

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.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

As Engrossed: S2/22/05

# A Bill

SENATE BILL 386

5 By: Senator Luker  
6 By: Representative Bond  
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8

## 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

## Subtitle

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

36 5-4-402. Place of imprisonment.



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

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

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

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

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

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

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

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

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

36 (3) All inmates transferred to the division under this

1 subsection shall be returned to the Department of Correction on their  
2 eighteenth birthdays.

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

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

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

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

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

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

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

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

1 participates in a home detention program and any good-time credit awarded  
2 shall be credited against the defendant's sentence.

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

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*/s/ Luker*