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## PENAL INSTITUTIONS

### *General Provisions: Provide for Work Release Programs for Certain County Inmates and Provide for Home Arrest for Certain County Offenders*

CODE SECTION: O.C.G.A. §§ 42-1-8, -9 (new)<sup>1</sup>  
BILL NUMBERS: HB 379, HB 380  
ACT NUMBERS: 495, 496  
SUMMARY: The Acts provide for general provisions regarding work release programs and home arrest programs for certain county inmates and include eligibility requirements, assignment provisions, notice provisions, provisions regarding the revocation of assigned work release or home arrest, and provisions dealing with the disposition of an inmate's wages.  
EFFECTIVE DATE: July 1, 1991

#### *History*

Home arrest and work release programs were initiated in response to prison overcrowding and the needs of inmates and their families.<sup>2</sup> There is a need for a system that will decrease the number of inmates in the county detention centers, and at the same time will go beyond warehousing inmates.<sup>3</sup> Frequently, an inmate's family needs financial assistance, and without the inmate's help, the family must rely on other relatives or the State for such assistance.<sup>4</sup> Home arrest and work release programs allow an inmate to continue providing for the inmate's family.<sup>5</sup> The home arrest program allows additional freedom for those individuals who demonstrate responsibility.<sup>6</sup> These programs are also beneficial to the participating individual in a rehabilitative sense.<sup>7</sup> Inmates have the

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1. Due to an oversight, HB 379 and HB 380 were both passed to be codified at O.C.G.A. § 42-1-7. HB 379 is now codified at O.C.G.A. § 42-1-8 and HB 380 at § 42-1-9. See Code Commission notes, O.C.G.A. §§ 42-1-7 to -9 (1991).

2. Telephone Interview with Sheriff Dick Mecum, Sheriff of Hall County, Georgia (Apr. 24, 1991) [hereinafter Mecum Interview].

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

opportunity to be productive and at the same time to fulfill financial obligations.<sup>8</sup>

For approximately six months before the consideration of these bills, Hall County operated a home arrest program similar to the program proposed by House Bill 379.<sup>9</sup> Before the Act's enactment, however, the court had to sentence each offender to this specific program before the offender became eligible to participate.<sup>10</sup> This Act enables the sheriff to assign a misdemeanor offender or one who violates probation to a home arrest program, and to charge the offender a fee to participate.<sup>11</sup> The Department of Corrections for the State has a similarly supervised probation program.<sup>12</sup> This measure should help to relieve the overcrowding of county detention facilities in a timely fashion.<sup>13</sup> Several counties indicated an interest in the type of program currently in operation in Hall County; continued success of this program should encourage other counties to initiate similar programs.<sup>14</sup>

House Bill 380 was also introduced as a cost saving measure.<sup>15</sup> In 1989, seven jails were funded to become holding facilities.<sup>16</sup> These facilities are under construction. Sheriffs would like to put inmates to work to help defray the costs of incarceration and construction, and to help fulfill the inmates' requirements to pay fines or obligations.<sup>17</sup> Under prior law, the courts would be required to sentence each inmate to work release programs.<sup>18</sup> To facilitate the implementation of the program, the Act will permit sheriffs to assign inmates to available programs when they meet certain eligibility requirements.<sup>19</sup>

### *HB 379*

The Act concerning home arrest programs defines home arrest as "electronic monitoring of an offender at a residence" and authorizes a

8. *Id.*

9. *Law Makers' 91*, (WGTV television broadcast, Feb. 18, 1991) (videotape available in Georgia State University College of Law Library) [hereinafter *Law Makers' 91*]. Rep. Jerry Jackson sponsored and presented the bill. *Id.*

10. *Id.*

11. O.C.G.A. § 42-1-8(b) (1991) (referring to HB 379); Mecum Interview, *supra* note 2. Sheriff Mecum indicated that by charging each participant of the home arrest program one hour's salary per day, to be paid weekly, the break-even point would be reached when one officer supervises 20 participating offenders. This point concerns the salary of the correctional officer and equipment used. *Id.*

12. *Law Makers' 91*, *supra* note 9.

13. *Id.*

14. Mecum Interview, *supra* note 2.

15. *Law Makers' 91*, *supra* note 9.

16. *Id.*

17. *Id.*

18. *Id.*

19. O.C.G.A. § 42-1-9(b) (1991).

sheriff, an administrator of the home arrest program, or the court, to approve the residence.<sup>20</sup> The participant is permitted to live alone or with family.<sup>21</sup> The sheriff is given the discretion to assign eligible offenders to the home arrest program.<sup>22</sup> The court may also authorize eligible offenders to participate in the home arrest program.<sup>23</sup> Both the court and the sheriff have the discretion to authorize the offender's participation in supplementary educational or other rehabilitative programs.<sup>24</sup> Ultimately, for the program to be a success, it is vital that appropriate individuals are selected for the program.<sup>25</sup> The court, in its discretion, and upon notification, may revoke an offender's authorization for participation in the home arrest program.<sup>26</sup> This authorization may be revoked if the participant travels beyond the designated area, or fails to return from work at the scheduled time.<sup>27</sup>

While under home arrest, the offender may be required to wear either a wrist, ankle, or waist monitor.<sup>28</sup> A corrections officer may periodically phone the inmate who is required to place the monitor in a certain cradle to signify the offender's presence.<sup>29</sup> Additionally, computer monitoring can indicate if the individual travels beyond the set perimeter.<sup>30</sup>

The eligibility requirements for offender participation in the home arrest program are: (1) the offender is not subject to any warrants or orders from any other court or law enforcement agency; (2) the offender is free from disabilities that would interfere with work on a regular basis; and (3) the offender does not have a criminal history of certain named offenses within the past five years.<sup>31</sup> The offenses include aggravated assault, aggravated battery, rape, child molestation, robbery, certain drug-related offenses, homicide by vehicle, and felony bail-

20. O.C.G.A. § 42-1-8(a)(3) (1991).

21. Mecum Interview, *supra* note 2. Sheriff Mecum stated that typical participants have families and jobs. If a family exists, the family is interviewed confidentially to ensure there are no problems with domestic violence or alcohol abuse. *Id.*

22. O.C.G.A. § 42-1-8(b) (1991).

23. *Id.*

24. *Id.*

25. Mecum Interview, *supra* note 2. The offender cannot be a violent criminal or drug dealer, but may have a drug problem as long as she participates in a legitimate rehabilitation program. *Id.*

26. O.C.G.A. § 42-1-8(c) (1991).

27. Mecum Interview, *supra* note 2. Sheriff Mecum indicated that if a participant in the home arrest or work release program violates the rules, the participant will go back to the Hall County minimum security detention center. The inmate may be able to work his or her way out of the center again. *Id.*

28. Mecum Interview, *supra* note 2.

29. *Id.*

30. *Id.*

31. O.C.G.A. § 42-1-8(d)(1)-(3) (1991).

jumping or escape.<sup>32</sup> During the House Floor debate, there was some concern that the first-time felon may be released to a home arrest program.<sup>33</sup> The wording of the legislation prohibits those with a history of the enumerated offenses from participation.<sup>34</sup> However, the legislative intention is also to prohibit first time offenders of the enumerated offenses from participating in the home arrest program.<sup>35</sup> Habitual offenders may participate in the home arrest program if their offenses are not included in the list.<sup>36</sup>

The offender assigned to home release will be required to maintain employment with a legitimate employer, and if the offender fails to fulfill employment, educational, or rehabilitative obligations, the offender will be guilty of a misdemeanor.<sup>37</sup> If the offender leaves the county, the offender may be treated as an escapee under Code section 16-10-52.<sup>38</sup> Participants who violate these provisions will no longer be eligible for the home release program.<sup>39</sup>

The Act defines the disposition of any wages earned by the offender while participating in the home release program.<sup>40</sup> This furthers the purpose of the legislation by defraying the cost of incarcerating offenders.<sup>41</sup> The home release participant's wages may be used to pay for equipment for the monitoring process, to cover the cost of supervision, to pay travel expenses for the offender necessary for employment or other rehabilitative obligations, to help fulfill the offender's support obligations to dependents, and to cover court costs, fines, or restitutionary obligations.<sup>42</sup> If a balance remains, it may be retained and paid to the offender upon release.<sup>43</sup>

The final portion of the Act states that the offender participating in the home release program will not be considered an agent or employee of the state while engaging in required activities.<sup>44</sup> In addition, local jails will qualify for compensation to cover costs beyond that obtained from offenders.<sup>45</sup>

32. O.C.G.A. § 42-1-8(d)(2) (1991).

33. *Law Makers' 91*, *supra* note 9. Rep. Wayne Elliot expressed concern regarding the offenses the potential participant may have committed. *Id.*

34. O.C.G.A. § 42-1-8(d)(2) (1991).

35. *Law Makers' 91*, *supra* note 9. The list of offenses in § 42-1-8(d)(2) is not meant to be exhaustive. O.C.G.A. § 42-1-8(d)(2) (1991).

36. *Id.*

37. O.C.G.A. § 42-1-8(e) (1991).

38. *Id.*

39. *Id.*

40. O.C.G.A. § 42-1-8(f) (1991).

41. *Law Makers' 91*, *supra* note 9.

42. O.C.G.A. § 42-1-8(1)-(5) (1991).

43. *Id.*

44. O.C.G.A. § 42-1-8(g) (1991).

45. O.C.G.A. § 42-1-8(h) (1991).

*HB 380*

This Act contains similar provisions to the Home Arrest Act, but deals instead with work release for qualified inmates in county jails.<sup>46</sup> This legislation was introduced to defray the cost of incarcerating inmates, and to help fulfill their financial obligations to pay fines, restitution, and family support.<sup>47</sup>

The work release and home arrest programs may start with either a court sentencing the individual to this kind of program (usually the sentence is probation with time to serve) or the program may be initiated in a detention center.<sup>48</sup> To qualify for the work release program, an inmate must have a legitimate job with a legitimate employer.<sup>49</sup> Under the work release program, monitoring the inmate may consist of on-site visits to the employee during working hours, or direct or telephone contact with the employer.<sup>50</sup> Inmates who are successful in the work release program may be candidates for the home release program.<sup>51</sup>

The eligibility requirements for participation in the work release program are the same as the participation requirements for the home arrest program.<sup>52</sup> One purpose of this legislation was to give county sheriffs the authority to assign inmates to the work release program.<sup>53</sup> If the sheriff assigns an inmate to the work release program, the court that sentenced the offender will be notified of the nature of the

46. O.C.G.A. § 42-1-9 (1991).

47. *Law Makers' 91*, *supra* note 9.

48. Mecum Interview, *supra* note 2. There is a policy and procedure for selecting qualified individuals to participate in the Hall County program. *Id.* Usually, an inmate will apply for work release, and program supervisors will do a complete background check of the individual. *Id.* The individual's family, neighbors, and employers may be questioned. *Id.*

49. O.C.G.A. § 42-1-9(e) (1991); Mecum Interview, *supra* note 2. Sheriff Mecum indicated that "shade-tree mechanics," wherein the inmate would help his brother fix cars under a tree in the yard, is one kind of employment that would not be acceptable. Legitimate work may be during regular hours or may be shift work. Generally, the inmate must have someone to take him or her to work, and to return him or her to the facility. *Id.* In Hall County, the inmate may be permitted such perks as stopping at a store to buy personal items like soap or toothpaste. *Id.*

50. Mecum Interview, *supra* note 2. Sheriff Mecum indicated that the supervising officer will be concerned with the inmate abiding by certain well-defined rules, such as rules prohibiting the inmate from leaving the work site during working hours, except on work-related business, and rules prohibiting visits to the work site by the inmate's family. *Id.*

51. *Id.* If a participant of Hall County's work release program is successful, she may receive such perks as occasionally being allowed to remain away from the detention center a few hours longer to have dinner with her family. Eventually, the inmate may graduate to the home arrest program. *Id.*

52. O.C.G.A. § 42-1-9(b) (1991).

53. *Law Makers' 91*, *supra* note 9.

employment or educational program, and in its discretion, may revoke the authority for the inmate's participation.<sup>54</sup>

Finally, inmates who participate in the work release program will not be considered agents or employees of the state while participating in employment, educational, or rehabilitative activities, or during any travel to and from such activities.<sup>55</sup> Local jails additionally shall qualify for compensation for costs in excess of that obtained from the offenders.<sup>56</sup>

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54. O.C.G.A. § 42-1-9(c) (1991).

55. O.C.G.A. § 42-1-9(g) (1991).

56. O.C.G.A. § 42-1-9(h) (1991).