

HOUSE BILL REPORT

HB 1943

As Reported by House Committee On:
Public Safety
General Government & Information Technology

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].

Brief Summary of Bill

- Redefines home detention to require presence in a private residence 24 hours a day, unless otherwise authorized by the court.
- Prohibits the use of home detention for those offenders who have a prior history of violations of the terms of a home detention program.
- Requires monitoring agencies to notify certain agencies of violations of home detention, verify monitored individuals' locations on a regular basis, have policies for contingency plans and conflicts of interest, and meet background check requirements.
- Subjects monitoring agencies to civil penalties for non-compliance 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.
- Requires the AOC to develop a pattern order for courts to use when ordering home detention.
- Prohibits use of pre-trial home detention for offenders who have a prior conviction for a violent, sex, or escape offense.
- Requires posting of bail prior to pre-trial release to home detention.

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 an award of credit toward a sentence for time spent in pre-trial 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.

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).

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 Pre-trial 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 pre-trial 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, and a class C felony is punishable by up to five years in prison and a \$10,000 fine.

Summary of 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 surveillance that determines the monitored individual's presence at an approved location through either signaling or satellite monitoring. Home detention may not be imposed for an offender if the sentencing court finds that the offender has previously violated the terms of a home detention program.

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

- provides notification within 24 hours to law enforcement, the court, probation, the prosecuting attorney, and if applicable, the DOC or the local detention facility when a monitored individual is unaccounted for, or beyond an approved location for 24 consecutive hours;
- provides weekly notification to law enforcement, the prosecuting attorney, probation, and if applicable, the DOC or the local detention facility of any violations of the court order or terms of the home detention program;
- verifies and documents the monitored individuals attendance at court ordered activities;
- verifies the location of the offender through in-person contact at least once per week, and on a random basis at least once per month;
- ensures compliance with any other conditions ordered by the court and required by law;
- 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 monitoring agency that fails to comply with the requirements may be subject to a \$1,000 fine per violation, as determined by a court. Monitoring agencies include any entity, public or private, which supervises a monitored offender pursuant to a home detention program.

Court Requirements and Pre-trial Release. A court that received notice of a violation of the terms of a home detention 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.

The court may impose compliance with a home detention program as a condition of release. However, the court may not order home detention for a pre-trial defendant if the defendant has a prior conviction for a violent or sex offense or a prior conviction for Escape in the first, second, or third degree. No defendants may be released to home detention unless release is secured with payment of bail.

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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(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.

Persons Testifying: (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 Signed In To Testify But Not Testifying: None.

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).

Summary of Recommendation of Committee On General Government & Information Technology Compared to Recommendation of Committee On Public Safety:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(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: James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.