WEST VIRGINIA CODE CHAPTER 62 ARTICLE 11D

WV Legislature

§62-11D-1. Definitions.

As used in this article:

(1) "Certified polygraph analyst" means a person licensed pursuant to the provisions of section five-c, article five, chapter twenty-one of this code and who:

(A) Is certified in post conviction sex offender testing as prescribed by the American Polygraph Association;

(B) Has completed not less than twenty hours of American Polygraph Association-approved sex offender testing training every other calendar year; and

(C) Uses standards approved by the American Polygraph Association for sex offender testing.

(2) "Electronic monitoring" means any one or a combination of the following technologies:

(A) Voice verification;

(B) Radio frequency;

(C) Video display/breath alcohol test;

(D) Global positioning satellite; or

(E) Global positioning satellite - cellular.

(3) "Full-disclosure polygraph" or "sexual history polygraph" means a polygraph examination administered to determine the entire sexual history of the probationer or parolee.

(4) "Maintenance test" means polygraph examination administered to determine the probationer's or parolee's compliance with the terms of supervision and treatment.

(5) "Sexually violent predator" means any person determined by a circuit court of this state to be a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code or of a similar provision in another state, federal or military jurisdiction.

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§62-11D-2. Polygraph examinations as a condition of supervision for certain sex offenders released on probation, parole or on supervised release.

(a) Notwithstanding any provision of this code to the contrary, any person:

(1) Who has been determined to be a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code; or

(2) Who is required to register as a sex offender pursuant to the provisions of article twelve, chapter fifteen of this code and who is ordered by a circuit court or supervising entity to undergo polygraph examination as a condition of probation, parole or supervised release, shall, as a condition of said probation, parole or supervised release, submit to polygraph examinations as prescribed in this section.

(b) Any person required to undergo polygraph examination pursuant to subsection (a) of this section shall, at his or her expense, submit to at least one polygraph examination each year to answer questions relating to his or her compliance with conditions of supervision, including conditions related to treatment. Additional examinations may be required, not to exceed a total of five. The results of any examination are not admissible in evidence and are to be used solely as a risk assessment and treatment tool. Examination results shall be made available to the person under supervision, upon request.

(c) In the event a person required to submit to polygraph examinations as required by the provisions of this section is unable to pay for the polygraph examination or examinations, that person may present an affidavit reflecting the inability to pay for such testing to the circuit court of the county of supervision. If it appears to the satisfaction of the court that such person is in fact financially unable to pay for such testing, the court shall issue an order reflecting such findings and forward such order to the supervising entity. Upon receipt of such order, the supervising entity shall then be responsible for paying for such testing.

(d) Any polygraph examination conducted pursuant to the provisions of this section shall be conducted by a certified polygraph analyst.

(e) In the conduct of polygraph examinations of a sex offender performed pursuant to the provisions of this section, no certified polygraph analyst may:

(1) Conduct more than two full disclosure or sexual history polygraph examinations in a twenty-four hour period;

(2) Disclose any information gained during any full disclosure or sexual history polygraph examination to any law-enforcement agency or other party, other than the supervising entity, without the supervised person's consent, nor shall any information or disclosure be admissible in any court of this state, unless such information disclosed indicates the intention or plan to commit a criminal violation of the laws of this or another state or of the United States in which case such information may be released only to such persons as might

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be necessary solely to prevent the commission of such crime;

(3) Conduct more than two maintenance tests in a twenty-four hour period;

(4) Conduct more than one full disclosure or sexual history polygraph examination and more than two maintenance tests in a twenty-four hour period; or

(5) Conduct more than five polygraph examinations of the same sex offender in a calendar year.

(f) No polygraph examination performed pursuant to the provisions this section may be conducted by a person who is a sworn peace officer, within the boundaries of that officer's jurisdiction.

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§62-11D-3. Electronic monitoring of certain sex offenders under supervision; tampering with devices; offenses and penalties.

(a) Notwithstanding any provisions of this code to the contrary, any person designated as a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code who is on probation, parole or supervised release, shall be subject to electronic monitoring as a condition of probation, parole or supervised release. A person required to register as a sex offender pursuant to the provisions of article twelve, chapter fifteen of this code may, as a condition of probation, parole or supervised release, be subject to electronic monitoring.

(b) Upon being placed on supervision, a person required to undergo electronic monitoring pursuant to the provisions of this section shall be placed at a minimum on radio frequency monitoring with curfews enforced. Following an assessment designed to determine the level and type of electronic monitoring necessary to effectuate the protection of the public, a supervised person may be placed on a system providing a greater or lesser degree of monitoring.

(c) A person subject to the provisions of this section shall be responsible for the cost of the electronic monitoring. In the event a person required to submit to electronic monitoring as required by the provisions of this section is unable to pay for the electronic monitoring, that person may present an affidavit reflecting the inability to pay for such monitoring to the circuit court of the county of supervision. If it appears to the satisfaction of the court that such person is in fact financially unable to pay for such monitoring, the court shall issue an order reflecting such findings and forward said order to the supervising entity. Upon receipt of such order, the supervising entity shall then be responsible for paying for each testing.

(d) The assessment required by the provisions of subsection (b) of this section shall be completed not later than thirty days after the supervised person begins serving probation or parole or supervised release. Under no circumstances may a person of whom electronic monitoring has been mandated as a condition of supervision be on a type of monitoring less effective than voice verification with a curfew.

(e) Any person who intentionally alters, tampers with, damages or destroys any electronic monitoring equipment, with the intent to remove the device or impair its effectiveness, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one year nor more than ten years.

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