

2009 HOUSE JUDICIARY

HB 1223

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1223

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/20/09

Recorder Job Number: 7325, 7327

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1223.

Rep. Larry Klemin: Sponsor, explained the bill.

Gail Hagerty, South Center District Court Judge: Support (attachment).

Rep. Delmore: How would the sheriff make the determination on who uses the equipment.

Ms. Hagerty: The administrator would look at the criminal history record, they have more knowledge of the defendant's history. The sheriffs will work on guidelines for determining who is appropriate for electronic monitoring. The judge can also determine who might be appropriate for electronic monitoring with the criterion put out by the sheriff.

Chairman DeKrey: Thank you. Further testimony in support.

Sheriff Pat Heinert, Burleigh County: Support (attachment). The qualifications would be determined based along the lines of who is eligible for work release programs. There would be an assessment. Not every inmate would qualify.

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

Neutral testimony.

Charles Placek, Dep. Director of Administrative Services, Adult Services Division, Dept.

of Corrections: Neutral (attachment).

Rep. Delmore: How many inmates are currently on the program, and how much are you losing?

Charles Placek: We currently have 35-40 people on any given day on the program. As far as the \$5 assessment, I don't know. Anecdotally, I would say \$3-5/day. The vast majority of the inmates on the program are either from a sex offenders tax force request or a request from staffing.

Chairman DeKrey: Thank you. Further testimony. We will close the hearing.

Chairman DeKrey: We will take a look at HB 1223.

Rep. Delmore: I would like to offer an amendment on HB 1223. If we change "shall" to "may" I think we can reduce the problem that we have.

Rep. Klemin: That's only one of the two fees listed in this section. The first fee is for the assessment and the second fee is administrative fee. Maybe we should just delete the parole board and the department out of that one.

Chairman DeKrey: We will take this bill up again later. Bring your amendments.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1223


House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/21/09

Recorder Job Number: 7401

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1223. What are the committee's wishes.

Rep. Delmore: I move that we amend the bill on page 1, line 11, to remove the overstrike over "or the" and after "court" insert "administrator". On page 4, line 17, replace the first underscored comma with "or" and remove ", the parole board, or the department", page 4, line 18, replace the underscored comma with "or", page 4, line 19, remove ", the parole board, or the department".

Rep. Klemin: Second.

Chairman DeKrey: Discussion, voice vote, motion carried. We now have the bill before us as amended. What are the committee's wishes.

Rep. Delmore: I move a Do Pass as amended.

Rep. Wolf: Second.

12 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Klemin

VK
1/21/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1223

Page 1, line 11, remove the overstrike over "or the" and after "~~court~~" insert "administrator"

Page 4, line 17, replace the first underscored comma with "or" and remove ", the parole board, or the department"

Page 4, line 18, replace the underscored comma with "or"

Page 4, line 19, remove ", the parole board, or the department"

Renumber accordingly

Date: 4/21/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1223

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman					
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 1

Floor Carrier: Rep. Klemin

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

REPORT OF STANDING COMMITTEE

HB 1223: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1223 was placed on the Sixth order on the calendar.

Page 1, line 11, remove the overstrike over "or the" and after "~~court~~" insert "administrator"

Page 4, line 17, replace the first underscored comma with "or" and remove ", the parole board, or the department"

Page 4, line 18, replace the underscored comma with "or"

Page 4, line 19, remove ", the parole board, or the department"

Renumber accordingly

2009 SENATE JUDICIARY

HB 1223

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1223

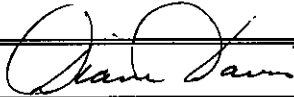
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10048

Committee Clerk Signature



Minutes:

Senator Nething opens the hearing on HB 1223, relating to electronic monitoring of certain offenders.

Judge Gail Hagerty, introduces the bill (see attached testimony).

Senator Nething is the change dealing with the administrator is that the thrust of the bill?

Judge Hagerty yes and the fee is also another thrust to the bill.

Senator Fiebiger Can the sheriff decide if the person will be a good candidate for this system?

Judge Hagerty yes, I think they could. I don't anticipate law enforcement doing that in our situation. I think that it would put them parallel to the Department of Corrections. When we sentence to the Department of Corrections we don't decide where people will be placed or how they will be incarcerated, so I am comfortable with this as well.

Senator Nething closed the hearing on HB 1223.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1223

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10050

Committee Clerk Signature

Kati Lin

Minutes:

Senator Nething opens the discussion on HB 1223, relating to electronic monitoring of certain offenders.

Senator Lyson moves a Do pass on HB 1223.

Senator Schneider seconds the motion.

The bill received a Do Pass on a vote of 6 to 0.

$3/3$

#: 1
1223

1223

Schneider

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

REPORT OF STANDING COMMITTEE

HB 1223, as engrossed: Judiciary Committee (Sen. Nethling, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1223 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1223

**Testimony of District Judge Gail Hagerty
in support of House Bill 1223
House Judiciary Committee
January 20, 2009**

Chairman DeKrey, Members of the Committee:

I'm Gail Hagerty, a district judge in Bismarck. I am testifying today in support of House Bill 1223, which deals with electronic monitoring.

During the last legislative session, legislation was passed which allows for use of electronic monitoring. I support use of electronic monitoring. It provides a meaningful penalty while allowing offenders to continue in employment. It also is part of the solution to overcrowding in detention facilities.

As I worked with the sheriffs in counties within the South Central Judicial District to implement use of electronic monitoring, I became concerned about a couple issues. I was concerned about the Court's role in electronic monitoring and I was concerned about the ongoing expenses to the counties in supervising electronic monitoring.

Soon after the last session, I began receiving requests from organizations which wished to provide electronic monitoring services. I didn't feel I had the proper background to determine what the requirements should be for providing this service and asked for assistance from sheriffs I work with.

I believe the people who deal with corrections on a local basis are the people who are best able to determine who should provide electronic monitoring. I realize that those are the people who will be working with electronic monitoring on a day-to-day basis.

House Bill 1223 defines "Administrator" to include the sheriff, chief of police, administrator, superintendent, director, or other individual serving as chief executive officer of a correctional facility. It then gives the administrator a role in determining who will provide

electronic monitoring services and whether a particular offender is appropriate for electronic monitoring.

If this legislation is passed, I will sentence people to the county detention facility and then indicate the individual may be placed on electronic monitoring if approved by the sheriff. I am attaching a copy of a judgment form to show you how I would accomplish this.

House Bill 1223 also provides for a fee of not more than \$5 to be used to reimburse the sheriff or other law enforcement agency for electronic monitoring. The sheriff (or whoever is managing electronic monitoring) will incur costs to set up electronic monitoring and to respond when there are violations.

I urge you to recommend passage of House Bill 1223.

ORDER

Case # _____

-VS-

_____, Defendant.

On _____, the defendant (☐ appeared ☐ did not appear) before the Court on the offense of _____ and;

- ☐ i defendant (☐ entered a plea of guilty ☐ was found guilty); ☐ ii after trial, the defendant was found NOT GUILTY;
☐ iii after review, the defendant is found to be in violation of the Court's Order of _____;

IT IS ORDERED:

- ☐ A The matter is dismissed. ☐ B A judgment of acquittal is entered.
☐ C Imposition of the sentence is deferred, and 61 days after probation ends (if all conditions are met) the guilty plea is withdrawn, the case dismissed, and the file sealed.
☐ D Judgment of guilty is entered, and defendant is sentenced for a period of _____ to the
☐ County Detention Center/Jail ☐ Department of Corrections ☐ Other _____
with _____ suspended for _____ on conditions.
☐ E Defendant shall pay a fine in the amount of \$ _____, through the Clerk of District Court, with \$ _____
suspended on conditions.
☒ F Defendant must pay the mandatory court administrative fee, through the Clerk of District Court: \$125 for Class B
Misdemeanor; \$200 for Class A Misdemeanor; \$400 for Class C Felony; \$650 for Class B Felony; \$900 for a Class A or
AA Felony; or ☐ waived \$ _____.
☒ G Defendant must pay the mandatory \$100 indigent defense / court facility improvement fee; or ☐ waived \$ _____.
☐ H Defendant must pay the \$25 indigent defense application fee; or ☐ waived \$ _____.
☐ I Defendant shall pay a crime victim witness program fee in the amount of \$ _____.
☐ J **All fines and fees shall be paid to the Clerk of District Court immediately.**

Other _____

CONDITIONS

- ☐ 1. The defendant shall report to the Sheriff to begin sentence on _____ at _____ o'clock _____ m.
☐ 2. The defendant's imprisonment shall be ☐ served on weekends ☐ with credit for time served (_____ days)
☐ with work release privileges if approved by the Sheriff.
☐ with electronic monitoring privileges if approved by the Sheriff.
☐ 3. The defendant shall make restitution in the sum of \$ _____ to be paid by certified check or money order
☐ directly to victim and file proof of payment by _____; or through the
☐ County State's Attorney. Payment is due immediately, unless other arrangements are made with the Clerk
of District Court.
☐ 4. The defendant shall complete a chemical dependency evaluation by a certified addiction counselor, and file proof
with the Court by _____ ☐ Follow through with any recommended treatment by _____ and file proof with
the court by _____.
☐ 5. The defendant is placed on probation for a period of _____ and shall not violate this Order or any
municipal, state, or federal laws and such probation is: ☐ unsupervised ☐ supervised and subject to the
additional conditions set forth by the Court.
☐ 6. The defendant shall complete _____ hours of ☐ community service by _____;
☐ attend ACT class by _____; ☐ submit to fingerprinting.
☐ Defendant must pay the mandatory \$50 community service supervision fee ☐ waived \$ _____.
☐ 7. Other: _____
☒ 8. Any violations of this Order may result in a revocation or termination of probation, and the imposition of any suspended
sentence or penalty.

District Judge: _____

I understand the conditions of this sentence and I acknowledge I have received a copy of this Order. If my address changes before com-
pletion of any of the conditions, it is my responsibility to provide the Court and the State's Attorney with my new address.

Defendant's Signature _____

Counsel for State: _____

Counsel for Defendant: _____

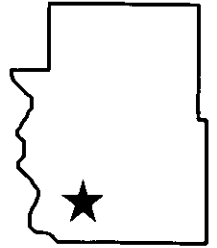
Waived Counsel: ☐ Yes



514 E. Thayer
P.O. BOX 1416
BISMARCK, ND 58502-1416

BURLEIGH COUNTY SHERIFF'S DEPT.

PAT HEINERT, SHERIFF



TELEPHONE 701-222-6651
FAX 701-221-6899

TO: HOUSE JUDICIARY COMMITTEE
DATE: January 20, 2009
FROM: Pat Heinert, Sheriff, Jail Administrator
RE: HB 1223

Good Afternoon Chair man DeKrey and members of the House Judiciary Committee.

I am Pat Heinert, Sheriff of Burleigh County and also the appointed Jail Administrator for Burleigh County.

I am here to day in support of HB 1223. We have been part of many discussions with Judge Gail Hagerty, South Central Judicial District in reference to electronic monitoring.

We feel that this would be a benefit to our local judiciary as well as assisting with jail overcrowding. This would allow people to continue employment, while still being monitored for the safety of the community.

I urge your support and passage of HB 1223.

Thank You

**House Judiciary Committee
Duane DeKrey, Chairman
January 20th, 2009**

**Charles R. Placek,
Deputy Director of Administrative Services
Adult Services Division
Department of Corrections
Presenting Testimony Re: HB 1223**

The DOCR is neutral on the passage of this bill but questions the deletion of the court from line 11 of page 1. By deleting the court, is it the intent that only the DOCR approves electronic monitoring device for all state and political subdivisions? Would it not be better to include "Administrator" in the list authorized to approve electronic monitoring devices? If a County or City wishes to use electronic monitoring and can obtain services from another vendor, not used by the DOCR, would they be allowed to use it if they are not listed in subsection 2, line 10, page 1 of this bill?

The DOCR would request that, on page 4, line 17 and line 19, the parole board or the department be deleted from this bill. Currently the DOCR uses GPS primarily on our sex offender population. Many of these offenders have GPS installed as a request from a local Sex Offender Containment Board. These offenders are not assessed the cost of the GPS since it is either a request of a local Sex Offender Containment Board or our staff, and not the result of negative behavior while on supervision.

Those offenders who have GPS placed on them as a result of negative behavior are assessed \$5.00 a day. Our current cost of GPS is determined through a procurement of services contract. Currently the daily cost is \$8.25 a day for active GPS and \$5.50 for passive GPS. The DOCR pays the remaining daily cost from our appropriation, as an intermediate measure to avoid revocation, and at the same time assures public safety.

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Senate Judiciary Committee
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