

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2726

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BYRD, ISNER, FRICH AND LOVEJOY

[Introduced February 28, 2017; Referred

to the Committee on the Judiciary]

1 A BILL to amend and reenact §62-11B-9 of the Code of West Virginia, 1931, as amended,
2 relating generally to authorizing home incarceration officers to arrest a participant for
3 violating the terms and conditions of his or her supervision without a court order.

Be it enacted by the Legislature of West Virginia:

1 That §62-11B-9 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 11B. Home Incarceration Act.

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

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

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

15 (c) If, at any time during the period of home incarceration, there is reasonable cause to
16 believe that a participant sentenced to home incarceration by a magistrate has violated the terms
17 and conditions of the magistrate's order of home incarceration as an alternative sentence to

18 incarceration in jail, the supervising authority may arrest the participant ~~upon the obtaining of an~~
19 ~~order or warrant~~ and take the offender before a magistrate within the county of the offense. The
20 magistrate shall then conduct a prompt and summary hearing on whether the participant's home
21 incarceration should be revoked. If it appears to the satisfaction of the magistrate that any
22 condition of home incarceration has been violated, the magistrate may revoke the home
23 incarceration and order that the sentence of incarceration in jail be executed. Any participant
24 under an order of home incarceration is subject to the same penalty or penalties, upon the
25 magistrate's finding of a violation of the order of home incarceration, as the participant could have
26 received at the initial disposition hearing: *Provided*, That the participant shall receive credit
27 towards any sentence imposed after a finding of violation for the time spent in home incarceration.

NOTE: The purpose of this bill is to authorize home incarceration officers to arrest participants for violating the terms and conditions of his or her supervision with or without a court order.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.