2009 DRAFTING REQUEST

Bill

Received: **03/20/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Tim Carpenter (608) 266-8535**

By/Representing: **Stuart**

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - domestic abuse**
Criminal Law - miscellaneous

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Carpenter@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

GPS tracking for domestic violence offenders

Instructions:

companion bill to 09-1284

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	phurley 03/20/2009	bkraft 03/26/2009		_____ _____			S&L Crime
/1			jfrantze 03/26/2009	_____ _____	sbasford 03/26/2009	cduerst 03/26/2009	

FE Sent For: "/1" @ intro. 4/24/09 **<END>**

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	phurley	1 bjk 3/23	3/26	3/26			

FE Sent For:

<END>

Hurley, Peggy

From: Ewy, Stuart
Sent: Friday, March 20, 2009 11:35 AM
To: Reader, Chris; Hurley, Peggy
Subject: RE: lrb 1284

Hi Peggy -

Can you please draft this senate companion for us?

Let me know if you have any questions or comments,

Regards,

G. Stuart Ewy
Office of Senator Tim Carpenter
State Capitol 306 S
608.266.8535

From: Reader, Chris
Sent: Friday, March 20, 2009 11:30 AM
To: Hurley, Peggy
Cc: Ewy, Stuart
Subject: lrb 1284

Hi Peggy,

Rep. Zipperer is authorizing Senator Carpenter to access LRB 1284 in order to have a senate companion bill drafted.

Thank you,

Chris Reader
Office of Rep. Zipperer
Wisconsin State Assembly
(608) 266-5120

State of Wisconsin
2009 – 2010 LEGISLATURE

LRB-1284/2
PJH:bjk:md

2009 BILL

AN ACT ***to renumber*** 813.122 (11), 813.123 (10), 813.125 (7) and 813.128 (2); ***to amend*** 16.705 (1n), 16.71 (5m), 20.410 (1) (gk) (title), 946.465, 971.37 (1m) (c) 1. (intro.), 971.37 (1m) (c) 2., 973.075 (1) (b) 1m. f. and 973.075 (1) (bm); and ***to create*** 20.410 (1) (gL), 301.49, 813.12 (8) (c), 813.122 (11) (b), 813.123 (10) (b), 813.125 (7) (b), 813.128 (2) (b), 814.75 (8m), 969.02 (3) (e) and 973.057 of the statutes; **relating to:** requiring persons who violate certain restraining orders or injunctions to be monitored by a global positioning system, making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, an individual who is, or who acts on behalf of, a victim of abuse, harassment, or threats may obtain a temporary restraining order against the person who has committed the acts of abuse, harassment, or making a threat. The restraining order bars the person from contacting the victim and requires the person to stay away from the victim's residence and other places temporarily occupied by the victim until a court conducts a hearing to determine whether the restraining order should be incorporated into a longer lasting injunction.

If the court determines that the person has engaged in, or may engage in, acts of abuse, harassment, or threats against the victim, the court may issue an

injunction against the person. An injunction may stay in effect for up to four years and bars the person from contacting the victim, requires the person to stay away from the victim's residence, and may require the person to stay away from other locations temporarily occupied by the victim.

A person who violates a restraining order or an injunction may be fined up to $1,000 and imprisoned for up to nine months, except that a person who violates a restraining order or injunction that was issued only for harassment faces the same fine but may be imprisoned for up to 90 days.

This bill allows a court to order a person who is convicted of violating a restraining order or an injunction to submit, for the duration of the restraining order or injunction, to global positioning system (GPS) tracking by the Department of Corrections (DOC). The bill also allows a court to order, as a condition of release, a person who is charged with violating a restraining order or an injunction to submit to GPS tracking. The bill requires the court to consider a request for GPS tracking by a district attorney or by the individual who asked for the restraining order.

Under the bill, DOC must monitor the person's whereabouts with a GPS device and, if the person enters into an area that he or she is required to avoid under the terms of the restraining order or injunction, DOC must immediately notify local law enforcement and the victim. Under the bill, everyone who violates a restraining order is required to pay a $200 surcharge in addition to his or her fine that will be used toward the costs of GPS tracking. The bill makes it a Class I felony, punishable by a fine up to $10,000, imprisonment for up to three years and six months, or both, for a person to tamper with the GPS device.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.705 (1n) of the statutes is amended to read:

2 16.705 **(1n)** Subsection (1) does not apply to a contract entered into by the
3 department of corrections for global positioning system tracking services under s.
4 301.48 (3) <u>or 301.49</u>.

5 **SECTION 2.** 16.71 (5m) of the statutes is amended to read:

16.71 **(5m)** The department shall delegate authority to the department of corrections to enter into contracts for global positioning system tracking services under ~~s.~~ ss. 301.48 (3) and 301.49.

SECTION 3. 20.410 (1) (gk) (title) of the statutes is amended to read:

20.410 **(1)** (gk) (title) *Global positioning system tracking devices for certain sex offenders.*

SECTION 4. 20.410 (1) (gL) of the statutes is created to read:

20.410 **(1)** (gL) *Global positioning system tracking devices for certain violators of restraining orders.* All moneys received from the domestic violence surcharge on court fines, as authorized under s. 971.37 (1m) (c) 1. or 973.057, for expenditures related to the global positioning system tracking program under s. 301.49.

SECTION 5. 301.49 of the statutes is created to read:

301.49 Global positioning system tracking for persons who violate certain orders or injunctions. (1) DEFINITIONS. In this section:

(a) "Exclusion zone" means a zone in which a person who is tracked using a global positioning system tracking device is prohibited from entering except for purposes of traveling through it to get to another destination.

(b) "Global positioning system tracking" means tracking using a system that actively monitors and identifies a person's location and timely reports or records the person's presence in an exclusion zone. "Global positioning system tracking" includes comparable technology.

(c) "Petitioner" means the person who petitioned for the restraining order or injunction that was issued under ss. 813.12 to 813.125 or enforced under s. 813.128.

(d) "Restraining order or injunction" means an order or an injunction issued pursuant to ss. 813.12 to 813.125 or enforced under s. 813.128.

1 **(2)** WHO IS COVERED; DURATION OF COVERAGE. (a) The department shall maintain
2 global positioning system tracking of a person who is ordered by a court to submit
3 to monitoring under s. 813.12 (8) (c), 813.122 (11) (b), 813.123 (10) (b), 813.125 (7) (b),
4 813.128 (2) (b), or 969.02 (3) (e), for the duration of the restraining order or
5 injunction. If a restraining order or injunction is extended beyond its original
6 expiration date, the department shall maintain global positioning system tracking
7 of the person for the duration of the extended restraining order or injunction.

8 (b) The department shall maintain global positioning system tracking of a
9 person who is subject to global positioning system tracking as a condition of release
10 under s. 969.02 (3) (e) for as long as the court orders under that paragraph.

11 **(3)** FUNCTIONS AND OPERATION OF TRACKING PROGRAM. (a) The department shall
12 implement a continuous global positioning tracking system to electronically monitor
13 the whereabouts of persons who are subject to this section. The system shall do all
14 of the following:

15 1. Use field monitoring equipment that supports cellular communications with
16 as large a coverage area as possible and shall automatically provide instantaneous
17 information regarding the whereabouts of a person who is being monitored,
18 including information regarding the person's presence in an exclusion zone
19 established under par. (c).

20 2. Use land line communications equipment to transmit information regarding
21 the location of persons who are subject to this section when they are in areas in which
22 no commercial cellular service is available.

23 3. Immediately alert the department and the local law enforcement agency
24 having jurisdiction over the exclusion zone if the person stays in any exclusion zone

1 for any longer period than the time needed to travel through the zone to get to
2 another destination.

3 4. Immediately alert the petitioner if the person stays in any exclusion zone for
4 any longer period than the time needed to travel through the zone to get to another
5 destination.

6 (b) The department shall contract with a vendor using a competitive process
7 as described under s. 16.75 to provide staff in this state to install, remove, and
8 maintain equipment related to global positioning system tracking for purposes of
9 this section. The term of the contract may not exceed 3 years.

10 (c) For each person who is subject to global positioning system tracking under
11 this section, the department shall create an individualized exclusion zone for the
12 person, if necessary to protect public safety. In creating an exclusion zone, the
13 department shall include any location that the person is ordered to avoid or enjoined
14 from entering under the restraining order or injunction that the person violated or
15 is alleged to have violated.

16 **(4)** TERMINATION IF PERSON MOVES OUT OF STATE. Notwithstanding sub. (2), if a
17 person who is subject to being tracked under this section moves out of state, the
18 department shall terminate the person's tracking. If the person returns to the state
19 during the duration of the restraining order or injunction, the department shall
20 reinstate the person's tracking.

21 **SECTION 6.** 813.12 (8) (c) of the statutes is created to read:

22 813.12 **(8)** (c) If a person knowingly violates a temporary restraining order or
23 injunction issued under this section, the court may report the violation to the
24 department of corrections immediately upon the person's conviction and may order
25 the person to submit to global position system tracking under s. 301.49.

1 **SECTION 7.** 813.122 (11) of the statutes is renumbered 813.122 (11) (a).

2 **SECTION 8.** 813.122 (11) (b) of the statutes is created to read:

3 813.122 **(11)** (b) If a person knowingly violates a temporary restraining order
4 or injunction issued under this section, the court may report the violation to the
5 department of corrections immediately upon the person's conviction and may order
6 the person to submit to global position system tracking under s. 301.49.

7 **SECTION 9.** 813.123 (10) of the statutes is renumbered 813.123 (10) (a).

8 **SECTION 10.** 813.123 (10) (b) of the statutes is created to read:

9 813.123 **(10)** (b) If a person knowingly violates a temporary restraining order
10 or injunction issued under this section, the court may report the violation to the
11 department of corrections immediately upon the person's conviction and may order
12 the person to submit to global position system tracking under s. 301.49.

13 **SECTION 11.** 813.125 (7) of the statutes is renumbered 813.125 (7) (a).

14 **SECTION 12.** 813.125 (7) (b) of the statutes is created to read:

15 813.125 **(7)** (b) If a person knowingly violates a temporary restraining order or
16 injunction issued under this section, the court may report the violation to the
17 department of corrections immediately upon the person's conviction and may require
18 the person to submit to global position system tracking under s. 301.49.

19 **SECTION 13.** 813.128 (2) of the statutes is renumbered 813.128 (2) (a).

20 **SECTION 14.** 813.128 (2) (b) of the statutes is created to read:

21 813.128 **(2)** (b) If a person knowingly violates a foreign protection order
22 enforced under this section, the court may report the violation to the department of
23 corrections immediately upon the person's conviction and may require the person to
24 submit to global position system tracking under s. 301.49.

25 **SECTION 15.** 814.75 (8m) of the statutes is created to read:

814.75 **(8m)** The domestic violence surcharge under s. 971.37 (1m) (c) 1. or 973.057.

SECTION 16. 946.465 of the statutes is amended to read:

946.465 Tampering with a global positioning system tracking device. Whoever, without the authorization of the department of corrections, intentionally tampers with, or blocks, diffuses, or prevents the clear reception of, a signal transmitted by, a global positioning system tracking device or comparable technology that is provided under s. 301.48 <u>or 301.49</u> is guilty of a Class I felony.

SECTION 17. 969.02 (3) (e) of the statutes is created to read:

969.02 **(3)** (e) If the person is charged with violating a restraining order or injunction issued under ss. 813.12 to 813.125 or an order or modification enforced under s. 813.128, require the person to submit to global positioning system tracking under s. 301.49 and may require the person to participate in mental health treatment, anger management, or individual counseling. The judge shall consider a request by the district attorney or the petitioner, as defined in s. 301.49 (1) (c), in determining whether to issue an order under this paragraph.

SECTION 18. 971.37 (1m) (c) 1. (intro.) of the statutes is amended to read:

971.37 **(1m)** (c) 1. (intro.) The agreement may provide as one of its conditions that a person covered under sub. (1) (b) or (c) pay the domestic abuse surcharge under s. 973.055 <u>and, if applicable, the domestic violence surcharge under s. 973.057</u>. Payments and collections <u>of the domestic abuse surcharge and the domestic violence surcharge</u> under this subdivision are subject to s. 973.055 (2) to (4) <u>or s. 973.057 (2) and (3), respectively,</u> except as follows:

SECTION 19. 971.37 (1m) (c) 2. of the statutes is amended to read:

971.37 **(1m)** (c) 2. If the prosecution is resumed under sub. (2) and the person is subsequently convicted, a court shall give the person credit under s. 973.055 and, if applicable, s. 973.057 for any amount paid under subd. 1.

SECTION 20. 973.057 of the statutes is created to read:

973.057 Domestic violence surcharge. (1) If a court convicts a person under s. 813.12 to 813.128, or a conforming municipal ordinance, the court shall impose a domestic violence surcharge under ch. 814 of $200 for each offense.

(2) (a) If the surcharge is imposed by a court of record, after the court determines the amount due, the clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25 (3) (f) 2.

(b) If the surcharge is imposed by a municipal court, after a determination by the court of the amount due, the court shall collect and transmit the amount to the treasurer of the county, city, town, or village, and that treasurer shall make payment to the secretary of administration as provided in s. 66.0114 (1) (bm).

(3) All moneys collected from domestic violence surcharges shall be deposited by the secretary of administration in s. 20.410 (gL) and utilized in accordance with s. 301.49.

SECTION 21. 973.075 (1) (b) 1m. f. of the statutes is amended to read:

973.075 **(1)** (b) 1m. f. In the commission of a crime under s. 813.12 (8) (a), 813.122 (11) (a), 813.123 (10) (a), 813.125 (7) (a), 813.128 (2) (a), or 940.32.

SECTION 22. 973.075 (1) (bm) of the statutes is amended to read:

973.075 **(1)** (bm) Any property used in the commission of a crime under s. 813.12 (8) (a), 813.122 (11) (a), 813.123 (10) (a), 813.125 (7) (a), 813.128 (2) (a), or

1 940.32, but if the property is encumbered by a bonafide perfected security interest
2 that was perfected before the date of the commission of the current violation and the
3 holder of the security interest neither had knowledge of nor consented to the
4 commission of that violation, the holder of the security interest shall be paid from the
5 proceeds of the forfeiture.

6 **(END)**

Barman, Mike

From: Ewy, Stuart
Sent: Thursday, March 26, 2009 10:39 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-2415/1 Topic: GPS tracking for domestic violence offenders

Please Jacket LRB 09-2415/1 for the SENATE.

Thank you!

Regards,

G. Stuart Ewy
Office of Senator Tim Carpenter
State Capitol 306 S
608.266.8535