



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Assembly Bill 263

**Assembly Substitute
Amendment 1, as Amended by
Assembly Amendment 1 to the
Substitute**

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ASSEMBLY SUBSTITUTE AMENDMENT 1, AS AMENDED BY ASSEMBLY AMENDMENT 1

This proposal deals with persons who violate a restraining order or injunction relating to domestic abuse, child abuse, individuals at risk, or harassment. See ss. 813.12 to 813.125, Stats. Violation of a restraining order or injunction is a misdemeanor under current law. The proposal authorizes a court to order that a person who knowingly violates a restraining order or injunction, as a condition of release under s. 969.02 (3), Stats., or upon conviction of the violation, to submit to global positioning system (GPS) tracking. (The court may also require, as a condition of release, that the alleged violator participate in mental health treatment, a batterer's intervention program, or individual counseling.)

Court Order to Submit to GPS Tracking

Before issuing a GPS tracking order, the court is required to consider whether the restraining order or injunction violator is likely to cause serious bodily harm to the person who petitioned for the restraining order or injunction (petitioner), poses a serious threat to public safety, or is likely to intimidate witnesses. The court is required to make these considerations by weighing the following factors:

- Whether the violator has allegedly caused physical injury, intentionally abused pets or damaged property, or committed sexual assault, an act of strangulation, or forcible entry to gain access to the petitioner.
- Whether the violator has threatened any individual, including the petitioner, with harm.
- Whether the violator has access to a firearm or other dangerous weapon and a history of improperly using or threatening to use a firearm or other dangerous weapon.

- Whether the violator has expressed suicidal ideation.
- Whether the violator has exhibited obsessive or controlling behavior toward the petitioner or any member of the petitioner's family, including stalking, surveillance, or isolation of the petitioner or any member of the petitioner's family.
- The violator's mental health history.
- Whether the violator has a history of abusing alcohol or a controlled substance.

(Note that **Assembly Amendment 1** to the substitute amendment deletes the following factor: "Whether the [violator] and the petitioner have recently separated, divorced, or otherwise terminated their relationship.")

The court is authorized to request the Department of Corrections (DOC) to provide a validated danger assessment of the violator in order to assist the court in making the above findings.

If, after weighing the factors set forth above, the court determines that the violator is likely to cause serious bodily harm to the petitioner, poses a threat to public safety, or is likely to intimidate witnesses, and the court determines that another alternative, including imprisonment, is more likely to protect the petitioner or the public or more likely to prevent intimidation of witnesses, the court may not enter a GPS tracking order.

If the court enters a GPS tracking order, the court is required to provide the petitioner with a referral to a domestic violence or sexual assault victim service provider.

GPS Tracking; DOC's Duties

DOC is required to maintain GPS tracking of a person (who is not in jail or prison) who is ordered by a court to submit to GPS tracking under the proposal for the duration of the restraining order or injunction, including any extension of the order or injunction. If GPS tracking is ordered as a condition of release, DOC is required to maintain the GPS tracking for as long as the court orders.

DOC is required to implement a continuous GPS tracking system to electronically monitor the location of persons subject to an order. The system must:

- Use field monitoring equipment that supports cellular communications with as large a coverage area as possible and automatically provides instantaneous information regarding the location of a person subject to monitoring.
- Use landline communications equipment to transmit information regarding the location of persons subject to monitoring when they are in areas in which no commercial cellular service is available.
- Immediately alert DOC, local law enforcement, and the petitioner when the violator enters any exclusion zone. An "exclusion zone" is defined as a zone in which a person who is tracked using a GPS tracking device is prohibited from entering.

The DOC is required to create an individual exclusion zone for each person subject to a GPS tracking order, if necessary to protect public safety. The department is required to include in the zone any location the person is ordered to avoid or enjoined from entering under the restraining order or injunction that the person violated or is alleged to have violated.

If a person subject to a GPS tracking order moves out of state, the DOC is required to terminate tracking of that person and resume tracking if the person returns to the state during the duration of the restraining order or injunction.

Payment of Costs by Individuals Subject to GPS Tracking

DOC is required to determine, for each person ordered to submit to GPS tracking:

- The cost of GPS tracking for that person.
- How much of the cost the person is able to pay based on specified factors.

If required by DOC, a person subject to GPS tracking must pay for the cost of tracking up to the amount the person is found to be able to pay.

Notice to Petitioner Relating to GPS Tracking

DOC is required to provide to each petitioner:

- Notice when the person subject to GPS tracking is released from incarceration.
- The exclusion zones that the violator must avoid and the amount of time the violator is allowed to remain in an exclusion zone before DOC and law enforcement receive an alert.
- An explanation of the failure rates associated with GPS tracking programs and an explanation of situations in which a person may not be detected by the tracking program.

GPS Tracking Surcharge

A person convicted of violating a restraining order or injunction is required to pay a GPS system tracking surcharge of \$200 for each offense. Moneys collected from the surcharge are to be deposited in an appropriation for expenditures related to the GPS tracking system program under the proposal. If the unencumbered balance of the appropriation exceeds \$100,000 immediately before the end of any fiscal year, DOC is required to transfer the excess to the appropriation for grants for domestic abuse service organizations.

If moneys collected from the surcharge and individual payments from persons subject to GPS tracking are inadequate to fund the GPS tracking program, DOC may, by rule, increase the surcharge by not more than 5% each year to cover the costs of the program.

Tampering With GPS Tracking System

Whoever, without authorization of DOC, intentionally tampers with, or blocks, diffuses, or prevents a clear reception of, a signal transmitted by a GPS tracking under the proposal is guilty of a Class I felony.

DOC Contracting Requirement

DOC is required to contract with a vendor using a competitive process under s. 16.75, Stats., to provide staff to install, remove, and maintain equipment related to the GPS tracking system under the proposal. The term of the contract may not exceed three years.

DOC Implementation Rules

DOC is required to promulgate rules to implement the GPS tracking system program created by the proposal. The department is required to consult with the Wisconsin Coalition Against Domestic Violence, law enforcement, judges, district attorneys, and probation officers in developing the implementation plan.

Effective Date

With the exception of the \$200 surcharge and DOC implementation rule-making, the act takes effect on the first day of the sixth month beginning after publication.

DIFFERENCES BETWEEN SUBSTITUTE AMENDMENT AND ORIGINAL BILL

Among the general changes made by the substitute amendment to the original bill are:

- Adds specific considerations and factors for the court to consider in ordering GPS tracking; specifies when a court may not order GPS tracking; authorizes a court to request a validated danger assessment from DOC; and requires the court to provide the petitioner with a referral to a domestic violence or sexual assault system service provider.
- Modifies the definition of “exclusion zone” so that it may not be entered for the purpose of traveling through it to get to another destination.
- Requires DOC to determine the cost of GPS tracking for each individual required to submit to tracking and authorizes DOC to require the person to pay for the cost of tracking, consistent with ability to pay.
- Requires DOC to provide notice to a petitioner of when a person ordered to submit to GPS tracking is released from incarceration, of the exclusion zones that that individual must avoid, and an explanation of failure rates associated with GPS tracking programs and the situations in which a person may not be detected by the tracking program.
- Clarifies the relationship of the new GPS tracking system surcharge and the current domestic abuse surcharge.

- Provides a delayed effective date and specific initial applicability provisions.

Legislative History

Assembly Substitute Amendment 1 was offered by Representative Zipperer. Assembly Amendment 1 to the substitute was offered by Representative Kessler. The Assembly Committee on Criminal Justice recommended adoption of Assembly Amendment 1 to the substitute by a vote of Ayes, 9; Noes, 0; and recommended adoption of the substitute amendment, as amended, by a vote of Ayes, 9; Noes, 0. The committee recommended passage of the proposal, as amended by a vote of Ayes, 9; Noes, 0.

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