

SPONSOR:

Rep. Minor-Brown & Rep. Morrison
& Sen. Pinkney

Rep. Briggs King; Sen. Sokola

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 73

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO PROBATION AND PAROLE
RECOMMENDATIONS FOR HOUSE ARREST.

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

Section 1. Amend § 4332, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 43. Sentencing, Probation, Parole and Pardons

Subchapter III. Probation and Sentencing Procedures

§ 4332. Conditions of probation or suspension of sentence; house arrest for ~~nonviolent~~ offenders.

(a) The Department may adopt standards concerning the conditions of probation or suspension of sentence which the court may use in a given case. The standard conditions shall apply in the absence of any other specific or inconsistent conditions imposed by the court. The presentence report may recommend conditions to be imposed by the court. ~~However, nothing~~ Nothing in this chapter shall limit the authority of the court to impose or modify any general or specific conditions of probation or suspension of sentence. The Department may recommend and, by order ~~duly entered~~, the court may impose and may at any time order modification of any conditions of probation or suspension of sentence. Before any ~~such~~ conditions are modified, a report by the Department shall be presented to and considered by the court. The court shall cause a copy of any ~~such~~ order to be delivered to the Department and to the probationer.

(b) The Department may adopt standards governing any program of house arrest for ~~nonviolent~~ offenders. The presentence report may recommend conditions to be imposed by the court. In addition to any conditions imposed by the Department or by the court, each program involving house arrest for ~~nonviolent~~ offenders, regardless of the official or unofficial name of the program, shall include a reasonable monthly payment by each offender participating in the program, clear and consistent sanctions when a participant in the program violates any of the conditions, and the ownership or leasing of all equipment by the Department of Correction.

(c) The Department is authorized to use offender electronic monitoring systems and any new or emerging offender monitoring technology that will assist in the supervision of offenders placed on house arrest.

(d) The Department is authorized to supervise offenders on house arrest without the use of any specific electronic equipment, so long as sufficient and reasonable methods for ensuring compliance with the terms of house arrest are employed.

Section 2. Amend § 4391, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter IX. House Arrest

§ 4391. Definitions.

The following words, terms and phrases, when used in this subchapter, ~~shall~~ have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) “Crime of violence” ~~shall mean~~ means any crime which involves the use or threat of physical force or violence against any individual. For purposes of this subchapter, no motor vehicle offense is a crime of violence where it is not a part of an additional crime.

(2) “Good standing” ~~shall mean~~ means that an offender participating in the house arrest program has, at the time such person entered the program and continuously thereafter, met the following qualifications:

- a. No pending warrants or ~~charges;~~ charges.
- b. No major violations during the immediately preceding 45 ~~days;~~ days.
- c. Adherence to all conditions of probation, work-release and case plans.

(3) “House arrest” or “house arrest program” ~~shall mean~~ means a form of intensive supervised custody in the community, including surveillance on weekends, administered by intensive supervision officers. The house arrest program shall be ~~limited to nonviolent offenders and shall be~~ an individual program in which the freedom of the offender is restricted within the stable, approved place of residence of the ~~nonviolent~~ offender or within the stable, approved place of residence of a host, parent, sibling or child of the ~~nonviolent~~ offender and in which specific sanctions are imposed and enforced.

~~(4) “Nonviolent offender” shall mean a person who is an applicant for the house arrest program and who has been convicted of an offense which is not a crime of violence.~~

~~(5)~~ (4) “Public service” ~~shall mean~~ means that work which is required of an offender participating in the house arrest program and shall include work which ~~such the~~ offender is ordered to perform, without payment, for the benefit of the community, separate and apart from any paid employment which ~~such the~~ offender may be permitted to obtain. All public service work shall be performed for designated tax-supported or tax-exempt entities which have entered into an informal agreement with the Department to administer the work performed by ~~such the~~ offender. The words “public service” ~~shall include, but are not limited to,~~ include any of the following:

- a. Work on any property or building owned or leased by the State, by any county or by a municipality or by any nonprofit organization or agency or work for any program under the control or sponsorship of a charitable ~~enterprise;~~ enterprise.
- b. Work on a state, county or municipally-owned road or ~~highway;~~ highway.
- c. Landscaping, maintenance or service work in any state, county or municipal park or recreation ~~areas;~~ areas.
- d. Work in a state, county or municipal hospital or for any nonprofit health or medical center or facility.

Section 3. Amend § 4392, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4392. Identification and selection of participants.

(a) An offender sentenced to supervision Level I, II or III is not eligible for house arrest placement unless specifically ordered by the sentencing judge, or as a result of administrative detention under § 4334(d) of this title.

(b) Any person committed to the corrections center to serve a short-term sentence for a ~~nonviolent~~ crime shall be identified by the classification officer before or upon arrival at the corrections center if ~~such the~~ person has not already been identified prior to transportation to the corrections center.

(c) The sentencing judge, in sentencing an offender, may impose a house arrest sentence as an alternative to imprisonment.

Section 4. Amend § 4393, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4393. Requirements for participation.

(a) No person shall be eligible for the house arrest program unless ~~such the~~ person meets the following requirements:

(1) Participation shall be ~~voluntary~~ ; voluntary.

(2) Participation shall be limited to the following types of offenders:

a. Individuals found guilty of ~~nonviolent~~ crimes ~~and~~ who, due to the characteristics of the crime and/or the offender's background, would not be placed on regular ~~probation~~; probation.

b. Probation violators charged with technical or misdemeanor ~~violations~~; violations.

c. Parole violators charged with technical or misdemeanor violations.

(b) The supervision of offenders assigned to home confinement and the use of the electronic monitoring devices shall be restricted to the area within the geographical boundaries of the State unless otherwise determined by the Commissioner of the Department of Correction.

SYNOPSIS

This Act reflects a recommendation of the 2019 Comprehensive Reentry Plan and Progress Report which allows the Department of Corrections, Probation and Parole officers the flexibility to recommend to a court house arrest (Level IV home confinement) for any probation violator in appropriate circumstances. Under current law, Probation and Parole may not recommend house arrest (Level IV home confinement) for a person who violates probation if the person was initially convicted of a "violent crime." Accordingly, recommendations pertaining to probation violations for persons convicted of a "violent crime" are limited to Levels 1-3 (a lower level of supervision) or Level V (incarceration) which may be excessive and costly.

The Act also makes non-substantive changes to existing law to make it conform to the Legislative Drafting Manual.