

Act 809 of the 1989 Regular Session.

Act 809

HB1509

By: Representative Wilson

"AN ACT TO AUTHORIZE THE SIXTH JUDICIAL CIRCUIT COURT JUDGES, AS A CONDITION OF PROBATION OR SUSPENSION OF SENTENCE, TO REQUIRE CRIMINAL DEFENDANTS TO PARTICIPATE IN A HOME DETENTION PROGRAM TO BE SUPERVISED ELECTRONICALLY; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. "Approved electronic monitoring or supervising device" means any electronic device approved by the court which meets the minimum Federal Communications Commission regulations and requirements, and which is limited in capability to recording or transmitting information as to the criminal defendant's presence in the home.

SECTION 2. In all instances where a court may suspend the imposition of sentence or place a criminal defendant on probation, in addition to all other conditions which may be imposed by the court, the court may require the criminal defendant to participate in a home detention program in lieu of being sentenced to a State correctional facility or a county or city jail. The term of the home detention shall not exceed the maximum number of years of imprisonment to which the criminal defendant could be sentenced, and the length of time the defendant participates in a home detention program shall be credited against the defendant's sentence if sentence is subsequently imposed.

SECTION 3. The court in which the criminal defendant received suspension of sentence or probation shall establish the procedures for participation in a home detention program, including but not limited to program criteria, terms and conditions of release, the the imposition of fees and costs upon the criminal defendant which will fully or partially pay the costs arising from the use by those persons of approved electronic monitoring or supervising devices and for program supervision. Participation fees, through 1990, shall not exceed \$15.00 per day, and shall increase no more than 5% each two years thereafter. All participation fees shall be held separate and apart from county general funds, and shall be used only for continuation of the home detention program. Furthermore, the court shall obtain the consent of the criminal defendant as a condition of participation in the program, and shall provide by court order that participation in the home detention program is further contingent upon any other conditions set forth in the order. These conditions shall include but are not limited to, unannounced visits into the defendant's place of detention by any person or agent designated by the court for the purpose of verifying compliance with the use of the electronic monitoring or supervising device, and for verifying that the device is not being tampered with or otherwise altered.

SECTION 4. The case of Venhaus v. State, et al, Sup. Ct. #84-205, held that the quorum courts of the various counties cannot set the salaries of court employees under Amendment 55 to the Constitution of Arkansas, and the same case held that the judges of the courts of the various judicial districts cannot set the salaries of the courts' employees within a legislatively

specified range, and there is currently no legal authority to pay employees of a home detention program, other than the inherent powers of said courts to impound funds to pay the lawful expenses of the administration of justice. In that the circuit courts of the Sixth Judicial District have one of the highest case loads in the State, and have been historically among the highest in disposal rates, and with local and State detention facilities unable to meet the incarceration demands due to federal court orders, it is hereby found that there is a need for a home detention program for non-violent, non-habitual defendants, and additional staff to supervise said defendants.

SECTION 5. Upon petition from a majority of the legislators of the Sixth Judicial District, the Governor shall create a home detention commission composed of the circuit judges from said district.

SECTION 6. The commission shall appoint a project director for a term of four (4) years who may be removed by the commission for just cause.

(A) Just cause for removal shall consist of permanent physical or mental disability seriously interfering with the performance of duties, willful misconduct in office, willful and persistent failure to perform home detention duties, habitual intemperance, or conduct prejudicial to the administration of justice.

(B) The Director may serve as many successive terms as the commission may approve.

(C) The Director may appoint employees to assist him/her in the performance of his/her duties.

(D) The Director and his/her deputies (surveillance and probation) must be certified through the Arkansas Commission on Law Enforcement Standards and Training.

(E) The Director and his/her employees may not be related within the third degree of consanguinity or affinity to the Prosecuting Attorney, Deputy Prosecuting Attorney, Public Defender, Deputy Public Defender, Sheriff, Chief of Police of any town served, Judge or Magistrate having criminal jurisdiction, or member of the commission, nor may either be a partner or associate or otherwise have any business relationships with the Prosecuting Attorney, Deputy Prosecuting Attorney, Public Defender, Deputy Public Defender, or Judge or Magistrate having criminal jurisdiction.

SECTION 7. The base salary of the Director shall be no less than \$32,450 per year and shall remain as set, unless a higher salary is provided by any other legislative act or county ordinance.

SECTION 8. The base salary of the administrative assistant shall be no less than \$17,500 per year and shall remain as set, unless a higher salary is provided by any other legislative act or county ordinance.

SECTION 9. The base salary of the staff secretary shall be no less than \$16,500 per year and shall remain as set, unless a higher salary is provided by any other legislative act or county ordinance.

SECTION 10. The base salary of the chief deputy probation officer shall be no less than \$27,000 per year and shall remain as set, unless a higher salary is provided by any other legislative act or county ordinance.

SECTION 11. The base salary of the chief deputy surveillance officer shall be no less than \$27,000 per year and shall remain as set, unless a higher salary is provided by any other legislative act or county ordinance.

SECTION 12. The base salary of probation officers shall be no less than

\$25,000 per year and shall remain as set, unless a higher salary is provided by any other legislative act or county ordinance.

SECTION 13. The base salary of surveillance officers shall be no less than \$25,000 per year and shall remain as set, unless a higher salary is provided by any other legislative act or county ordinance.

SECTION 14. The base salary of behavior modification specialist shall be no less than \$23,500 per year and shall remain as set, unless a high salary is provided by any other legislative act or county ordinance.

SECTION 15. All of the above salaries shall be paid bi-weekly by Pulaski County.

SECTION 16. When the county quorum court raises salaries for county employees, they shall also raise salaries an equivalent amount for the above employees.

SECTION 17. The employees covered by this Act shall be treated by Pulaski County in the same manner as other Pulaski County employees for all other purposes.

SECTION 18. The expenses of the home detention office shall be paid by the county(ies) in which the office is located.

SECTION 19. Any indigent person desiring to obtain the services of home detention shall affirm in writing that he/she is without funds or assets with which to pay a partial or total daily fee. The affirmation shall further provide in bold print that a false statement as to financial status shall be punishable by a sentence in the state penitentiary of not less than one (1) year nor more than five (5) years and a fine of not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00).

The affirmation certificate shall be provided by the home detention office to the indigent person. Upon execution of the affirmation certificate, the affirmation shall be a permanent part of the indigent person's records, in which case the detention center having jurisdiction of the defendant shall pay the daily participation fee as designated in Section 3.

SECTION 20. All participation fees shall be held separate and apart from county general funds, and shall be used only for continuation of the home detention program.

SECTION 21. The provisions of this act shall expire on December 31, 1990.

SECTION 22. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 23. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 24. Emergency. It is hereby found and determined by the General Assembly that adequate lawful funding and staff should be provided for the Home Detention Program, and that this Act is immediately necessary to grant such authority. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace,

health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 21, 1989
