

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER
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DESCRIPTION

2406

2001 SENATE JUDICIARY

SB 2406

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2406

Senate Judiciary Committee

Conference Committee

Hearing Date February, 6th, 2001

Tape Number	Side A	Side B	Meter #
1	x		0-26
Committee Clerk Signature			

Minutes: **Senator Traynor** opened the hearing on SB 2406: A BILL FOR AN ACT TO CREATE AND ENACT A NEW SUBSECTION TO SECTION 39-08-01 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO INMATE PLACEMENT FOR DRIVING WHILE UNDER THE INFLUENCE.

**Senator Flakoll**, representing district 44, testifies in support of SB 2406. (testimony attached)

**Senator Lyson**, would you have heart burn on this bill if an amendment dealing with judges was attached to this bill?. So that the courts understand.

**Senator Flakoll**, yes. I agree with you.

**Senator Watne**, do you know cost of these units?

**Senator Flakoll**, no, I do not, but someone does.

**Senator Dever**, my son was given a minor in possession and had a leg brace put on. Would this be in my house?

**Senator Flakoll**, there is a camera which monitors them.

**Senator Trenbeath,** I don't think that answers his question. A second possession of alcohol would be four days in jail.

**Tom Martin,** of Fargo ND, testifies in favor of SB 2406. (testimony attached)

**Senator Trenbeath,** you monitor the defedents?

**Tom Martin,** yes I do. We offer comprehensive monitoring in NW Minnesota.

**Senator Trenbeath,** is my county able to contract from you?

**Tom Martin,** yes. It doesn't matter where the defendent is.

**Senator Traynor,** you say offender pays for their own punishment. Can you explain?

**Tom Martin,** I contact the defendent. I collect personally from him. I then notify the county of the penalty. The defendent pays for the equipment as part of their sentence.

**Senator Dever,** how long is house arrest? And what is the cost?

**Tom Martin,** 5 days at 12-16 dollars a day.

**Senator Dever,** is there a charge for setting this thing up?

**Tom Martin,** yes and it varies.

**Senator Nelson,** miles charge for someone?

**Tom Martin,** in a county I live in, I would charge daily rate, plus the 35 dollar hookup fee. If they lived in Minot I would charge them .50 cents a mile and that's it.

**Senator Watne,** is this connected to a telephone line?

**Tom Martin,** yes. A computer generates the image.

**Pat Bohn,** Intensive Programs Coordinator Department of Corrections and Rehabilitation Field Service Division, presents proposed amendments to SB 2406. (see attachment)

**Senator Traynor,** if the court decided to the offender was an appropriate subject for this device your department would not be involved?

**Pat Bohn**, yes.

**Senator Watne**, there is a large fiscal note with this. Are you familiar with this?

**Pat Bohn**, the fiscal note under my amendment would go by the wayside for the state. We could come up with another calculation.

**Senator Watne**, I would like to see that.

**Pat Bohn**, if we had this amendment it would take off the fiscal note.

**Senator Traynor**, could you provide info from the counties?

**Pat Bohn**, yes.

**John Olson**, states attorney and peace officers. The question is who pays and who tests. Since they do not, I'm not sure we are apposed. I don't know if you want to be so confining., that might be a consideration with the word must. If they want to take the check for the cost of this program, there should be no costs to the county. This program seems to be designed for those who can pay. However, what about those who can't pay. This bill does have some merit.

**Senator Traynor**, if the bill was passed, and someone couldn't afford the bill, could that be an argument?

**John Olson**, yes that may be a concern.

**Senator Watne**, if they are under house arrest can they work?

**John Olson**, I don't know about house arrest.

**Keith Magnusan**, represents department of transportation, should look at something different on house arrest. Add house arrest and electronic monitoring.

**Senator Traynor**, if bill were amended would it meet your requirement.

**Keith Magnusan**, it would make no difference.

**Senator Traynor** closed the hearing on SB 2406.

SENATOR TRENBEATH MOTIONED TO PASS BOTH AMENDMENTS, SECONDED BY SENATOR WATNE. VOTE INDICATED 6 YEAS, 0 NAYS AND 1 ABSENT AND NOT VOTING. SENATOR TRENBEATH AGAIN MOTIONED TO AMEND THE BILL, SECONDED BY SENATOR NELSON. VOTE INDICATED 6 YEAS, 0 NAYS AND 1 ABSENT AND NOT VOTING. A THRID MOTION WAS MADE BY SENTER WATNE TO DO PASS AS TWICE AMENDED, SECONDED BY SENATOR NELSON. VOTE INDICATED 6 YEAS, 0 NAYS AND 1 ABSENT AND NOT VOTING. SENATOR NELSON VOLUNTEERED TO CARRY THE BILL.

**FISCAL NOTE**  
 Requested by Legislative Council  
 02/13/2001

Bill/Resolution No.:

Amendment to: SB 2406

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

As amended SB 2406 has no fiscal impact on state revenues, expenditures or appropriations.

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.*

No fiscal impact.

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.*

No fiscal impact.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

No fiscal impact.

<b>Name:</b>	Elaine Little	<b>Agency:</b>	Dept. of Corrections & Rehabilitation
<b>Phone Number:</b>	328-6390	<b>Date Prepared:</b>	02/13/2001

# FISCAL NOTE

Requested by Legislative Council  
02/07/2001

**REVISION**

Bill/Resolution No.: SB 2406

Amendment to:

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The fiscal impact of SB 2406 as revised, is the potential savings to the municipalities and counties for not having to incarcerate those sentenced to the minimum mandatory for a 2nd DUI conviction in 5 years, which is 5 days. The Department of Corrections & Rehabilitation is unable, however, to calculate the potential savings. The unknown factor that impacts this potential cost savings is the availability of beds within the jail. If, for example, there are 20 beds in the jail and only 10 are occupied, leaving 10 vacant, the savings would not be as great as if all 20 beds in the jail were occupied, in which case, the county or city would have to contract to incarcerate the offender elsewhere.

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.*

No impact.

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.*

**DUI OFFENSES BY CLASS AND YEAR**

**DUI Offenses by Class Calendar Year Calendar Year Two Year Average**

**1998 1999**

2nd in 5 years 1128 1051 1091

\* Statistics obtained from the North Dakota Drivers License Division and represents all 53 counties and municipalities.

**Assuming that 50% of all DUI offenders would be eligible for this program:**

**DUI Offenses by Class Calendar Year Calendar Year Two Year Average**

**1998 1999**

2nd in 5 years 564 526 545

We would assume, using a 50% eligibility basis, that there would be 545 people in the program during the course of a calendar year.

*C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Not applicable.

<b>Name:</b> Warren Emmer	<b>Agency:</b> Department of Corrections and Rehabilitation
<b>Phone Number:</b> 701-328-6193	<b>Date Prepared:</b> 02/08/2001

## FISCAL NOTE

Requested by Legislative Council  
01/30/2001

Bill/Resolution No.: SB 2406

Amendment to:

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>				\$235,296		\$235,296
<b>Expenditures</b>			\$631,572	\$235,296	\$631,572	\$235,296
<b>Appropriations</b>			\$631,572	\$235,296	\$631,572	\$235,296

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Pursuant to Senate Bill 2406, the Department of Corrections and Rehabilitation would be responsible for supervising DUI offenders in the community, on house arrest. The bill requires that these offenders be placed on electronic monitoring and to be tested twice daily for alcohol. The estimated fiscal impact on the Department of Corrections and Rehabilitation, Field Services Division is explained below.

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.*

Assuming participant rates as identified in the expenditures summary we would see approximately 817 people in this program per year. The per day rate assessed to offenders on electronic monitoring by the DOCR is \$6. Assuming that the collection rate is approximately 40% the total revenue for the biennium would be as follows

$(817 \text{ Offenders} \times 60 \text{ days}) \times \$6/\text{Day} \times 40\%$   
Collection Rate = \$117,648 year  
or \$235,296 per Biennium.

- 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.*

### **DUI Offenses by Class and Year**

**DUI Offenses by Class Calendar Year 1998 Calendar Year 1999**

**Two Year Average**

2nd in 5 years 1128 1051 1090

3rd in 7 years 362 347 355  
4th in 7 years 133 114 124  
5th in 7 years 63 69 66  
Total 1686 1581 1634

\*Statistics Obtained from the North Dakota Drivers License  
Division and Represent all 53 Counties and Municipalities

**Assuming that 50% off all DUI offenders would be eligible for this  
program.**

**DUI Offenses by Class Calendar Year 1998 Calendar Year 1999  
Two Year Average**

2nd in 5 years 564 526 545  
3rd in 7 years 181 174 177  
4th in 7 years 67 57 62  
5th in 7 years 32 35 33  
Total 843 791 817

**Assuming an average of 60 days per offender the following are  
projected costs by offense**

**Monitoring Expense Monitoring Cost**

2nd in 5 years: (\$4.50/day EMS costs X 60 Days) X 545 Offenders =  
\$147,150

3rd in 7 years: (\$4.50/day EMS costs X 60 Days) X 177 Offenders =  
47,790

4th in 7 years: (\$4.50/day EMS costs X 60 Days) X 62 Offenders =  
16,740

5th in 7 years: (\$4.50/day EMS costs X 60 Days) X 33 Offenders =

8,910

Total \$220,590

**Labor Expense Labor Costs**

2nd in 5 years: (10 minutes/Day X \$26/hr) X 545 Offenders =  
\$141,983

3rd in 7 years: (10 minutes/Day X 26/hr) X 177 Offenders = 46,112

4th in 7 years: (10 minutes/Day X 26\$/hr) X 62 Offenders = 16,152

5th in 7 years: (10 minutes/Day X 26\$/hr) X 33 Offenders = 8,597

Total \$212,844

**Total Labor and Monitoring Expense \$433,434**

**Total Labor and Monitoring Expense Biennium: \$866,868**

*C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The amounts shown above and in the attachment would need to be added to the DOCR budget in order for the Department to implement this bill.

Name:	Warren Emmer	Agency:	Department of Corrections and Rehabilitation
Phone Number:	701-328-6193	Date Prepared:	02/05/2001

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2406**

Page 1, line 7, insert a period after the first word "arrest" and remove "whether sentenced to house arrest by the court or committed"

Page 1, remove line 8

Page 1, line 9, remove "the director of the department may determine the type of imprisonment."

Page 1, line 12, after "alcohol." insert: "This subsection does not apply to persons committed to or under the supervision and management of the department of corrections and rehabilitation."

PROPOSED AMENDMENTS TO SENATE BILL NO. 2406

Page 1, line 7, remove "whether sentenced to house arrest by the court or committed"

Page 1, remove line 8

Page 1, line 9, remove "the director of the department may determine the type of imprisonment"

Page 1, line 12, after the period insert "The defendant ~~shall be responsible for~~ <sup>does</sup> defraying all costs associated with the electronic home detention. This subsection ~~shall~~ not apply to <sup>individual persons</sup> committed to or under the supervision and management of the department of corrections and rehabilitation."

Renumber accordingly







**REPORT OF STANDING COMMITTEE**

**SB 2406: Judiciary Committee (Sen. Traynor, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2406 was placed on the Sixth order on the calendar.

Page 1, line 7, remove "whether sentenced to house arrest by the court or committed"

Page 1, remove line 8

Page 1, line 9, remove "the director of the department may determine the type of imprisonment"

Page 1, line 12, after the period insert "The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation."

Renumber accordingly

2001 HOUSE JUDICIARY

SB 2406

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2406

House Judiciary Committee

Conference Committee

Hearing Date 03-12-01

Tape Number	Side A	Side B	Meter #
TAPE II	X		1261 to 3526
Tape ii	X		4388 TO 5014
Committee Clerk Signature <i>Joan Davis</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2406. Relating to inmate placement for driving while under the influence.

Senator Flakoll: District 44, introduced the bill. (see attached testimony).

Rep Delmore: The bill states that the defendant shall defray all costs associated with the electronic home detention. What is the cost.

Senator Flakoll: \$16.00 per day.

Rep Mahoney: These are costs that are picked up by the defendant.

Senator Flakoll: The difference being that currently the political subdivision has to pick up the cost of jail time, with this option the defendant pays, so there would be a savings.

Rep Delmore: Why are we doing this devise when someone gets into a car, rather than taking a chance, no one is monitoring them 24 hours a day as far as there drinking. Why are we not putting it in the car rather then twice testing them in there home.

Senator Flakoll: There has been a bill that approached that way. This has checks periodically throughout the day. Having a device installed in a car is another separate issue.

Chairman DeKrey: we did pass out an Inter lock bill.

Rep Disrud: In this program of electronic home detention, how would we know if it is that person doing the testing.

Senator Flakoll: Someone else will testify to that. There is a camera taking a picture of you while you are testing.

Chairman DeKrey: Are there any more questions, thank you for appearing.

Tom Martin: Cass County resident, appearing to testify in support of SB 2406. (see attached testimony). (explains the machine that he had with him).

Rep Delmore: How many states use this and what happens if the defendant cannot pay for the cost of the machine.

Tom Martin: South Dakota, Minnesota and up and down the eastern seaboard. In answer to the second question, about 90% of the offenders come up with the money.

Rep Delmore: You know of no cases where the defendant has not been able to come up with the money.

Tom Martin: There have been cases, but it is a very small percentage of the overall.

Rep Delmore: To clarify, there would be two random checks a day, do they call you, do you call them and then for how long would this continue.

Tom Martin: He explains the procedure, the calls are by computer at least four times a day and we call them.

Rep Delmore: He would do it twice daily or four times.

Tom Martin: The legislation says at least twice daily, we must test for alcohol.

Rep Mahoney: What is your financial arrangement with this.

Tom Martin: I don't have any financial arrangement.

Rep Mahoney: The \$14.00 rate for DHM, the city of Fargo did not buy the machines, they just lease them from you.

Tom Martin: It is cost prohibitive for a municipality to purchase. Those counties that use the machines pay on a per day basis, only when a defendant is actually serving.

Rep Mahoney: If Cass County set up for 40 of these machines, would they pay for all of them.

Tom Martin: NO, they would only paying for days the equipment was in use.

Rep Mahoney: How did you come up with the figure projections.

Tom Martin: I figured an eleven per cent growth rate between 1997, 1998, 1999. That was the average and we projected that forward.

Rep Maragos: What happens if you dial someone up and they are not at home.

Tom Martin: It varies, but generally what happens, we sit down with the judge, the prosecutor and the defense lawyer and agree that if the person was not at home, what would most likely happen, the next day an affidavit of violation would be prepared at my office and forwarded to the prosecutor for his signature. The judge gets it for his signature and then a warrent would be issued. The sheriff would serve the warrent.

Rep Maragos: when you file an affidavit are you then an officer of the court.

Tom Martin: I am an officer of the court because I am a lawyer. If the person is not a lawyer I would not classify you as an officer of the court.

Rep Maragos: If you are not an officer of the court, are you part of law enforcement.

Tom Martin: No, a witness.

Rep Maragos: I like the legislation, I am just trying to understand how this all works. You are the person the law enforcement is depending on to do the factials.

Tom Martin: There is a great parallel in Fargo, and goes on to explain.

Rep Maragos: Who regulates the private facilities.

Tom Martin: The judge.

Rep Maragos: The judge figures if they are qualified.

Tom Martin: I think what you are asking is what qualifications do house arrest providers have, there is no license requirement.

Rep Delmore: What would your liability be, someone is not there, and you do not notify until the next day, if something happens, would your company be liable to the state?

Tom Martin: I carry liability insurance.

Rep Delmore: A whole day is quite a length of time for the reporting period.

Chairman DeKrey: If there are no further questions, thank you for appearing before the committee. Keith I have a question for you. Earlier we passed out legislation that was amended over in the Senate because it had to have a ten day mandatory in it, does that effect this bill.

Keith Magness: Department of Transportation, HB 1218, we did amend in the Senate as part of the regulation on the repeat offender statute, the definition of imprisonment does include home detention.

Chairman DeKrey: This does not run a foul with federal regulations.

Keith Magness: I am here to make sure, don't amend that part of the bill.

Page 5  
House Judiciary Committee  
Bill/Resolution Number SB 2406  
Hearing Date 03-12-01

Rep Grande: Senator Flakoll, I have a question for you, this bill is for second time offenders only.

Senator Flakoll: Yes.

Chairman DeKrey: If there are no further questions, anyone wishing to testify neutral or against, seeing none we will close the hearing on SB 2406.

#### COMMITTEE ACTION

#### DISCUSSION

Chairman DeKrey: What are the wishes of the committee, Rep Grande moved a DO PASS, seconded by Rep Kingsbury.

#### DISCUSSION

The committee decided to table this bill until they could do some further checking, Rep Grande withdrew her motion, Rep Kingsbury withdrew her second and the bill was tabled.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2406b

House Judiciary Committee

Conference Committee

Hearing Date 03-14-01

Tape Number	Side A	Side B	Meter #
TAPE I	X		4160 to 4830
Committee Clerk Signature <i>Joan Deere</i>			

Minutes: Chairman DeKrey called the committee to order on SB 2406.

DISCUSSION

Chairman DeKrey: what are your wishes. Rep Maragos moved a DO PASS, seconded by Rep Delmore.

DISCUSSION

Chairman DeKrey: the clerk will call the roll on a DO PASS motion on SB 2406. The motion passes by a vote of 13 YES, 0 NO and 2 ABSENT. Carrier Rep Delmore.

Date: 03-13-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB-2404

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep Maragos Seconded By Rep Delmore

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke					
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Delmore

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

**REPORT OF STANDING COMMITTEE (410)**  
March 15, 2001 8:06 a.m.

**Module No: HR-45-5640**  
**Carrier: Delmore**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2406, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2406 was placed on the Fourteenth order on the calendar.**

2001 TESTIMONY

SB 2406

SB 2406

February 6, 2001 Senate Judiciary Committee

Senator Tim Flakoll, District 44 of Fargo.

Chairman Traynor and members of the Judiciary Committee, I am here to speak in favor of SB 2406.

We live in an exciting era in the history of the world. One where technological advances have opened doors to new opportunities for our society.

SB 2406 would incorporate technology to provide the sentencing judge with the option of sentencing a second time DUI offender to a term of electronic home detention in lieu of jail time.

SB 2406 is an interesting bill, in that it allows us to harness technology to offer opportunities which previously were not possible. My testimony today will explain the specific technological capabilities and judicial ramifications.

I can tell you that the electronic home system that is proposed in SB 2406 does work. My wife former held the position as a Asst. Attorney in Clay County, Minnesota so I am aware of the efficacy of the utilization of this technology.

If this program is enacted, it could in specific instances, reduce the number of people in our jails (jail capacity is preserved) and thus save our political subdivisions money.

Second, it could allow a logical migration of someone who has a drinking problem to a situation in their normal environment where they may be able to deal with their problem. As you can appreciate, it is much easier to not drink when you are in jail. How a person deals with their alcohol problem at home is a greater challenge. I think that this program could help them more readily transition back into their normal life.

I know there are other experts who will testify on this bill but I would be happy to stand for any questions that the committee may have.

**SENATE JUDICIARY COMMITTEE**  
**Senator John T. Traynor, Chairman**  
**February 6, 2001**

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**Patrick N. Bohn, Intensive Programs Coordinator**  
**Department of Corrections and Rehabilitation**  
**Field Services Division**

**Presenting Testimony Re: S.B. 2406**

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I am here today on behalf of the North Dakota Department of Corrections and Rehabilitation-Division of Field Services (DOCR) to testify in support of an amendment to S.B. 2406. The reason for the amendment is clarify that the DOCR would not be obligated under the language contained within S.B. 2406 because those people that are sentenced to the DOCR under 39-08-01 are already subject to the programs offered by the DOCR. By adding the language contained within the handout labeled "Proposed Amendments to Senate Bill No. 2406" it would allow the authors of this legislation to proceed with their intentions and remove any of the potential state fiscal impact as noted on the Fiscal Note for S.B. 2406.

The DOCR is currently developing programs that address both incarceration as well as treatment for repeat DUI offenders. Programs in operation or in the development stages are the Drug Court and a DUI treatment program in conjunction with the North Dakota State Hospital.

If the amendments were approved S.B. 2406 would read: "As used in subdivision b of subsection 4, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention in which the defendant is tested at least twice daily for the consumption of alcohol. This subsection does not apply to persons committed to or under the supervision and management of the department of corrections and rehabilitation."

**Testimony of Thomas P. Martin, PO Box 1745, Fargo, ND 58107**

**RE: Testimony in Favor of Senate Bill 2406**

**A bill that would allow a sentencing judge to impose electronic home detention for second offense driving while under the influence.**

I speak in favor of Senate Bill 2406 for three main reasons. First, offenders pay for their own punishment while serving electronic home detention. Second, technology has evolved that allows a supervising authority to monitor an offender effectively. Finally, this bill will resolve a conflict in interpretation of NDCC §39-08-01 that exists between certain courts in the state.

A properly designed electronic home detention program requires offenders to pay the costs associated with home detention. The work load on the judge, prosecutor, defense attorney, and court staff remains relatively constant whether or not there is a program of electronic home detention in effect. Once a referral is sent to the home detention provider (equal to a commitment if the offender is sent to jail), the home detention provider takes over and notifies the court when the offender has completed the program or has failed the program. My company's protocol even requires the home detention provider to prepare Affidavits of Violation and proposed Warrants for the proper authorities to sign and execute.

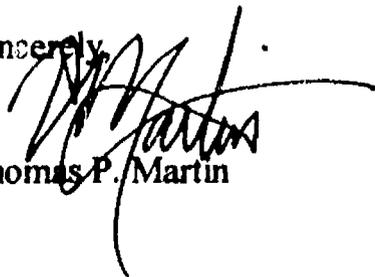
My company, Alternative Corrections, Inc., has been in business for almost three years and predominately does business in northwest Minnesota. Approximately 80% of the offenders sentenced to electronic home detention successfully complete the program. The program was developed on the local level with input from judges, sheriffs, prosecutors and defense attorneys. Well over 90% of the offenders serving electronic home detention in these counties pay for their own punishment. Clay County jail staff and I have calculated that the electronic home detention program in Clay County saved the taxpayers in excess of \$300,000 in fiscal year 2000. Not a bad savings for a county of 60,000 residents.

Second, technology has been developed that allows a level of comfort that the offender is at home and has not consumed alcohol. New home detention equipment couples a video camera and an intoxilyzer to create a level confidence that the offender is doing what the offender is sentenced to do. See the attached sample event printout. No longer do we hang a radio transmitter on the offender's ankle and hope for the best. Failures to comply with the program are reported to the appropriate agency on the date following the incident.

Finally, this bill would solidify the status of law in the state. Certain courts in the state currently allow offenders to serve electronic home detention for mandatory minimum sentences. Other courts do not, see attached letter. This bill will dictate the intent of the legislature, not leave the intent of the legislature to the attorney general. The current nonuniformity in the law seems to stem from an opinion written by Attorney General Spaeth.

Thank you for considering my testimony. I urge passage of Senate Bill 2406.

Sincerely,

  
Thomas P. Martin

# PROJECTEL SAVINGS to the CITY OF FARGO

Electronic Home Detention v. Incarceration

Information Known:

Sentences for EHM in 1998	294
Sentences for EHM in 1999*	334
Daily Rate for Incarceration	\$ 40.00
Daily Rate for EHM**	\$ 14.00

Information Assumed:

Average Length of EHM Sentence (days)	5
Growth Rate per Year in Number of Sentences	11%

Savings Projected to City:

	<u>Sentences Imposed</u>	<u>Days Imposed</u>	<u>Daily Rate of Incarceration</u>	<u>Total Cost of incarceration</u>
Year 1998	294	1470	\$ 40.00	\$ 58,800.00
Year 1999	334	1670	\$ 40.00	\$ 66,800.00
Year 2000	371	1854	\$ 40.00	\$ 74,148.00
Year 2001	412	2058	\$ 40.00	\$ 82,304.28
Year 2002	457	2284	\$ 40.00	\$ 91,357.75
Year 2003	507	2535	\$ 40.00	\$ 101,407.10
Year 2004	563	2814	\$ 40.00	\$ 112,561.38
Year 2005	625	3124	\$ 40.00	\$ 124,943.69
			Total Five Year Savings	\$ 512,574.71

\* EHM was used by the Municipal Court until October 1999. 139 Sentences imposed from January through May 1999. This number (334) number was extrapolated given the 5 month total. An 11% increase was calculated between 1998 and 1999.

\*\* The entire cost of EHM is generally paid by the defendant.

The use of the MEMS 2000 family of electronic monitoring equipment provides a positive, reliable means of ensuring client compliance. It provides a corrections agency with an alternative that permits the client to remain productive in society, while meeting community requirements for punishment.

### **MEMS 2000 HomeStation Diamond Series VBR**

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The MEMS 2000 VBR HomeStation is an electronic monitoring device that is comprised of a Video Display Telephone, a Breath Alcohol Tester and a radio frequency Receiver/Monitor. The three components are housed in one fully integrated unit measuring just 11" x 11" x 9.5" (LxWxH). The two-tone gray unit consists of a top half made from ABS flame-retardant plastic. The bottom half of the case is a metal chassis designed for durability. The operational switches are covered for easy cleaning and tamper resistance and the vents are filtered to prevent the intrusion of debris into the chassis.

The HomeStation attaches easily to a participant's telephone. It will operate with either a standard rotary or touch tone telephone, using a modular telephone connector jack or plug.

The HomeStation is powered by a standard 110V AC power source. No permanently attached wires or cables are visible on the outside of the unit, as the HomeStation utilizes connection jacks for telephone, telephone line, and power. It is equipped with an internal back up battery capable of providing up to 18 hours of emergency power, in the event of a commercial electrical failure at the home site.



#### **The Video Display Telephone**

Event Printout

Client Name	Test Subject	ID	0000000006
Client Phone	6711394.	Risk Level:	1
Agency	Test Agency	Time zone:	EST
		HomeStation #:	VBR8000



Event Picture

Date/Time: 11/20/98 22:35

BAT Call

Result: PASS

BAT Value: .004

Call Retries: 0



Reference Picture

**CITY OF FARGO  
MUNICIPAL COURT**

200 NORTH THIRD STREET  
P.O. BOX 49  
FARGO, NORTH DAKOTA 58107-0049

TELEPHONE: 701-241-1316  
FAX: 701-241-1320

December 20, 2000

Kent Costin, Finance Director  
City of Fargo  
200 3<sup>rd</sup> St. N.  
Fargo, ND 58102

**IN RE: RFP FOR MINIMUM SECURITY PLACEMENT**

Dear Mr. Costin:

I am writing this to you in your capacity as chair of the committee appointed to review the Request for Proposals to Provide Minimum Security Placement.

After considering the current state law, I recommend we defer any action on vendors for electronic monitoring services (EMS).

Last year a Cass County district judge ruled that EMS was not appropriate for mandatory minimum sentences. Since the vast majority of our EMS sentences involved mandatory sentences, and since we are bound by the district judge's decision, we discontinued the use of EMS entirely.

Unless legislation [that would allow EMS in mandatory minimum sentences] is enacted by the State of North Dakota, this court has no intention to utilize EMS and thus no purpose is served in contracting for EMS.

With the exception of the EMS provision, and for the reasons indicated, I support the contract for minimum security placement as presented by Centre, Inc.

Sincerely yours,



Thomas A. Davies  
Municipal Judge

TAD:jek

SB 2406

March 12, 2001 House Judiciary Committee  
Senator Tim Flakoll, District 44 of Fargo.

Chairman Dekrey and members of the Judiciary Committee. For the record, I am Senator Tim Flakoll, District 44 of Fargo. I am here to speak in favor of SB 2406.

We live in an exciting era in the history of our world. One where technological advances have opened great new possibilities for us in virtually every segment of society.

SB 2406 would incorporate technology to provide the sentencing judge with the option of sentencing a second time DUI offender to a term of electronic home detention in lieu of jail time.

SB 2406 is an interesting bill, in that it allows us to harness technology to offer opportunities which previously were not possible. After my testimony an expert will explain the specific technological capabilities and judicial ramifications.

If this program is enacted, it could in specific instances, reduce the number of people in our jails (jail capacity is preserved) and thus save our political subdivisions money.

Second, it could allow a logical migration of someone who has a drinking problem to a situation in their normal environment where they have to deal with their problem. As you can appreciate, it is much easier to not drink when you are in jail. How a person deals with their alcohol problem at home is a greater challenge. I think that this program could help them more readily transition back into their normal life.

I know there are other experts who will testify on this bill but I would be happy to stand for any questions that the committee may have.