

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

669C0562

SENATE BILL NO. 125

Introduced by: Senators Kloucek, Dennert, Flowers, Lange, Lawler, Paisley, and Reedy and
Representatives Koetzle, Cerny, Fischer-Clemens, Kazmerzak, Lucas,
Patterson, Weber, and Wilson

1 FOR AN ACT ENTITLED, An Act to permit the use of home detention programs for certain
2 nonviolent offenders.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Home detention is an alternative correctional sentence or term of probation or
5 parole whereby defendants maybe allowed to serve that sentence or term of probation or parole,
6 or a portion thereof, within the offender's home, other home-like environment, or other approved
7 residence. Such sentence or term of probation or parole shall require the offender to remain
8 within the approved residence at all times except for approved employment, court-ordered
9 activities, and medical needs. No offender convicted of aggravated assault, child abuse,
10 kidnaping, manslaughter in the first degree, murder, rape, robbery, felony sexual contact as
11 defined in §§ 22-22-7 and 22-22-19.1, vehicular homicide, riot, arson, burglary in the first
12 degree, commission of a crime while armed, possession of a firearm by a felon, any other felony
13 in the commission of which the perpetrator used force, or was armed with a dangerous weapon,
14 or used any explosive or destructive device, or any drug-related offenses, except for the offense
15 of Class 1 misdemeanor possession of marijuana, is eligible for participation in any home
16 detention program.

1 Section 2. A sentencing judge may sentence any eligible nonviolent offender, pursuant to
2 section 1 of this Act, to a home detention program operated pursuant to a contractual agreement
3 with the Department of Corrections for all or part of the offender's sentence.

4 Section 3. Prior to sentencing any offender directly to a home detention program, the
5 sentencing judge shall consider the following factors:

- 6 (1) The safety of victims and witnesses of the offender's criminal acts;
- 7 (2) The safety of the public-at-large;
- 8 (3) The seriousness of any offense committed by the offender together with any
9 information relating to the original charge against the offender;
- 10 (4) The offender's prior criminal record; and
- 11 (5) The ability of the offender to pay for the costs of home detention and restitution to
12 victims.

13 Section 4. Any offender sentenced to a home detention program who fails to carry out the
14 terms and conditions prescribed by the sentencing court shall be returned to the court and
15 resentenced.

16 Section 5. A sentencing judge may require any eligible nonviolent offender, as a condition
17 of probation, to serve an appropriate period of time in a home detention program operated
18 directly by the Department of Corrections, or in a home detention program operated pursuant
19 to a contractual agreement between the Department of Corrections and a local unit of
20 government or private entity.

21 Section 6. The State Board of Pardons and Paroles may require any eligible nonviolent
22 offender, as a condition of parole or modified parole, to serve an appropriate period of time in
23 a home detention program operated by the Department of Corrections, or in a home detention
24 program operated pursuant to a contractual agreement between the Department of Corrections
25 and a local unit of government or private entity. The State Board of Pardons and Paroles shall

1 use the same criteria to determine the eligibility of candidates for home detention as any
2 sentencing judge.

3 Section 7. The Department of Corrections may contract with local governmental entities and
4 private entities to develop, administer, and operate home detention programs which may be
5 utilized by any sentencing judge or by the State Board of Pardons and Paroles.

6 Section 8. Any home detention program shall include the following:

- 7 (1) Supervision of the offender by personal monitoring by a home detention officer
8 employed by the entity operating the home detention program;
- 9 (2) Supervision of the offender through monitoring by electronic devices which are
10 capable of detecting and reporting the offender's presence or absence at such
11 offender's approved residence, place of employment, or other court-approved activity;
- 12 (3) Access for the offender to attend any court-ordered counseling, substance abuse
13 treatment, vocational rehabilitation or training, or education; and
- 14 (4) Employment under which the offender shall pay for all or a reasonable portion of the
15 costs of monitoring and other costs specified by the sentencing judge or State Board
16 of Pardons and Paroles.

17 Section 9. If an offender fails to remain within the extended limits of a home detention
18 program as ordered by a sentencing judge, the offender has escaped from custody and is, upon
19 conviction thereof, guilty of a violation of § 22-11A-2. An offender on parole who fails to remain
20 within the limits of a home detention program is in violation of parole pursuant to § 24-15-24.