

2011 HOUSE JUDICIARY

HB 1338

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1338  
January 25, 2011  
13392

Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We will open the hearing on HB 1338. Right now, if you are sentenced in municipal court and you are sentenced to jail time, it's up to law enforcement to determine whether you are actually going to serve that time or not. This bill says that a judge should decide whether you are going to serve that time or not. That's the gist of the bill. I would expect that if there was a problem with this, law enforcement would have shown up and say that they don't like it. Is there any opposition to the bill. We now have a bill with no support and no opposition. This is Rep. Dahl's bill and this is a problem that she's run into in Grand Forks Municipal Court; she successfully prosecuted someone and they're sentenced to jail time, 4 days, for example, because these are minor offenses, then law enforcement actually determines whether they are going to actually serve any time or not. So even though you win the case in court, and they are sentenced, they don't actually end up serving time in some cases. She felt that instead of law enforcement making that decision, that it should be the judge's decision whether they are going to actually serve any time or not on that sentence.

Rep. Klemin: Can we hold the hearing open, this bill is actually amending a law that came out of the Commission on Alternatives to Incarceration. Judge Hagerty is on the Commission, and she is one, on behalf of the sheriffs and judges, who asked for some change to allow the administrators of the jails to make the decision, not the judges. I guess I would like to check this out; because with this bill, it would change it back to the old way.

Chairman DeKrey: We will recess.

Chairman DeKrey: Let's go back to HB 1338 because Rep. Dahl is here.

Rep. Dahl: This is a complicated issue that came across my desk, as an assistant municipal prosecutor. Basically, we are having problems where law enforcement imposes a different sentence than the judge handed out. This arose out of a case involving an elderly woman, probably in her 80's and she had received a DUI. She had a DUI on her record. Well, she drove after her license had been suspended.

That is considered a driving under suspension, alcohol related, offense. There is a mandatory minimum of 4 days in jail, according to our statutes. Well, the jail in Grand Forks County, decided that she was not a good candidate to serve out her jail time because of her age. So even though we said in state statute, 4 days of mandatory minimum jail time, it was the jail that decided that she should serve her time on electronic home monitoring. It's not the most egregious example but it did indicate that there is a system in place where our jails are getting judgments, it will say 10 days with 6 days suspended, so 4 days are to be served in jail. They are making the decision whether a person should serve the time in jail or not. The purpose of this bill, which is a complicated issue, basically still provides for EHM in those situations, like the example I gave you, perhaps that older person was not the best person to sit 4 days in jail, there may have been a problem with her age, and her health. In that case, all I'm trying to say with this bill is that the decision should be made by the judge and the burden should be put on to the defendant to ask for lenience, and ask for EHM if the situation warrants that. I put some exceptions in there; if the health was poor, or they have some type of contagious disease, we put that in there and if there is an overcrowding situation. But other than that, the intent of the bill is to put that decision in front of the judge who I think is in a better place to say how they should serve their jail time, rather than a jail administrator.

Rep. Klemin: This provision for electronic home detention was a bill that originally came out of the Commission on Alternatives to Incarceration. The law was subsequently amended at the request of the judges to allow the jail administrators to make the decision as to whether electronic home detention is appropriate or not. So now, for mandatory incarceration situations, this amendment, as I see it, would allow the judge to decide that EHM could still be used. If we go back to page 1, line 12 of the bill, it starts out with "except for an offense for which the law requires mandatory incarceration, EHM can be used". Then we go to the new language which actually contradicts that clause on the previous page and says, even with mandatory incarceration, the judge can decide to do this electronic home detention. Don't we have some drafting inconsistency that needs to be resolved.

Rep. Dahl: I also noted that there is the confusing distinction in state statute between incarceration and imprisonment. In some places, it says mandatory incarceration, which means jail and that's all it means. Imprisonment can mean jail or can mean EHM. So I think that perhaps line 4 of page 2, should say mandatory imprisonment, because on some of these offenses, it gives a mandatory minimum, but it talks about imprisonment, not incarceration.

Rep. Klemin: I'm not sure whether that really solves the problem though, because they are kind of used interchangeably.

Rep. Dahl: They are not used interchangeably. They are not the same thing.

Rep. Klemin: Incarceration and imprisonment are not the same.

Rep. Dahl: Correct. Incarceration means actual jail time; imprisonment can mean EHM or can mean incarceration. It's a bit of a more broad term but it is separately defined in different sections of the NDCC.

Rep. Klemin: Imprisonment can mean incarceration, but incarceration doesn't mean imprisonment.

Rep. Dahl: Correct.

Rep. Klemin: Even if the judge decides that EHM is not appropriate for an offense with mandatory incarceration, then the second part of this, on lines 6-9, says the jail administrator can do it anyway. Is that what you intended.

Rep. Dahl: In a sense, if a judge decides that the person should serve their time in jail, I just wanted to give some flexibility to the jails for overcrowding or if they have some kind of contagious illness. I was trying to provide that; I understand that it is somewhat inconsistent but I was trying to allow for those situations to be dealt with by the jails.

Rep. Klemin: Here again we have the situation, where we go back to the previous page, on subsection 1, starting on line 7, a jail administrator can make a decision as to whether EHM is appropriate. Then in subsection 2 says except for an offense for which the law requires mandatory incarceration; which means the jail administrator can't make that decision for those situations. So now we have in new language, if the offense has mandatory incarceration and if the judge decides that the person should go to jail, the last part of this is going to allow the jail administrator to put that person on EHM anyway. Isn't that inconsistent with subsection 2 on page 1.

Rep. Dahl: The intent is only to deal with those mandatory minimum offenses. That's how it's a little different from that previous section that you mentioned. What we have now is a system where the state statute sets out mandatory minimums, unless the judgment from the judge says they are specifically to serve it in jail, the jails are just using it and saying that they get to make the decision. I have some criteria from the Grand Forks County Correctional Center. It's pretty difficult not to qualify for EHM. They have criteria regarding sex offenders, your past history, whether you've tried to break out of jail; but in total, it is very difficult not to meet the requirements of EHM. All I'm trying to say in this bill, is that the decision should rest with the judge; subject to the issue of mandatory minimums the jail administrators can make those decisions if there is a health issue or an overcrowding issue.

Chairman DeKrey: Thank you. We will recess the hearing until we hear from Judge Hagerty.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1338  
February 7, 2011  
14130

Conference Committee

Committee Clerk Signature

*Penrose*

## Minutes:

Chairman DeKrey: We will take a look at HB 1338. This is the bill that was brought to us because law enforcement is making a decision whether they serve any time or not after they've been sentenced. The sponsor of the bill thought that it should be a judge who made that decision. Rep. Klemin thought that maybe the Uniform Code had dealt with this and that we were changing it back to something that we'd already changed it from. This amendment wording (attached 1) is from Judge Hagerty.

Rep. Klemin: I move the Hagerty amendment.

Rep. Maragos: Seconded the motion.

Rep. Klemin: As I understand this amendment, this would replace what we have in the bill now.

Chairman DeKrey: This hog house accomplishes what Rep. Dahl's put the bill in for, but cleans it up so that the courts are happy with it. Further discussion.

Rep. Koppelman: It doesn't really read like a hog house. The first part seems to amend section 1, it says section 2, I think it means item 2, and then it says subsection 3 it is referring to, it really isn't deleting the whole verbiage here, and it's amending it, but also added some language. On line 6 talking about the administrator, that part would still be here.

Rep. Onstad: Just to clarify, if you go to section 2, all that deleted language and then it says electronic juvenile offenders, with all the language out of there, is that proper.

Chairman DeKrey: LC will fix it up. Voice vote on the Hagerty amendment. Motion carried. We now have the bill before us as amended. What are the committee's wishes?

Rep. Maragos: I move a Do Pass as amended.

Rep. Delmore: Second the motion.

**14 YES 0 NO 0 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Rep. Koppelman**

VR  
2/7/11

February 7, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1338

Page 1, line 9, overstrike "who" and insert immediately thereafter "Except in cases in which the law requires mandatory incarceration and does not allow for electronic home detention or global positioning system monitoring, the administrator of the jail or correctional facility"

Page 1, line 12, overstrike "Except for an offense for which the law requires mandatory incarceration, electronic" and insert immediately thereafter "Electronic"

Page 2, line 1, overstrike "County jail diversion approved by the court."

Page 2, line 2, overstrike "h."

Page 2, line 3, remove "If electronic home detention or global positioning system monitoring is otherwise"

Page 2, remove lines 4 and 5

Page 2, line 6, replace "monitoring. Notwithstanding a judicial determination to the contrary, the" with "The"

Page 2, line 8, replace "due to the health" with "if required due to medical needs"

Page 2, after line 9, insert:

"4. If the law requires mandatory incarceration and does not allow for electronic home detention or global positioning system monitoring, the court order must expressly prohibit electronic home detention and global positioning system monitoring."

Renumber accordingly

Date: 2/7/11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1338

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 11. 0455. 01002 . 02000

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1338: Judiciary Committee (Rep. DeKrey, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1338 was placed on the Sixth order on the calendar.

Page 1, line 9, overstrike "who" and insert immediately thereafter "Except in cases in which the law requires mandatory incarceration and does not allow for electronic home detention or global positioning system monitoring, the administrator of the jail or correctional facility"

Page 1, line 12, overstrike "Except for an offense for which the law requires mandatory incarceration, electronic" and insert immediately thereafter "Electronic"

Page 2, line 1, overstrike "County jail diversion approved by the court."

Page 2, line 2, overstrike "h."

Page 2, line 3, remove "If electronic home detention or global positioning system monitoring is otherwise"

Page 2, remove lines 4 and 5

Page 2, line 6, replace "monitoring. Notwithstanding a judicial determination to the contrary, the" with "The"

Page 2, line 8, replace "due to the health" with "if required due to medical needs"

Page 2, after line 9, insert:

"4. If the law requires mandatory incarceration and does not allow for electronic home detention or global positioning system monitoring, the court order must expressly prohibit electronic home detention and global positioning system monitoring."

Renumber accordingly

2011 SENATE JUDICIARY

HB 1338

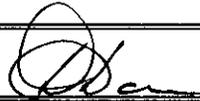
# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1338  
3/7/11  
Job #14996

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to electronic home detention for certain offenses

Minutes:

## Senator Nething – Chairman

**Representative S. Dahl** – Introduces the bill – She explains this issue came to her attention through her work in Grand Forks. She explains the changes after the amendment. She mentions that Judge Hagerty wrote these amendments. Rep. Dahl said she would like to check with Judge Hagerty whether Section 3 reconciles with Section 1. She says the real crux of this bill is in Section 4, where it says, if EHM is not possible because of what the law says, the court must prohibit that practice. It requires more communication between the courts and the jails. When the jail gets the judgment sheet they know it is a mandatory sentence and EHM is not authorized under the law.

**Senator Sitte** - Asks what EHM is and does it monitor alcohol.

**Dahl** – Relates it is hooked up to a home phone line and they must stay confined to their home. They can sometimes go to work but for the most part are confined to home. It does not monitor alcohol.

## Opposition – 0

Close the hearing 1338

# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB1338  
3/21/11  
Job #15771

Conference Committee

Committee Clerk Signature	<i>DDan</i>
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**Explanation or reason for introduction of bill/resolution:**

Relating to electronic home detention for certain offenses

**Minutes:**

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**Senator Nething – Chairman**

Committee work

Committee discusses the amendment brought in by Rep. Dahl.

**Senator Olafson** moves to adopt the amendment

**Senator Lyson** seconded

Verbal vote – all yes

**Senator Lyson** moves a do pass as amended

**Senator Olafson** seconded

Roll call vote – 6 yes, 0 no

Motion passes

**Senator Nething** will carry

1338

11.0455.02001  
Title.

Prepared by the Legislative Council staff for  
Representative Dahl  
March 7, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1338

Page 2, line 6, replace "The" with "If not otherwise prohibited by law, the"

Renumber accordingly

Date: 3/21/11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1338

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Senator

If the vote is on an amendment, briefly indicate intent:

Verbal yes



**REPORT OF STANDING COMMITTEE**

**HB 1338, as engrossed: Judiciary Committee (Sen. Nething, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1338 was placed on the Sixth order on the calendar.

Page 2, line 6, replace "The" with "If not otherwise prohibited by law, the"

Re-number accordingly

2011 TESTIMONY

HB 1338

**12-67-02. Application.**

**(Section 1 deals with offenders who are in jails or correction facilities because they have been sentenced to the facility.)**

1. For those offenders who are sentenced by the court to a term of imprisonment in a county jail or regional correctional facility, the court may commit the offender to the legal and physical custody of the administrator of the jail or correctional facility: Except in cases in which the law requires mandatory incarceration and does not allow for home detention or global positioning system monitoring, the administrator of the jail or correctional facility ~~who~~ shall make the decision as to whether the use of electronic home detention or global positioning system monitoring is appropriate for that offender.

**(Section 2 deals with offenders who are on probation or parole or are involved in the juvenile court system.)**

2. ~~Except for an offense for which the law requires mandatory incarceration,~~ Electronic home detention or global positioning system monitoring may be used for adult and juvenile offenders as selected by the court, the administrator, the parole board, or the department for adult offenders as an intermediate measure of supervised probation, and for delinquent juvenile offenders in the custody of the division of juvenile services as a condition of community placement. Electronic home detention and global positioning system monitoring may be used for the following:

- a. Pretrial or preadjudicatory detention.
- b. Probation.
- c. Community corrections approved by the court.
- d. Parole.
- e. Work release under chapter 12-44.1 or approved by the parole board.
- f. Institutional release approved by the court or the parole
- g. ~~County jail diversion approved by the court.~~
- h. Sex offender containment.

**(Section 3 deals with emergency type situations in which electronic monitoring should be used.)**

3. ~~If electronic home detention or global positioning system monitoring is otherwise allowed by law for an offense with mandatory incarceration, the court shall decide as to the appropriateness of electronic home detention or global positioning system monitoring. Notwithstanding a judicial determination to the contrary,~~ The administrator may use electronic home detention or global positioning system monitoring for an offender ~~due to~~ if required because of the medical needs ~~the health~~ of the offender or to prevent overcrowding in the county jail or regional correctional facility.

**(Would provide clear notice to administrator when electronic monitoring cannot be used.)**

4. If the law requires mandatory incarceration and does not allow for home detention or global position system monitoring, the criminal judgment must expressly prohibit home detention and global position system monitoring.