

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1223

Introduced by

Representative Klemin

Senator Lyson

1 A BILL for an Act to amend and reenact sections 12-67-01, 12-67-02, 12-67-03, and 12-67-04
2 of the North Dakota Century Code, relating to electronic monitoring of certain offenders.

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

4 **SECTION 1. AMENDMENT.** Section 12-67-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12-67-01. Definitions.** As used in this chapter:

7 1. "Administrator" means the sheriff, chief of police, administrator, superintendent,
8 director, or other individual serving as the chief executive officer of a correctional
9 facility, as defined in section 12-44.1-01.

10 2. "Approved electronic monitoring device" means a global positioning system device
11 or other electronic monitoring device approved by the department or the court
12 which is primarily intended to actively or passively monitor, record, and transmit
13 confirmation of a participant's location or the participant's presence or nonpresence
14 in the home.

15 ~~2.~~ 3. "Court" means the district or municipal court having criminal or juvenile jurisdiction
16 to place over a participant in electronic home detention or global positioning
17 system monitoring.

18 ~~3.~~ 4. "Department" means the department of corrections and rehabilitation.

19 ~~4.~~ 5. "Home detention" means the confinement of an individual adjudicated, convicted,
20 or charged with an offense to the individual's place of residence under the terms
21 and conditions established by the court, the administrator, or the department.

22 ~~5.~~ 6. "Participant" means an adult or juvenile offender placed into an electronic
23 monitoring program.

SECTION 2. AMENDMENT. Section 12-67-02 of the North Dakota Century Code is amended and reenacted as follows:

12-67-02. Application.

1. For those offenders who are sentenced by the court to a term of imprisonment in a county jail or regional correctional facility, the court may commit the offender to the legal and physical custody of the administrator of the jail or correctional facility who shall make the decision as to whether the use of electronic home detention or global positioning system monitoring is appropriate for that offender.

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

1. a. Pretrial or preadjudicatory detention.
2. b. Probation.
3. c. Community corrections approved by the court.
4. d. Parole.
5. e. Work release under chapter 12-44.1 or approved by the parole board.
6. f. Institutional release approved by the court or the parole board.
7. g. County jail diversion approved by the court.
8. h. Sex offender containment.

SECTION 3. AMENDMENT. Section 12-67-03 of the North Dakota Century Code is amended and reenacted as follows:

12-67-03. Program description - Fees.

1. Subject to the availability of funding, ~~the court or, with the approval of the court,~~ the department or a correctional facility subject to chapter 12-44.1 may implement an electronic home detention and global positioning system monitoring program.

- 1 2. A participant may be required to remain within the interior premises or within the
2 property boundaries of the participant's residence at all times during the hours
3 designated by the court, the administrator, the parole board, or the department.
4 Instances of approved absences from the residence may include:
5 a. Work or employment approved by the court, the administrator, the parole
6 board, or the department or traveling to or from approved employment;
7 b. Unemployment and seeking employment approved for the participant by the
8 court, the administrator, the parole board, or the department;
9 c. Medical, psychiatric, mental health treatment, counseling, or other treatment
10 programs approved for the participant by the court, the administrator, the
11 parole board, or the department;
12 d. Attendance at an educational institution or a program approved for the
13 participant by the court, the administrator, the parole board, or the
14 department;
15 e. Attendance at a regularly scheduled religious service at a place of worship;
16 f. Participation in a community work release or community service program
17 approved for the participant by the court, the administrator, the parole board,
18 or the department; or
19 g. For another compelling reason consistent with the public interest, as approved
20 by the court, the administrator, the parole board, or the department.
21 3. A participant shall admit any individual or agent designated by the court, the
22 administrator, the parole board, or the department into the participant's residence
23 at any time for purposes of verifying the participant's compliance with the
24 conditions of the participant's detention.
25 4. A participant shall make the necessary arrangements to allow for any individual or
26 agent as designated by the court, the administrator, the parole board, or the
27 department to visit the participant's place of education or employment at any time,
28 based upon the approval of the educational institution or employer, for the purpose
29 of verifying the participant's compliance with the conditions of the participant's
30 detention.

- 1 5. A participant shall acknowledge and participate in the approved electronic
- 2 monitoring program as designated by the court, the administrator, the parole
- 3 board, or the department at any time for the purpose of verifying the participant's
- 4 compliance with the conditions of the participant's detention.
- 5 6. A participant shall maintain the following:
- 6 a. A monitoring device in the participant's residence or on the participant's
- 7 person, or both; and
- 8 b. A working telephone in the participant's residence or in the absence of a
- 9 telephone a monitoring device in the participant's residence and on the
- 10 participant's person.
- 11 7. A participant shall obtain approval from the court, the administrator, the parole
- 12 board, or the department before the participant changes residence or the schedule
- 13 described in subsection 2.
- 14 8. The court, the administrator, the parole board, or the department shall inform a
- 15 participant that violation of the order for home detention may subject the participant
- 16 to prosecution or adjudication for the offense of escape from official detention.
- 17 9. The court, the administrator, the parole board, or the department shall assess to
- 18 each participant the actual cost of the electronic monitoring. The court, the
- 19 administrator, the parole board, or the department also shall assess to each
- 20 participant an administration fee of not more than five dollars per day which is to be
- 21 used to reimburse the sheriff or other law enforcement agency for the cost of
- 22 electronic monitoring enforcement services.
- 23 10. A participant shall abide by other conditions as set by the court, the administrator,
- 24 the parole board, or the department.
- 25 ~~10.~~ 11. An approved electronic monitoring device may be used to record a conversation
- 26 between a participant and the monitoring device or the participant and the
- 27 individual supervising the participant solely for the purpose of identification and not
- 28 for the purpose of eavesdropping or conducting any other illegally intrusive
- 29 monitoring.

30 **SECTION 4. AMENDMENT.** Section 12-67-04 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **12-67-04. Consent of the participant.** Before ~~entering an order for commitment for~~
2 electronic home detention or global positioning system monitoring may be used, the court, the
3 administrator, the parole board, or the department shall inform the participant and other
4 individuals residing in the residence of the nature and extent of the approved electronic
5 monitoring devices by securing the written consent of the participant in the program and
6 ensuring that the approved electronic devices be minimally intrusive upon the privacy of the
7 participant and other individuals residing in the residence.