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VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

[H 857]

Approved

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

57 under § 18.2-58.1; or (vi) any criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et  
 58 seq.). The court may further authorize the offender's participation in work release employment or educational  
 59 or other rehabilitative programs as defined in § 53.1-131 or, as appropriate, in a court-ordered intensive case  
 60 monitoring program for child support. The court shall be notified in writing by the director or administrator  
 61 of the program to which the offender is assigned of the offender's place of home/electronic incarceration,  
 62 place of employment, and the location of any educational or rehabilitative program in which the offender  
 63 participates.

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

90 D. In any city or county in which a home/electronic incarceration program established pursuant to this  
 91 section is available, the court, subject to approval by the sheriff or the jail superintendent of a local or  
 92 regional jail, may assign the accused to such a program pending trial if it appears to the court that the accused  
 93 is a suitable candidate for home/electronic incarceration and shall assign the accused to such a program  
 94 pending trial if the accused is a pregnant or postpartum person who still has contact with their infant child.  
 95 However, such an offender is not eligible for a home/electronic incarceration program if there is probable  
 96 cause to believe that (i) the offender will not appear for trial or hearing or at such other time and place as  
 97 may be directed or (ii) the offender's liberty will constitute an unreasonable danger to such person, such  
 98 person's family or household members as defined in § 16.1-228, or the public. Such a person remains eligible  
 99 for bond, as defined in § 19.2-119. A postpartum person may continue to be eligible for participation in the  
 100 home/electronic incarceration program after the period of postpartum recovery, as that term is defined in  
 101 § 53.1-133.06, has ended, so long as such person remains a suitable candidate for home/electronic  
 102 incarceration.

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

117 ~~D.~~ F. The Board may prescribe regulations to govern home/electronic incarceration programs, and the  
 118 Director may prescribe rules to govern home/electronic incarceration programs operated under the

119 supervision of a Department of Corrections probation and parole district office established pursuant to  
120 § 53.1-141.

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

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

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

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

- 140 1. Meet the obligation of any judicial or administrative order to provide support and such funds shall be
- 141 disbursed according to the terms of such order;
- 142 2. Pay any fines, restitution, or costs as ordered by the court;
- 143 3. Pay travel and other such expenses made necessary by his work release employment or participation in
- 144 an education or rehabilitative program, including the sums specified in § 53.1-150; and
- 145 4. Defray the offender's keep.

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

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

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