

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1277

2005 HOUSE JUDICIARY

HB 1277

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1277

House Judiciary Committee

☐ Conference Committee

Hearing Date 1/18/05

Tape Number	Side A	Side B	Meter #
1	xx		9-40
1		xx	0-2.6

Committee Clerk Signature

Minutes: 13 members present, 1 member absent (Rep. Kingsbury).

Chairman DeKrey: We will open the hearing on HB 1277.

Representative Klemin: I am here to testify in support of HB 1277. (see written testimony).

Chairman DeKrey: Thank you. I think this is a forward thinking piece of legislation. The hope is that this technology will reduce costs. Further testimony in support of HB 1277.

Warren Emmer, Director, Dept. Of Corrections, Field Services Division: Support. (see written testimony). (Submitted amendments).

Chairman DeKrey: Are these two sets of amendments compatible.

Warren Emmer: They should be compatible, the AG's office drafted both sets.

Representative Delmore: Are some of the high risk offenders the sexual offenders.

Warren Emmer: That's right. Some bills that will be proposed here in the next week or two will be compatible with the amendments and with the initial intent of Rep. Klemin.

Representative Onstad: Do you already have a set standards or requirements of who is going to be in this category to use the GPS system.

Warren Emmer: Right now we haven't used GPS, so we're going to be putting together the criteria between now and July 1. Global positioning is a really excellent technology, where even just a few years ago it was too expensive and too cumbersome and not user friendly enough. That system in our view is very compatible with the Governor's concerns with the high risk offenders out there. Generally speaking GPS will be used for the high risk offender. We can literally with a cell phone, download where they have been the day before. The parole officer will be able to watch, with the offender, everywhere the offender went. Home confinement, as originally envisioned, is an excellent add-on part of home detention. I think it's going to be very effective with the overcrowding in the county jails. We are also getting some short time sentenced offenders coming into the prison, and the department envisions about 30 of them coming out on some kind of home confinement system. It may or may not include electronic monitoring. Some of them need it.

Representative Onstad: Is an ankle bracelet a piece of equipment.

Warren Emmer: We used to pay about \$3-4/day for traditional home confinement systems. That was with a leg bracelet and you could be within a 1,000 ft of a phone (land line). With the add on with the GPS, it is only going to raise the cost of that technology to about \$4/day. Now what that means, is there will be a leg bracelet, but instead of having the transmitter at home, that offender will have the technology of GPS we talked about. He can be on the job site and that leg bracelet will check with his cellular receiver, the same way it would have been at home, with the exception that now that it will jump up to a satellite, come back, etc. Now we can have a guy out

of a work site doing construction, and he can do that, and have the equipment with him and it doesn't restrict him. The leg bracelet is still a very critical part of the program, but now with the GPS piece, he can be at work. That way we can tell if they are really at work. Once the offender gets home, he will drop the phone into the receiver at home and it becomes a traditional home detention system, plus it downloads all the information on the land line and we can upload it on our computer at the office.

Chairman DeKrey: We took testimony on the sexual predator task force, where it is going to be a tremendous for law enforcement, along with Corrections, because say we have a sexual assault or other crime someplace in the city. Now they can pull up and see if any sexual offenders were in any of those areas on that given day and puts it up on the map; that immediately will makes them a suspect or eliminate them. It does away from a lot of the footwork that police officers have to do with checking and rechecking people, it will be there instantaneously. This is going to be a tremendous tool for law enforcement and corrections. It costs about \$60/day to have a guy in the house.

Warren Emmer: Actually the rates are a little higher than that.

Chairman DeKrey: What we talked about in the task force with the ankle bracelet and receiver, it's actually about \$10/day. That's going down, becoming more and more affordable all the time. I think as far as public safety goes, I think it is a tremendous asset, cost effective way of monitoring people. It will help the citizens in two ways. Enhance public safety and also save money. I think ND is on the forefront. We couldn't even find a lot of information out there, because there are no other states that are really getting into this heavily. In regard to Representative Onstad's question about determining how will use the technology, through the

years that I've served on the different department advisory boards, I'm really impressed with how many people are involved in that decision-making process. It's not just one person in Corrections that wakes up one day and decides that Joe Criminal would be a good guy to put a bracelet on and send him out.

Representative Delmore: Some of the people, especially sex offenders, are these devices going to be pretty much monitored all the time. How long do we monitor the people, especially the sex offenders.

Warren Emmer: I'll never say never. This is just a tool, an important tool. It doesn't replace supervision. When Governor endorsed bills that will be heard shortly, you'll see that this is just one small component of what was being done in the Task Force. I don't think that technology is tamperproof, but darn near tamperproof. When a person makes a decision to cut the leg bracelet off, he's made a decision. Then we don't know where he is. Then at that point, we need to figure out where he is. Electronic monitoring, especially GPS, will be a very valuable tool for managing high risk sex offenders.

Chairman DeKrey: When we are monitoring, there are two different systems, we would go to real-time, it's more expensive, but maybe we would have offenders where we would want to use real time on. We would know where they are at every second. But for the most part, it would be the delayed system, where they download at the end of the day.

Warren Emmer: The Governor is supporting strongly, the Department of Corrections putting more parole officers on to high risk offenders. We currently have five parole officers, with very low caseloads, who are managing the very high risk sex offenders that are in the community.

That's something we really appreciate. It's really been valuable. It takes that available staff to manage these programs.

Chairman DeKrey: Also with the low risk offenders, the last place we want them is in the prison system, to get their Ph.D. in criminal activity. So if we can keep them out of the big house, and keep them as productive citizens in society and be able to monitor them, this is a benefit to society because, like other offenders we have, we can charge them for their monitoring, and if they have a job out there, that's one way to recoup costs to Corrections, which everyone knows is skyrocketing.

Representative Delmore: If someone tampers with a bracelet (cuts off), would that immediately mean that law enforcement will find him and incarcerating him at that stage. Is that in the law.

Warren Emmer: The two populations that will be served, on the criminal side of the aisle, there may very well be some with another piece of legislation dealing with community civil commitment and that's not what we are speaking of today. But on the criminal side of the aisle, we have the authority, pursuant to Rule 32 of the Rules of Criminal Procedure to arrest someone without a warrant on a probation violation. So at the point that someone has tampered with that equipment, we clearly know that they're gone, the authority is there now to arrest. We don't need any additional authority on that. On the parole side, we have similar authority and I also sign all the warrants for parole violators. We are confident that, first of all, the first people that will be called are the officers involved in my staff. We have a really good relationship with law enforcement across the state. As soon as we realize they are gone, law enforcement will realize they're gone and we'll be looking for them. I don't anticipate that this happen very often. This is

a good deterrent and it keeps people on the right track. With the GPS technology, in particular, I envision that what we'll do when we're putting someone on GPS supervision, we will follow whatever tracks with the offender, whatever tracks around the community he/she needs to go to do their job, go to school, come home, where the grocery stores are, where the hot zones are. Zones where they are not supposed to be. Everybody will be clear as to what you can and can't do. The rules of the road will be known in a way that we've never known in the past. Once this is all plugged into the computer, the offender will get a reminder if he gets close to a hot zone. They won't be able to say that they didn't know they were in the wrong place, because the technology will remind them, then they'll be given a certain amount of time to get out of that hot zone, and if they don't get out of that hot zone, we'll have something to discuss the next day. Unless it is a very high risk offender, where we have full-time active supervision of them. That type of system, I don't think is going to be too effective for too many people; if they are that worrisome to the public, maybe we ought not to have them out in the public in the first place. It takes an officer 24/hr a day 7 days a week watching that particular case. It's not going to have that people involved with the very active system.

Chairman DeKrey: You can even do it for something as simple as a restraining order. So the he said/she said kind of thing, the judge can just say, we've got a way of figuring it out if you are or not.

Representative Koppelman: So this basically deals with three groups of people, 1) probation, 2) parole, 3) incarcerated (an alternative to incarceration). For those who were to cut the bracelet, you said that the violation would be a probation violation and going back to jail.

What about the person is basically, alternatively incarcerated through this method, would the penalty if he/she did that be the same as breaking out of jail.

Warren Emmer: Ken Sorenson could respond to that.

Bob Bennett, AG's office: The amendment introduced by Rep. Klemin, would address that. I think it is paragraph 7 of the bill, that talks about that any violation would be a escape from official detention and the amendment Rep. Klemin had would define what home detention or home electronic monitoring would be subject to the definition of official detention. So if someone would cut off the bracelet, go beyond what's required, that would be considered to be escape from official detention. One of the problems we had in the past definition, that was key to people actually in physical custody, or if on work release and failed to come back to official custody. With this type of monitoring, this would expand the definition of official detention. So if you have a bracelet on, you're supposed to keep it on and if you go where you aren't supposed to, it would be as though you are not returning to jail or you violated the conditions of your release.

Representative Boehning: If you are going to put a sex offender back on the street, do they still have to go through all the sex notifications like when someone gets out of jail. How do you think the neighbors are going to respond to that.

Warren Emmer: This is not necessarily a way to get sex offenders out of jail early.

In fact, right now we have somewhere in the neighborhood of 240 sex offenders currently under our supervision in the community. We have about the same amount in prison. This will enhance the level of supervision available to use for existing sex offenders that are out in the community.

That's the first piece. The second piece is that if sex offenders are released from prison in the

future, and at some point, 97% of everybody that's in prison across the country is released. This is an additional tool that can be made available to the parole board. This will then enhance public safety. Moving people in the community, prior to the expiration of their criminal sentence, is a public safety plus not a minus. Because what happened in the past, is that some people have maxed their sentences in the prison, in fact many sex offenders have, without any kind of supervision that follows and that puts them literally out in the community with no supervision with the exception of the other part of your question. Community notification is clearly still part of every sex offenders lives when they are released from the prison, or if they are in a community under our supervision, or in the community on some non-supervised probation case. There the case is monitored by the AG's office or our committee, and they are considered for community notification and they're then considered low, medium or high risk for those notifications. They are never released from that. Sex offender registration is still clearly a part of their lives, some of them for the rest of their lives. So there are different tiers of supervision with sex offenders. One of the things the Task Force tried to do, and the Governor was really concerned with, as were members of the Task Force, is that there was a gap between sex offender registration and aggressive supervision. Some people weren't under any supervision when they maxed out their sentence, and so the Governor wanted to develop a system that was much more seamless than the current system; that included supervision, that included registration, that included electronic monitoring and then he also wanted to include a civil commitment component where that would even follow that person into the community. It's kind of a holistic approach to a major problem that we obviously envisioned.

Chairman DeKrey: I really don't want to get into sex offenders today, because next week we are taking up the Governor's sex offender bills that were submitted by the Task Force. We will be talking about those matters next week.

Representative Charging: You brought up the possibility of going real time. Does this need to be in Rep. Klemin's bill.

Warren Emmer: It's not necessary to have it in the bill. The problems with real time technology is that you will have areas where the signal may get cut off for a time, but at the end of the day you will be able to see where they've been when the information is downloaded. That's just one small part of the technology; and I think the least useful.

Chairman DeKrey: The problem with real time is the expense. If you are going to know where the guy is every second of the day, you also have to have someone on the other end watching the computer screen, so now you have another person hired full-time 24/7, or two or three people to watch this guy real time. So I think the offender who needs real time supervision, is not going to be the guy you want to strap a bracelet on and get him monitoring anyway.

Representative Klemin: Just to further respond to Rep. Charging's question, if you look at the definition of approved electronic monitoring device in this bill, on line 10 it is covered in the bill.

Representative Meyer: When someone is assigned to house arrest in lieu of going to prison, does the state automatically take over their house payments, rent, etc. How is that handled.

Warren Emmer: The answer is that they are still responsible for their own bills. They need to have suitable housing arrangements and so on. Most often, that is going to work best for those who are in the county jail. The jails are very full, and very often the offender has a suitable place to go home too, that may work for those facilities. A lot of times they have a place to stay, and a

husband or wife, or a parent, and one of the requirements for that technology is that they have to have a phone line coming into the house. There are still some homes without phones. Some homes are not suitable for this person to be living there. Maybe there is chronic alcoholic behavior or drug use in those homes. The corrections people might not want them there. We don't take over any of their bills. Now if the Department of Corrections makes a decision to put them on home confinement, most likely it will be those folks that are coming to the department for as little as a dozen days, yet we have to do all this medical work when they get there. It is in our vested interest to take a look at these cases and say that if they are going to be here for six months, or a dozen days we might be better off with them in the home confinement setting. At that point, we will take a look to see where they are coming from and if they have a place, that would be suitable technology for them. They have to have a place, too. We don't take care of any of their bills when they get out of prison, in fact they will owe us for this technology.

Representative Meyer: But we would never be in a position where the jail is more and more crowded, and we would confine them to the house, the houses will always be evaluated so that we would never be in the position to pay rent or upkeep.

Warren Emmer: I can't ever imagine that happening. I don't know how a local jurisdiction might apply this technology, that is their decision not ours. But the department and the state wouldn't.

Representative Boehning: If you are going to put them on home confinement, with the technology, do you have to notify the neighbors that someone is living there that did some type of crime.

Warren Emmer: Right now, we have 4200 people out in the community; on parole, probation, on supervision. Most of those people, over 90%, are being productive. A lot of them own homes, they have relatives or family members they are living with, and we don't notify neighbors. There is no reason to. But high risk sex offenders is another matter. Obviously the legislature has dealt with that aggressively and I'm guessing will continue to deal with that aggressively. Notifying neighbors could be counterproductive, we need them to be stable in the community, this helps the public to remain safe.

Representative Kretschmar: Do you think that removing or destroying the bracelet should be a separate criminal offense.

Warren Emmer: I don't. I think there are lots of laws on the books already. My opinion is that if it is a violation of parole, let's aggressively deal with the parole. If it's a violation of probation, let's deal with that. Often times, it will require the people to be in prison for many years. We don't need more penalties.

Chairman DeKrey: Thank you. 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 HB 1277.

Representative Maragos: I move the two sets of amendments.

Representative Delmore: Second.

Chairman DeKrey: It has been moved and seconded to amend HB 1277. All those in favor, motion carried. We now have the bill before us as amended.

Representative Delmore: I move a Do Pass as amended.

Page 12
House Judiciary Committee
Bill/Resolution Number HB 1277
Hearing Date 1/18/05

Representative Maragos: Second the motion.

Chairman DeKrey: The clerk will call the roll call vote on HB 1277 as amended.

12 YES 0 NO 2 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Onstad

FISCAL NOTE
Requested by Legislative Council
01/20/2005

Amendment to: HB 1277

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$180,095		\$200,750	
Appropriations			\$180,095		\$200,750	

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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 use of electronic monitor systems (ems) is included in the department of corrections and rehabilitation's 2005-07 executive budget recommendation. The department's ems plan includes diverting non-violent short-sentenced offenders from prison, community supervision of offenders on parole and/or probation, and community supervision of sex offenders under correctional supervision.

The estimated fiscal impact noted in section 1A only represents the estimated fiscal impact to the department of corrections and rehabilitation and the parole board. The bill, as amendmended, also applies to the district courts.

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.*

As noted in 1A, the department of corrections and rehabilitation's 2005-07 executive budget recommendation includes the use of ems. The estimated cost per day is \$5 per offender. By 6/30/07 the department anticipates to have the following offender types under supervision in the community using ems.

- * 30 non-violent short-sentenced (diverted from prison)
- * 5 offenders on probation and/or parole
- * 20 sex offenders under correctional supervision

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 2005-07 department of corrections and rehabilitation's executive budget recommendation includes \$180,095 of

general funds to provide for the use of ems devices for the supervision of offenders. The cost per offender per day is estimated at \$5.00

Name: Dave Krabbenhoft
Phone Number: 328-6135

Agency: docr
Date Prepared: 01/24/2005

FISCAL NOTE
Requested by Legislative Council
01/12/2005

Bill/Resolution No.: HB 1277

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.*

2003-2005 Biennium		2005-2007 Biennium		2007-2009 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.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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.*

This bill assigns the responsibility of selecting offenders to participate in electronic home detention or global positioning system monitoring to the courts. As a result it is not possible for the DOCR to determine the number of offenders that would be using this type of monitoring. However, the DOCR estimates the per person per day cost of electronic monitoring to be \$5.00.

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.*

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.*

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.*

Name: Dave Krabbenhoft
Phone Number: 328-6135

Agency: DOCR
Date Prepared: 01/14/2005

VR
1/19/05
1083

HOUSE AMENDMENTS TO HOUSE BILL NO. 1277 JUD 1-19-05

Page 1, line 3, after "offenders" insert "; and to amend and reenact subdivision b of subsection 3 of section 12.1-08-06 of the North Dakota Century Code, relating to the definition of official detention"

Page 1, underscore lines 7 through 20

Page 1, line 21, underscore "electronic home detention or global positioning system monitoring may be used for" and remove "low-risk,"

Page 1, line 22, remove "nonviolent", underscore "adult and juvenile offenders as selected by the court" and insert immediately thereafter ", the parole board, or the department", and underscore ". Electronic home detention and"

Page 1, underscore lines 23 and 24

HOUSE AMENDMENTS TO HB 1277 JUD 1-19-05

Page 2, underscore lines 1 through 13

Page 2, line 14, underscore "1. The participant", replace "must" with "may be required to", and underscore "remain within the interior premises or within the property"

Page 2, underscore line 15

Page 2, line 16, underscore "by the court" and insert immediately thereafter ", the parole board," and underscore "or the department. Instances of approved absences from the"

Page 2, underscore line 17

Page 2, line 18, underscore "a. Work or employment approved by the court" and insert immediately thereafter ", the parole board, or the department" and underscore "or traveling to or from approved"

Page 2, underscore lines 19 and 20

Page 2, line 21, underscore "court" and insert immediately thereafter ", the parole board, or the department" and underscore the semicolon

Page 2, underscore line 22

Page 2, line 23, underscore "programs approved for the participant by the court" and insert immediately thereafter ", the parole board, or the department" and underscore the semicolon

Page 2, underscore line 24

Page 2, line 25, underscore "participant by the court" and insert immediately thereafter ", the parole board, or the department" and underscore the semicolon

Page 2, underscore lines 26 and 27

Page 2, line 28, underscore "approved for the participant by the court" and insert immediately thereafter ", the parole board, or the department" and underscore "; or"

2013

Page 2, underscore line 29

Page 2, line 30, underscore "by the court" and insert immediately thereafter ", the parole board," and underscore "or the department."

HOUSE AMENDMENTS TO HB 1277 JUD 1-19-05

Page 3, line 1, underscore "2. The participant must admit any individual or agent designated by the court" and insert immediately thereafter ", the parole board," and underscore "or the"

Page 3, underscore lines 2 through 4

Page 3, line 5, underscore "or agent as designated by the court" and insert immediately thereafter ", the parole board," and underscore "or the department to visit the participant's"

Page 3, underscore lines 6 through 9

Page 3, line 10, underscore "monitoring program as designated by the court" and insert immediately thereafter ", the parole board," and underscore "or the department at any time for"

Page 3, underscore lines 11 through 18

Page 3, line 19, underscore "6. The participant must obtain approval from the court" and insert immediately thereafter ", the parole board," and underscore "or the department before the"

Page 3, underscore lines 20 through 22

Page 3, line 23, underscore "8. The participant must abide by other conditions as set by the court" and insert immediately thereafter ", the parole board," and underscore "or the"

Page 3, underscore lines 24 and 25

Page 3, line 26, underscore "home detention or global positioning system monitoring, the court" and insert immediately thereafter ", the parole board," and underscore "or the department shall"

Page 3, underscore lines 27 through 30

HOUSE AMENDMENTS TO HB 1277 1-19-05

Page 4, underscore lines 1 through 7

Page 4, after line 7, insert:

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

- b. "Official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, home detention as authorized by section 1 of this Act, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, or being absent

without permission from any release granted while under custody of a sentence such as work or education release, community confinement, or other temporary leaves from a correctional or placement facility, ~~but~~ ~~"official."~~ "Official" detention" does not include supervision on probation or parole or constraint incidental to release."

Renumber accordingly

Date: 11/18/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1277

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Rep. Delmore Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	A				
Representative Klemm	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Onstad

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

REPORT OF STANDING COMMITTEE

HB 1277: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1277 was placed on the Sixth order on the calendar.

Page 1, line 3, after "offenders" insert "; and to amend and reenact subdivision b of subsection 3 of section 12.1-08-06 of the North Dakota Century Code, relating to the definition of official detention"

Page 1, underscore lines 7 through 20

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Page 1, line 22, remove "nonviolent", underscore "adult and juvenile offenders as selected by the court" and insert immediately thereafter ", the parole board, or the department", and underscore ". Electronic home detention and"

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Page 3, underscore lines 6 through 9

Page 3, line 10, underscore "monitoring program as designated by the court" and insert immediately thereafter ", the parole board," and underscore "or the department at any time for"

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Page 3, line 19, underscore "6. The participant must obtain approval from the court" and insert immediately thereafter ", the parole board," and underscore "or the department before the"

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Page 3, underscore lines 24 and 25

Page 3, line 26, underscore "home detention or global positioning system monitoring, the court" and insert immediately thereafter ", the parole board," and underscore "or the department shall"

Page 3, underscore lines 27 through 30

Page 4, underscore lines 1 through 7

Page 4, after line 7, insert:

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

- b. "Official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, home detention as authorized by section 1 of this Act, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, or being absent

without permission from any release granted while under custody of a sentence such as work or education release, community confinement, or other temporary leaves from a correctional or placement facility, but "official. "Official detention" does not include supervision on probation or parole or constraint incidental to release."

Renumber accordingly

2005 HOUSE APPROPRIATIONS

HB 1277

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1277
Electronic Home Detention

House Appropriations Full Committee

☐ Conference Committee

Hearing Date February 1, 2005

Tape Number	Side A	Side B	Meter #
1	X	X	#43.3 - end (A)
			0 - #4.9 (B)

Committee Clerk Signature

Chris Alexander

Minutes:

Rep. Ken Svedjan, Chairman opened the hearing on HB1277.

Rep Duane DeKrey explained that HB1277 allows corrections to monitor prisoners and parolees and other uses listed on page 2 of the bill. The fiscal note is \$400,000 which is in the budget. The judiciary committee took extensive testimony and we found this made a lot of sense and gave us a way to do cost effective things in corrections. Right now the cost is approximately \$60.00 a day per offender and now it will be about \$5.00 per day. Another good that will come from this is that the offender can be a productive citizen in society why they are being monitored and they can help pay for the cost of the monitoring.

Rep. Mike Timm, Vice Chairman asked why the cost wouldn't come out of the corrections budget if we are reducing their budget.

Rep Duane DeKrey answered that he was unsure why they put this in the general budget instead of their own.

Rep. Keith Kempenich How many would qualify for this program.

Rep Duane DeKrey answered that the fiscal note estimates about 55 at \$5.00 per day.

Rep. Bob Skarphol asked if these offenders would be housed in the prisons at all.

Rep Duane DeKrey answered that they may have been released from the prisons, which means that they could get out earlier on parole or work release.

Rep. Bob Skarphol mentioned that if they were going to use these on work release offenders than it could actually be an increase of \$5.00 because they would still have the prison costs and then pay to monitor them while they are on work release as well.

Rep Duane DeKrey answered that the thinking is is that most of them would be living outside of the prison and working to help pay the costs of the monitoring. Rep DeKrey continued to discuss how this monitoring system works and the benefits of it. Because it can tell corrections where the offenders have been, it becomes a trickle down effect that will save dollars to the state on the law enforcement sight as well.

Rep. Jeff Delzer asked why this is needed since they have already been doing this but had previously leased the equipment.

Rep Duane DeKrey answered that the method of this is new and the bill gives the state the authority to continue this way as well as appropriating the \$400,000.00 in the corrections budget to get this up and running.

Rep. Ken Svedjan, Chairman commented that the actual amount of appropriations for this biennium is \$180,000 and it is actually in the corrections budget that is in the Senate.

Rep. Bob Skarphol explains that the judiciary committee amended this bill extensively and that the new version (0300) explains the fiscal note. (meter #50.6)

Rep. Jeff Delzer asked OMB what part of this is in the Governor's budget.

Mr. Jim Smith of OMB answered that it was his understanding that the \$180,000 was in the Governor's Budget.

Rep. Ken Svedjan, Chairman asked if the cost savings for these people getting out on parole is reflected in the corrections budget.

Mr. Jim Smith answered that yes it was reflected in what corrections calls their population management plan, but that there is no decrease in the total budget because population in the prison continues to increase.

Rep. Ole Aarsvold asked if the costs reflected contract services or agency administration of the program.

Rep Duane DeKrey answered that the agency will administer this but that there is a contract for the equipment.

Rep. Keith Kempenich mentioned that there was no mention about the amount of people overall who would be using this.

Rep Duane DeKrey mentioned that the amount of people using this system will be fluid because there will be people coming off the system while others are just entering it. **Rep DeKrey** continued to say that because these people will be out and working, they will be able to help pay for the cost of the monitoring and we can recapture these costs.

Rep. Ken Svedjan, Chairman commented that this recapturing amount is not reflected as revenue.

Rep. Jeff Delzer moved a Do Pass on HB1277.

Rep. Ole Aarsvold seconded.

Page 4

House Appropriations Committee

Bill/Resolution Number HB1277

Hearing Date February 1, 2005

Rep. Ken Svedjan, Chairman called for a roll call vote on a Do Pass motion on house bill

1277. Motion carried with a vote of 19 yeas, 0 neas and 4 absent. Rep Onstad will carry this bill to the house floor.

Rep. Ken Svedjan, Chairman closed the discussion on HB1277. (meter Tape #1, side B, #4.9)

Date: **February 1, 2005**
Roll Call Vote #: **1**

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1277

House Appropriations - Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken **DO PASS**

Motion Made By **Rep Delzer** Seconded By **Rep Aarsvold**

Representatives	Yes	No	Representatives	Yes	No
Rep. Ken Svedjan, Chairman	X		Rep. Bob Skarphol	X	
Rep. Mike Timm, Vice Chairman	X		Rep. David Monson	X	
Rep. Bob Martinson	X		Rep. Eliot Glassheim	X	
Rep. Tom Brusegaard	X		Rep. Jeff Delzer	X	
Rep. Earl Rennerfeldt	AB		Rep. Chet Pollert	X	
Rep. Francis J. Wald	AB		Rep. Larry Bellew	X	
Rep. Ole Aarsvold	X		Rep. Alon C. Wieland	X	
Rep. Pam Guleson	AB		Rep. James Kerzman	AB	
Rep. Ron Carlisle	X		Rep. Ralph Metcalf	X	
Rep. Keith Kempenich	X				
Rep. Blair Thoreson	X				
Rep. Joe Kroeber	X				
Rep. Clark Williams	X				
Rep. Al Carlson	X				

Total Yes **19** No **0**

Absent 4

Floor Assignment **Rep Onstad (Judiciary)**

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

Re-Referred Bill from Judiciary - Rep DeKrey

REPORT OF STANDING COMMITTEE (410)
February 1, 2005 1:36 p.m.

Module No: HR-21-1562
Carrier: Onstad
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1277, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman)
recommends **DO PASS** (19 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING).
Engrossed HB 1277 was placed on the Eleventh order on the calendar.

2005 SENATE JUDICIARY

HB 1277

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1277

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 1, 2005

Tape Number	Side A	Side B	Meter #
1		X	2738 - End

Committee Clerk Signature

Mona L. Solberg

Minutes: Relating to the definition of official detention.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Rep. Larry Klemin, Dist #47 Introduced the bill (meter 2738) Gave Testimony - Att. #1

Warren R. Emmer, Dir. Dept. of Corrections, Field Services (meter 3105) Gave Testimony - Att. #2. The home confinement -low risk offenders portion of the bill would benefit mostly in the Counties. This would open up bed in the county facilities that were built for the hi risk individuals. Global positioning would highly help us for the hi risk individuals in the communities. Discussed history of device and passive GPS systems and hot zones. Senator Hacker asked if the technology was attached to the citizens body? There are two parts one is the cellular technology and the other is the "bracelet" that it reads off of. At home the cellular part recharges and works as a larger home monitor system.

Sen. Trenbeath questioned if the fiscal note. Mr. Emmer sited that there the department of corrections has identified 30 people on average in the institution that could be on this type of home monitoring. I have discussed with the department that this may not be necessary. These are very low risk individuals that we could place on home confinement that we do not need to add the additional expense and officer time on top of this. The technology would be best suited for the high risk individuals with supervision and surveillance.

Senator Syverson asked about hi-risk individual. This would be in real-time surveillance. The very high risk individuals would still be in prisons. This is future technology.

Senator Syverson in the bill the consent of the people living with the individual. Mr. Emmer discussed the support of the people living with the person. If they are not with supportive people then they are better off in jail or a half way house? One risk factor an inmate has is whether they have a supportive environment to be in when they are released.

Senator Triplett questioned the technology being 20 years old, have we not used this? Yes we have used the old technology more so 12 years ago. This technology is very labor intensive. Our desire is to get the low risk offenders out of the expensive beds and put the high risk offenders in them. **Senator Triplett** responded that you have done this in the past why are you asking us for permission? Under our authority of the department of corrections we feel that we have always had the authority to do this. It is in the Counties that they do not. **Senator Triplett** replied that as a County Commissioner she thought the counties also had the authority to do it. Why do you think this is not being used in the counties? I do not have the answer.

Testimony in Opposition of the Bill: none

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1277

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 2, 2005

Tape Number	Side A	Side B	Meter #
2		X	200 - 850

Committee Clerk Signature *Mona L. Solberg*

Minutes: Relating to the definition of official detention.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following work:

The benefit of this bill is for the County Jail. **Senator Triplett** reminded the group that they, the county commissioners have been already doing this for a long time, we do not need the prison system to dictate to the counties what they do. Why do we need to legislate it now? We do not want to micro manage.

Sen. Nelson made the motion to DO NOT Pass and **Sen. Trenbeath** seconded the motion

Carrier: **Senator Hacker**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: 3/2/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1277

Senate Judiciary

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Not Pass*

Motion Made By Senator *Nelson* Seconded By Senator *Trenbeath*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator *Hacker*

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

REPORT OF STANDING COMMITTEE (410)
March 3, 2005 8:42 a.m.

Module No: SR-39-4030
Carrier: Hacker
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1277, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1277 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1277

HOUSE BILL NO. 1277
TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE JUDICIARY COMMITTEE
JANUARY 18, 2005

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 House Bill 1277.

You are all well aware that our jails and the State Penitentiary are crowded and expensive to maintain and operate. The cost of housing a prisoner continues to increase. We must look to alternatives to incarceration wherever possible. House Bill 1277 provides an alternative for home detention in an appropriate case, rather than incarceration. This bill is derived from a model bill proposed by the American Legislative Exchange Council, but has been revised to be consistent with North Dakota law and to also include provisions for global positioning system (GPS) monitoring. In drafting this bill, I also sought assistance from the Department of Corrections and Rehabilitation (DOCR), as well as the Governor's office.

At the present time, there are no specific provisions in the law for electronic home detention. There is nothing at all about GPS monitoring. There is a provision in Section 39-08-01(5), which provides for house arrest for certain DUI violations, but that section excludes persons under the supervision of the Department of Corrections. The Department of Corrections has general authority in Section 54-23.3-02(6) and 54-23.3-04(10) to develop and promote alternatives to conventional incarceration, but those sections refer to community-based facilities and programs, not to home detention. Consequently, there appears to be a need to specifically provide for electronic home detention and GPS monitoring in the North Dakota statutes.

The bill as drafted would apply to low-risk nonviolent adult and juvenile offenders. However, after further review, the Department of Corrections would like to expand the allowable types of offenders to include other persons. Consequently, the Department will be proposing some amendments for consideration by the Committee, which have been discussed with me. In addition, I am attaching an amendment proposed by the Attorney General, which would amend Section 12.1-08-06(3)(b) to include the provisions for home detention in this bill in the definition of "official detention" for purposes of the "escape" statute.

The use of electronic home detention or GPS monitoring could have a number of applications, including pretrial or preadjudicatory detention; probation; community corrections; parole; work release; institutional furlough; and prison or county jail diversion. The bill allows the Department of Corrections to adopt rules to establish guidelines for the operation of electronic home detention and GPS and sets out parameters for those guidelines. The bill requires the consent of the participant, the court, the Department and other individuals residing in the residence.

The intention is not to invade the privacy of a participant, but rather to provide minimally intrusive supervision and monitoring consistent with the program, and to provide for an alternative to incarceration in an appropriate case. I request your support for this bill.

PROPOSED AMENDMENTS TO HB 1277

Page 1, line 3, after "offenders" insert "; and to amend and reenact subdivision b of subsection 3 of section 12.1-08-06 of the North Dakota Century Code, relating to the definition of official detention"

Page 2, after line 7, insert

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

3. In this section:

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

Renumber accordingly

**House Judiciary Committee
Representative Duane DeKrey, Chairman
January 18th, 2005**

**Warren R. Emmer, Director
Department of Corrections, Field Services Division
Presenting Testimony Re: H.B.1277**

The department of corrections supports the use of electronics monitoring as a tool in correctional offender supervision. New technologies, such as global positioning systems (GPS), will revolutionize the supervision of all offenders, particularly more high-risk offenders. H.B. 1277 lays the groundwork for a manageable electronic monitoring system that may be utilized by corrections as well as others, state wide.

The department does recommend some amendments to H.B.1277 that will:

1. Expand its scope to include high-risk offenders.
2. Allow the court, the Parole Board, or the Department of Corrections to authorize its use.
3. Make home confinement an optional component of any electronic monitoring program.

The department recommends a "do pass" for H.B.1277, from this committee.

DOCR's suggested amendments to House Bill No. 1277

Page 1, line 21, remove "low-risk,"

Page 1, line 22, remove "nonviolent"

Page 1, line 22, after "court" insert ", the parole board or the department"

Page 2, line 14, replace "must" with "may be required to"

Page 2, line 16, after "court" insert ", the parole board"

Page 2, line 18, after "court" insert ", the parole board or the department,"

Page 2, line 21, after "court" insert ", the parole board or the department"

Page 2, line 23, after "court" insert ", the parole board or the department"

Page 2, line 25, after "court" insert ", the parole board or the department"

Page 2, line 28, after "court" insert ", the parole board or the department"

Page 2, line 30, after "court" insert ", the parole board"

Page 3, line 1, after "court" insert ", the parole board"

Page 3, line 5 after "court" insert ", the parole board"

Page 3, line 10, after "court" insert ", the parole board"

Page 3, line 19, after "court" insert ", the parole board"

Page 3, line 23, after "court" insert ", the parole board"

Page 3, line 26, after "court" insert ", the parole board"

Renumber Accordingly

Att #1

**HOUSE BILL NO. 1277
TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE JUDICIARY COMMITTEE
MARCH 1, 2005**

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 House Bill 1277.

You are all well aware that our jails and the State Penitentiary are crowded and expensive to maintain and operate. The cost of housing a prisoner continues to increase. We must look to alternatives to incarceration wherever possible. House Bill 1277 provides an alternative for home detention in an appropriate case, rather than incarceration. This bill also includes provisions for global positioning system (GPS) monitoring. In drafting this bill, I sought assistance from the Department of Corrections and Rehabilitation (DOCR), as well as the Governor's office.

At the present time, there are no specific provisions in the law for electronic home detention using GPS monitoring. There is a provision in Section 39-08-01(5), which provides for house arrest for certain DUI violations, but that section excludes persons under the supervision of the Department of Corrections. The Department of Corrections has general authority in Section 54-23.3-02(6) and 54-23.3-04(10) to develop and promote alternatives to conventional incarceration, but those sections refer to community-based facilities and programs, not to home detention. The Department of Corrections can also use home confinement, house arrest, and electronic monitoring under Section 12.1 -32-07, but that only applies to probation. There are no criteria set out for electronic home detention in any of the existing statutes. There is nothing that applies to allow the use of electronic home detention instead of incarceration in county jails. Consequently, there appears to be a need for comprehensive provisions for electronic home detention and GPS monitoring in the North Dakota.

The bill would allow the use of electronic home detention or GPS monitoring in any case where mandatory incarceration is not required for both adult and juvenile offenders selected by the Court, the Parole Board, or the Department of Corrections.

The use of electronic home detention or GPS monitoring could have a number of applications, including pretrial or preadjudicatory detention; probation; community corrections; parole; work release; institutional furlough; and prison or county jail diversion. The bill allows the Department of Corrections to adopt rules to establish guidelines for the operation of electronic home detention and GPS and sets out parameters for those guidelines. The bill requires the consent of the participant, the court, the Department and other individuals residing in the residence.

The intention is not to invade the privacy of a participant, but rather to provide minimally intrusive supervision and monitoring consistent with the program, and to provide for an alternative to incarceration in an appropriate case. I request your support for this bill.

**Senate Judiciary Committee
John T. Traynor, Chairman
March 1, 2005**

**Warren R. Emmer, Director
Department of Corrections, Field Services
Division
Presenting Testimony Re: H.B.1277**

The department of corrections supports the use of electronics monitoring as a tool in correctional offender supervision. New technologies, such as global positioning systems (GPS), will revolutionize the supervision of all offenders, particularly more high-risk offenders. H.B. 12 77 lays the groundwork for a manageable electronic monitoring system that may be utilized by corrections as well as others, state wide.

The department recommends a "do pass" for H.B.1277, from this committee.