

Sixtieth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Council

(Commission on Alternatives to Incarceration)

1 A BILL for an Act to create and enact a new chapter to title 12 of the North Dakota Century  
2 Code, relating to electronic home detention and global positioning system monitoring for certain  
3 offenders; and to amend and reenact subdivision b of subsection 3 of section 12.1-08-06 of the  
4 North Dakota Century Code, relating to the definition of official detention.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new chapter to title 12 of the North Dakota Century Code is created and  
7 enacted as follows:

8 **Definitions.** As used in this chapter:

- 9 1. "Approved electronic monitoring device" means a global positioning system device  
10 or other electronic monitoring device approved by the department or the court  
11 which is primarily intended to actively or passively monitor, record, and transmit  
12 confirmation of a participant's location or the participant's presence or  
13 nonpresence in the home.
- 14 2. "Court" means the district court having criminal or juvenile jurisdiction to place a  
15 participant in electronic home detention or global positioning system monitoring.
- 16 3. "Department" means the department of corrections and rehabilitation.
- 17 4. "Home detention" means the confinement of an individual adjudicated, convicted,  
18 or charged with an offense to the individual's place of residence under the terms  
19 and conditions established by the court or the department.
- 20 5. "Participant" means an adult or juvenile offender placed into an electronic  
21 monitoring program.

22 **Application.** Except for an offense for which the law requires mandatory incarceration,  
23 electronic home detention or global positioning system monitoring may be used for adult and  
24 juvenile offenders as selected by the court, the parole board, or the department for adult

1 offenders as an intermediate measure of supervised probation, and for delinquent juvenile  
2 offenders in the custody of the division of juvenile services as a condition of community  
3 placement. Electronic home detention and global positioning system monitoring may be used  
4 for the following:

- 5       1. Pretrial or preadjudicatory detention.
- 6       2. Probation.
- 7       3. Community corrections approved by the court.
- 8       4. Parole.
- 9       5. Work release under chapter 12-44.1 or approved by the parole board.
- 10      6. Institutional release approved by the court or the parole board.
- 11      7. County jail diversion approved by the court.
- 12      8. Sex offender containment.

13 **Program description.**

- 14      1. Subject to the availability of funding, the court or, with the approval of the court, the  
15 department or a correctional facility subject to chapter 12-44.1 may implement an  
16 electronic home detention and global positioning system monitoring program.
- 17      2. A participant may be required to remain within the interior premises or within the  
18 property boundaries of the participant's residence at all times during the hours  
19 designated by the court, the parole board, or the department. Instances of  
20 approved absences from the residence may include:
  - 21       a. Work or employment approved by the court, the parole board, or the  
22 department or traveling to or from approved employment;
  - 23       b. Unemployment and seeking employment approved for the participant by the  
24 court, the parole board, or the department;
  - 25       c. Medical, psychiatric, mental health treatment, counseling, or other treatment  
26 programs approved for the participant by the court, the parole board, or the  
27 department;
  - 28       d. Attendance at an educational institution or a program approved for the  
29 participant by the court, the parole board, or the department;
  - 30       e. Attendance at a regularly scheduled religious service at a place of worship;

f. Participation in a community work release or community service program approved for the participant by the court, the parole board, or the department; or

g. For another compelling reason consistent with the public interest, as approved by the court, the parole board, or the department.

3. A participant shall admit any individual or agent designated by the court, the parole board, or the department into the participant's residence at any time for purposes of verifying the participant's compliance with the conditions of the participant's detention.

4. A participant shall make the necessary arrangements to allow for any individual or agent as designated by the court, the parole board, or the department to visit the participant's place of education or employment at any time, based upon the approval of the educational institution or employer, for the purpose of verifying the participant's compliance with the conditions of the participant's detention.

5. A participant shall acknowledge and participate in the approved electronic monitoring program as designated by the court, the parole board, or the department at any time for the purpose of verifying the participant's compliance with the conditions of the participant's detention.

6. A participant shall maintain the following:

a. A monitoring device in the participant's residence or on the participant's person, or both; and

b. A working telephone in the participant's residence or in the absence of a telephone a monitoring device in the participant's residence and on the participant's person.

7. A participant shall obtain approval from the court, the parole board, or the department before the participant changes residence or the schedule described in subsection 2.

8. The court, the parole board, or the department shall inform a participant that violation of the order for home detention may subject the participant to prosecution or adjudication for the offense of escape from official detention.

1           9.    A participant shall abide by other conditions as set by the court, the parole board,  
2               or the department.

3           10. An approved electronic monitoring device may be used to record a conversation  
4               between a participant and the monitoring device or the participant and the  
5               individual supervising the participant solely for the purpose of identification and not  
6               for the purpose of eavesdropping or conducting any other illegally intrusive  
7               monitoring.

8           **Consent of the participant.** Before entering an order for commitment for electronic  
9               home detention or global positioning system monitoring, the court, the parole board, or the  
10              department shall inform the participant and other individuals residing in the residence of the  
11              nature and extent of the approved electronic monitoring devices by securing the written consent  
12              of the participant in the program and ensuring that the approved electronic devices be  
13              minimally intrusive upon the privacy of the participant and other individuals residing in the  
14              residence.

15           **SECTION 2. AMENDMENT.** Subdivision b of subsection 3 of section 12.1-08-06 of the  
16           North Dakota Century Code is amended and reenacted as follows:

17               b.    "Official detention" means arrest, custody following surrender in lieu of arrest,  
18                      detention in any facility for custody of persons under charge or conviction of  
19                      an offense or alleged or found to be delinquent, detention under a law  
20                      authorizing civil commitment in lieu of criminal proceedings or authorizing  
21                      such detention while criminal proceedings are held in abeyance, detention for  
22                      extradition, home detention as authorized by section 1 of this Act, or custody  
23                      for purposes incident to the foregoing, including transportation, medical  
24                      diagnosis or treatment, court appearances, work, and recreation, or being  
25                      absent without permission from any release granted while under custody of a  
26                      sentence such as work or education release, community confinement, or  
27                      other temporary leaves from a correctional or placement facility, ~~but "official~~.  
28                      "Official detention" does not include supervision on probation or parole or  
29                      constraint incidental to release.