

# VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

## CHAPTER 800

*An Act to amend and reenact §§ 53.1-131 and 53.1-131.2 of the Code of Virginia, relating to local correctional facilities; work release and home/electronic incarceration.*

[H 543]

Approved April 8, 2002

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 53.1-131 and 53.1-131.2 of the Code of Virginia are amended and reenacted as follows:**

§ 53.1-131. Provision for release of prisoner from confinement for employment, educational or other rehabilitative programs; escape; penalty; disposition of earnings.

A. Any court having jurisdiction for the trial of a person charged with a criminal offense or charged with an offense under Chapter 5 (§ 20-61 et seq.) of Title 20 may, if the defendant is convicted and (i) sentenced to confinement in jail or (ii) being held in jail pending completion of a presentence report pursuant to § 19.2-299, and if it appears to the court that such offender is a suitable candidate for work release, assign the offender to a work release program under the supervision of a probation officer, the ~~office of the sheriff or the administrator of a local or regional jail or a program designated by the court.~~ The court further may authorize the offender to participate in educational or other rehabilitative programs designed to supplement his work release employment. 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 employment and the location of any educational or rehabilitative program in which the offender participates.

Any person who has been sentenced to confinement in jail or who has been convicted of a felony but is confined in jail pursuant to § 53.1-20, in the discretion of the sheriff ~~or the administrator of a local or regional jail~~, may be assigned by the sheriff ~~or the administrator of a local or regional jail~~ to a work release program under the supervision of the ~~office of the sheriff or the administrator of a local or regional jail.~~ The sheriff ~~or the administrator of a local or regional jail~~ may further authorize the offender to participate in educational or other rehabilitative programs as defined in this section designed to supplement his work release employment. The court that sentenced the offender shall be notified in writing by the sheriff or the administrator of a local or regional jail of any such assignment and of the offender's place of employment or other rehabilitative program. The court, in its discretion, may thereafter revoke the authority for such an offender to participate in a work release program.

The sheriff ~~or other administrative head of a local correctional facility~~ and the Director may enter into agreements whereby persons who are committed to the Department, whether such persons are housed in a state or local correctional facility, and who have met all standards for such release, may participate in a local work release program or in educational or other rehabilitative programs as defined in this section. *The administrator of a regional jail and the Director may also enter into such agreements where such agreements are approved in advance by a majority of the sheriffs on the regional jail board.* All persons accepted in accordance with this section shall be governed by all regulations applying to local work release, notwithstanding the provisions of any other section of the Code. Local jails shall qualify for compensation for cost of incarceration of such persons pursuant to § 53.1-20.1, less any payment for room and board collected from the inmate.

Any offender assigned to such a program by the court or sheriff ~~or the administrator of a local or regional jail~~ who, without proper authority or just cause, leaves the area to which he has been assigned to work or attend educational or other rehabilitative programs, or leaves the vehicle or route of travel involved in his going to or returning from such place, ~~shall be~~ *is* guilty of a Class 1 misdemeanor. In the event such offender leaves the Commonwealth, the offender may be found guilty of an escape as provided in § 18.2-477. An offender who is found guilty of a Class 1 misdemeanor in accordance with this section shall be ineligible for further participation in a work release program during his current term of confinement.

The Board shall prescribe regulations to govern the work release, educational and other rehabilitative programs authorized by this section.

Any wages earned pursuant to this section by an offender may, upon order of the court, be paid to the director or administrator of the program after standard payroll deductions required by law. Distribution of such wages shall be made for the following purposes:

1. To pay an amount to defray the cost of his keep;
2. To pay travel and other such expenses made necessary by his work release employment or participation in an educational or rehabilitative program;
3. To provide support and maintenance for his dependents or to make payments to the local department of ~~welfare or~~ social services or the Commissioner of Social Services, as appropriate, on

behalf of dependents who are receiving public assistance as defined in § 63.1-87; or

4. To pay any fines, restitution or costs as ordered by the court.

Any balance at the end of his sentence shall be paid to the offender upon his release.

B. For the purposes of this section:

"Educational program" means a program of learning recognized by the State Council of Higher Education, the State Board of Education or the State Board of Corrections.

"Rehabilitative program" includes an alcohol and drug treatment program, mental health program, family counseling, community service or other community program approved by the court having jurisdiction over the offender.

*"Sheriff" means the sheriff of the jurisdiction where the person charged with the criminal offense was convicted and sentenced, provided that the sheriff may designate a deputy sheriff or regional jail administrator to assign offenders to work release programs under this section.*

"Work release" means full-time employment or participation in suitable career and technical education programs.

§ 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 ~~office 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. 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 ~~or the administrator of a local or regional jail~~ to a home/electronic incarceration program under the supervision of the ~~office 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.

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 ~~or the administrator of a local or regional jail~~ 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, ~~shall be~~ 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 residential program may remove an offender from a home/electronic incarceration program and place him in such residential program if the offender commits a noncriminal program violation. The court

shall be notified of the violation and of the placement of the offender in the residential program.

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

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

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

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

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

4. Defray the offender's keep.

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

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

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