

# HOUSE BILL REPORT

## EHB 1943

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### As Amended by the Senate

**Title:** An act relating to improving home detention accountability to better protect the public.

**Brief Description:** Concerning home detention.

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

#### **Brief History:**

##### **Committee Activity:**

Public Safety: 2/17/15, 2/20/15 [DP];

General Government & Information Technology: 2/23/15 [DP].

##### **Floor Activity:**

Passed House: 3/10/15, 96-1.

Senate Amended.

Passed Senate: 4/15/15, 49-0.

#### **Brief Summary of Engrossed Bill**

- Redefines home detention to require presence in a private residence 24 hours a day, unless otherwise authorized by the court, and subject to electronic monitoring.
- Defines electronic monitoring as tracking the location of a person through technology capable of determining a person's presence or absence at a particular location.
- Prohibits the use of home detention for those offenders who have a prior history of knowingly violating the terms of a home detention program.
- Requires monitoring agencies to notify certain agencies of violations of home detention and verify monitored individuals' locations on a regular basis.
- Requires private monitoring agencies to have policies for contingency plans and conflicts of interest and meet background check requirements.
- Subjects private monitoring agencies to civil penalties for noncompliance with the act.
- Requires the courts to notify the Administrative Office of the Courts (AOC) when discontinuing or resuming use of a monitoring agency and requires the AOC to transmit this notice to courts statewide.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Prohibits a monitoring agency from monitoring an offender who is currently awaiting trial for a violent or sex offense and who has previously been convicted for such an offense.
- Prohibits an award of credit toward a sentence for time spent in pretrial home detention if an offender is convicted of certain offenses.
- Provides that a person who knowingly violates the terms of home detention is guilty of Escape in the third degree.

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## HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 8 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Griffey, Moscoso, Pettigrew and Wilson.

**Staff:** Cassie Jones (786-7303).

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## HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

**Majority Report:** Do pass. Signed by 7 members: Representatives Hudgins, Chair; Senn, Vice Chair; MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; McCabe, Morris and Takko.

**Staff:** Meghan Bunch (786-7119).

### **Background:**

An offender may be ordered by a court, 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, an offender may be ordered by the Department of Corrections (DOC) 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;
- 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 of Engrossed Bill:**

Home detention is defined as a program of partial confinement available to offenders wherein the offender is confined in a private residence 24 hours a day, unless an absence from the residence is included in the order by the court that ordered home detention, and the offender is subject to 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.

Electronic monitoring is defined as tracking the location of an individual pretrial or posttrial 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 department of corrections pursuant to its discretion to monitor those convicted of sex offenses;
- 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.

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

- provides notification within 24 hours to the court and other entities when a monitoring agency discovers that a monitored individual is unaccounted for, or beyond an approved location for 24 consecutive hours;

- provides notification to the court or other entity that ordered home detention or electronic monitoring of known violations of the terms and conditions of monitoring;
- documents the monitored individual's absence at court ordered activities; and
- verifies the location of offenders through in-person contact on a random basis and at least once per month.

Private monitoring agencies must meet the following additional requirements:

- has a detailed contingency plan for events such as power outages, malfunction of equipment, fires, and floods;
- prohibits conflicts of interest between employees and monitored individuals;
- is not owned by, nor employs, any person convicted of a felony within the past four years; and
- obtains 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.

A monitoring agency may not agree to monitor an offender who is currently awaiting trial for a violent or sex offense who has previously been convicted of such an offense.

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 in a home detention 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. A person is guilty of Escape in the third degree if he or she escapes from custody or knowingly violates the terms of a home detention 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.

#### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment modifies the definition of electronic monitoring to remove the requirement that the technology used continuously or intermittently detect the location of the

monitored individual; instead, the technology must simply detect the location of the monitored individual. The definition is also modified to remove the requirement that the technology continuously notify the monitoring agency of monitored person's location; instead, the technology must simply notify of the monitoring agency of the monitored person's location.

The Senate amendment provides that home detention is a subset of the electronic monitoring.

The Senate amendment retains the requirement that the sentencing court deny imposition of home detention for those offenders that it finds have previously and knowingly violated the terms of a home detention program, but adds an additional required finding that the previous violations were not technical, minor or non-substantive. The sentencing court is also given discretion to deny imposition of home detention for those offenders that it finds have previously and knowingly violated the terms of a home detention program and the previous violations were technical, minor, or non-substantive.

The Senate amendment creates duties for a supervising agency, requiring that a supervising agency must:

- establish terms and conditions of electronic monitoring for each individual subject to electronic monitoring under the agency's jurisdiction;
- communicate those 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.

The Senate amendment modifies the duties of a monitoring agency as follows:

- adds the requirement that a monitoring agency comply with the terms and conditions established by the supervising agency;
- removes the requirement that a monitoring agency document the monitored individual's absence at the individual's location of employment, school, treatment, counseling, programming, or other court-ordered activities; and
- adds the requirement that a monitoring agency to establish geographic boundaries consistent with court-ordered activities and report substantive violations of those boundaries.

The Senate amendment allows a court administrator to impose a civil penalty on a private monitoring agency who violates the act and allows a court or a court administrator to cancel a contract with a monitoring agency for any violation by the monitoring agency.

The Senate amendment modifies the prohibition on a monitoring agency agreeing to monitor persons awaiting trial for violent or sex offenses who have previously been convicted of one or more such offenses by: (1) extending the prohibition to all persons awaiting trial for a violent or sex offense regardless of prior convictions; and (2) creating an exception to the prohibition where such person's release before trial is secured by payment of bail.

The Senate amendment removes the prohibition on a sentencing court awarding credit for any time an offender complied with home detention prior to sentencing when the offender was convicted of certain offenses and adds a prohibition on an award of credit for any time such an offender complied with electronic monitoring.

The Senate amendment modifies the crime of escape in the third degree to include knowing violations of the terms of an electronic monitoring program instead of a home detention program.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Public Safety):**

(In support) If someone is on electronic home monitoring, the public expects that the person is at home and being monitored. Neither of these things are true in implementation. This bill seeks to put in place standards. It creates a definition for home monitoring and specifies what technology needs to be used. A monitored person must be at home unless approved by the court. There needs to be penalties if electronic home monitoring is violated. The state Constitution has liberal language that all defendants are entitled to reasonable bail. However, those who cannot make bail should not be released on home monitoring. There have been dangerous situations where individuals on home monitoring have committed serious crimes.

(In support with concerns) This is a huge step in the right direction. There are a couple of concerns. Verifying the location of the offenders through in-person contact will increase the cost of home monitoring significantly; it would require companies to increase the cost and the number of company employees. With global positioning system (GPS) technology, the monitoring agencies know where the monitored person is without having to see them in person.

(With concerns) This is a very comprehensive bill. There are a number of suggested amendments. Most courts that are authorizing home monitoring order a variety of conditions that require the person to be away from the home. Home monitoring is not perfect and it never will be. Often times the choice for a defendant is making bail with monitoring or making bail without monitoring. Bail with monitoring is preferred. No one should presume that GPS monitoring means that a person is being monitored in real time. Real-time monitoring is cost prohibitive. This bill is a good effort to shore up difficulties with home monitoring. A system that inspires confidence is good for the defense. There are concerns with certain sections, section 6 would severely limit the number of people who would be eligible for home monitoring. Many defendants cannot post any amount of bail and house arrest is the only alternative to detention. The bail system is ineffective. Section 7 limits who would receive credit for time that was served on home monitoring. This is an equal protection issue with limiting credit for time served in this context.

(Opposed) None.

**Staff Summary of Public Testimony (General Government & Information Technology):**

(In support) None.

(With concerns) This bill needs cleanup in the electronic monitoring arena. There are technical and procedural errors in the policy that need fixing. The intent of the bill is good, and the bill should keep moving, but with amendments. The technology is moving forward and emerging. Clear language is needed for court standards and for the agencies ordering the detention.

(Opposed) None.

**Persons Testifying (Public Safety):** (In support) Representative Shea, prime sponsor; and Chris Vance, King County Corrections Guild.

(In support with concerns) Steve Hopkins, Jail Alternatives Monitoring Advisory Group.

(With concerns) Mitch Barker, Washington Association of Sheriffs and Police Chiefs; and Catherine Elliott, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

**Persons Testifying (General Government & Information Technology):** James McMahan, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying (Public Safety):** None.

**Persons Signed In To Testify But Not Testifying (General Government & Information Technology):** None.