

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1277

Introduced by

Representatives Klemin, DeKrey

Senators Lyson, Traynor

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
11 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 court having criminal or juvenile jurisdiction to place a
15 participant in electronic home detention or global positioning system monitoring.
- 16 3. "Department" means the department of corrections and rehabilitation.
- 17 4. "Home detention" means the confinement of an individual convicted or charged
18 with a crime to the individual's place of residence under the terms and conditions
19 established by the court or the department.
- 20 5. "Participant" means an inmate or offender placed into an electronic monitoring
21 program.

22 **Application.** Except for an offense for which the law requires mandatory incarceration,
23 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. Electronic
2 home detention and global positioning system monitoring may be used for the following:

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

10 **Program description.** The department shall adopt rules that prescribe reasonable
11 guidelines for the operation of an electronic home detention and global positioning system
12 monitoring program. The rules must provide that an approved electronic monitoring device
13 may be used to record a conversation between the participant and the monitoring device or the
14 participant and the individual supervising the participant solely for the purpose of identification
15 and not for the purpose of eavesdropping or conducting any other illegally intrusive monitoring.
16 The rules also must provide that:

- 17 1. The participant may be required to remain within the interior premises or within the
18 property boundaries of the participant's residence at all times during the hours
19 designated by the court, the parole board, or the department. Instances of
20 approved absences from the residence may include:
 - 21 a. Work or employment approved by the court, the parole board, or the
22 department or traveling to or from approved employment;
 - 23 b. Unemployment and seeking employment approved for the participant by the
24 court, the parole board, or the department;
 - 25 c. Medical, psychiatric, mental health treatment, counseling, or other treatment
26 programs approved for the participant by the court, the parole board, or the
27 department;
 - 28 d. Attendance at an educational institution or a program approved for the
29 participant by the court, the parole board, or the department;
 - 30 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 2. The participant must admit any individual or agent designated by the court, the
7 parole board, or the department into the participant's residence at any time for
8 purposes of verifying the participant's compliance with the conditions of the
9 participant's detention.
- 10 3. The participant must make the necessary arrangements to allow for any individual
11 or agent as designated by the court, the parole board, or the department to visit
12 the 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 4. The participant must 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 5. The participant must 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 6. The participant must obtain approval from the court, the parole board, or the
26 department before the participant changes residence or the schedule described in
27 subsection 1.
- 28 7. The participant must be notified that violation of the order for home detention may
29 subject the participant to prosecution for the crime of escape from official
30 detention.

1 8. The participant must abide by other conditions as set by the court, the parole
2 board, or the department.

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:

7 1. Securing the written consent of the participant in the program to comply with the
8 rules of the program;

9 2. Securing the written consent of other individuals residing in the residence of the
10 participant at the time an order or commitment for electronic home detention or
11 global positioning system monitoring is entered and acknowledgment of the nature
12 and extent of approved electronic monitoring devices; and

13 3. Ensuring that the approved electronic devices be minimally intrusive upon the
14 privacy of the participant and other individuals residing in the residence while
15 remaining in compliance with the rules adopted by the department.

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

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