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## HOUSE BILL NO. 857

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Public Safety)

on \_\_\_\_\_)

(Patron Prior to Substitute—Delegate Cousins)

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

**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 and the revocation of such credit.

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. 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 E 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. For purposes of this section, "postpartum person" means a person in postpartum recovery, as that term is defined in § 53.1-133.06.*

B. 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.).

60 seq.). The court may further authorize the offender's participation in work release employment or educational  
61 or other rehabilitative programs as defined in § 53.1-131 or, as appropriate, in a court-ordered intensive case  
62 monitoring program for child support. The court shall be notified in writing by the director or administrator  
63 of the program to which the offender is assigned of the offender's place of home/electronic incarceration,  
64 place of employment, and the location of any educational or rehabilitative program in which the offender  
65 participates.

66 **B. C.** Any court having jurisdiction for the trial of a pregnant person, or postpartum person who still has  
67 contact with their infant child, charged with a criminal offense, a traffic offense, an offense under Chapter 5  
68 (§ 20-61 et seq.) of Title 20, or failure to pay child support pursuant to a court order shall, if the defendant is  
69 convicted and sentenced to confinement in a state or local correctional facility and is a suitable candidate,  
70 assign the offender to a home/electronic incarceration program, if such program exists, under the  
71 supervision of the sheriff, the administrator of a local or regional jail, or a Department of Corrections  
72 probation and parole district office established pursuant to § 53.1-141. However, such an offender is not  
73 eligible for a home/electronic incarceration program if there is probable cause to believe that (i) the offender  
74 will not appear for trial or hearing or at such other time and place as may be directed or (ii) the offender's  
75 liberty will constitute an unreasonable danger to such person, such person's family or household members as  
76 defined in § 16.1-228, or the public. Such an offender who is convicted of any of the following violations of  
77 Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 shall not be eligible for participation in the home/electronic  
78 incarceration program: (a) first and second degree murder and voluntary manslaughter under Article 1  
79 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; (b) mob-related felonies under Article 2 (§ 18.2-38 et seq.) of  
80 Chapter 4 of Title 18.2; (c) any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter  
81 4 of Title 18.2; (d) any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51  
82 et seq.) of Chapter 4 of Title 18.2; (e) robbery under § 18.2-58; or (f) any criminal sexual assault punishable  
83 as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2. The court may further authorize the  
84 offender's participation in work release employment or educational or other rehabilitative programs as  
85 defined in § 53.1-131 or, as appropriate, in a court-ordered intensive case monitoring program for child  
86 support. The court shall be notified in writing by the director or administrator of the program to which the  
87 offender is assigned of the offender's place of home/electronic incarceration and place of employment and the  
88 location of any educational or rehabilitative program in which the offender participates. A postpartum  
89 person may continue to be eligible for participation in the home/electronic incarceration program after the  
90 period of postpartum recovery, as that term is defined in § 53.1-133.06, has ended, so long as such person  
91 remains a suitable candidate for home/electronic incarceration.

92 **D.** In any city or county in which a home/electronic incarceration program established pursuant to this  
93 section is available, the court, subject to approval by the sheriff or the jail superintendent of a local or  
94 regional jail, may assign the accused to such a program pending trial if it appears to the court that the accused  
95 is a suitable candidate for home/electronic incarceration and shall assign the accused to such a program  
96 pending trial if the accused is a pregnant or postpartum person who still has contact with their infant child.  
97 Such a person remains eligible for bond, as defined in § 19.2-119. A postpartum person may continue to be  
98 eligible for participation in the home/electronic incarceration program after the period of postpartum  
99 recovery, as that term is defined in § 53.1-133.06, has ended, so long as such person remains a suitable  
100 candidate for home/electronic incarceration.

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

115 **D. F.** The Board may prescribe regulations to govern home/electronic incarceration programs, and the  
116 Director may prescribe rules to govern home/electronic incarceration programs operated under the  
117 supervision of a Department of Corrections probation and parole district office established pursuant to  
118 § 53.1-141.

119 **E. G.** Any offender or accused assigned to such a program by the court or sheriff who, without proper  
120 authority or just cause, leaves his place of home/electronic incarceration, the area to which he has been  
121 assigned to work or attend educational or other rehabilitative programs, including a court-ordered intensive

122 case monitoring program for child support, or the vehicle or route of travel involved in his going to or  
 123 returning from such place, is guilty of a Class 1 misdemeanor. An offender or accused who is found guilty of  
 124 a violation of this section shall be ineligible for further participation in a home/electronic incarceration  
 125 program during his current term of confinement.

126 **F. H.** The director or administrator of a home/electronic incarceration program who also operates a  
 127 residential program may remove an offender from a home/electronic incarceration program and place him in  
 128 such residential program if the offender commits a noncriminal program violation. The court shall be notified  
 129 of the violation and of the placement of the offender in the residential program.

130 **G. I.** The director or administrator of a home/electronic incarceration program may charge the offender or  
 131 accused a fee for participating in the program ~~which~~ that shall be used for the cost of home/electronic  
 132 incarceration equipment. The offender or accused shall be required to pay the program for any damage to the  
 133 equipment ~~which~~ that is in his possession or for failure to return the equipment to the program.

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

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

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

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

143 4. Defray the offender's keep.

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

146 The State Board of Local and Regional Jails shall promulgate regulations governing the receipt of wages  
 147 paid to persons participating in such programs, except programs operated under the supervision of a  
 148 Department of Corrections probation and parole district office established pursuant to § 53.1-141, the  
 149 withholding of payments, and the disbursement of appropriate funds. The Director shall prescribe rules  
 150 governing the receipt of wages paid to persons participating in such programs operated under the supervision  
 151 of a Department of Corrections probation and parole district office established pursuant to § 53.1-141, the  
 152 withholding of payments, and the disbursement of appropriate funds.

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