



March 25, 2005

**ENGROSSED
SENATE BILL No. 175**

DIGEST OF SB 175 (Updated March 23, 2005 4:49 pm - DI 69)

Citations Affected: IC 35-38.

Synopsis: Allows a court to order an offender on home detention to wear a monitoring device that can reliably determine the location of the offender. Changes the definition of "monitoring device" to include a device that can: (1) record information 24 hours a day regarding an offender's location; (2) track where an offender has been; and (3) notify the appropriate agency if an offender violates a home detention order. Requires a probation department or community corrections program that monitors an offender on home detention to: (1) maintain constant supervision of the offender; and (2) have staff available at all times to respond if the offender violates a home detention order. Requires a sex offender or violent offender on home detention to use a monitoring device that can determine the offender's precise location. Makes technical change correcting the definition of "violent offender" for purposes of home detention.

Effective: July 1, 2005.

**Dillon, Long, Waltz, Steele, Lanane,
Howard**

(HOUSE SPONSORS — NEESE, ULMER, RESKE)

January 4, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

February 10, 2005, amended, reported favorably — Do Pass.

February 17, 2005, read second time, amended, ordered engrossed.

February 18, 2005, engrossed.

February 21, 2005, read third time, passed. Yeas 49, nays 1.

HOUSE ACTION

March 8, 2005, read first time and referred to Committee on Courts and Criminal Code.

March 24, 2005, reported — Do Pass.

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March 25, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 175

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-38-2.5-2.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2005]: **Sec. 2.5. As used in this chapter,**
4 **"contract agency" means an agency or a company that contracts**
5 **with a community corrections program or a probation department**
6 **to monitor an offender or alleged offender using a monitoring**
7 **device.**

8 SECTION 2. IC 35-38-2.5-3 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. **(a)** As used in this
10 chapter, "monitoring device" means an electronic device that:

11 (1) ~~is limited in capability to the recording can record or~~
12 ~~transmitting of transmit~~ information **twenty-four (24) hours**
13 **each day** regarding an offender's:

14 (A) presence or absence from the offender's home; **or**

15 (B) **precise location;**

16 (2) is minimally intrusive upon the privacy of the offender or
17 other persons residing in the offender's home; ~~and~~

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- 1 (3) with the written consent of the offender and with the written
- 2 consent of other persons residing in the home at the time an order
- 3 for home detention is entered, may record or transmit:
- 4 (A) ~~a visual images;~~ **image;**
- 5 (B) ~~oral or wire~~ **an electronic** communication or any ~~auditory~~
- 6 sound; or
- 7 (C) information regarding the offender's activities while inside
- 8 the offender's home; **and**
- 9 **(4) can notify a probation department, a community**
- 10 **corrections program, or a contract agency if the offender**
- 11 **violates the terms of a home detention order.**

12 **(b) The term includes any device that can reliably determine the**
 13 **location of an offender and track the locations where the offender**
 14 **has been, including a device that uses a global positioning system**
 15 **satellite service.**

16 SECTION 3. IC 35-38-2.5-4.7 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.7. As used in this
 18 chapter, "violent offender" means a person who is:

- 19 (1) convicted of an offense or attempted offense ~~except for an~~
- 20 ~~offense~~ under IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3,
- 21 IC 35-43-1-1, IC 35-44-3-5, IC 35-45-10-5, IC 35-47-5-1
- 22 (repealed), or IC 35-47.5-5;
- 23 (2) charged with an offense or attempted offense listed in
- 24 IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-42-4,
- 25 IC 35-43-1-1, IC 35-44-3-5, IC 35-45-10-5, IC 35-46-1-3,
- 26 IC 35-47-5-1 (repealed), or IC 35-47.5-5; or
- 27 (3) a security risk as determined under section 10 of this chapter.

28 SECTION 4. IC 35-38-2.5-7 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A court may not
 30 order home detention for an offender unless the offender agrees to
 31 abide by all of the requirements set forth in the court's order issued
 32 under this chapter.

33 (b) A court may not order home detention for an offender who is
 34 being held under a detainer, warrant, or process issued by a court of
 35 another jurisdiction.

36 (c) A court may not order home detention for an offender who has
 37 been convicted of a sex offense under IC 35-42-4 or IC 35-46-1-3
 38 unless:

- 39 (1) the home detention is supervised by a court approved home
- 40 detention program; and
- 41 (2) the conditions of home detention:
- 42 (A) include twenty-four (24) hour per day supervision of the

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offender; **and**
(B) require the use of surveillance equipment and a monitoring device that can transmit information twenty-four (24) hours each day regarding an offender's precise location.

SECTION 5. IC 35-38-2.5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) Each probation department or community corrections program shall establish written criteria and procedures for determining whether an offender or alleged offender that the department or program supervises on home detention qualifies as a violent offender.

(b) A probation department or community corrections program shall use the criteria and procedures established under subsection (a) to establish a record keeping system that allows the department or program to quickly determine whether an offender or alleged offender who violates the terms of a home detention order is a violent offender.

(c) A probation department or a community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall provide all law enforcement agencies (including any contract agencies) having jurisdiction in the place where the probation department or a community corrections program is located with a list of offenders and alleged offenders under home detention supervised by the probation department or the community corrections program. The list must include the following information about each offender and alleged offender:

- (1) The offender's name, any known aliases, and the location of the offender's home detention.
- (2) The crime for which the offender was convicted.
- (3) The date the offender's home detention expires.
- (4) The name, address, and telephone number of the offender's supervising probation or community corrections program officer for home detention.
- (5) An indication of whether the offender or alleged offender is a violent offender.

(d) Except as provided under section 6(1) of this chapter, a probation department or community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall, at the beginning of a period of home detention, set the monitoring device and surveillance equipment to minimize the possibility that the offender or alleged offender can enter another residence or structure without a violation.

(e) A probation department or community corrections program

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1 charged by a court with supervision of offenders and alleged
2 offenders ordered to undergo home detention shall:

3 (1) maintain or contract with a contract agency to maintain
4 constant supervision of each offender and alleged offender;
5 and

6 (2) have adequate staff available twenty-four (24) hours each
7 day to respond if an offender or alleged offender violates the
8 conditions of a home detention order.

9 (f) A contract agency that maintains supervision of an offender
10 or alleged offender under subsection (e)(1) shall notify the
11 contracting probation department or community corrections
12 program within one (1) hour if the offender or alleged offender
13 violates the conditions of a home detention order. However:

14 (1) a community corrections advisory board, if the offender is
15 serving home detention as part of a community corrections
16 program; or

17 (2) a probation department, if the offender or alleged offender
18 is serving home detention as a condition of probation or bail;
19 may shorten the time in which the contract agency must give notice
20 of a home detention order violation.

21 (g) A probation department or community corrections program
22 may contract with a contract agency under subsection (e)(1) only
23 if the contract agency can comply with subsection (f).

24 SECTION 6. IC 35-38-2.5-12 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) A probation
26 department or community corrections program charged by a court with
27 supervision of a violent offender placed on home detention under this
28 chapter shall:

29 (1) cause a local law enforcement agency or contract agency
30 described in section 10 of this chapter to be the initial agency
31 contacted upon determining that the violent offender is in
32 violation of a court order for home detention order;

33 (b) A probation department or community corrections program
34 charged by a court with supervision of a violent offender placed
35 on home detention under this chapter shall

36 (2) maintain constant supervision of the violent offender using
37 surveillance equipment and a monitoring device and
38 surveillance equipment that can transmit information
39 twenty-four (24) hours each day regarding an offender's
40 precise location The supervising entity may do this by either:

41 (†)(A) using the supervising entity's equipment and personnel;
42 or

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1 ~~(2)~~ **(B)** contracting with an outside entity; a contract agency;
 2 and
 3 **(3)** have adequate staff available twenty-four (24) hours each
 4 day to respond if the violent offender violates the conditions
 5 of a home detention order.
 6 **(b)** A contract agency that maintains supervision of a violent
 7 offender under subsection (a)(2) shall notify the contracting
 8 probation department or community corrections program within
 9 one (1) hour if the violent offender violates the conditions of a
 10 home detention order. However, a:
 11 **(1)** community corrections advisory board, if the violent
 12 offender is serving home detention as part of a community
 13 corrections program; or
 14 **(2)** probation department, if the violent offender is serving
 15 home detention as a condition of probation or bail;
 16 may shorten the time in which the contract agency must give notice
 17 of a home detention order violation.
 18 **(c)** A probation department or community corrections program
 19 may contract with a contract agency under subsection (a)(2) only if
 20 the contract agency can comply with subsection (b).

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SENATE MOTION

Madam President: I move that Senator Long be added as second author of Senate Bill 175.

DILLON

SENATE MOTION

Madam President: I move that Senators Walts, Steele and Lanane be added as coauthors of Senate Bill 175.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 175, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 175 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 175 be amended to read as follows:

Page 1, line 14, delete "and" and insert "**or**".

Page 1, line 15, after "(B)" insert "**precise**".

Page 1, line 15, delete "location while the offender is away from home;" and insert "**location;**".

Page 2, line 9, delete "(4) can track the locations where the offender has been;".

Page 2, run in lines 8 through 9.

Page 2, line 10, delete "(5)" and insert "**(4)**".

Page 2, line 14, delete "offender," and insert "**offender and track the locations where the offender has been,**".

Page 2, between lines 27 and 28, begin a new paragraph and insert:
"SECTION 4. IC 35-38-2.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A court may not order home detention for an offender unless the offender agrees to abide by all of the requirements set forth in the court's order issued under this chapter.

(b) A court may not order home detention for an offender who is being held under a detainer, warrant, or process issued by a court of another jurisdiction.

(c) A court may not order home detention for an offender who has been convicted of a sex offense under IC 35-42-4 or IC 35-46-1-3 unless:

(1) the home detention is supervised by a court approved home detention program; and

(2) the conditions of home detention:

(A) include twenty-four (24) hour per day supervision of the offender; **and**

(B) **require the use of surveillance equipment and a monitoring device that can transmit information twenty-four (24) hours each day regarding an offender's precise location.**

Page 4, line 16, after "using" insert "**surveillance equipment and**".

Page 4, line 17, strike "and surveillance equipment" and insert "**that can transmit information twenty-four (24) hours each day regarding an offender's precise location**".

Renumber all SECTIONS consecutively.

(Reference is to SB 175 as printed February 11, 2005.)

DILLON

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SENATE MOTION

Madam President: I move that Senator Howard be added as
coauthor of Engrossed Senate Bill 175.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 175, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

ULMER, Chair

Committee Vote: yeas 10, nays 0.

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