

# FINAL BILL REPORT

## EHB 1943

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C 287 L 15  
Synopsis as Enacted

**Brief Description:** Concerning electronic monitoring.

**Sponsors:** Representatives Shea, Goodman, McCaslin and Scott.

**House Committee on Public Safety**

**House Committee on General Government & Information Technology**

**Senate Committee on Law & Justice**

**Senate Committee on Ways & Means**

### **Background:**

A court may order an offender, as an alternative to incarceration, to home detention. Home detention is a program of partial confinement available to an offender wherein the offender is confined in a private residence subject to electronic surveillance. Alternatively, the Department of Corrections (DOC) may be order an offender to home detention, as part of the DOC's parenting program.

Offenders convicted of certain crimes are ineligible for home detention unless imposed as partial confinement under the DOC's parenting program: a violent offense, a sex offense, a drug offense, Reckless Burning in the first or second degree, Assault in the third degree, Assault of a Child in the third degree, Unlawful Imprisonment, or Harassment. Offenders convicted of Burglary, Possession of a Controlled Substance, Forged Prescription of a Controlled Substance, or Taking a Motor Vehicle are eligible for home detention if they meet certain criteria.

Participation in a home detention program is conditioned upon the offender: (1) obtaining and maintaining employment, attending a course of study at regular hours, or performing parental duties to children normally in his or her custody; (2) abiding by the rules of the home detention program; and (3) compliance with court-ordered legal financial obligations.

Court Requirements and Pretrial Release. When a person charged with an offense appears before a judicial officer, the judicial officer must issue an order that, pending trial, the person be released on recognizance, released on conditions, or remain detained. The court's order for conditional release may include the following conditions:

- placing a defendant on a pretrial release program;

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- restricting travel, association, or place of abode;
- requiring compliance with a curfew, work release, or electronic monitoring;
- prohibiting contact with particular persons or places;
- prohibiting possession of dangerous weapons or firearms;
- prohibiting consumption of alcohol or non-prescribed drugs;
- prohibiting operation of a motor vehicle not equipped with ignition interlock;
- reporting regularly to court supervision; and
- prohibiting violations of the criminal law.

Escape in the Third Degree. A person commits the crime of Escape in the third degree when the person escapes from custody. Custody means restraint pursuant to a lawful arrest or an order of a court, or any period on a work crew. Escape in the third degree is a gross misdemeanor, punishable by up to 364 days in jail, and a \$5,000 fine.

A misdemeanor is punishable by up to 90 days in jail and a \$1,000 fine. A gross misdemeanor is punishable by up to 364 days in jail and a \$5000 fine. A class C felony is punishable by up to five years in prison and a \$10,000 fine.

**Summary:**

The definition of "home detention" is modified to include only circumstances where the offender is confined in a private residence 24 hours a day, unless an absence from the residence is authorized by the supervising agency, and the offender is subject to electronic monitoring. Home detention is a subset of electronic monitoring. Home detention may not be imposed for an offender if the sentencing court finds that the offender has previously and knowingly violated the terms of a home detention program and the violation was not technical, minor, or non-substantive.

"Electronic monitoring" is defined as tracking the location of an individual pretrial or post-trial through the use of technology capable of determining the monitored person's location. Electronic monitoring is included in the definition of partial confinement. This definition of electronic monitoring is applicable in the following contexts:

- when imposed by the DOC pursuant to its discretion to monitor sex offenders;
- when imposed by the court as part of a domestic violence protection order or after conviction for violation of such orders; and
- when imposed as a condition of release in a criminal case.

Supervising Agency Requirements. A supervising agency is defined as a public entity that authorized a home detention or home monitoring program and has jurisdiction over a monitored individual. A monitoring agency may be a supervising agency. A supervising agency must:

- establish terms and conditions of electronic monitoring for each individual subject to the electronic monitoring under the agency's jurisdiction;
- communicate the terms and conditions to the monitoring agency; and
- establish protocols for when and how a monitoring agency must notify the supervising agency when a violation of the terms and conditions occurs.

Monitoring Agency Requirements. Home detention programs must be administered by a monitoring agency that:

- complies with the terms and conditions set by the supervising agency;
- provides notification within 24 hours to the court or other supervising agency when a monitoring agency discovers that a monitored individual is unaccounted for, or beyond an approved location for 24 consecutive hours;
- establishes geographic boundaries consistent with court-ordered activities and report substantive violations of those boundaries;
- verifies the location of offenders through in-person contact on a random basis and at least once per month; and
- reports to the supervising agency any known violation of the law or court-ordered condition.

Private monitoring agencies must:

- have a detailed contingency plan for events such as power outages, malfunction of equipment, fires, and floods;
- prohibit conflicts of interest between employees and monitored individuals;
- not be owned by, or employ, any person convicted of a felony within the past four years; and
- obtain background checks for every owner and employee.

A private monitoring agency that fails to comply with the requirements may be subject to a \$1,000 fine per violation, as determined by a court or court administrator.

A monitoring agency may not agree to monitor a defendant who is currently awaiting trial for a violent or sex offense unless the defendant's release was secured with a payment of bail.

Court Requirements. A court that receives notice of a violation of the terms of a home detention or electronic monitoring program must maintain a record of violations in the court file. If a court decides to discontinue or resume use of a monitoring agency, the court must notify the Administrative Office of the Courts (AOC), which must then notify all superior and district courts of the decision. The AOC is required to create a pattern form order for the court to use when ordering a person to comply with a home detention program.

A sentencing court may not give credit for time an offender spent on a electronic monitoring program prior to sentencing if the offender was ultimately convicted for one of the following offenses:

- a violent offense;
- any sex offense;
- any drug offense;
- Reckless Burning in the first or second degree;
- Assault in the third degree;
- Assault of a Child in the third degree;
- Unlawful Imprisonment; or
- Harassment.

Escape in the Third Degree. The crime of Escape in third degree is modified to include knowing violations of an electronic monitoring program. Escape in the third degree is a

misdemeanor on the first offense, a gross misdemeanor on the second offense, and a class C felony on the third or subsequent offense.

**Votes on Final Passage:**

House	96	1	
Senate	49	0	(Senate amended)
House	98	0	(House concurred)

**Effective:** July 24, 2015