

SENATE No. 692

By Mr. Barrett, a petition (accompanied by bill, Senate, No. 692) of Michael J. Barrett, Mary Jane Simmons, Anne M. Paulsen, Barbara E. Gray, Stanley C. Rosenberg, John A. Businger, Edward G. Connolly and other members of the General Court for legislation to establish electronically-monitored home confinement to alleviate prison overcrowding. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Four.

AN ACT ESTABLISHING ELECTRONICALLY-MONITORED HOME CONFINEMENT
TO ALLEVIATE PRISON OVERCROWDING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 276 of the General Laws, as appearing in the 1988
2 Official Edition, is hereby amended by inserting after section 87A
3 the following section: —

4 Section 87B. As a condition of probation or upon being trans-
5 ferred from a house of correction, a person may be confined to his
6 or her home, and his or her location may be monitored with the
7 assistance of electronic monitoring devices. Henceforth this con-
8 dition will be referred to as “electronically-monitored home con-
9 finement”.

10 Persons subject to the conditions of this section shall be any
11 defendant who shall have been found to be in violation of his or
12 her probation, excluding:

13 (a) any person who the court finds to represent a serious threat
14 to the safety of individuals or the public at large;

15 (b) any person who would otherwise be sentenced to any term
16 in state prison or a term in the house of correction for a period
17 that exceeds one year in duration;

18 (c) any person who is unable to demonstrate that he or she is
19 possessed of a fit place of residence with a working phone within
20 the commonwealth;

21 (d) any person who is unable to demonstrate that he or she is
22 regularly employed within a reasonable period of time after being
23 sentenced pursuant to this act, unless the court finds the person to
24 suffer from a physical or mental handicap or incapacitation which
25 renders him or her unable to obtain employment, or the court
26 excuses him or her from obtaining employment due to an unavoi-
27 dable necessity, including the care of an invalid or dependent fami-
28 ly member.

29 Such a person who is alleged to have violated the conditions
30 and terms of electronically-monitored home confinement shall be
31 treated in the same manner as if charged with a violation of proba-
32 tion, however, he or she may not be released on bail pending the
33 hearing on violation. Pursuant to the conditions set forth in this
34 paragraph, electronically-monitored home confinement shall be
35 administered by the Probation Department.

36 Any person sentenced to a house of correction for a period not
37 exceeding one year may be transferred by the Sheriff subject to
38 this act, excluding:

39 (a) any person who the sentencing judge states in writing at the
40 time of disposition is not eligible;

41 (b) any person the Sheriff or his or her designee finds to repre-
42 sent a serious threat to the safety of individuals or the public at
43 large;

44 (c) any person who is unable to demonstrate that he or she is
45 possessed of a fit place of residence with a working phone within
46 the commonwealth;

47 (d) any person who is unable to demonstrate that he or she is
48 regularly employed within a reasonable period of time after being
49 sentenced pursuant to this act, unless the Sheriff or his or her
50 designee finds the person to suffer from a physical or mental
51 handicap or incapacitation which renders him or her unable to
52 obtain employment, or the Sheriff or his or her designee excuses
53 him or her from obtaining employment due to an unavoidable
54 necessity, including the care of an invalid or dependent family
55 member;

56 (e) any person for whom the Sheriff or his or her designee finds
57 home confinement to be antithetical to the court's original sen-
58 tence.

59 Such person who is alleged to have violated the terms and con-

60 ditions of electronically-monitored home confinement shall be
61 treated in the same manner as if charged with a serious institution-
62 al infraction and may be immediately transferred to an appropriate
63 house of correction or institution under the jurisdiction of the
64 Sheriff to serve out his or her full sentence. Pursuant to the condi-
65 tions set forth in this paragraph, electronically-monitored home
66 confinement shall be administered by the several Sheriffs.

67 Under the terms of electronically-monitored home confinement,
68 the defendant shall be confined within his or her residence for a
69 period of time commensurate with the term of imprisonment
70 otherwise imposed by the court, except that the defendant shall
71 not receive credit for time in which he or she is allowed to exit
72 said residence to work or attend other approved activities. To
73 monitor and enforce said home confinement, the court or the
74 Sheriff or his or her designee shall be authorized to install such
75 equipment on the defendant's person and residence as may be nec-
76 essary and to periodically inspect said equipment to insure its con-
77 tinued operation.

78 The conditions of electronically-monitored home confinement
79 shall include:

80 (a) that the defendant may leave his or her place of residence
81 only at specific hours approved by the court or Sheriff or his or
82 her designee to pursue gainful employment, attend religious
83 observances once a week, and other approved activities that are
84 necessary, such as medical treatment or the purchase of food, pro-
85 vided, however, all such activities are approved in advance and
86 are closely monitored;

87 (b) that, if allowed to leave his or her residence, the defendant
88 must travel directly to and from the approved activity and shall
89 not be permitted to exit his or her means of transportation for any
90 reason other than such travel to pursue the approved activity;

91 (c) in cases of dire emergency, the defendant may leave his or
92 her residence as necessary but must notify approved authorities as
93 soon as practically possible after leaving said residence;

94 (d) that the defendant be subject to searches of his or her person
95 or his or her residence without a warrant and without probable
96 cause for items prohibited by law or conditions of electronically-
97 monitored home confinement, or otherwise subject to seizure,

98 upon request of the probation officer or the Sheriff or his or her
99 designee;

100 (e) that the defendant not use illegal drugs or abuse alcohol or
101 any other legal substance and, further, submit to periodic urinaly-
102 sis, breath testing or other tests without probable cause at the
103 request of the probation officer or the Sheriff or his or her
104 designee;

105 (f) that the defendant notify any law enforcement officer by
106 whom he or she is stopped of his or her status as a defendant
107 under electronically-monitored home confinement, and that he or
108 she notify his or her supervising agency within 24 hours of any
109 such contact with any law enforcement officer;

110 (g) that the defendant violate no Federal or state criminal law;

111 (h) that the defendant pay a reasonable weekly fee to reimburse
112 the supervising agency for the costs of his or her electronically-
113 monitored home confinement at a rate set by the sentencing court
114 either at the imposition of the sentence of electronically-moni-
115 tored home confinement after a probation violation or upon
116 motion of the Sheriff his designee, provided that the defendant has
117 the means of payment as determined by the sentencing court and
118 that said fee is deducted from any other fee imposed as a condi-
119 tion of probation pursuant to section eighty-seven A of Chapter
120 276 of the General Laws, as appearing in the 1988 Official
121 Edition;

122 (i) that the defendant obey any other condition imposed by the
123 court or the Sheriff or his or her designee.

124 Any person found in violation of the terms and conditions of
125 his or her electronic home confinement and ordered to serve the
126 remainder of his or her sentence within an appropriate correction-
127 al institution shall receive credit for time served under the terms
128 of condition of home confinement, provided he or she does not
129 receive credit for time he or she spent outside his or her approved
130 residence.

131 If the defendant has fled his residence, the court may authorize
132 the supervising authority to enter the defendant's residence to
133 recover any equipment installed pursuant to this act.