

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

## **House Bill 2494**

BY DELEGATE STEELE, KESSINGER, PACK AND HOWELL

[Introduced January 17, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §62-11B-6 of the Code of West Virginia, 1931, as amended, relating  
2 to the ineligibility for home incarceration for offenders convicted of two or more prior,  
3 unrelated felonies not a part of the same criminal transaction.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 11B. HOME INCARCERATION ACT.**

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

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

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

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

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

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

17 (f) Notwithstanding ~~the provisions of subsection (c) of this section~~ §62-11B-6(c) of this  
18 code a magistrate may order home incarceration through the imposition of supervision or  
19 participation in a community corrections program created pursuant to ~~article eleven-c, chapter~~

20 ~~sixty-two~~ §62-11C-1 et seq. of this code.

1       (g) A circuit court or magistrate shall not grant home incarceration to an offender convicted  
2 of two or more unrelated felony offenses, not arising from the same criminal transaction on a prior  
3 occasion in this jurisdiction or any jurisdiction within the United States. The court, upon sentencing  
4 the offender, shall make inquiry of the officer preparing the presentence investigation report, as  
5 to whether the offender has two or more prior felony convictions, and the offender shall be  
6 afforded the opportunity to confirm or deny the assertion of the officer preparing the report. Should  
7 the offender deny the assertion of the officer preparing the report, the state, by its counsel, shall  
8 present such evidence to the court as it may have in its possession concerning the prior felony  
9 convictions of the offender, and the offender shall present such evidence to the court as the  
10 offender may have concerning the prior felony convictions of the offender. The court, after hearing  
11 the evidence of both parties, shall determine by a preponderance of the evidence whether the  
12 offender has been convicted of two or more prior unrelated felonies, not arising from the same  
13 criminal transaction on a prior occasion in this jurisdiction or any jurisdiction within the United  
14 States. Should the offender confirm the assertion of the officer or be found by the court to have  
15 committed two prior unrelated felonies, not arising from the same criminal transaction on a prior  
16 occasion in this jurisdiction or any jurisdiction within the United States, then the offender shall not  
17 be eligible for a grant of home incarceration under this article.

NOTE: The purpose of this bill is to make the sentence of home incarceration unavailable to an offender convicted of two or more unrelated felony offenses, not arising from the same criminal transaction on a prior occasion in this jurisdiction or any jurisdiction within the United States.

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