



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2001

(Patron – Bell)

Date Submitted: 12/17/02

LD #: 03-0751627

Topic: Eligibility for home/electronic incarceration

Proposed Change:

The proposal amends § 53.1-131.2 such that offenders convicted of a felony or certain misdemeanors would no longer be eligible for assignment to a home/electronic incarceration (HEI) program. In addition to making felony offenders ineligible for HEI, the proposal prohibits the use of HEI for offenders convicted of driving under the influence in violation of § 18.2-266 or assault and battery against a family or household member in violation of § 18.2-57.2.

Currently, under § 53.1-131.2, the court may assign a defendant to an HEI program pending trial, subject to the approval of the sheriff. Pretrial defendants assigned to HEI by the court are considered to be out on bail or bond with HEI as a condition of their release. In addition, if an offender is convicted and sentenced to confinement in a state or local correctional facility and is deemed a suitable candidate, the court may suspend the sentence and order the offender directly to an HEI program as a condition of probation. Under current *Code*, judges may not place offenders convicted of murder, voluntary manslaughter, any mob-related felony, kidnapping, felony assault, robbery or any sexual assault in an HEI program. In addition to HEI placements by the court, current *Code* permits sheriffs to assign eligible offenders to an HEI program; offenders convicted of a felony violent crime, felony sexual offense, burglary or manufacturing, distributing or possessing with intent to distribute a Schedule I or II drug are not eligible to be placed on HEI by the sheriff. When a sheriff assigns a local-responsible prisoner to HEI as an alternative to confinement in the jail, the State Compensation Board reimburses the sheriff at an established per diem rate. If a state-responsible prisoner is assigned to HEI, the Compensation Board ceases to reimburse the sheriff for that prisoner.

Current Practice:

Based on FY2001 and FY2002 Local Inmate Data System (LIDS) data, 2,038 convicted offenders were released from jail to an HEI program during that two-year period. Of these, 906 (44%) were convicted of a felony, 792 (39%) were convicted of a misdemeanor, and 340 (17%) were convicted of a crime carrying a penalty that cannot be classified strictly as a misdemeanor or a felony (e.g., the maximum penalty for certain driving while intoxicated offenses is one year in prison, instead of the maximum penalty of 12 months in jail that is associated with a Class 1 misdemeanor). Overall, nearly 87% of the offenders placed on HEI during the two-year period had been sentenced to serve a local-responsible (jail) term. For offenders convicted misdemeanors and other non-felony crimes, the median jail sentence was two and three months, respectively (see *Background Sentencing Information* below). For felony offenders sentenced to

jail time, the median sentence was seven months. Under the proposed legislation, offenders convicted of a felony or certain misdemeanor offenses could no longer be placed on HEI.

Background Sentencing Information – Convicted Offenders Placed on HEI

Penalty Structure	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local-Responsible Sentence
Misdemeanor	792	2%	97%	1%	2 months
Other non-felonies	340	3%	89%	8%	3 months
Felony	906	1%	77%	22%	7 months

Note: Data includes only convictions for those held in the local jail pretrial or sentenced to serve time post-trial.

For felony offenders given a state-responsible term, the median sentence was one year.

Data Source: FY2001 and FY2002 Local Inmate Data System (LIDS) database

During FY2001 and FY2002, 17 offenders convicted of a misdemeanor assault and battery against a family or household member in violation of § 18.2-57.2 were placed on HEI. All but one had been sentenced to serve a jail term; the median jail sentence in these cases was two months. The proposed legislation would prohibit offenders convicted of this misdemeanor crime from HEI participation.

During the same period, there were a total of 236 convictions for driving under influence (DUI) in violation of § 18.2-266 among offenders who were assigned to HEI programs. Less than half (45%) of the convictions were for misdemeanor or non-felony DUI offenses. All but one had been sentenced to serve a jail term; the median jail sentence in the misdemeanor DUI cases ranged from .3 months to 4.5 months, depending on the prior record and blood alcohol level of the offender at the time of the offense. The proposed legislation would prohibit offenders convicted of DUI from HEI participation.

Most costs for persons on HEI are borne by the inmate. According to a 1998 Virginia State Crime Commission report on *The Use of Home Electronic Incarceration in Virginia*, nearly 93% of the offenders on HEI through the sheriffs and regional jails pay monitoring fees at an average rate of \$10.42 per day.

Impact of Proposed Legislation:

Proposed changes to § 53.1-131.2 are likely to have an impact on both state-responsible (prison) and local-responsible (jail) beds. Felony and misdemeanor offenders previously eligible for HEI will be denied this alternative and, as a result, may remain confined for the duration of term of incarceration imposed by the court.

Should prisoners remain incarcerated, costs will increase for localities and the Commonwealth. Based on the Crime Commission report, a locality profits an average of more than \$4000 per HEI inmate on an annualized basis (the locality receives a daily average of \$10.42 paid by offender plus \$8.00 paid by the State Compensation Board; a locality spends \$7.16 per day on average for leasing HEI equipment). On average, it costs a locality \$8,400 per year to house a jail prisoner. Thus, restricting HEI eligibility based on the proposal will result in a shift in the locality of more than \$12,000 annually per jail prisoner. Furthermore, it costs the state less than \$3,000 per year (\$2,922) for a felon diverted to HEI by the court, but the state pays \$11,637 per year for a felon sentenced to jail and \$22,286 for a felon sentenced to prison. For the state, the

proposed HEI restrictions will result in a shift of about \$8,700 annually per jail prisoner; the resulting shift will be about \$19,000 annually per prison inmate.

No adjustment to the sentencing guidelines would be necessary under the proposal. Data available to the Commission on misdemeanor offenses is limited to offenders who were held pre- or post-trial in jail; therefore, it is possible that there were cases that are not reflected in the data.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

*Cost per prison bed was assumed to be \$22,286 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. Cost per jail bed was based on The Compensation Board's FY2001 Jail Cost Report (presently, these numbers have not been approved by the Board, and are to be regarded as preliminary). The state cost was calculated from the revenue portion and the resulting sum was \$31.86 per day or \$11,637 per year. The local cost was calculated by using the daily expenditure cost of \$57.45 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$23.04 per day or \$8,415 per year.