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**HOUSE BILL NO. 151**

Offered January 13, 2010

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*A BILL to amend and reenact §§ 53.1-116 and 53.1-131.2 of the Code of Virginia, relating to assignment to home/electronic incarceration program.*

Patron—O'Bannon

Referred to Committee on Militia, Police and Public Safety

**Be it enacted by the General Assembly of Virginia:****1. That §§ 53.1-116 and 53.1-131.2 of the Code of Virginia are amended and reenacted as follows:**

§ 53.1-116. What records and policy jailer shall keep; how time deducted or added for felons and misdemeanants; payment of fine and costs by person committed to jail until he pays.

A. The jailer shall keep a (i) record describing each person committed to jail, the terms of confinement, for what offense or cause he was committed, and when received into jail; (ii) record of each prisoner; and (iii) written policy stating the criteria for and conditions of earned credit in the facility.

Unless he is serving a mandatory minimum sentence of confinement, each prisoner sentenced to 12 months or less for a misdemeanor or any combination of misdemeanors shall earn good conduct credit at the rate of one day for each one day served, including all days served while confined in jail prior to conviction and sentencing, in which the prisoner has not violated the written rules and regulations of the jail. Prisoners eligible for parole under §§ 53.1-151, 53.1-152 or § 53.1-153 shall earn good conduct credit at a rate of 15 days for each 30 days served with satisfactory conduct.

The jailer may grant the prisoner additional credits for performance of institutional work assignments, participation in classes, or participation in local work force programs, if available at the facility, at the rate of five days for every 30 days served. The time so deducted shall be allowed to each prisoner for such time as he is confined in jail or assigned to a home/electronic incarceration program pursuant to subsection A or C of § 53.1-131.2. It shall be the responsibility of the jailer in each facility to determine the manner in which these additional credits may be awarded and to include this information in the written policy mandated by clause (iii) of this subsection.

For each violation of the rules prescribed herein, the time so deducted shall be added until it equals the full sentence imposed upon the prisoner by the court.

However, any prisoner committed to jail upon a felony offense committed on or after January 1, 1995, shall not earn good conduct credit, sentence credit, earned sentence credit, other credit, or a combination of any credits in excess of that permissible under Article 4 (§ 53.1-202.2 et seq.) of Chapter 6 of this title. So much of an order of any court contrary to the provisions of this section shall be deemed null and void.

B. Notwithstanding the provisions of § 19.2-350, in the event a person who was committed to jail to be therein confined until he pays a fine imposed on him by the court in which he was tried should desire to pay such fine and costs, he may pay the same to the person in charge of the jail. The person receiving such moneys shall execute and deliver an official receipt therefor and shall promptly transmit the amount so paid to the clerk of the court which imposed the fine and costs. Such clerk shall give him an official receipt therefor and shall properly record the receipt of such moneys.

C. The administrator of a local or regional jail shall not assign a person to a home/electronic incarceration program pursuant to subsection C of § 53.1-131.2 in a locality which has a jail operated by a sheriff, without the consent of the sheriff.

§ 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)

INTRODUCED

HB151

59 first and second degree murder and voluntary manslaughter under Article 1 (§ 18.2-30 et seq.); (ii)  
60 mob-related felonies under Article 2 (§ 18.2-38 et seq.); (iii) any kidnapping or abduction felony under  
61 Article 3 (§ 18.2-47 et seq.); (iv) any malicious felonious assault or malicious bodily wounding under  
62 Article 4 (§ 18.2-51 et seq.); (v) robbery under § 18.2-58.1; or (vi) any criminal sexual assault  
63 punishable as a felony under Article 7 (§ 18.2-61 et seq.). The court may further authorize the offender's  
64 participation in work release employment or educational or other rehabilitative programs as defined in  
65 § 53.1-131. The court shall be notified in writing by the director or administrator of the program to  
66 which the offender is assigned of the offender's place of home/electronic incarceration, place of  
67 employment, and the location of any educational or rehabilitative program in which the offender  
68 participates.

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

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

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

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

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

96 FG. The director or administrator of a home/electronic incarceration program who also operates a  
97 residential program may remove an offender from a home/electronic incarceration program and place  
98 him in such residential program if the offender commits a noncriminal program violation. The court  
99 shall be notified of the violation and of the placement of the offender in the residential program.

100 GH. The director or administrator of a home/electronic incarceration program shall charge the  
101 offender or accused a fee for participating in the program to pay for the cost of home/electronic  
102 incarceration equipment. The offender or accused shall be required to pay the program for any damage  
103 to the equipment which is in his possession or for failure to return the equipment to the program.

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

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

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

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

113 4. Defray the offender's keep.

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

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

119 IJ. For the purposes of this section, "sheriff" means the sheriff of the jurisdiction where the person  
120 charged with the criminal offense was convicted and sentenced, provided that the sheriff may designate

**121** a deputy sheriff or regional jail administrator to assign offenders to home/electronic incarceration  
**122** programs pursuant to this section.

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**HB151**