

FIRST ENGROSSMENT
with House Amendments

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 or municipal court having criminal or juvenile jurisdiction
15 to place a participant in electronic home detention or global positioning system
16 monitoring.

17 3. "Department" means the department of corrections and rehabilitation.

18 4. "Home detention" means the confinement of an individual adjudicated, convicted,
19 or charged with an offense to the individual's place of residence under the terms
20 and conditions established by the court or the department.

21 5. "Participant" means an adult or juvenile offender placed into an electronic
22 monitoring program.

23 **Application.** Except for an offense for which the law requires mandatory incarceration,
24 electronic home detention or global positioning system monitoring may be used for adult and

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

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

14 **Program description.**

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

- 1 f. Participation in a community work release or community service program
2 approved for the participant by the court, the parole board, or the department;
3 or
4 g. For another compelling reason consistent with the public interest, as
5 approved by the court, the parole board, or the department.
- 6 3. A participant shall admit any individual or agent designated by the court, the parole
7 board, or the department into the participant's residence at any time for purposes
8 of verifying the participant's compliance with the conditions of the participant's
9 detention.
- 10 4. A participant shall make the necessary arrangements to allow for any individual or
11 agent as designated by the court, the parole board, or the department to visit the
12 participant's place of education or employment at any time, based upon the
13 approval of the educational institution or employer, for the purpose of verifying the
14 participant's compliance with the conditions of the participant's detention.
- 15 5. A participant shall acknowledge and participate in the approved electronic
16 monitoring program as designated by the court, the parole board, or the
17 department at any time for the purpose of verifying the participant's compliance
18 with the conditions of the participant's detention.
- 19 6. A participant shall maintain the following:
- 20 a. A monitoring device in the participant's residence or on the participant's
21 person, or both; and
- 22 b. A working telephone in the participant's residence or in the absence of a
23 telephone a monitoring device in the participant's residence and on the
24 participant's person.
- 25 7. A participant shall obtain approval from the court, the parole board, or the
26 department before the participant changes residence or the schedule described in
27 subsection 2.
- 28 8. The court, the parole board, or the department shall inform a participant that
29 violation of the order for home detention may subject the participant to prosecution
30 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.