

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

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

- 1 1. Pretrial or preadjudicatory detention.
- 2 2. Probation.
- 3 3. Community corrections.
- 4 4. Parole.
- 5 5. Work release.
- 6 6. Institutional furlough.
- 7 7. Prison or county jail diversion.
- 8 8. Sex offender containment.

9 **Program description.**

- 10 1. The department may implement an electronic home detention and global
11 positioning system monitoring program.
- 12 2. A participant may be required to remain within the interior premises or within the
13 property boundaries of the participant's residence at all times during the hours
14 designated by the court, the parole board, or the department. Instances of
15 approved absences from the residence may include:
 - 16 a. Work or employment approved by the court, the parole board, or the
17 department or traveling to or from approved employment;
 - 18 b. Unemployment and seeking employment approved for the participant by the
19 court, the parole board, or the department;
 - 20 c. Medical, psychiatric, mental health treatment, counseling, or other treatment
21 programs approved for the participant by the court, the parole board, or the
22 department;
 - 23 d. Attendance at an educational institution or a program approved for the
24 participant by the court, the parole board, or the department;
 - 25 e. Attendance at a regularly scheduled religious service at a place of worship;
 - 26 f. Participation in a community work release or community service program
27 approved for the participant by the court, the parole board, or the department;
28 or
 - 29 g. For another compelling reason consistent with the public interest, as approved
30 by the court, the parole board, or the department.

- 1 3. A participant shall admit any individual or agent designated by the court, the parole
2 board, or the department into the participant's residence at any time for purposes
3 of verifying the participant's compliance with the conditions of the participant's
4 detention.
- 5 4. A participant shall make the necessary arrangements to allow for any individual or
6 agent as designated by the court, the parole board, or the department to visit the
7 participant's place of education or employment at any time, based upon the
8 approval of the educational institution or employer, for the purpose of verifying the
9 participant's compliance with the conditions of the participant's detention.
- 10 5. A participant shall acknowledge and participate in the approved electronic
11 monitoring program as designated by the court, the parole board, or the
12 department at any time for the purpose of verifying the participant's compliance
13 with the conditions of the participant's detention.
- 14 6. A participant shall maintain the following:
- 15 a. A monitoring device in the participant's residence or on the participant's
16 person, or both; and
- 17 b. A working telephone in the participant's residence or in the absence of a
18 telephone a monitoring device in the participant's residence and on the
19 participant's person.
- 20 7. A participant shall obtain approval from the court, the parole board, or the
21 department before the participant changes residence or the schedule described in
22 subsection 2.
- 23 8. The court, the parole board, or the department shall inform a participant that
24 violation of the order for home detention may subject the participant to prosecution
25 for the crime of escape from official detention.
- 26 9. A participant shall abide by other conditions as set by the court, the parole board,
27 or the department.
- 28 10. An approved electronic monitoring device may be used to record a conversation
29 between a participant and the monitoring device or the participant and the
30 individual supervising the participant solely for the purpose of identification and not

1 for the purpose of eavesdropping or conducting any other illegally intrusive
2 monitoring.

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

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

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