

# HOUSE BILL REPORT

## HB 1124

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### As Reported By House Committee On:

Judiciary

**Title:** An act relating to correcting electronic monitoring provisions in the penalty schedule for alcohol violators.

**Brief Description:** Correcting DUI penalty provisions.

**Sponsors:** Representatives Constantine, Sheahan, Ballasiotes, Lantz, McDonald, Lambert, Stensen, Hurst and Esser.

### Brief History:

#### Committee Activity:

Judiciary: 1/26/99, 2/11/99 [DPS].

#### Brief Summary of Substitute Bill

- Allows the court to provide equivalent alternatives to mandatory electronic monitoring when sentencing DUI offenders. Equivalent alternatives include such things as additional jail time or work camp.
- Provides grounds for giving such an alternative sentence including lack of necessary facilities, residence outside the state, and belief that the offender would violate the conditions of electronic monitoring.
- Provides that in the event jail time plus electronic monitoring equals more than one year of confinement, the jail time is to be served first and the monitoring or equivalent sentence is to be reduced so the total does not exceed one year.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

**Staff:** Bill Perry (786-7123).

**Background:**

As part of extensive amendments to the state's drunk driving laws in 1998, the Legislature greatly expanded the use of electronic home monitoring in DUI sentences. All DUI offenders are now explicitly subject to electronic monitoring. Electronic home monitoring may include an alcohol detection breathalyzer test to which the offender is periodically required to submit. The monitoring must be paid for by the offender. In some instances the monitoring is mandatory.

For first-time offenders, electronic monitoring may be given in lieu of what is otherwise mandatory jail time. This means that for first-time offenders, either a prescribed minimum jail sentence or a prescribed minimum monitoring sentence must be given. For a first-time offender with an alcohol concentration (BAC) below 0.15 percent, not less than 15 days of electronic monitoring may be given in lieu of an otherwise mandatory one day in jail. In the case of a first-time offender with a BAC of 0.15 or more, not less than 30 days may be given in lieu of an otherwise mandatory two days in jail.

For repeat offenders, electronic monitoring must be given in addition to mandatory jail time. This means that for repeat offenders, a prescribed minimum sentence of both jail and monitoring must be given. For these repeat offenders, the prescribed minimum sentence ranges from 60 to 150 days, depending on the offenders' histories and BAC levels.

Electronic home monitoring is not considered "confinement." Under the Sentencing Reform Act (SRA), confinement includes "home detention . . . for a substantial portion of the day with the balance of the day spent in the community." The state is responsible for the cost of incarcerating offenders who are sentenced to more than one year of incarceration.

Some local jurisdictions have expressed concern that the requirements for mandatory electronic home detention may prove ineffective or impractical if, for instance, the offender lacks a dwelling or a phone line which are necessary for home monitoring. Some concern has also been expressed that exempting electronic home monitoring from the SRA definition of detention makes administration of the program difficult.

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**Summary of Substitute Bill:**

Courts may waive otherwise mandatory electronic home monitoring in DUI cases if:

- The offender has no dwelling, phone, or other necessity for monitoring;

- The offender resides outside the state;
- There is reason to believe the offender will violate the terms of the monitoring.

Whenever a court waives the mandatory monitoring, it must give its reasons and must impose an alternative sentence with similar punitive consequences. Alternatives include, but are not limited to, more jail time, work crew, or work camp.

The statement that electronic monitoring is not "confinement" is removed.

If the total of jail time and electronic monitoring (or an alternative to monitoring) would exceed one year, the jail time is to be served first and the monitoring (or alternative) is to be reduced so that the combination does not exceed one year.

**Substitute Bill Compared to Original Bill:** The substitute bill adds the following provisions:

- Listing of more jail time, work crew, and work camp as examples of alternatives to electronic home monitoring;
- Requiring jail time to be served first, and electronic monitoring to be reduced if the total of the two sentences would exceed one year; and
- Declaring an emergency and providing for an immediate effective date.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** For some defendants, such as those without homes or phones, electronic home monitoring can't work. The bill will improve the current law by recognizing these realities and providing alternatives. By allowing electronic home monitoring to be considered as "confinement," the bill will also improve the administration of the law by giving law enforcement and jail personnel control over offenders after they leave jail.

**Testimony Against:** None.

**Testified:** (In support) Mike Shaw, Washington Association of Counties.

(In support with suggested amendment) Tim Schellberg, Washington Association of Sheriffs and Police Chiefs.