

**REPORT OF THE
VIRGINIA STATE CRIME COMMISSION ON**

**THE USE OF HOME ELECTRONIC
INCARCERATION IN VIRGINIA**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 66

**COMMONWEALTH OF VIRGINIA
RICHMOND
1998**



COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building

Rich Savage
Director

December 16, 1997

MEMBERS:

FROM THE SENATE OF VIRGINIA:

Janet D. Howell, Vice-Chair
Mark L. Earley
Kenneth W. Stolle

FROM THE HOUSE OF DELEGATES:

Clifton A. Woodrum, Chairman
James F. Almand
Jean W. Cunningham
John J. Davies, III
R. Creigh Deeds
Raymond R. Guest, Jr.

APPOINTMENTS BY THE GOVERNOR:

Robert C. Bobb
Terry W. Hawkins
Robert J. Humphreys

ATTORNEY GENERAL'S OFFICE

Richard Cullen

To: The Honorable James S. Gilmore, III and
Members of the Virginia General Assembly:

House Joint Resolution 469, agreed to by the 1997 General Assembly, directed the Virginia State Crime Commission to conduct a study on the use of home electronic incarceration in the Commonwealth and to submit its findings and recommendations to the Governor and the 1998 session of the General Assembly.

In fulfilling this directive, a study was conducted by the Virginia State Crime Commission in 1997. I have the honor of submitting herewith the study report.

Respectfully submitted,

Clifton A. Woodrum
Chairman

CAW:sbw

MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION, 1997

From the Senate of Virginia:

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From the House of Delegates:

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Appointments by the Governor:

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Susan B. Williams, Staff Attorney

HJR 469 - The Use of Home Electronic Incarceration in Virginia

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I. Authority for Study

During the 1997 legislative session, Delegate John J. Davies, III sponsored House Joint Resolution 469 directing the Virginia State Crime Commission to study the use of home electronic incarceration in Virginia. *See Appendix A.*

Section 9-125 of the **Code of Virginia** establishes and directs the Virginia State Crime Commission "to study, report, and make recommendations on all areas of public safety and protection." Section 9-127 of the **Code of Virginia** provides that "the Commission shall have the duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in Section 9-125, and to formulate its recommendations to the Governor and the General Assembly." Section 9-134 of the **Code of Virginia** authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the study of the use of home electronic incarceration.

II. Members Appointed to Serve

At the April 15, 1997 meeting of the Crime Commission, Chairman Delegate Clifton A. Woodrum of Roanoke selected Senator Janet D. Howell to chair the Law Enforcement Subcommittee and Delegate Raymond R. Guest, Jr. to chair the Corrections Subcommittee. The following members were selected to serve on the respective subcommittees:

Corrections

Delegate Raymond R. Guest, Jr.
Delegate James F. Almand
Delegate Jean W. Cunningham
Delegate John J. Davies, III
Sheriff Terry W. Hawkins
Senator Kenneth W. Stolle
Delegate Clifton A. Woodrum

Law Enforcement

Senator Janet D. Howell
Delegate James F. Almand
Mr. Robert C. Bobb
Delegate R. Creigh Deeds
Senator Mark L. Earley
The Attorney General
The Hon. Robert J. Humphreys

III. Executive Summary

The Crime Commission formulated its findings with respect to the use of home electronic incarceration based on data obtained from a survey, conducted in conjunction with the Department of Criminal Justice Services, of regional jail administrators and sheriffs and information provided by House Appropriations Committee Staff and the Department of Corrections. Based on this information, the Commission was able determine the extent to which home electronic incarceration is utilized in the Commonwealth for local as well as state responsible offenders; to compare the cost of home electronic incarceration for local responsible offenders to the cost of traditional confinement in jail; and to review the cost associated with home electronic incarceration for state responsible offenders.

In addition, the Commission carefully analyzed a recent Attorney General's opinion which concluded that, under the current statute, inmates assigned to home electronic incarceration are not eligible to receive good time credit. With input from Virginia sheriffs and regional jail administrators, the Commission ultimately recommended that the **Code of Virginia** be amended to allow good time credit to be awarded to inmates assigned to home electronic incarceration programs.

IV. Study Design

A. Full Crime Commission Meetings

April 15, 1997

November 19, 1997

December 16, 1997

B. User Survey

Surveys were developed and distributed by the Department of Criminal Justice Services, in conjunction with the Crime Commission, to the 98 regional jail administrators and sheriffs operating jails. The purpose of the survey was to ascertain the use of and costs associated with home electronic incarceration programs in the Commonwealth and to determine whether any changes to the **Code of Virginia**

relating to the use of home electronic incarceration programs are needed. Survey results were incorporated in the Commission's final findings and recommendations and are provided in Appendix B to this report.

V. Background

A. Introduction

At present, home electronic incarceration (HEI) programs are utilized by the Virginia Department of Corrections (DOC) for state responsible offenders and by local and regional jails across the Commonwealth for appropriate local responsible offenders. The DOC uses HEI in conjunction with Intensive Supervised Probation/Parole for select inmates upon their regular release from state correctional facilities. Local and regional jails operate HEI programs as an inmate management tool and an alternative to confinement in jail for low-risk, non-violent offenders selected by the sheriff or jail administrator. In addition, the Comprehensive Community Corrections Act for Local Responsible Offenders requires that mandated community corrections programs provide HEI services.

B. Offender Fees and Local Jail Reimbursement

The DOC as well as the vast majority of local programs require offenders assigned to HEI programs to pay monitoring fees. Pursuant to Appropriations Act Item Number 78, jails may be eligible to receive reimbursement from the Compensation Board for participation in HEI programs. HEI programs must apply for reimbursement, and applications are considered by a review panel. Approved programs are reimbursed at the rate of \$8.00 per day per offender assigned to HEI. To date, thirty local HEI programs have been approved for reimbursement.

C. Good Time Credit

In the past, there has been some debate over whether local inmates assigned to home electronic incarceration programs were eligible for good time credit. However, this question was resolved in April 1997 when the Attorney General of Virginia issued

an official opinion concluding that such inmates, because they are not confined in jail, are not eligible for good time. *See Finding A and Appendix C.*

VI. Study Goals/Objectives

Delegate John J. Davies, III sponsored House Joint Resolution 469 (1997) requesting the Crime Commission to study the use of home electronic incarceration in the Commonwealth. More specifically, HJR 469 directed the Commission to:

- examine the use of home electronic monitoring in the Commonwealth;
- examine the use of good conduct credit in conjunction with the program; and
- compare the costs associated with home electronic monitoring programs to the costs associated with time served in jail.

VII. Findings and Recommendations

Finding A

In response to a request from Fairfax County Sheriff Carl Peed, Attorney General James S. Gilmore, III issued an opinion dated April 2, 1997 concluding that sheriffs are not authorized to award good conduct credit to offenders assigned to home electronic incarceration programs. "A sheriff, as keeper of the jail, is required to award good conduct credit to a prisoner who complies with jail rules and regulations. Such credit is allowed for the time a prisoner is confined in jail. Offenders assigned to home/electronic incarceration programs are not confined in jail. Therefore, a sheriff is not authorized to award good conduct to an offender assigned to a home/electronic incarceration program." *See Appendix C.*

A survey conducted by the Crime Commission, in conjunction with the Department of Criminal Justice Services, revealed that 43% of responding sheriffs and regional jail administrators agreed that good time should be awarded to offenders assigned to home electronic incarceration programs. Another seven percent indicated that good time should be awarded to such offenders but that special restrictions should

apply. Suggested restrictions included limiting the offenses for which good time could be awarded and reducing the amount of good time awarded. Thirty-nine percent of respondents indicated that good time in any form should not be awarded to offenders assigned to home electronic incarceration programs.

In the 1998 legislative package of the Virginia Sheriffs' Association, as presented to the Crime Commission on November 18, 1997, the sheriffs requested that the Code be amended "to allow for good time credits to be given when inmates serve time in home detention programs." The sheriffs view the award of such good time as an important inmate management tool because it would give inmates an extra incentive to strive for assignment to a home electronic incarceration program. As a result, inmate behavior would arguably improve and, ultimately, the jail population would decrease. Without good time, some inmates prefer to remain in jail because they can be released from supervision more quickly than if they are assigned to a home electronic incarceration program.

Recommendation 1

Amend the Code of Virginia to allow good time to be awarded to offenders assigned to home electronic incarceration programs.

Finding B

The Crime Commission, in conjunction with the Department of Criminal Justice Services, distributed 98 surveys to sheriffs operating jails and regional jail administrators. Fifty-six surveys were completed for a response rate of 57%. Fifty percent of respondents currently operate a home electronic incarceration (HEI) program.

- Responding HEI programs have an average of 11 bracelets on hand (276 total) with a daily average of seven and a high of 13 offenders assigned to HEI
- Twenty-five percent of responding HEI programs indicated that all offenders served time in jail prior to being assigned to HEI

- Offenders spend an average of four months assigned to responding HEI programs
- Pretrial defendants are eligible in 50% of the responding HEI programs

Finding C

Forty-three percent of HEI programs responding to the survey receive reimbursement from the Compensation Board for program participation pursuant to Appropriations Act Item Number 78. Approved programs are reimbursed at the rate of \$8.00 per day per offender assigned to HEI. HEI programs must apply for reimbursement, and applications are considered by a review panel comprised of representatives from the Department of Corrections, Department of Criminal Justice Services and the Compensation Board. According to the Department of Corrections, thirty local HEI programs have been approved for reimbursement to date and an additional program is currently being considered for approval.

Finding D

Sixty-one percent of responding local HEI programs lease their HEI equipment at an average cost of \$7.16 per day. In 93% of the responding programs, offenders pay monitoring fees at an average rate of \$10.42 per day. By comparison, the total operating cost per prisoner-day in a local jail ranges from a high of over \$100 for the five highest-cost local jails to a low of \$30 for the four lowest-cost jails, for a weighted average of \$47 per prisoner-day.

Finding E

The Department of Corrections (DOC) has purchased 225 HEI units at an average cost of \$1,275 per unit. The DOC pays \$2.11 per day per unit in use for the monitoring of offenders. In FY 96-97, the DOC averaged 188 offenders per month assigned to HEI supervision and collected a total of \$11,248 from offenders for their supervision. The average assignment for a state responsible offender to the DOC's HEI program is 90 days.

Within DOC, HEI is always coupled with Intensive Supervised Probation/Parole (ISP). The cost per day for ISP is \$3.56, and the per day cost for HEI is \$2.11; therefore, the total cost per day is \$5.67 or \$510.30 for an average stay on HEI.

VIII. Acknowledgments

The members and staff extend special thanks to the following agencies, organizations and individuals for their cooperation and valuable assistance to this study effort:

House Appropriations Committee Staff

Ron Jordan

Virginia Department of Corrections

Mike Howerton

Drew Molloy

Virginia Department of Criminal Justice Services

Tony Casale

Dan Catley

Tracey Jenkins

Virginia Sheriffs Association

John Jones

The Crime Commission also expresses its sincere appreciation to each of the sheriffs and regional jail administrators who responded to the survey on the use and cost of home electronic incarceration in Virginia.

APPENDIX A: HJR 469

HOUSE JOINT RESOLUTION NO. 469

Directing the Virginia State Crime Commission to study the use of home electronic incarceration.

Agreed to by the House of Delegates, February 20, 1997

Agreed to by the Senate, February 19, 1997

WHEREAS, the Code of Virginia provides that certain criminal offenders can be assigned to home electronic incarceration; and

WHEREAS, in cities and counties that have home electronic incarceration, the court, with the sheriff or jail superintendent's approval, may place a defendant in home electronic incarceration pending trial; and

WHEREAS, after sentencing, individuals may be assigned to home electronic incarceration by the local sheriff or jail administrator; and

WHEREAS, the Board of Corrections may prescribe regulations governing home electronic incarceration; and

WHEREAS, the director or administrator of a home electronic incarceration program is required to charge the offender a fee for participating in the program; and

WHEREAS, the Code of Virginia is silent on the awarding of good conduct credit for home electronic incarceration; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission be directed to study the use of home electronic incarceration. The study shall include, but not be limited to, the examination of the use of home electronic incarceration in the Commonwealth and the use of good conduct credit with the program, and compare the costs associated with the program and the costs associated with time served in jail.

All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1998 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

APPENDIX B: USER SURVEY

Home Electronic Incarceration/Electronic Monitoring (EM) User Survey

Note: Ninety-eight surveys were distributed to all sheriffs operating jails and regional jail administrators. Fifty-six surveys were completed for a response rate of 57.14%. Fifty percent (28) of respondents currently operate EM programs, and 50.00% (28) respondents do not operate EM programs.

Your assistance in completing this two page survey is greatly appreciated. Please try to have this in the mail no later than June 11, 1997. Thank you.

1. Name of Program Coordinator: Phone:
2. Name of person completing this survey: Phone:
3. Jail:
4. Locality or localities served:

5. Equipment brand

a. Mitsubishi	(05)	17.85%
b. BI	(19)	67.85%
c. Digital	(02)	07.15%
d. Vorec	(00)	
e. Other	(02)	07.15%

6. Please describe how the equipment/system you use operates:*

7. Is the computer base located:

a. On-site	(08)	28.57%
b. Off-site	(18)	64.28%
c. No response	(02)	07.15%

If off-site, where?

Harrisonburg, PA	(13)	72.22%
Anderson, IN	(01)	05.60%
Richmond, VA	(01)	05.60%
BI	(01)	05.60%
No response	(02)	10.18%

8. Was the equipment procured through:

a. Lease	(17)	60.71%
b. Purchase	(02)	07.14%
c. Lease/Purchase Option	(05)	17.86%
d. No response	(04)	14.29%

9. How much does (did) your equipment cost?
- | | | |
|--------------------------|--|--------------------------|
| a. Lease | | \$7.16 per day (average) |
| b. Purchase | | \$53,000 (average) |
| c. Lease/Purchase Option | | \$60,000 (average) |
10. How many monitoring bracelets do you currently have?
- | | |
|--|---------------------------|
| | 10.62 bracelets (average) |
| | 276 bracelets (total) |
11. What is the highest number of offenders you have had on EM at any one time?
- | | |
|--|---------------------------|
| | 13.23 offenders (average) |
|--|---------------------------|
12. Do all offenders placed in the EM program serve jail time (prior to placement)?
- | | | |
|-------------|------|--------|
| No | (20) | 71.43% |
| Yes | (07) | 25.00% |
| No response | (01) | 03.57% |
13. Please estimate the average number of offenders you have had on EM on a daily basis over the past 11 months (July 1, 1996 - May 31, 1997).
- | | |
|--|--------------------------|
| | 6.82 offenders (average) |
|--|--------------------------|
14. Please estimate the average length of time offenders spend in the EM program.
- | | |
|--|-----------------------|
| | 3.71 months (average) |
|--|-----------------------|
15. Do you receive reimbursement from the Compensation Board (as approved by the Department of Corrections) for program participation?
- | | | |
|-------------|------|--------|
| No | (13) | 46.43% |
| Yes | (12) | 42.86% |
| No response | (03) | 10.71% |
16. Do you have standard operating procedures for your program?
- | | | |
|-------------|------|--------|
| No | (02) | 07.14% |
| Yes | (25) | 89.29% |
| No response | (01) | 03.57% |
17. Are pretrial defendants eligible for your EM program?
- | | | |
|-------------|------|--------|
| No | (13) | 46.43% |
| Yes | (14) | 50.00% |
| No response | (01) | 03.57% |
18. Are offenders required to be on a work release program prior to entering EM?
- | | | |
|-------------|------|--------|
| No | (22) | 78.57% |
| Yes | (05) | 17.86% |
| No response | (01) | 03.57% |

19. Do offenders pay monitoring fees?

No	(01)	03.57%
Yes	(26)	92.86%
No response	(01)	03.57%

If so, how much?

\$10.42 (average)

20. Please describe how offenders are placed on EM--include (1) who makes referrals and assignments, and (2) at what point screening is done. If there are several options, please estimate the percentage of time each one is used (i.e., the jail will screen the offender and directly place him on the program 95% of the time and judges will request the program to screen the offender and then he/she will order the offender to the program 5% of the time).*

21. What are your thoughts concerning changes to §53.1-131.2 that would enhance or expand the use of EM?

No changes needed	(15)	53.57%
No response	(08)	28.57%
Changes recommended	(05)	17.86%

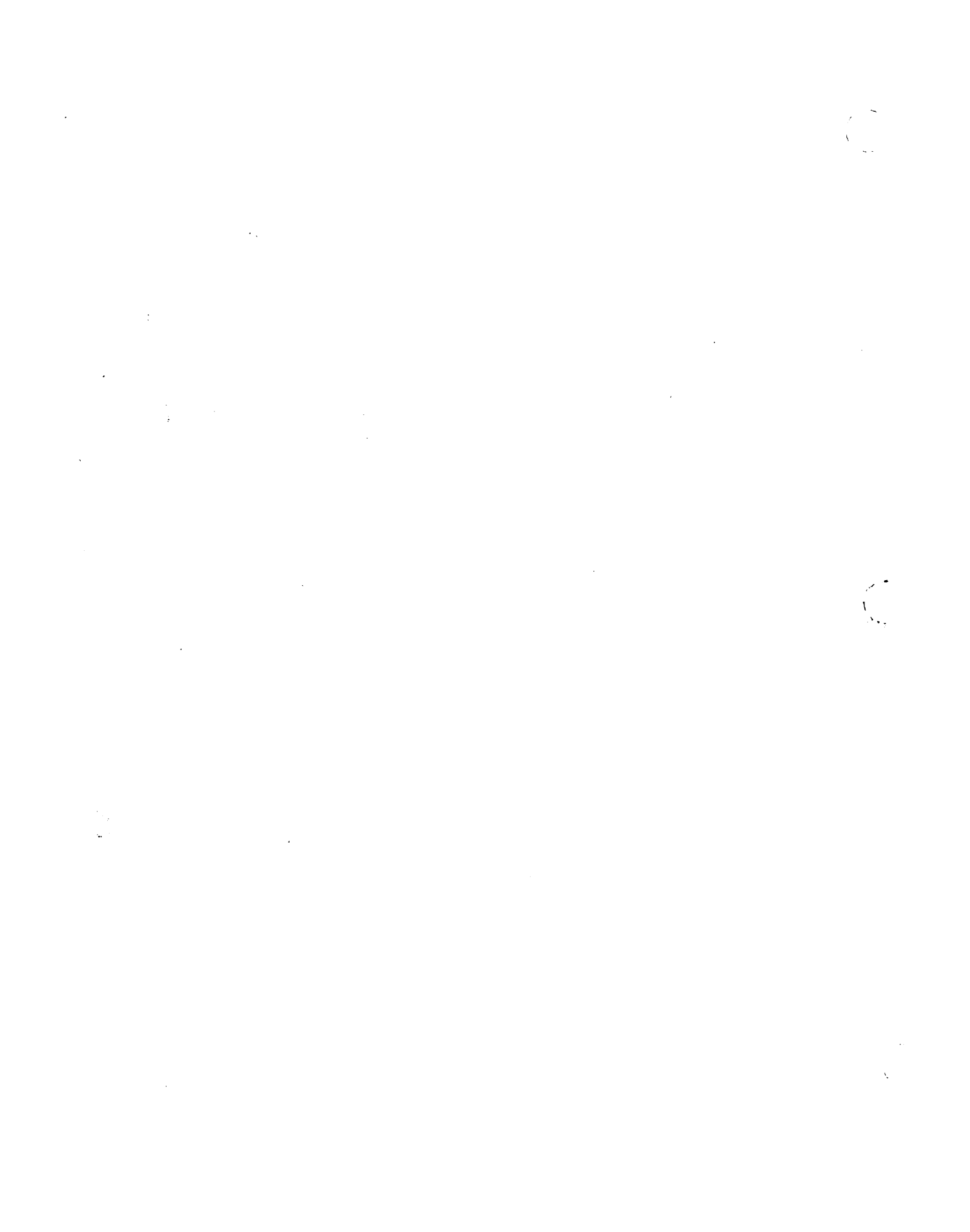
22. What are your thoughts on good time credits for offenders placed on EM (should good time credits be allowed, should they not, etc.)?

No good time	(11)	39.29%
Good time	(12)	42.86%
Limited good time	(02)	07.14%
No response	(03)	10.71%

23. Please use this space to describe/list/discuss anything about your program's operation that you believe needs additional explanation:*

*Note: Responses to these questions are on file in the office of the Virginia State Crime Commission.

**APPENDIX C: OPINION OF THE ATTORNEY
GENERAL**



PRISONS AND OTHER METHODS OF CORRECTION: LOCAL CORRECTIONAL FACILITIES.

Prisoners ineligible for parole may earn good conduct credit during confinement for commission of offense. Offenders assigned to home/electronic incarceration programs are not confined in jail. Sheriff is not authorized to award good conduct credit to offender assigned to such program.

The Honorable Carl R. Peed

Sheriff for Fairfax County

April 2, 1997

You ask whether a sheriff may award good conduct credit to an offender assigned to a home/electronic incarceration program pursuant to § 53.1-131.2 of the *Code of Virginia*.¹

Section 53.1-116(A) requires that the sheriff, as keeper of the jail,² "shall keep a record describing each person committed to jail, the terms of confinement, for what offense or cause he was committed, and when received into jail." Section 53.1-116(A) further provides that "[e]ach prisoner not eligible for parole under §§ 53.1-151, 53.1-152 or § 53.1-153 shall earn good conduct credit at the rate of one day for each day served, π in which the prisoner has not violated the written rules and regulations of the jail."³ The word "shall" is primarily mandatory in its effect.⁴ In a 1983 opinion, the Attorney General concludes that "the General Assembly has placed an affirmative duty upon the jailer to award good conduct credit to a prisoner who complies with jail rules and regulations. The jailer's duty is unconditional."⁵ Another 1983 opinion of the Attorney General concludes that the language of § 53.1-116 also applies to offenders who serve their sentences in jail on weekends.⁶

A well-recognized principle of statutory construction provides that when the language of a statute is clear and unambiguous, resort to rules of statutory construction is unnecessary.⁷ Section 53.1-116(A) provides that "[t]he time so deducted shall be allowed to each prisoner for such time as he is *confined in jail*." (Emphasis added.) Offenders assigned to home/electronic incarceration programs pursuant to § 53.1-131.2(A) and (C) are clearly not confined in jail. Therefore, I am of the opinion that the sheriff is not authorized to award good conduct credit to an offender assigned to a home/electronic incarceration program.

Section 53.1-131.2 provides:

"A. 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 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 office of the sheriff π .

* * *

"C. Any person who has been sentenced to jail or convicted and sentenced to confinement in prison but is actually serving his sentence in jail, after notice to the attorney for the Commonwealth of the convicting jurisdiction, may be assigned by the sheriff π to a home/electronic incarceration program under the supervision of the office of the sheriff π ."

Section 53.1-116.2 provides that "[t]he sheriff of each county or city shall be the keeper of the jail thereof."

Section 53.1-116(A) also prohibits the award of good conduct credit to prisoners sentenced to a "mandatory minimum sentence" and to "any prisoner committed to jail upon

a felony offense committed on or after January 1, 1995."

⁴See *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965);
Creteau v. Phoenix Assurance Co., 202 Va. 641, 643-44, 119 S.E.2d 336, 339 (1961).

⁵1982-1983 Op. Va. Att'y Gen. 382, 382.

⁶1982-1983 Op. Va. Att'y Gen. 293.

⁷See *Vaughan v. Murray*, 247 Va. 194, 198, 441 S.E.2d 24, 26, mot. denied, 872 F. Supp. 268 (E.D. Va. 1994), vacated without op., 70 F.3d 114 (4th Cir.), reported in full, 1995 U.S. App. LEXIS 31288 (4th Cir. No. 6, 1995).

