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SENATE BILL NO. 1552

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 28, 2009)

(Patron Prior to Substitute—Senator Stolle)

A *BILL to amend and reenact § 53.1-131.2 of the Code of Virginia, relating to assignment to home/electronic incarceration program.*

Be it enacted by the General Assembly of Virginia:

1. That § 53.1-131.2 of the Code of Virginia is amended and reenacted as follows:

§ 53.1-131.2. Assignment to a home/electronic incarceration program; payment to defray costs; escape; penalty.

A. Any court having jurisdiction for the trial of a person charged with a criminal offense, a traffic offense or an offense under Chapter 5 (§ 20-61 et seq.) of Title 20 may, if the defendant is convicted and sentenced to confinement in a state or local correctional facility, and if it appears to the court that such an offender is a suitable candidate for home/electronic incarceration, assign the offender to a home/electronic incarceration program as a condition of probation, if such program exists, under the supervision of the sheriff, the administrator of a local or regional jail, or a Department of Corrections probation and parole district office established pursuant to § 53.1-141. *A court may also assign such an offender to home/electronic incarceration without such assignment being a condition of probation.*

However, any offender who is convicted of any of the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 shall not be eligible for participation in the home/electronic incarceration program: (i) first and second degree murder and voluntary manslaughter under Article 1 (§ 18.2-30 et seq.); (ii) mob-related felonies under Article 2 (§ 18.2-38 et seq.); (iii) any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.); (iv) any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.); (v) robbery under § 18.2-58.1; or (vi) any criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.). The court may further authorize the offender's participation in work release employment or educational or other rehabilitative programs as defined in § 53.1-131. The court shall be notified in writing by the director or administrator of the program to which the offender is assigned of the offender's place of home/electronic incarceration, place of employment, and the location of any educational or rehabilitative program in which the offender participates.

B. In any city or county in which a home/electronic incarceration program established pursuant to this section is available, the court, subject to approval by the sheriff or the jail superintendent of a local or regional jail, may assign the accused to such a program pending trial if it appears to the court that the accused is a suitable candidate for home/electronic incarceration.

C. Any person who has been sentenced to jail or convicted and sentenced to confinement in prison but is actually serving his sentence in jail, after notice to the attorney for the Commonwealth of the convicting jurisdiction, may be assigned by the sheriff to a home/electronic incarceration program under the supervision of the sheriff, the administrator of a local or regional jail, or a Department of Corrections probation and parole office established pursuant to § 53.1-141. However, if the offender violates any provision of the terms of the home/electronic incarceration agreement, the offender may have the assignment revoked and, if revoked, shall be held in the jail facility to which he was originally sentenced. Such person shall be eligible if his term of confinement does not include a sentence for a conviction of a felony violent crime, a felony sexual offense, burglary or manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a Schedule I or Schedule II controlled substance. The court shall retain authority to remove the offender from such home/electronic incarceration program. The court which sentenced the offender shall be notified in writing by the sheriff or the administrator of a local or regional jail of the offender's place of home/electronic incarceration and place of employment or other rehabilitative program.

C1. An assignment to a home/electronic incarceration program is deemed to be a term of confinement for an offender who has been convicted and sentenced to a term of confinement.

D. The Board may prescribe regulations to govern home/electronic incarceration programs.

E. Any offender or accused assigned to such a program by the court or sheriff who, without proper authority or just cause, leaves his place of home/electronic incarceration, the area to which he has been assigned to work or attend educational or other rehabilitative programs, or the vehicle or route of travel involved in his going to or returning from such place, is guilty of a Class 1 misdemeanor. An offender or accused who is found guilty of a violation of this section shall be ineligible for further participation in a home/electronic incarceration program during his current term of confinement.

F. The director or administrator of a home/electronic incarceration program who also operates a

60 residential program may remove an offender from a home/electronic incarceration program and place
61 him in such residential program if the offender commits a noncriminal program violation. The court
62 shall be notified of the violation and of the placement of the offender in the residential program.

63 G. The director or administrator of a home/electronic incarceration program shall charge the offender
64 or accused a fee for participating in the program to pay for the cost of home/electronic incarceration
65 equipment. The offender or accused shall be required to pay the program for any damage to the
66 equipment which is in his possession or for failure to return the equipment to the program.

67 H. Any wages earned by an offender or accused assigned to a home/electronic incarceration program
68 and participating in work release shall be paid to the director or administrator after standard payroll
69 deductions required by law. Distribution of the money collected shall be made in the following order of
70 priority to:

71 1. Meet the obligation of any judicial or administrative order to provide support and such funds shall
72 be disbursed according to the terms of such order;

73 2. Pay any fines, restitution or costs as ordered by the court;

74 3. Pay travel and other such expenses made necessary by his work release employment or
75 participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and

76 4. Defray the offender's keep.

77 The balance shall be credited to the offender's account or sent to his family in an amount the
78 offender so chooses.

79 The Board of Corrections shall promulgate regulations governing the receipt of wages paid to
80 persons participating in such programs, the withholding of payments and the disbursement of appropriate
81 funds.

82 I. For the purposes of this section, "sheriff" means the sheriff of the jurisdiction where the person
83 charged with the criminal offense was convicted and sentenced, provided that the sheriff may designate
84 a deputy sheriff or regional jail administrator to assign offenders to home/electronic incarceration
85 programs pursuant to this section.