an alternative sentence to another form of incarceration for any criminal violation of this code over which a circuit court has jurisdiction, a circuit court may order an offender confined to the offender's home for a period of home incarceration. As an alternative sentence to incarceration in jail for any criminal violation of this code over which a magistrate court has jurisdiction or as a condition of bail for a criminal violation of this code over which a magistrate court has jurisdiction to set bail, a magistrate may order an offender confined to the offender's home for a period of electronically monitored home incarceration: Provided, That electronic monitoring may not be required in a specific case if a circuit court upon petition thereto finds by order that electronic monitoring is not necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) A requirement that the offender maintain:

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

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

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

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

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

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

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

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

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

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

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

(e) Home incarceration is not available as a sentence if the language of a criminal statute expressly prohibits its application.

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

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

All home incarceration fees ordered by the circuit court or a magistrate pursuant to subdivision (7), section five of this article are to be paid to the county sheriff. The county sheriff is to establish a special fund designated the home incarceration services fund, in which the sheriff is to deposit all home incarceration fees collected pursuant to this section. The county commission shall appropriate money from the fund to administer a home incarceration program, including the purchase of electronic monitoring devices and other supervision expenses, and may as necessary supplement the fund with additional appropriations. The county commission may also appropriate any excess money from the fund to defray the costs of housing county inmates or for community corrections programs, if the sheriff or other person designated to administer the fund certifies in writing to the county commission that a surplus exists in the fund at the end of the fiscal year.

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

The county commission may employ one or more persons with the approval of the circuit court and who shall be subject to the supervision of the sheriff as a home incarceration supervisor or may designate the county sheriff to supervise offenders ordered to undergo home incarceration and to administer the county's home incarceration program. Any person so supervising shall have authority, equivalent to that granted to a probation officer pursuant to section ten, article twelve of this chapter, to arrest a home incarceration participant when reasonable cause exists to believe that such participant has violated the conditions of his or her home incarceration. Unless otherwise specified, the use of the term "supervisor" in this article shall refer to a home incarceration supervisor.

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§62-11B-7b. Home incarceration supervisors deemed qualified law-enforcement officers as that term is used in 18 U.S.C. §926B.

(a) Notwithstanding any other provision of this code, for purposes of this section it is hereby recognized that home incarceration is a form of confinement as that term is used in 18 U.S.C. § 926B.

(b) In recognition of the duties of their employment supervising confinement and supervised release, and the inherent arrest powers for violation of the same which constitute law enforcement, home incarceration supervisors, are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. § 926B.

(c) Any home incarceration supervisor may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. § 926B if the following criteria are met:

(1) The home incarceration program has a written policy authorizing home incarceration supervisors to carry a concealed firearm for self-defense purposes.

(2) There is in place in the home incarceration program a requirement that the home incarceration supervisors must regularly qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies in the county in which the home incarceration supervisors are employed; and

(3) The home incarceration program issues a photographic identification and certification card which identify the home incarceration supervisors as law-enforcement employees of the home incarceration program of §30-29-12 of this code.

(d) Any policy instituted pursuant to subsection (b) of this section shall include provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm; and

(3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(e) Any home incarceration supervisor who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(f) The privileges authorized by the amendments to this section enacted during the 2022, regular session of the Legislature are wholly within the discretion of the supervising authority over the home incarceration supervisors.

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(g) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize home incarceration programs wishing to do so to allow home incarceration supervisors to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

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

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

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

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

(b) If, at any time during the period of home incarceration, there is reasonable cause to believe that a participant sentenced to home incarceration by the circuit court has violated the terms and conditions of the court's order of home incarceration and the participant's participation was imposed as an alternative sentence to another form of incarceration, the participant is subject to the same procedures involving confinement and revocation as would a probationer charged with a violation of the order of home incarceration. Any participant under an order of home incarceration is subject to the same penalty or penalties, upon the circuit court's finding of a violation of the order of home incarceration, as he or she could have received at the initial disposition hearing: Provided, That the participant shall receive credit towards any sentence imposed after a finding of violation for the time spent in home incarceration.

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

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

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

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

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

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

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

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

(a) Home incarceration pursuant to the provisions of this article may be imposed at the discretion of the circuit court or magistrate court as an alternative means of incarceration for any offense. Except for offenses for which the penalty includes mandatory incarceration, home incarceration may not be considered an exclusive means of alternative sentencing.

(b) Upon conviction of a person, the circuit court, magistrate court or municipal court may, in its discretion, grant credit for time spent on home incarceration as a condition of bail toward any sentence imposed, if the person is found to have complied with the terms of bail.

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

(a) Notwithstanding any provision of this code to the contrary, in any case where a person has been ordered to home incarceration where that person is not in the custody or control of the Division of Corrections, the circuit court shall have the authority of the board of probation and parole regarding the release, early release or release on parole of the person.

(b) Any person paroled from a sentence of home incarceration imposed by the provisions of this article shall be supervised by the probation office of the sentencing court. If at any time during the period of parole there is reasonable cause to believe that the person paroled has violated the terms and conditions of his or her parole, he or she shall be subject to the procedures and penalties set forth in section ten, article twelve of this chapter. If at any time during the period of parole from home incarceration there is reasonable cause to believe that the person paroled has violated the terms and conditions of his or her parole and the home incarceration was imposed as an alternative sentence to another form of incarceration, he or she shall be subject to the same penalty or penalties as he or she could have received at the initial disposition hearing. Time served on parole granted shall be credited for time served toward any remainder of the maximum sentence in the event of parole revocation: Provided, That time served on parole from home incarceration may not be credited towards any reduction of sentence for good conduct towards any remainder of the maximum sentence in the event of parole revocation.

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§62-11B-13. Home incarceration for municipal court offenders.

Notwithstanding any provision of this article to the contrary, when a person is convicted under a municipal ordinance for which a period of incarceration may be imposed, the municipal court may enter an order for home incarceration as an alternative sentence to incarceration in a county or regional jail. A home incarceration sentence ordered by a municipal court pursuant to the provisions of this section is subject to the same requirements and conditions as a home incarceration sentence imposed by a circuit court or magistrate court pursuant to the provisions of this article. All home incarceration fees ordered by the municipal court pursuant to subdivision (7), section five of this article are to be paid to the municipal clerk, who shall monthly remit the fees to the sheriff.

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