

# SENATE BILL REPORT

## EHB 1943

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As of April 7, 2015

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

**Committee Activity:** Law & Justice: 3/16/15, 3/31/15 [DPA-WM].

Ways & Means: 4/06/15.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

**Staff:** Tim Ford (786-7423)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Julie Murray (786-7711)

**Background:** An offender may be sentenced by a court, as an alternative to incarceration, to home detention, in which the offender resides in the community, 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.

Eligible Offenders. Offenders convicted of the following crimes are ineligible for home detention, unless they are participating in 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.

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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.*

Conditions of Home Detention. 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 the offender's custody; (2) abiding by the rules of the home detention program; and (3) compliance with court-ordered legal financial obligations.

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.

**Summary of Bill (Recommended Amendments):** Home detention is a subset of electronic monitoring and is defined as a program of partial confinement available to offenders wherein the offender is confined in a private residence 24 hours per 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, and the violation was minor, technical, or non-substantive. Home detention must not be imposed for an offender if the sentencing court finds that the offender previously and knowingly violated the terms of a home detention program, and the violation was not minor, technical, 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 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.

A supervising agency must establish terms and conditions of electronic monitoring for each individual and communicate those terms and conditions to the monitoring agency. A monitoring agency must comply with the terms and conditions.

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.

A private monitoring agency 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, or court administrator.

A monitoring agency may not agree to monitor an offender unless the defendant's pretrial release is secured by bail. A court must note the reason anytime it revokes 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 or court administrator 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. AOC must 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 an 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. A person is guilty of escape in the third degree if the person escapes from custody or knowingly violates the terms 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.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Amendments):**

- Home detention is a subset of electronic monitoring;
- A sentencing court may deny the imposition of home monitoring if the offender previously and knowingly violated a home detention program, and the violation was technical, minor, or non-substantive;
- A sentencing court must deny the imposition of home monitoring if the offender previously and knowingly violated a home detention program, and the violation was not technical, minor, or non-substantive;

- A supervising agency must establish terms and conditions of electronic monitoring for each individual and communicate those terms and conditions to the monitoring agency. A monitoring agency must comply with the terms and conditions;
- A court administrator may determine non-compliance by a monitoring agency, and may subject the monitoring agency to a monetary penalty or cancel a contract with a monitoring agency. A court administrator may decide not to allow the use of a particular monitoring agency;
- A sentencing court may not give credit to an offender for time served complying with electronic monitoring;
- The crime of escape in the third degree includes knowing violations of electronic monitoring; and
- A monitoring agency may not agree to monitor an offender unless the defendant's pretrial release is secured by bail. A court must note the reason anytime it revokes bail.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed House Bill (Law & Justice):** PRO: The use of a non-secure home monitoring system for dangerous offenders is a concern. Bail is a constitutional right, but anyone facing charges of a violent offense or sex offense should be required to make bail prior to home monitoring. Judges should have discretion to determine what is a violation of home monitoring.

OTHER: The bill needs clear language that the supervising agency sets the terms and conditions that an individual must follow while on home monitoring. Bail is a constitutional right. Section 7 isn't necessary and it takes away a tool of electronic monitoring. Pretrial release programs in law already address the concern of section 7. In-person monthly verification is expensive. With approximately 20,000 people on monitoring, an in-person verification would take about 20 minutes per person and cost about \$360,000 to \$380,000 per year. Agencies would pass this cost onto the individuals being monitored. Medical issues may preclude a person from maintaining employment so it shouldn't be a condition of electronic monitoring.

**Persons Testifying (Law & Justice):** PRO: Representative Shea, prime sponsor; Sam Meyer, District and Municipal Courts Judges Assn.; Chris Vance, King County Corrections Guild; Amy Muth, WA Criminal Defense Lawyers, WA Defenders Assn.

OTHER: James McMahan, WA Assn. of Sheriffs and Police Chiefs; Brian Enslow, WA Counties Assn.; Doug Levy, cities of Kent and Renton; Michael Shaw, King County.

**Persons Signed in to Testify But Not Testifying:** No one.

**Staff Summary of Public Testimony (Ways & Means):** OTHER: We support the notion of providing standardization among the home monitoring industry. The bill is well crafted; but a few provisions, specifically section 3(2), are expensive or unobtainable for a home monitoring system to do and we ask that they be removed. For example, while we can document where a person is located, we cannot document what activities they are performing.

**Persons Testifying (Ways & Means):** OTHER: James McMahan, WA Assn. Sheriffs and Police Chiefs.

**Persons Signed in to Testify But Not Testifying:** No one.