

### Option #3: Define Initial Term of Incarceration

9-499.07. Prisoner work, community restitution work and home detention program; eligibility; monitoring; procedures; continuous alcohol monitoring program; home detention for persons sentenced for driving under the influence of alcohol or drugs

A. A city or town may establish a prisoner work, community restitution work and home detention program for eligible sentenced prisoners, which shall be treated the same as confinement in jail. The presiding judge of the city or town municipal court shall approve the program before its implementation.

B. A prisoner is not eligible for a prisoner work, community restitution work and home detention program or a continuous alcohol monitoring program if any of the following applies:

1. The prisoner is found by the city or town to constitute a risk to either himself or other members of the community.
2. The prisoner has a past history of violent behavior.
3. The sentencing judge states at the time of the sentence that the prisoner may not be eligible for a prisoner work, community restitution work and home detention program or a continuous alcohol monitoring program.

C. For prisoners who are selected for a program established pursuant to subsection A of this section, the city or town may require electronic monitoring in the prisoner's home whenever the prisoner is not at the prisoner's regular place of employment or while the prisoner is assigned to a community work task. If electronic monitoring is required, the prisoner shall remain under the control of a home detention device that constantly monitors the prisoner's location in order to determine that the prisoner has not left the prisoner's premises. In all other cases, the city or town shall implement a system of monitoring using telephone contact or other appropriate methods to assure compliance with the home detention requirements. The city or town may place appropriate restrictions on prisoners in the program, including testing prisoners for consumption of alcoholic beverages or drugs or prohibiting association with individuals who are determined to be detrimental to the prisoner's successful participation in the program.

D. If a prisoner is placed on electronic monitoring pursuant to subsection C of this section, the court may order the prisoner to pay the electronic monitoring fee in an amount ranging from zero to full cost and thirty dollars per month while on electronic monitoring unless, after determining the inability of the prisoner to pay these fees, the city or town assesses a lesser fee. The city or town shall use the fees collected to offset operational costs of the program.

E. The city or town may require that a prisoner who is employed during the week also participate in community restitution work programs on weekends.

F. The city or town may allow prisoners to be away from home detention for special purposes, including church attendance, medical appointments or funerals.

G. Community restitution work shall include public works projects operated and supervised by the city or town or other public agencies of this state or projects sponsored and supervised by public or private community oriented organizations and agencies.

H. A city or town implementing a program established pursuant to subsection A of this

section may appoint a community restitution work committee. The committee shall recommend to the city or town appropriate community restitution work projects for home detention prisoners. Members are not eligible to receive compensation.

I. At any time the city or town may terminate a prisoner's participation in the prisoner work, community restitution work and home detention program or continuous alcohol monitoring program and require that the prisoner complete the remaining term of the prisoner's sentence in jail confinement.

J. Nothing in this section shall prohibit a city or town from entering into a joint exercise of powers agreement pursuant to section 11-952 for a prisoner work, community restitution work and home detention program.

K. If authorized by the court, a person who is sentenced pursuant to section 28-1381 or 28-1382 shall not be placed under home detention in a prisoner work, community restitution work and home detention program or continuous alcohol monitoring program except as provided in subsections L through R of this section.

L. By a majority vote of the full membership of the governing body of the municipality after a public hearing and a finding of necessity, a city or town may establish a home detention program for persons who are sentenced to jail confinement pursuant to section 28-1381 or 28-1382. A prisoner who is placed under the program established pursuant to this subsection shall bear the cost of all testing, monitoring and enrollment in alcohol or substance abuse programs unless, after determining the inability of the prisoner to pay the cost, the court assesses a lesser amount. The city or town shall use the collected monies to offset operational costs of the program.

M. A city or town may establish a continuous alcohol monitoring program for persons who are sentenced to jail confinement pursuant to section 28-1381 or 28-1382, which shall be treated the same as confinement in jail. The presiding judge of the city or town municipal court shall approve the program before its implementation. A prisoner who is placed under a continuous alcohol monitoring program established pursuant to this subsection shall bear the cost of all testing, monitoring and enrollment in the program and pay thirty dollars per month while in the program, unless, after determining the inability of the prisoner to pay the cost, the court assesses a lesser amount. The city or town shall use the collected monies to offset operational costs of the program.

N. If the city or town establishes a home detention or continuous alcohol monitoring program under subsection L or M of this section, a prisoner must meet the following eligibility requirements for the program:

1. Subsection B of this section applies in determining eligibility for the program.

2. If the prisoner is sentenced under section 28-1381, subsection I, the prisoner first serves a minimum of one day in jail.

3. Notwithstanding section 28-1387, subsection C, if the prisoner is sentenced under section 28-1381, subsection K or section 28-1382, subsection D or E, the prisoner first serves a minimum of twenty per cent of the initial term of incarceration in jail before being placed under home detention or continuous alcohol monitoring. **THE INITIAL TERM OF INCARCERATION IN JAIL IS THE TERM OF INCARCERATION IN JAIL THE COURT ORDERS UNDER SECTION 28-1381, SUBSECTION K OR SECTION 28-1382, SUBSECTION D OR E. IT IS NOT THE TERM OF INCARCERATION OF JAIL IMPOSED AS A RESULT OF THE APPLICATION OF SECTION 28-1382 SUBSECTION I.**

4. If placed under home detention, the prisoner is required to comply with all of the following provisions for the duration of the prisoner's participation in the home detention

program:

(a) All of the provisions of subsections C through G of this section.

(b) Testing at least once a day for the use of alcoholic beverages or drugs by a scientific method that is not limited to urinalysis or a breath or intoxication test in the prisoner's home or at the office of a person designated by the court to conduct these tests.

(c) Participation in an alcohol or drug program, or both. These programs shall be accredited by the department of health services or a county probation department.

(d) Prohibition of association with any individual determined to be detrimental to the prisoner's successful participation in the program.

(e) All other provisions of the sentence imposed.

5. Any additional eligibility criteria that the city or town may impose.

O. If a city or town establishes a home detention program under subsection L of this section, the court, on placing the prisoner in the program, shall require electronic monitoring in the prisoner's home and, if consecutive hours of jail time are ordered, shall require the prisoner to remain at home during the consecutive hours ordered. The detention device shall constantly monitor the prisoner's location to ensure that the prisoner does not leave the premises. Nothing in this subsection shall be deemed to waive the minimum jail confinement requirements under subsection N, paragraph 2 of this section.

P. The court may terminate a prisoner's participation in the home detention or continuous alcohol monitoring program and require the prisoner to complete the remaining term of the jail sentence by jail confinement if:

1. The prisoner fails to successfully complete a court ordered alcohol or drug screening, counseling, education and treatment program pursuant to subsection N, paragraph 4, subdivision (c) of this section or section 28-1381, subsection J or L.

2. If placed under home detention, the court finds that the prisoner left the premises without permission of the court or supervising authority during a time the prisoner is ordered to be on the premises.

Q. At any other time the court may terminate a prisoner's participation in the home detention or continuous alcohol monitoring program and require the prisoner to complete the remaining term of the jail sentence by jail confinement.

R. The governing body of the city or town may terminate the program established under subsection L of this section by a majority vote of the full membership of the governing body.

**11-251.15. Prisoner home detention program; eligibility; monitoring; procedures; continuous alcohol monitoring program; home detention for persons sentenced for driving under the influence of alcohol or drugs**

A. A county may establish a home detention program for eligible sentenced prisoners, which shall be treated the same as confinement in jail. The presiding justice of the peace of the county justice court shall approve the program before its implementation.

B. A prisoner is not eligible for a home detention program or a continuous alcohol monitoring program if any of the following applies:

1. The prisoner is found by the court to constitute a risk to either himself or other members of the community.

2. The prisoner has a past history of violent behavior.

3. The sentencing judge states at the time of the sentence that the prisoner may not be

eligible for a home detention program or a continuous alcohol monitoring program.

C. For prisoners who are selected for a program established pursuant to subsection A of this section, the court may require electronic monitoring in the prisoner's home whenever the prisoner is not at the prisoner's regular place of employment or while the prisoner is assigned to a community work task. If electronic monitoring is required, the prisoner shall remain under the control of a home detention device that constantly monitors the prisoner's location in order to determine that the prisoner has not left the prisoner's premises. In all other cases, the court shall implement a system of monitoring using telephone contact or other appropriate methods to assure compliance with the home detention requirements. The court may place appropriate restrictions on prisoners in the program, including testing prisoners for consumption of alcoholic beverages or drugs or prohibiting association with individuals who are determined to be detrimental to the prisoner's successful participation in the program.

D. If a prisoner is placed on electronic monitoring pursuant to subsection C of this section, the court may order the prisoner to pay the electronic monitoring fee in an amount ranging from zero to full cost and thirty dollars per month while on electronic monitoring unless, after determining the inability of the prisoner to pay these fees, the court assesses a lesser fee. The county shall use the fees collected to offset operational costs of the program.

E. The court may allow prisoners to be away from home detention for special purposes, including church attendance, medical appointments or funerals.

F. At any time the court may terminate a prisoner's participation in the home detention program or continuous alcohol monitoring program and require that the prisoner complete the remaining term of the prisoner's sentence in jail confinement.

G. If authorized by the court, a person who is sentenced pursuant to section 28-1381 or 28-1382 shall not be placed under home detention or a continuous alcohol monitoring program except as provided in subsections H through M of this section.

H. By a majority vote of the full membership of the board of supervisors after a public hearing and a finding of necessity, a county may establish a home detention program for persons who are sentenced to jail confinement pursuant to section 28-1381 or 28-1382. A prisoner who is placed under the program established pursuant to this subsection shall bear the cost of all testing, monitoring and enrollment in alcohol or substance abuse programs unless, after determining the inability of the prisoner to pay the cost, the court assesses a lesser amount. The county shall use the collected monies to offset operational costs of the program.

I. A county may establish a continuous alcohol monitoring program for persons who are sentenced to jail confinement pursuant to section 28-1381 or 28-1382, which shall be treated the same as confinement in jail. The presiding justice of the peace of the county justice court shall approve the program before its implementation. A prisoner who is placed under a continuous alcohol monitoring program established pursuant to this section shall bear the cost of all testing, monitoring and enrollment in the program and pay thirty dollars per month while in the program, unless, after determining the inability of the prisoner to pay the cost, the court assesses a lesser amount. The county shall use the collected monies to offset operational costs of the program.

J. If the county establishes a home detention or continuous alcohol monitoring program under subsection H or I of this section, a prisoner must meet the following eligibility requirements for the program:

1. Subsection B of this section applies in determining eligibility for the program.
2. If the prisoner is sentenced under section 28-1381, subsection I, the prisoner first serves a minimum of one day in jail.
3. Notwithstanding section 28-1387, subsection C, if the prisoner is sentenced under section 28-1381, subsection K or section 28-1382, subsection D or E, the prisoner first serves a minimum of twenty per cent of the initial term of incarceration in jail before being placed under home detention or continuous alcohol monitoring. **THE INITIAL TERM OF INCARCERATION IN JAIL IS THE TERM OF INCARCERATION IN JAIL THE COURT ORDERS UNDER SECTION 28-1381, SUBSECTION K OR SECTION 28-1382, SUBSECTION D OR E. IT IS NOT THE TERM OF INCARCERATION OF JAIL IMPOSED AS A RESULT OF THE APPLICATION OF SECTION 28-1382 SUBSECTION I.**
4. If placed under home detention, the prisoner is required to comply with all of the following provisions for the duration of the prisoner's participation in the home detention program:
  - (a) All of the provisions of subsections C through E of this section.
  - (b) Testing at least once a day for the use of alcoholic beverages or drugs by a scientific method that is not limited to urinalysis or a breath or intoxication test in the prisoner's home or at the office of a person designated by the court to conduct these tests.
  - (c) Participation in an alcohol or drug program, or both. These programs shall be accredited by the department of health services or a county probation department.
  - (d) Prohibition of association with any individual determined to be detrimental to the prisoner's successful participation in the program.
  - (e) All other provisions of the sentence imposed.
5. Any additional eligibility criteria that the court may impose.
- K. If a county establishes a home detention program under subsection H of this section, the court, on placing the prisoner in the program, shall require electronic monitoring in the prisoner's home and, if consecutive hours of jail time are ordered, shall require the prisoner to remain at home during the consecutive hours ordered. The detention device shall constantly monitor the prisoner's location to ensure that the prisoner does not leave the premises.
- L. The court may terminate a prisoner's participation in the home detention or continuous alcohol monitoring program and require the prisoner to complete the remaining term of the jail sentence by jail confinement if:
  1. The prisoner fails to successfully complete a court ordered alcohol or drug screening, counseling, education and treatment program pursuant to subsection J, paragraph 4, subdivision (c) of this section or section 28-1381, subsection J or L.
  2. If placed under home detention, the court finds that the prisoner left the premises without permission of the court or supervising authority during a time the prisoner is ordered to be on the premises.
- M. At any other time the court may terminate a prisoner's participation in the home detention or continuous alcohol monitoring program and require the prisoner to complete the remaining term of the jail sentence by jail confinement.
- N. The county board of supervisors may terminate the program established under subsection H of this section by a majority vote of the full membership of the governing body.

**11-459. Prisoner work, community restitution work and home detention program;**

eligibility; monitoring; procedures; continuous alcohol monitoring program; home detention for persons sentenced for driving under the influence of alcohol or drugs; community restitution work committee; members; duties

A. The sheriff may establish a prisoner work, community restitution work and home detention program for eligible sentenced prisoners, which shall be treated the same as confinement in jail and shall fulfill the sheriff's duty to take charge of and keep the county jail and prisoners.

B. A prisoner is not eligible for a prisoner work, community restitution work and home detention program or a continuous alcohol monitoring program if any of the following applies:

1. After independent review and determination of the jail's classification program, the prisoner is found by the sheriff to constitute a risk to either himself or other members of the community.

2. The prisoner has a past history of violent behavior.

3. The prisoner has been convicted of a serious offense as defined in section 13-706 or has been sentenced as a dangerous offender pursuant to section 13-704 or repetitive offender pursuant to section 13-703.

4. Jail time is being served as a result of a felony conviction.

5. The sentencing judge states at the time of the sentence that the prisoner may not be eligible for a prisoner work, community restitution work and home detention program or a continuous alcohol monitoring program.

6. The prisoner is sentenced to a county jail and is being held for another jurisdiction.

C. If a prisoner is selected for a program established pursuant to subsection A of this section, the sheriff may require electronic monitoring in the prisoner's home whenever the prisoner is not at the prisoner's regular place of employment or while the prisoner is assigned to a community work task. If electronic monitoring is required, the prisoner shall remain under the control of a home detention device that constantly monitors the prisoner's location in order to determine that the prisoner has not left the prisoner's premises. In all other cases, the sheriff shall implement a system of monitoring using visitation, telephone contact or other appropriate methods to assure compliance with the home detention requirements. The sheriff may place appropriate restrictions on prisoners in the program, including testing prisoners for consumption of alcoholic beverages or drugs or prohibiting association with individuals who are determined to be detrimental to the prisoner's successful participation in the program.

D. If a prisoner is placed on electronic monitoring pursuant to subsection C of this section, the court may order the prisoner to pay the electronic monitoring fee in an amount ranging from zero to full cost and thirty dollars per month while on electronic monitoring unless, after determining the inability of the prisoner to pay these fees, the sheriff assesses a lesser fee. The sheriff shall use the fees collected to offset operational costs of the program.

E. The sheriff may require that a prisoner who is employed during the week also participate in community restitution work programs on weekends.

F. The sheriff may allow prisoners to be away from home detention for special purposes, including church attendance, medical appointments or funerals. The standard for review and determination of such leave is the same as that implemented to decide transportation requests for similar purposes made by prisoners who are confined in the county jail.

G. Community restitution work shall include public works projects operated and supervised by public agencies of this state or counties, cities or towns on recommendation of the community restitution work committee and approval of the sheriff. The community restitution work committee may also recommend and the sheriff may approve other forms of community restitution work sponsored and supervised by public or private community oriented organizations and agencies.

H. The community restitution work committee is established in each county and is composed of two designees of the sheriff, a representative of the county attorney's office selected by the county attorney, a representative of a local police agency selected by the police chief of the largest city in the county and three persons selected by the county board of supervisors from the private sector. A sheriff's designee shall serve as committee chairman and schedule all meetings. The committee shall meet as often as necessary, but no less than once every three months, for the purpose of considering and recommending appropriate community restitution work projects for home detention prisoners. The committee shall make its recommendations to the sheriff. Members are not eligible to receive compensation.

I. At any time the sheriff may terminate a prisoner's participation in the prisoner work, community restitution work and home detention program or continuous alcohol monitoring program and require that the prisoner complete the remaining term of the prisoner's sentence in jail confinement.

J. If authorized by the court, a person who is sentenced pursuant to section 28-1381 or 28-1382 shall not be placed under home detention in a prisoner work, community restitution work and home detention program or a continuous alcohol monitoring program except as provided in subsections K through Q of this section.

K. By a majority vote of the full membership of the board of supervisors after a public hearing and a finding of necessity a county may authorize the sheriff to establish a home detention program for persons who are sentenced to jail confinement pursuant to section 28-1381 or 28-1382. If the board authorizes the establishment of a home detention program, a county sheriff may establish the program. A prisoner who is placed under the program established pursuant to this subsection shall bear the cost of all testing, monitoring and enrollment in alcohol or substance abuse programs unless, after determining the inability of the prisoner to pay the cost, the court assesses a lesser amount. The county shall use the collected monies to offset operational costs of the program.

L. A county sheriff may establish a continuous alcohol monitoring program for persons who are sentenced to jail confinement pursuant to section 28-1381 or 28-1382, which shall be treated the same as confinement in jail and shall fulfill the sheriff's duty to take charge of and keep the county jail and prisoners. A prisoner who is placed under a continuous alcohol monitoring program established pursuant to this subsection shall bear the cost of all testing, monitoring and enrollment in the program and pay thirty dollars per month while in the program, unless, after determining the inability of the prisoner to pay the cost, the court assesses a lesser amount. The county shall use the collected monies to offset operational costs of the program.

M. If a county sheriff establishes a home detention or continuous alcohol monitoring program under subsection K or L of this section, a prisoner must meet the following eligibility requirements for the program:

1. Subsection B of this section applies in determining eligibility for the program.

2. If the prisoner is sentenced under section 28-1381, subsection I, the prisoner first serves a minimum of one day in jail.

3. Notwithstanding section 28-1387, subsection C, if the prisoner is sentenced under section 28-1381, subsection K or section 28-1382, subsection D or E, the prisoner first serves a minimum of twenty per cent of the initial term of incarceration in jail before being placed under home detention or continuous alcohol monitoring. **THE INITIAL TERM OF INCARCERATION IN JAIL IS THE TERM OF INCARCERATION IN JAIL THE COURT ORDERS UNDER SECTION 28-1381, SUBSECTION K OR SECTION 28-1382, SUBSECTION D OR E. IT IS NOT THE TERM OF INCARCERATION OF JAIL IMPOSED AS A RESULT OF THE APPLICATION OF SECTION 28-1382 SUBSECTION I.**

4. If placed under home detention, the prisoner is required to comply with all of the following requirements for the duration of the prisoner's participation in the home detention program:

(a) All of the provisions of subsections C through G of this section.

(b) Testing at least once a day for the use of alcoholic beverages or drugs by a scientific method that is not limited to urinalysis or a breath or intoxication test in the prisoner's home or at the office of a person designated by the court to conduct these tests.

(c) Participation in an alcohol or drug program, or both. These programs shall be accredited by the department of health services or a county probation department.

(d) Prohibition of association with any individual determined to be detrimental to the prisoner's successful participation in the program.

(e) All other provisions of the sentence imposed.

5. Any additional eligibility criteria that the county may impose.

N. If a county sheriff establishes a home detention program under subsection K of this section, the court, on placing the prisoner in the program, shall require electronic monitoring in the prisoner's home and, if consecutive hours of jail time are ordered, shall require the prisoner to remain at home during the consecutive hours ordered. The detention device shall constantly monitor the prisoner's location to ensure that the prisoner does not leave the premises. Nothing in this subsection shall be deemed to waive the minimum jail confinement requirements under subsection M, paragraph 2 of this section.

O. The court may terminate a prisoner's participation in the home detention or continuous alcohol monitoring program and require the prisoner to complete the remaining term of the jail sentence by jail confinement if either:

1. The prisoner fails to successfully complete a court ordered alcohol or drug screening, counseling, education and treatment program pursuant to subsection M, paragraph 4, subdivision (c) of this section or section 28-1381, subsection J or L.

2. If placed under home detention, the prisoner leaves the premises during a time that the prisoner is ordered to be on the premises without permission of the court or supervising authority.

P. At any other time the court may terminate a prisoner's participation in the home detention or continuous alcohol monitoring program and require the prisoner to complete the remaining term of the jail sentence by jail confinement.

Q. The sheriff may terminate a program established pursuant to this section at any time.