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HOUSE BILL NO. 1562

Offered January 12, 2011

Prefiled January 4, 2011

A *BILL to amend and reenact § 53.1-131.2 of the Code of Virginia, relating to good conduct credits; home electronic incarceration.*

Patron—Miller, P.J.

Referred to Committee on Militia, Police and Public Safety

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, or failure to pay child support pursuant to a court order 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. 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 or, as appropriate, in a court-ordered intensive case monitoring program for child support. 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. 1. 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.

2. *Unless he is serving a mandatory minimum sentence of confinement, each offender 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 on electronic monitoring and participating in work release employment, educational or other rehabilitative program or due to a medical condition, including all days served while confined in jail prior to conviction and sentencing, in which the offender has not violated the written rules and regulations of the jail. It shall be the responsibility of the jailer in each facility to determine the manner in which these credits may be awarded and to include this*

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59 *information in the written policy mandated by § 53.1-116.*

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

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

68 F. The director or administrator of a home/electronic incarceration program who also operates a
69 residential program may remove an offender from a home/electronic incarceration program and place
70 him in such residential program if the offender commits a noncriminal program violation. The court
71 shall be notified of the violation and of the placement of the offender in the residential program.

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

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

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

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

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

85 4. Defray the offender's keep.

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

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

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