

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2029

2007 SENATE JUDICIARY

SB 2029

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2029**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: January 9, 2007

Recorder Job Number: 798

Committee Clerk Signature *Maria L. Solberg*

Minutes: Relating to electronic home detention and global positioning system monitoring for certain offenders.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Rep. Joe Kroeber, Dist. #12 (meter 1:4) Introduced the bill. Attachment #1

Sen. Fiebiger asked what (meter 4:02) states have adopted this legislation. Rep. Kroeber was not aware of any other states. Global technology is new technology that changes quickly so there are long term contract concerns.

Rep. Lawrence R. Klemin, Dist. #47 Gave testimony (meter 5:20) Attachment #2

Warren R. Emmer, Dir. Dept of Corrections, (meter 7:47) Attachment #3. Mr. Emmer gave an overview (meter 9:29) of how global positioning works. He stated that this technology doesn't save us time , it costs us time but it has a role in other areas i.e., prior to a hearing. Currently the system in use charges \$10 a day. **Sen. Nething** asked **Mr. Emmer** to review the bill (meter 11:48) for the changes.

Sen. Lyson questioned (meter 16:59) the fiscal impact this bill could mandate for the small counties that could not financially support this type of technology. Mr. Emmer discussed how

this would be of benefit for them. Sen. Lyson expressed his concerns with the current language and how it "mandates" a county Jail.

Sen. Fieberger asked for clarity on (meter 20:18) the language; page 3 line 10 – recording conversation.

Terry Gruble, Parole Officer with the Department of Corrections (meter 20:58) Coordinator for GPS program discussed how the "voice print" works in home detention to insure they are in the home.

Sen. Fieberger requested what participants "consent" means (meter 24:50) an offender always has an option of participation or not. Discussion of what the commission of this bill's intent of use for this type of application (meter 23:30) Electronic monitoring has been around for 20 years but global monitoring technology is new.

Sen. Marcellais inquired what the back-up to the system is (meter 25:29). Mr. Emmer responded that the system does not replace human monitoring and continued with states that have had problems have not done this. Sen. Nelson inquired if they currently have the personnel to do this (meter 27:57) Mr. Emmer sited 10 FTE's in the Governor's budget.

Sen. Nething, Chm. Sited additional concerns on the mandate portion of the bill

Rep. Klemin stated that that was not the intent of the bill (meter 31:16).

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

Connie Sprynczynatyk, ND League of Cities (meter 32:33) Spoke in support of the bill and would not be oppose to a friendly amendment to clarify the wording allowing the counties to choose.

Senator David Nething, Chairman closed the hearing to await the presentation of an amendment to be prepared by Senate Jud. Intern Brad Wiederholt and Ms. Sprczynatyk.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2029**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 17, 2007

Recorder Job Number: 1285

Committee Clerk Signature *Maria Holberg*

Minutes: Relating to electronic home detention and global positioning for certain offenders.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

The committee opened with the distribution of amendments from the Attorney General's office.

(meter 0:32) Att. 1a, 1b, 1c, 1d, - Discussion of who submitted what amendment

Sen. Lyson discussed that amendment 1d Page 1, line 23 (meter 3:22) Concern about the department being at the same level of the court. The committee reviewed the amendments (meter 4:25)

Ken Sornson – Attorney General's office (meter 5:40) and **Warren Emmers**, Dept. of Corrections, reviewed the amendment and the concerns. We all worked together to make the final 1d amendments and are satisfied with the results

Sen. Nelson questioned the three additional items added to the A.G.'s amendment and **Mr. Sornson** reviewed them for the committee. (meter 9:00).

Sen. Olafson questioned the departments responsibility being still in the bill? (meter 12:00)
Mr. Sornson reviewed.

Sen Fieberger questioned page 2, line 10 – "department may implement" is that the parole board?

Sen. Lyson questioned the department's responsibility to fund the process. He was greatly concern mandating to the counties to do something they could not afford to do. (meter 13:49)

Mr. Sornson referred to page 2, line 10 "the governing body" would address this.

Mr. Emmers spoke of talking to Judges and counties meeting a criteria level (meter 16:30) so that they could have an opinion. Discussion of parole board, evaluation verses funding availability. The County commissioners only concern is money. This should be established before the court would mandate. The counties will have to line item the money in there funding

Sen. Fiebiger states that in the title "subject to availability" and may vs. shall.

Mr. Emmers discussed (meter 23:19) charging a fee of \$18.20/day to the person wearing the "bracelet" The medical expense (meter 27:60) would become the expense of the offenders if they reside in there own home, not the state.

The committee discussed the wording "home rule" and amendment 1e. They had concerns about the briefness of the amendment.

Sen. Nething was open for the committee to make an action.

Sen. Fiebiger made the motion to Do Pass amendment 1d and change the wording on page 2, line 10 to include "Subject to the availability of funding", and **Sen. Lyson** seconded the amendment. All members were in favor and amendment passes

Sen. Lyson made the motion to Do Pass SB 2029 as amended and **Sen. Fiebiger** seconded the motion. All members were in favor and motion passes

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the hearing.

Sen. Lyson made the motion to Do Pass and **Sen. Olafson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the hearing.

FISCAL NOTE

Requested by Legislative Council

02/26/2007

Amendment to: Engrossed
 SB 2029

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$360,525		\$360,525	
Appropriations			\$360,525		\$360,525	

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The use of electronic monitoring systems (ems) is included in the DOCR's 2007-09 executive recommendation. The DOCR's ems plan includes community supervision of offenders on parole and probation, and community supervision of sex offenders under correctional supervision.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The estimated expenditure amount consists of the following:

Manpower - \$86,400

EMS Contract / Use - \$274,125 (35 passive units @ \$5.00 /day; 20 active units @\$10 /day)

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The 2007-09 DOCR executive recommendation includes \$360,525 (as noted in 3B above) of general funds to provide for the use of ems devices for the supervision of offenders.

Name:	Dave Krabbenhoft	Agency:	DOCR
Phone Number:	328-6135	Date Prepared:	02/26/2007

FISCAL NOTE
 Requested by Legislative Council
 01/23/2007

Amendment to: SB 2029

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$360,525		\$360,525	
Appropriations			\$360,525		\$360,525	

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The use of electronic monitoring systems (ems) is included in the DOCR's 2007-09 executive recommendation. The DOCR's ems plan includes community supervision of offenders on parole and probation, and community supervision of sex offenders under correctional supervision.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The estimated expenditure amount consists of the following:

Manpower - \$86,400

EMS Contract / Use - \$274,125 (35 passive units @ \$5.00 /day; 20 active units @\$10 /day)

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The 2007-09 DOCR executive recommendation includes \$360,525 (as noted in 3B above) of general funds to provide for the use of ems devices for the supervision of offenders.

Name:	Dave Krabbenhoft	Agency:	DOCR
Phone Number:	328-6135	Date Prepared:	01/23/2007

FISCAL NOTE

Requested by Legislative Council
12/26/2006

Bill/Resolution No.: SB 2029

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$360,525		\$360,525	
Appropriations			\$360,525		\$360,525	

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The use of electronic monitoring systems (ems) is included in the DOCR's 2007-09 executive recommendation. The DOCR's ems plan includes community supervision of offenders on parole and probation, and community supervision of sex offenders under correctional supervision.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The estimated fiscal impact noted above represents the estimated fiscal impact to the DOCR only. The bill also applies to the State's district courts. The amount of use of the electronic monitoring technology by the district courts can not be estimated by the DOCR.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The estimated expenditure amount consists of the following:

Manpower - \$86,400

EMS Contract / Use - \$274,125 (35 passive units @ \$5.00 /day; 20 active units @\$10 /day)

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The 2007-09 DOCR executive recommendation includes \$360,525 (as noted in 3B above) of general funds to provide for the use of ems devices for the supervision of offenders.

Name:	Dave Krabbenhoft	Agency:	DOCR
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Phone Number: 328-6135

Date Prepared: 01/02/2007

JB
1-19-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2029

Page 1, line 10, after "department" insert "or the court"

Page 1, line 16, after "individual" insert "adjudicated," and after "convicted" insert an underscored comma

Page 1, line 17, replace "a crime" with "an offense"

Page 1, line 19, replace "inmate" with "adult" and after "or" insert "juvenile"

Page 1, line 23, after "department" insert "for adult offenders as an intermediate measure of supervised probation, and for delinquent juvenile offenders in the custody of the division of juvenile services as a condition of community placement"

Page 2, line 3, after "corrections" insert "approved by the court"

Page 2, line 5, after "release" insert "under chapter 12-44.1 or approved by the parole board"

Page 2, line 6, replace "furlough" with "release approved by the court or the parole board"

Page 2, line 7, replace "Prison or county" with "County" and after "diversion" insert "approved by the court"

Page 2, line 10, replace "The" with "Subject to the availability of funding, the court or, with the approval of the court, the" and after "department" insert "or a correctional facility subject to chapter 12-44.1"

Page 3, line 24, after "prosecution" insert "or adjudication"

Page 3, line 25, replace "crime" with "offense".

Renumber accordingly

	ADDS OPERATING EXPENSES ¹	TOTAL SENATE CHANGES
Operating expenses	\$11,000	\$11,000
Total all funds	\$11,000	\$11,000
Less estimated income		
General fund	\$11,000	\$11,000
FTE	0.00	0.00

¹ Adds funding for operating expenses of the Office of Faith-Based and Community Initiatives which is being transferred from the Governor's office to the Department of Commerce.

REPORT OF STANDING COMMITTEE

SB 2011: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2011 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2029: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2029 was placed on the Sixth order on the calendar.

Page 1, line 10, after "department" insert "or the court"

Page 1, line 16, after "individual" insert "adjudicated," and after "convicted" insert an underscored comma

Page 1, line 17, replace "a crime" with "an offense"

Page 1, line 19, replace "inmate" with "adult" and after "or" insert "juvenile"

Page 1, line 23, after "department" insert "for adult offenders as an intermediate measure of supervised probation, and for delinquent juvenile offenders in the custody of the division of juvenile services as a condition of community placement"

Page 2, line 3, after "corrections" insert "approved by the court"

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Page 2, line 6, replace "furlough" with "release approved by the court or the parole board"

Page 2, line 7, replace "Prison or county" with "County" and after "diversion" insert "approved by the court"

Page 2, line 10, replace "The" with "Subject to the availability of funding, the court or, with the approval of the court, the" and after "department" insert "or a correctional facility subject to chapter 12-44.1"

Page 3, line 24, after "prosecution" insert "or adjudication"

Page 3, line 25, replace "crime" with "offense"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2041: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** and **BE REREFERRED** to the **Appropriations Committee** (3 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2041 was placed on the Sixth order on the calendar.

Page 3, line 18, replace "trained or certified" with "licensed" and after "counselor" insert "or therapist"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2045: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2045 was placed on the Eleventh order on the calendar.

2007 SENATE APPROPRIATIONS

SB 2029

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2029

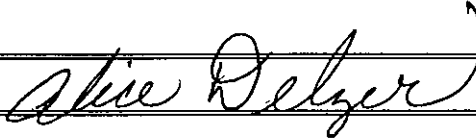
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 01-26-07

Recorder Job Number: 1999

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on SB 2029 at 8:30 am on January 26, 2007 on NDCC Electronic Home Detection.

John Bjornson, Legislative Staff explained this bill was introduced to find ways to reduce costs by keeping people out of prison by using a monitoring system. Concerns were raised last session regarding GPS monitoring and electronic bracelets, the specific authority to do this type of things, so this bill was introduced in this session to address these issues.

Senator Mathern asked several questions concerning the rational for getting consent and why put criminals on the monitoring program.

Senator Robinson explained this program is used sparingly as there is a high cost to maintain this program. A selective process is in place to chose those who qualify for this type of sentencing and usually it is a very successful tool to use. More discussion followed considering the fiscal note, why the bill ended up in this committee, concerns about the action taken in the House, and the need for a subcommittee. **Senator Mathern moved a DO PASS, Senator**

Robinson seconded. A roll call vote was taken resulting in 12 yeas, 0 nays, 2 absent.

The motion carried. It will be carried by the Judiciary. The hearing on SB 2029 closed.

Date: 1-26-07
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2029

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass

Motion Made By Mather Seconded By Sen Robinson

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathern	✓	
Senator Randel Christmann	✓		Senator Larry J. Robinson	✓	
Senator Tom Fischer	✓		Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson		
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 12 No 0

Absent 02

Floor Assignment Judiciary Senator Lyson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2029, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2029 was placed on the Eleventh order on the calendar.

2007 HOUSE JUDICIARY

SB 2029

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2029

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/21/07

Recorder Job Number: 3537, 3545

Committee Clerk Signature

DeRose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2029.

Rep. Joe Kroeber: Sponsor (see attached testimony).

Chairman DeKrey: Thank you. Further testimony in support.

Terry Grumbo, Parole Officer, DOCR: We are in support of this program. I am also the program manager for the EMS and GPS programs.

Rep. Griffin: Have you had incidents where people have taken them off, if the bracelet is removed, can you tell.

Terry Grumbo: It depends on the technology you use. The bill as presented includes both electronic monitoring which is the old home detention with the ankle bracelet on their leg and then the unit in the house. It also includes the GPS, if the strap is cut, it will notify you immediately. With the older system, there was a curfew and if the strap were cut when they were out in the community, you wouldn't know it. GPS would allow that.

Chairman DeKrey: Thank you. Further testimony in support. Testimony neutral.

John Bjornson, LC: Neutral. I am available to answer any questions.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Larry Klemin: The amendments related to additional language relating to approval by the court or also references to the county jail and regional correctional centers system. I am a member on the Commission on Alternatives to Incarceration. This bill was introduced by the commission to accomplish three primary objectives. First, the bill is intended to provide an alternative to incarceration in prison by implementing a program for electronic home detention and GPS monitoring. A goal of the bill is to alleviate the crowding at the state penitentiary by the home detention of some offenders. Second, the bill provides for uniformity of application in the courts across the state; finally the bill grants specific authority for a program of electronic home detention and GPS monitoring to the DOCR where no such authority now exists. Electronic home detention is not mandated by this bill, but it is permitted in an appropriate case under conditions imposed by the court, consistent with the standards set out in the bill and it also requires the consent of the participant. The bill was approved and recommended by a bipartisan multi-jurisdictional commission as Rep. Kroeber told you. The program is included in the Governor's Executive Budget for the Department of Corrections according to the fiscal note. Nobody has really explained this bill yet, so maybe I should go through that. Section 1 simply starts off with definitions, it defines various terms used throughout the bill. The application relates to offenses other than those where mandatory incarceration is required. It can be used by both adult and juvenile offenders. On the top of page 2, it sets out various situations under which electronic home detention of GPS monitoring could be used, including pre-trial detention, probation, any corrections parole, and so forth. During the time that the Commission on alternatives to incarceration was meeting over the last two years, we had a very close look at how GPS monitoring is being done now. It is one of those technologies that is increasing in sophistication and ease of implementation. One of the members of the Commission wore a GPS monitoring device. We had a meeting in Fargo and then we went

subsequent to that, the next day we went to a meeting at the State Hospital in Jamestown. He wore the GPS monitoring device from one day to the next and he also went out for a walk while he was in Jamestown that night before our meeting, and they had the device, it was not an active monitoring, but basically a machine monitoring where they could look back and see where he had been over the 24 hour period. It showed him on a graph him being tracked from Fargo, down I-94 West to Jamestown, showed where he had walked around in Jamestown and places he had been. You could spot that on a map. For someone like a sex offender, who is out on release who isn't supposed to go into certain areas, they would be able to tell from the tracking of the GPS monitor, where that person had been. If he had gone into an area where he shouldn't have been, they would know that. There's also a form of GPS monitoring that is an active monitoring, where someone monitors the person 24 hours a day, watching where they are going all the time, and if they go where they aren't supposed to be, they would know that immediately and can go and get the person out of there if necessary. As was mentioned earlier, if someone takes that off, then they would know that immediately because they are designed so that if you remove or cut it off, they know that it's been removed. Program description describes what it can be used for. This would allow people to go to work, they would know if they are authorized to go to work, they would know when they are going, where they are going. They could go to the doctor or hospital, they would be able to monitor that, also to go to school, work release programs or other reasons. There is a provision at the top of page 3, on line 6-9, which requires the participant to admit any person who's been monitoring or from the Parole board of DOCR to come into the house, if necessary to make arrangements, if they are allowed to go anywhere, the court would have to know that. This whole thing is designed to be a flexible program, the court would actually set out the parameters that would be followed here. It requires the participant to have a monitoring

device, either on his person or in his house, working telephone or some other kind of monitoring device. Subsection 7, line 25, requires the participant to get approval before they change their residence. Line 28, subsection 8, was something that was added at the request of the AG's office, so that if they violate an order under this, it is considered escape from official detention. At the top of page 4, subsection 10, it allows the recording of conversations for purposes of identification and is made very clear that eavesdropping is not permitted under this and couldn't then be used as evidence against somebody. Line 8 on page 4, consent of the participant. The court can't just order this to be done, or the Parole Board or the DOCR. It has to have the consent of the participant and there must be steps taken to make sure that it is minimally intrusive for the privacy of the participant and other individuals residing in the residence. Section 2 is an amendment to existing law which deals with what's official detention, and as I mentioned this was part of what the AG's office wanted so that official detention would be included in that about escape from official detention would be included under this bill, if somebody cut off his GPS monitoring device. It was in the fiscal note an appropriate of \$360,000, which the DOC stated was in their budget. I'm not sure what happened on that in the Senate Appropriations, but obviously it did pass the Senate.

Chairman DeKrey: Why do we need the consent of the participant.

Rep. Klemin: This is an alternative program, it was deemed that it should be a voluntary type of thing and therefore you would need consent.

Chairman DeKrey: Would they be getting something in exchange if they agree to this program.

Rep. Klemin: They agree to be monitored, they consent to this stuff, then they're going to have all these conditions imposed on them. As a voluntary alternative of going to prison or county jail, it was determined that it would be better to have their consent as a formality.

Chairman DeKrey: Does it need an emergency clause.

Rep. Klemin: There isn't an emergency clause, I don't know, it says subject to funding.

Funding, of course, I don't know if you can do emergency funding. It is something that it is going to be taken care of as part of the Corrections budget.

Rep. Dahl: In the definition it talks about actively or passively monitoring someone. Can you clarify what that means.

Rep. Klemin: Active monitoring is the monitoring that is going on all the time, you need a person there watching this equipment. Someone has to be sitting there watching this person move around. Active monitoring is more expensive because you have someone sitting there watching him 24/7. Passive monitoring, in contrast, is done by the equipment itself and they track the person as he goes over a 24 hour period, and then the following day, the supervisor can come and look at the printout of where he's been. That's a lot cheaper.

Rep. Griffin: Can't the court already do this right now, or does the language just clarify it.

Rep. Klemin: We looked at this, and I think it may be that the court can do this right now on its own motion, but there are no standards. One court in Fargo may do it differently than a court in Williston. One of the goals of this is to try and have some uniformity as to how it's applied by the courts across the state.

Rep. Kretschmar: If technology advances, and other things are found to do this monitoring, does your statute suffice, or would it have to be changed.

Rep. Klemin: I think the definitions are broad enough to include whatever technology may come along in the future. I think it would cover anything that came along in the future.

Rep. Delmore: Looking at the fiscal note, we're looking at some type of a pilot. Obviously, it couldn't cover all of the people from what the fiscal note said, that might be eligible for this. How would you decide which particular prisoners who would be allowed to use this system.

Terry Grumbo: When the initial form of this bill first came out, I started to think about how this was going to affect us, not only budget wise but also manpower wise. The first thing that sprang to my mind, that if the courts are going to use this and the participant, being the defendant, they are going to have some type of qualification for that person. Is this person able to pay somewhat ahead of time for the use of this. Obviously this is going to be a privilege for them to remain in the community, to continue to work and support their family, as opposed to being locked up. I think the participant is going to be looked at ahead of time, as to whether or not they qualify monetarily, do they qualify in terms of the type of crime, obviously a violent crime may not be appropriate for this type of sentence.

Rep. Delmore: You really don't have set criteria for who will be chosen to take care. You have no written testimony on who is going to be chosen or how it's going to work.

Terry Grumbo: That would have to come from the court.

Rep. Griffin: Who is funding the current law now.

Terry Grumbo: The state taxpayers. It is covered in our budget already.

Rep. Griffin: How would you know how much you would need because a court could have as many people be monitored as it wanted.

Terry Grumbo: That is correct, the court could flood us with a lot of these. I guess how we would be funded then, it's going to have to be funded in part, if not all, by the participants in order for it to be feasible.

Rep. Meyer: Are you saying that you have these units available right now, or are you capped at the 35 units. Is the fiscal note to buy new units.

Terry Grumbo: The fiscal note simply covers the DOCR current program.

Chairman DeKrey: Thank you. Further testimony in support.

Connie Sprynczynatyk, ND League of Cities: We've been asked by one of our communities to seek additional permissive language to insert municipal court, on page 1, under the definition section, line 14. "the court means the district court, or municipal court, have..." This is an amendment that was offered in Senate Judiciary. I have asked a number of committee members, including the chairman, whether there was a reason that it wasn't attached, and I got five different answers. The best one I can give you is perhaps it was an oversight.

Rep. Koppelman: Do you know what effect, if any, on the fiscal note, would that increase the likelihood of them using this system and therefore increase the costs.

Connie Sprynczynatyk: My assumption, is that if a city chose this as an alternative to incarceration that there would be some sort of contractual relationship. That's my assumption. But again it's permissive language.

Chairman DeKrey: Further testimony in support. Testimony in opposition. We will close the hearing.

(Reopened later in the same session)

Chairman DeKrey: What are the committee's wishes in regard to SB 2029.

Rep. Meyer: I move the amendment to add the municipal court on line 14.

Rep. Wolf: Second.

Chairman DeKrey: We will take a voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes.

Rep. Kingsbury: I move a Do Pass as amended with a rereferral to Appropriations.

Rep. Koppelman: Second.

12 YES 0 NO 2 ABSENT

CARRIER: Rep. Klemin

DO PASS AS AMENDED WITH REFERRAL TO APPROPRIATIONS

Date: 2/21/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2029

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended w/ Referral to Approps.

Motion Made By Rep. Kingsbury Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore		
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging			Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2029, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the Appropriations Committee (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2029 was placed on the Sixth order on the calendar.

Page 1, line 14, after "district" insert "or municipal"

Renumber accordingly

2007 HOUSE APPROPRIATIONS

SB 2029

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2029

House Appropriations Committee

Check here for Conference Committee

Hearing Date: March 9, 2007

Recorder Job Number: 4773

Committee Clerk Signature

Shelby N. Samuel

Minutes:

Chm. Svedjan opened the hearing on SB 2029.

Rep. Duane DeKrey, Chairman, House Judiciary Committee, testified in support of SB 2029. The bill sets out in the law approved electronic monitoring devices for felons or people who have been sentenced to the DOCR. Other than the money, there's not a lot in this bill

Chm. Svedjan: The bill was required to allow for this to happen. The money was included in the budget.

Rep. DeKrey: Yes.

Rep. Wald: Why do they need the consent language on page three?

Rep. DeKrey: they will not be allowed to have this type of monitoring program unless they agree to it because they have to pay part or all of the costs of monitoring. By consenting to it, they are agreeing that they will abide by the sentencing given to them by the court. This electronic monitoring is a privilege.

Rep. Kroeber: If they don't qualify, choose and pay to be in the program, they remain incarcerated.

Rep. DeKrey: People sentenced prior to electronic monitoring cannot have their sentence changed just because you want to.

Rep. Bellew: If the offenders have to pay for the program, why do we need a general fund appropriation?

Rep. Kroeber: What they are paying for is the maintenance of the program. It's not for the actual purchase of the equipment.

Chm. Svedjan: The fiscal note indicates they need \$86,400 for manpower. That's the person that's going to get this program up and running. It also talks about the passive and active monitoring that brings the amount to \$360,000.

Rep. DeKrey described the difference in passive and active monitoring (Ref. 4:28).

Rep. Aarsvold: Do we have out-of-state contractors wanting to do this?

Rep. DeKrey: There are people wanting the contracts. There have been problems in the past and there are good vendors out there.

Rep. Kroeber motioned a Do Pass to SB 2029. **Rep. Pollert** seconded the motion. The motion carried by a roll call vote of 20 ayes, 1 nay and 3 absent and not voting. **Rep. Klemin** was designated to carry the bill.

Date: 3/9/07
 Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2029

House Appropriations Full Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass

Motion Made By Kroeber Seconded By Pollert

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Representative Wald	✓		Representative Aarsvold	✓	
Representative Monson	✓		Representative Gulleason	✓	
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson	✓		Representative Glassheim	✓	
Representative Carlisle	✓		Representative Kroeber	✓	
Representative Skarphol	✓		Representative Williams	✓	
Representative Thoreson		✓			
Representative Pollert	✓		Representative Ekstrom	✓	
Representative Bellew	✓		Representative Kerzman	✓	
Representative Kreidt	✓		Representative Metcalf	✓	
Representative Nelson	✓				
Representative Wieland	✓				

Total (Yes) 20 No 1

Absent 3

Floor Assignment Rep. Klesmin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2029, as engrossed and amended: Appropriations Committee (Rep. Svedjan, Chairman) recommends **DO PASS** (20 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING). Engrossed SB 2029, as amended, was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2029

Att # 1

4/9/07

Chairman Nething & members of the Senate Judiciary Committee. I'm Rep. Joe Kroeber, District 12 which includes 5/6 of Jamestown. SB 2029 is the Electronic Monitoring bill which was one of the products of our Commission on Alternatives to Incarceration Committee. The membership of the commission was three members appointed by the Governor, Assistant Attorney General, a member of the Supreme Court and a member of the District Court, Director of DOCR, Director of Human Services, two law enforcement officers, a State's attorney, a member of the Association of Counties and six legislators. A very diverse committee. SB 2029 was supported by all members of our committee. It will provide standards under which the DOCR may implement an electronic home detention & global positioning system. Other members of the commission will inform you of the important components of the bill. However, I would be happy to try and answer any questions you may have.

AH 7+ / @

Amendment to SB 2029

2. "Court" means the district court or municipal court having criminal or juvenile jurisdiction to place a participant in electronic home detention or global positioning system monitoring.

[REDACTED]

[REDACTED]

AH #1a
1-17-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2029

Page 1, line 23, after department, insert "for adult offenders as an intermediate measure of supervised probation, and for delinquent juvenile offenders in the custody of the division of juvenile services as a condition of community placement"

Page 2, line 3, after "corrections" insert "approved by the court"

Page 2, line 5, after "release" insert "under chapter 12-44.1 or approved by the parole board"

Page 2, line 6, replace "furlough" with "release approved by the court or the parole board"

Page 2, line 7, replace "Prison or county" with "County" and after "diversion" insert "approved by the court"

Att # 16
1-17-07

ALTERNATIVE PROPOSED AMENDMENTS TO SENATE BILL NO. 2029

Page 1, line 16, after "individual", insert "adjudicated."

Page 1, line 17, replace "a crime" with "an offense"

Page 1, line 23, after department, insert "for adult offenders as an intermediate measure of supervised probation, and for delinquent juvenile offenders in the custody of the division of juvenile services as a condition of community placement"

Page 2, line 3, after "corrections" insert "approved by the court"

Page 2, line 5, after "release" insert "under chapter 12-44.1 or approved by the parole board"

Page 2, line 6, replace "furlough" with "release approved by the court or the parole board"

Page 2, line 7, replace "Prison or county" with "County" and after "diversion" insert "approved by the court"

Page 3, line 24, after "prosecution" insert "or adjudication"

Page 3, line 25, replace "crime" with "offense"

AH # 1C
1-17-07

DOCR Explanation of Proposed Amendments to SB 2029.

SB 2029 in its present form suggests that the DOCR has the responsibility to manage electronic monitoring and GPS not only for adult offenders under the supervision and management of the DOCR Adult Services Division or for delinquent juvenile offenders under the custody of DJS, but also for pre-trial release and bail matters for non-convicted offenders, county correctional facility release programs including county correctional facility work release, and for misdemeanor offenders who are not under the supervision and management of the DOCR. The DOCR does not have authority over these categories of offenders and should not be required to provide electronic surveillance services for the courts and county correctional facilities.

SB 2029 also uses words such as "crime" and "conviction" when referring to juveniles who may be subject to electronic monitoring and potentially GPS (and DJS does use electronic monitoring for juveniles, but it has never used GPS) The Juvenile Court Act specifically provides that juveniles are not considered convicted of crimes; instead, the juveniles are adjudicated delinquent and unruly.

The DOCR's proposed amendments are as follows:

1. The words "or the court" are inserted in page 1, line 10, for use by the courts of electronic monitoring devices in cases where the offenders are not under the supervision and management of the DOCR.
2. The word "adjudicated", "offense" and the terms adult offender and juvenile offender are used in page 1, lines 16, 17, and 19, to apply to both adults and juveniles.
3. The addition to page 1, line 23, is to make it clear that the DOCR will not be removing offenders from custody and placing them under electronic surveillance on its own authority, but instead, it may only be used for offenders on court-ordered supervised probation or for adjudicated delinquent juveniles who are allowed to remain in the community.
4. The changes on page 2, lines 3-7, are to require that releases that will be subject to electronic surveillance must be approved by the courts or the parole board. Normally, county jail work release is not subject to electronic surveillance.
5. The inclusion of the language on page 2, line 10, "a court, or a correctional facility subject to chapter 12-44.1, with the approval of the court" is to clarify that the use of electronic surveillance in cases where the offender is not under the supervision and management of the DOCR or the legal custody of DOCR-DJS is the responsibility of the courts or county correctional facilities.
6. The changes on page 3, lines 24 and 25 are to distinguish between adult offenders and convictions for crimes and juvenile offenders and adjudications for delinquency.

DOCR PROPOSED AMENDMENTS TO SENATE BILL NO. 2029

Page 1, line 10, after "department" insert "or the court"

Page 1, line 16, after "individual", insert "adjudicated,"

Page 1, line 17, replace "a crime" with "an offense"

Page 1, line 19, replace "inmate" with "adult" and after "or" insert "juvenile"

Page 1, line 23, after department, insert "for adult offenders as an intermediate measure of supervised probation, and for delinquent juvenile offenders in the custody of the division of juvenile services as a condition of community placement"

Page 2, line 3, after "corrections" insert "approved by the court"

Page 2, line 5, after "release" insert "under chapter 12-44.1 or approved by the parole board"

Page 2, line 6, replace "furlough" with "release approved by the court or the parole board"

Page 2, line 7, replace "Prison or county" with "County" and after "diversion" insert "approved by the court"

Page 2, line 10, after "department", insert ", the court, or a correctional facility subject to chapter 12-44.1, with the approval of the court,"

Page 3, line 24, after "prosecution" insert "or adjudication"

Page 3, line 25, replace "crime" with "offense"

HH #2
1/9/07

**SENATE BILL NO. 2029
TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE JUDICIARY COMMITTEE
JANUARY 9, 2007**

Mr. Chairman and Members of the Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I'm appearing before you today to testify in support of Senate Bill 2029 as a member of the Commission on Alternatives to Incarceration.

Senate Bill 2029 was introduced by the Commission to accomplish three primary objectives. First, the bill is intended to provide an alternative to incarceration in prison by implementing a program for electronic home detention and GPS monitoring. A goal of the bill is to alleviate crowding at the State penitentiary by the home detention of some offenders, thus saving the high cost of incarcerating those prisoners. Second, the bill provides for uniformity of application in the courts across the State. Finally, the bill grants specific authority for a program of electronic home detention and GPS monitoring to the Department of Corrections and Rehabilitation where such authority does not now exist.

Electronic home detention is not mandated by this bill, but is permitted in an appropriate case under conditions imposed by the Court, consistent with the standards set forth in the bill, and with the consent of the participant.

After much study and analysis, this bill was approved and recommended by a bipartisan multi-jurisdictional Commission consisting of legislators, judges, state agency representatives, a representative of the State's Attorneys, county representatives, law enforcement officials, a tribal representative, and a criminal justice expert. A list of the members of the Commission is attached to my testimony.

This program is included in the Governor's executive budget for the Department of Corrections and Rehabilitation, according to the fiscal note. A representative of the Department of Corrections and Rehabilitation is here to explain the provisions of the bill. I urge you to give favorable consideration to this bill.

COMMISSION ON ALTERNATIVES TO INCARCERATION

(17 members)

1473 § 1 Study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues

Chairman: Representative Joe Kroeber
Vice Chairman: Senator Thomas L. Trenbeath

Representatives			
Carlisle, Ron	P.O. Box 222	Bismarck	58502-0222
Klein, Lawrence R.	1709 Montego Drive	Bismarck	58503-0858
*Kroeber, Joe	1210 Seventh Avenue SE	Jamestown	58401-5818
Senators			
*Dever, Dick	1416 Eastwood Street	Bismarck	58504-6226
*Robinson, Larry J.	3584 Sheyenne Circle	Valley City	58072-9545
Trenbeath, Thomas L.	P.O. Box 361	Cavalier	58220-0361
Citizen Members			
Bertsch, Leann K.	Department of Corrections and Rehabilitation P.O. Box 1898	Bismarck	58502-1898
Brownshield, Edward	P.O. Box 161	Fort Totten	58335
Hagerty, Judge Gail	District Court P.O. Box 1013	Bismarck	58502-1013
Handrickson, Paul	Griggs County Sheriff's Department P.O. Box 574	Cooperstown	58425-0574
Johnston, Duane	Pierce County Commission 1308 Sixth Avenue SE	Rugby	58368-2550
Mahoney, John	P.O. Box 355	Center	58530-0355
Muehlen Maring, Justice Mary	Supreme Court State Capitol	Bismarck	58505-0530
Ness, Deborah	Bismarck Police Department 700 South Ninth Street	Bismarck	58504
Olson, Carol K.	Department of Human Services State Capitol	Bismarck	58505
Rabe, Dr. Gary	Minot State University 500 University Avenue West	Minot	58707
Tabor, Sandi	Attorney General's Office State Capitol	Bismarck	58505

AH #3
1-9-07

**Senate Judiciary Committee
Dave Nething, Chairman
January 9th, 2007**

**Warren R. Emmer, Director
Department of Corrections, Field Services
Division
Presenting Testimony Re: S.B. 2029**

The department of corrections supports the use of electronic monitoring as a tool in correctional offender supervision. New technologies, such a global positioning systems (GPS), has revolutionized the supervision of all offenders, particularly high-risk sex-offenders. S.B.2029 lays the groundwork for a manageable electronic monitoring system that may be utilized by corrections as well as others, state wide.

The Commission on Alternatives to Incarceration recommends a “do pass”, from this committee.

The department also recommends a “do pass” for S.B.2029, from this committee.

Chairperson Nething and Members of the Senate Judiciary Committee

RE: Testimony in support of SB 2029

Date: Tuesday, January 9, 2007

For the record I am Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator with the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota. I am here to provide testimony in support of SB 2029, implementation and use of Global Positioning Systems as a form of detention for criminal offenders.

The use of GPS monitoring is one component in the overall model of containment when it comes to offenders placed in the community. Our organization works toward ensuring safe communities, especially for victims of sexual assault and domestic violence. GPS monitoring adds another level of surveillance for offenders that has not previously been available.

Whether active monitoring or passive monitoring is used, we also want to have communities realize the limits of this technology in that it only allows officers to know where an offender is at a certain time. When parameters are established the technology can notify officers when an offender moves outside those parameters which allows a response quickly by law enforcement. However, this device will not stop an offender from committing a crime if they are intent on doing so. For example, most sexual assault happens either at the offender's or victim's home. Therefore having GPS on a sex offender, who is most likely to commit the crime in their own home, creates some concern about its effectiveness.

As a result, we must realize that additional components of utilizing GPS must also be in place such as: adequately trained personnel to monitor and respond to the alerts from the GPS systems, having appropriate equipment and resources to implement a system that

will work with the technologies currently in place, and having offender treatment programs available, having parole and probation officers able to randomly check compliance with the offenders guidelines, and having safety plans in place for high risk individuals, such as previous victims, children, vulnerable adults, or individuals that fit the offenders profile for victim selection.

We support the use of GPS as one tool to enhance the investigative and monitoring work that law enforcement is asked to do daily. But we also ask that you remember as you hear other bills, that this is just one component to a large system that must work together to reduce risk and make our communities safer.

Thank you.

Chairman DeKrey & members of the House Judiciary Committee. I'm Rep. Joe Kroeber, District 12 which includes 5/6 of Jamestown. SB 2029 is the Electronic Monitoring bill which was one of the products of our Commission on Alternatives to Incarceration Committee. The membership of the commission was three members appointed by the Governor, Assistant Attorney General, a member of the Supreme Court and a member of the District Court, Director of DOCR, Director of Human Services, two law enforcement officers, a State's attorney, a member of the Association of Counties and six legislators. A very diverse committee. SB 2029 was supported by all members of our committee. It will provide standards under which the DOCR may implement an electronic home detention & global positioning system. The program description is subject to the availability of funding, the court or, with the approval of the court, the DOCR or correctional facility may implement an electronic home detention and global positioning system monitoring program. Other members of the commission will inform you of the important components of the bill. However, I would be happy to try and answer any questions you may have.