

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 680 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

As Engrossed: S2/22/05

A Bill

SENATE BILL 386

4
5 By: Senator Luker
6 By: Representative Bond

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9 **For An Act To Be Entitled**

10 AN ACT TO PROVIDE THAT IMPRISONMENT INCLUDES HOME
11 DETENTION; TO AUTHORIZE THE BOARD OF CORRECTIONS
12 TO PROMULGATE RULES REGARDING INCARCERATION IN A
13 HOME DETENTION PROGRAM; AND FOR OTHER PURPOSES.

14
15 **Subtitle**

16 AN ACT TO PROVIDE THAT IMPRISONMENT
17 INCLUDES HOME DETENTION AND TO AUTHORIZE
18 THE BOARD OF CORRECTIONS TO PROMULGATE
19 RULES REGARDING INCARCERATION IN A HOME
20 DETENTION PROGRAM.

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

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25 SECTION 1. Arkansas Code § 5-4-101(4), pertaining to the definition of
26 imprisonment, is amended to read as follows:

27 (4) "Imprisonment":

28 (A) Means incarceration in a detentional facility operated
29 by the state or any of its political subdivisions; ~~or~~

30 (B) May mean incarceration in a privately operated
31 detentional facility under contract to the state or any of its political
32 subdivisions; ~~and~~ or

33 (C) Means home detention as described in § 16-93-708; and
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35 SECTION 2. Arkansas Code § 5-4-402 is amended to read as follows:



1 5-4-402. Place of imprisonment.

2 (a) Except as provided in §§ 5-4-203, ~~and 5-4-304,~~ and 16-93-708, a
3 defendant convicted of a felony and sentenced to imprisonment shall be
4 committed to the custody of the Department of Correction for the term of his
5 or her sentence or until released in accordance with law.

6 (b) Except as provided in § 16-93-708, A a defendant convicted of a
7 misdemeanor and sentenced to imprisonment shall be committed to the county
8 jail or other authorized institution designated by the court for the term of
9 his or her sentence or until released in accordance with law.

10 (c) Except as provided in § 16-93-708, A a defendant convicted of a
11 violation of § 5-64-401 shall be committed to the custody of the Department
12 of Correction for the term of his or her sentence or until released in
13 accordance with law.

14 (d)(1)(A) A juvenile sentenced in circuit court who is less than
15 sixteen (16) years of age when sentenced shall be committed to the custody of
16 the Division of Youth Services of the Department of Human Services until his
17 or her sixteenth birthday, at which time he shall be transferred to the
18 Department of Correction except as provided by court order or parole decision
19 made by the Post Prison Transfer Board.

20 (B) All records from the division shall be transferred to
21 the Department of Correction at the time the juvenile is transferred.

22 (2) Juveniles less than sixteen (16) years of age who are
23 awaiting transfer to the Department of Correction shall be segregated from
24 the general delinquency population housed at the division.

25 (e)(1) With the consent and approval of the division, the Department
26 of Correction may transfer from the Department of Correction to the division
27 any inmate under the age of eighteen (18) years who, in the opinion of the
28 Department of Correction and the division, is more suited and adaptable by
29 age, physical size, and temperament to the programs of the Department of
30 Human Services.

31 (2)(A) Inmates transferred to the division shall be segregated
32 from the general delinquency population housed at the division.

33 (B) In the event that a youth violates the rules of the
34 division's program or facility or is otherwise not amenable to the division's
35 rehabilitative efforts, the division may return the inmate to the Department
36 of Correction.

1 (3) All inmates transferred to the division under this
2 subsection shall be returned to the Department of Correction on their
3 eighteenth birthdays.

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5 SECTION 3. Arkansas Code § 16-93-708 is amended to read as follows:
6 16-93-708. Home detention.

7 (a) "Approved electronic monitoring or supervising device" means any
8 electronic device approved by the ~~board of correction~~ Board of Corrections
9 which meets the minimum Federal Communications Commission regulations and
10 requirements, and which is limited in capability to recording or transmitting
11 information as to the criminal defendant's presence in the home.

12 (b)(1)(A) Subject to the provisions of subdivision (b)(2) of this
13 section, a defendant convicted of a felony or misdemeanor and sentenced to
14 imprisonment may be incarcerated in a home detention program when:

15 (i) In the independent opinions of a prison
16 physician and a consultant physician from the community, a person who is
17 incarcerated in the Department of Correction or Department of Community
18 Correction has an incurable illness which, on the average, will result in
19 death within twelve (12) months; or

20 (ii) A person who is incarcerated in the Department
21 of Correction or Department of Community Correction is permanently physically
22 or mentally incapacitated to the degree that the community criteria are met
23 for placement in a nursing home, rehabilitation facility, or setting
24 providing a similar level of care.

25 (B) The Director of the Department of Correction or the
26 Director of the Department of Community Correction shall make the facts
27 described in subdivision (b)(1)(A) of this section known to the Post Prison
28 Transfer Board for consideration of early release to home detention.

29 (2) The Board of Corrections shall promulgate rules that will
30 establish policy and procedures for incarceration in a home detention
31 program.

32 ~~(b)(c)~~ In all instances where the department may release any inmate to
33 community supervision, in addition to all other conditions which may be
34 imposed by the department, the department may require the criminal defendant
35 to participate in a home detention program. The term of the home detention
36 shall not exceed the maximum number of years of imprisonment or supervision

1 to which the inmate could be sentenced, and the length of time the defendant
2 participates in a home detention program and any good-time credit awarded
3 shall be credited against the defendant's sentence.

4 ~~(e)~~(d) The Board of ~~Correction~~ Corrections shall establish policy and
5 procedures for participation in a home detention program, including but not
6 limited to program criteria, terms, and conditions of release.

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/s/ Luker

APPROVED: 3/09/2005

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