2011 DRAFTING REQUEST

Assembly Amendment (AA-SB104)

Received: **02/24/2012**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Tyler August (608) 266-1190**

By/Representing:

May Contact:

Drafter: **phurley**

Subject: **Courts - garn/injunct**
Criminal Law - domestic abuse

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.August@legis.wi.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Effective dates for GPS

Instructions:

add in delayed effective dates; clean up senate amendment language

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Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?							
/1	phurley 02/24/2012	jdyer 02/27/2012	rschluet 02/27/2012	_____ _____	sbasford 02/27/2012	sbasford 02/27/2012	

FE Sent For:

<END>

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/?	phurley	1 2/27 jld	2/27/12				

FE Sent For:

<END>

State of Wisconsin
2011 – 2012 LEGISLATURE

LRBa2451/1
PJH:jld:jf

ASSEMBLY AMENDMENT 3,

TO 2011 ASSEMBLY BILL 175

February 21, 2012 – Offered by Representative AUGUST.

At the locations indicated, amend the bill as follows:

1. Page 3, line 17: after that line insert:

"(am) "Exclusion zone violation" means entry into an exclusion zone except for purposes of traveling through an exclusion zone to get to another destination, unless the person is prohibited by the department from making such entry.".

2. Page 3, line 23: delete "ss. 813.12 to 813.125 or enforced under s. 813.128" and substitute "s. 813.12 or 813.125".

3. Page 3, line 25: delete that line and substitute "pursuant to s. 813.12 or 813.125.".

4. Page 4, line 3: delete "or 969.02 (3) (e)".

5. Page 4, line 4: delete lines 4 to 7 and substitute "duration of the person's period of probation.".

1 **6.** Page 4, line 9: delete "release" and substitute "extended supervision.".

2 **7.** Page 4, line 10: delete that line.

3 **8.** Page 4, line 23: delete lines 23 to 25 and substitute:

4 "3. Immediately alert the department if the person commits an exclusion zone
5 violation. The department shall immediately notify the law enforcement agency
6 having jurisdiction over the exclusion zone and the petitioner of any exclusion zone
7 violation.".

8 **9.** Page 5, line 7: delete "if" and substitute "as".

9 **10.** Page 5, line 7: delete "public safety" and substitute "the petitioner".

10 **11.** Page 5, line 8: after "department shall" insert "consider input from the
11 petitioner and shall".

12 **12.** Page 6, line 15: after that line insert:

13 "**SECTION 5d.** 813.12 (8) of the statutes is amended to read:

14 813.12 **(8)** PENALTY. (a) Whoever knowingly violates a temporary restraining
15 order or injunction issued under sub. (3) or (4) shall be fined not more than ~~$1,000~~
16 $10,000 or imprisoned for not more than 9 months or both.

17 **SECTION 5r.** 813.125 (7) of the statutes is amended to read:

18 813.125 **(7)** PENALTY. Whoever violates a temporary restraining order or
19 injunction issued under this section shall be fined not more than ~~$1,000~~ $10,000 or
20 imprisoned not more than 90 days or both.".

21 **13.** Page 6, line 18: delete "ss." and substitute "s.".

22 **14.** Page 6, line 18: delete "to" and substitute "or".

23 **15.** Page 6, line 19: delete "or any order enforced under s. 813.128".

1 **16.** Page 6, line 23: delete " shall consider whether" and substitute "must find
2 that".

3 **17.** Page 6, line 24: delete "likely" and substitute "more likely than not".

4 **18.** Page 7, line 1: delete ", poses a serious threat to public safety, or is likely
5 to".

6 **19.** Page 7, line 2: delete "intimidate witnesses".

7 **20.** Page 7, line 17: after "**(3)**" insert "(a)".

8 **21.** Page 7, line 18: delete "danger" and substitute "risk".

9 **22.** Page 7, line 18: after that line insert:

10 "(b) The court may request a domestic violence prevention or treatment center
11 in the court's county to complete a danger assessment of the person in order to make
12 the findings required in sub. (2).".

13 **23.** Page 7, line 23: delete "likely" and substitute "more likely than not".

14 **24.** Page 7, line 24: delete ", poses a serious threat to public safety, or is likely".

15 **25.** Page 7, line 25: delete "to intimidate witnesses".

16 **26.** Page 8, line 2: delete "or the public or more likely to prevent the" and
17 substitute ", the court may not enter an order under sub. (1).".

18 **27.** Page 8, line 3: delete that line.

19 **28.** Page 8, line 15: delete lines 15 and 16 and substitute "injunction issued
20 under s. 813.12 or 813.125,".

21 **29.** Page 8, line 17: delete "under s. 301.49 and".

22 **30.** Page 9, line 15: delete "ss." and substitute "s.".

1 **31.** Page 9, line 15: delete "to 813.128" and substitute "or 813.125".

2 **32.** Page 10, line 9: after that line insert:

3 "**SECTION 13m.** 973.09 (2) (ar) of the statutes is created to read:

4 973.09 **(2)** (ar) Notwithstanding par. (a) 1r., and except as provided in par. (a)
5 2., for a violation punishable under s. 813.12 (8) or 813.125 (7), not less than 6 months
6 or more than the period of the injunction issued under s. 813.12 or 813.125.".

7 **33.** Page 10, line 23: delete "the first day of the 6th".

8 **34.** Page 10, line 24: delete "month beginning after publication" and
9 substitute "January 1, 2014".

10 **35.** Page 11, line 3: delete "the day after" and substitute "July 1, 2013.".

11 **36.** Page 11, line 4: delete that line.

12 **(END)**

State of Wisconsin
2011 – 2012 LEGISLATURE

LRB–4112/1
PJH:jld:rs

ENGROSSED 2011 SENATE BILL 104

February 24, 2012 – Printed by direction of ASSEMBLY CHIEF CLERK.

1 AN ACT ***to amend*** 16.705 (1n), 16.71 (5m), 20.410 (1) (gk) (title), 813.12 (8),
2 813.125 (7), 946.465, 971.37 (1m) (c) 1. (intro.) and 971.37 (1m) (c) 2.; and ***to***
3 ***create*** 20.410 (1) (gL), 301.49, 813.129, 814.75 (8m), 969.02 (3) (e), 973.05 (2m)
4 (jm), 973.057 and 973.09 (2) (ar) of the statutes; **relating to:** requiring persons
5 who violate certain restraining orders or injunctions to be monitored by a global
6 positioning system, granting rule–making authority, making an appropriation,
7 and providing a penalty.

Analysis by the Legislative Reference Bureau

Engrossment information:

The text of Engrossed 2011 Senate Bill 104, as passed by the senate on February 14, 2011, consists of the following documents adopted in the senate on February 14, 2011: the bill as affected by Senate Amendment 3 (as affected by Senate Amendment 1 thereto); and Senate Amendment 4.

Content of Engrossed 2011 Senate Bill 104:

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 certain restraining orders 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 to community supervision, 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. The bill requires the court to find, before ordering GPS tracking, that the person who violated the restraining order or injunction is more likely than not to cause serious bodily harm to the person who petitioned for the restraining order or injunction (petitioner). The bill allows the court to request DOC or a local domestic violence prevention or treatment center to provide an assessment of risk in order to determine whether the person is likely to cause serious bodily harm to the petitioner.

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. The bill requires DOC to consider input from the petitioner and develop a personalized exclusion zone into which the person may not enter in order to protect the petitioner. If the person enters the exclusion zone, the bill requires DOC to immediately notify local law enforcement and the petitioner.

The bill increases the fine for violating a domestic abuse or harassment restraining order or injunction from $1,000 to $10,000 and requires, if a person who commits a violation is placed on probation, a minimum period of probation of six months.

Under the bill, a person 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. Under the bill, the court may order the person to pay for 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.

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) or 301.49.

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

6 16.71 **(5m)** The department shall delegate authority to the department of
7 corrections to enter into contracts for global positioning system tracking equipment,
8 implementation, and tracking services under ~~s.~~ ss. 301.48 (3) and 301.49.

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

10 20.410 **(1)** (gk) (title) *Global positioning system tracking devices for certain sex*
11 *offenders.*

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

13 20.410 **(1)** (gL) *Global positioning system tracking devices for certain violators*
14 *of restraining orders.* All moneys received under s. 301.49 (5) and all moneys received
15 from the global positioning system tracking surcharge on court fines, as authorized
16 under s. 971.37 (1m) (c) 1. or 973.057, for expenditures related to the global
17 positioning system tracking program under s. 301.49. If the unencumbered balance
18 in this appropriation account exceeds $100,000 immediately before the end of any
19 fiscal year, the department of corrections shall transfer the excess to the
20 appropriation account under s. 20.437 (1) (hh) at the end of that fiscal year.

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

1 **301.49 Global positioning system tracking for persons who violate**
2 **certain orders or injunctions. (1)** DEFINITIONS. In this section:
3 (a) "Exclusion zone" means a zone in which a person who is tracked using a
4 global positioning system tracking device is prohibited from entering.
5 (am) "Exclusion zone violation" means entry into an exclusion zone except for
6 purposes of traveling through an exclusion zone to get to another destination, unless
7 the person is prohibited by the department from making such entry
8 (b) "Global positioning system tracking" means tracking using a system that
9 actively monitors and identifies a person's location and timely reports or records the
10 person's presence in an exclusion zone. "Global positioning system tracking"
11 includes comparable technology.
12 (c) "Petitioner" means the person who petitioned for the restraining order or
13 injunction that was issued under s. 813.12 or 813.125.
14 (d) "Restraining order or injunction" means an order or an injunction issued
15 pursuant to s. 813.12 or 813.125.
16 **(2)** WHO IS COVERED; DURATION OF COVERAGE. (a) The department shall maintain
17 global positioning system tracking of a person who is not in jail or in prison and who
18 is ordered by a court to submit to monitoring under s. 813.129 for the duration of the
19 person's period of probation.
20 (b) The department shall maintain global positioning system tracking of a
21 person who is subject to global positioning system tracking as a condition of extended
22 supervision.
23 **(3)** FUNCTIONS AND OPERATION OF TRACKING PROGRAM. (a) The department shall
24 implement a continuous global positioning tracking system to electronically monitor

1 the whereabouts of persons who are subject to this section. The system shall do all
2 of the following:

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

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

11 3. Immediately alert the department if the person commits an exclusion zone
12 violation. The department shall immediately notify the law enforcement agency
13 having jurisdiction over the exclusion zone and the petitioner of any exclusion zone
14 violation.

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

19 (c) For each person who is subject to global positioning system tracking under
20 this section, the department shall create an individualized exclusion zone for the
21 person, as necessary to protect the petitioner. In creating an exclusion zone, the
22 department shall consider input from the petitioner and shall include any location
23 that the person is ordered to avoid or enjoined from entering under the restraining
24 order or injunction that the person violated or is alleged to have violated.

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

6 **(5)** COSTS. (a) The department shall determine all of the following for each
7 person tracked:

8 1. The cost of global positioning system tracking for the person.

9 2. How much of the cost under subd. 1. the person is able to pay based on the
10 factors listed in par. (c).

11 (b) If required by the department, a person who is subject to global positioning
12 system tracking shall pay for the cost of tracking up to the amount calculated for the
13 person under par. (a) 2. The department shall collect moneys paid by the person
14 under this paragraph and credit those moneys to the appropriation account under
15 s. 20.410 (1) (gL).

16 (c) In determining how much of the costs the person is able to pay, the
17 department may consider the following:

18 1. The person's financial resources.

19 2. The present and future earning ability of the person.

20 3. The needs and earning ability of the person's dependents.

21 4. Any other factors that the department considers appropriate.

22 **(6)** NOTICE. The department shall provide all of the following to each petitioner:

23 (a) Notice when the person who is ordered by a court to submit to monitoring
24 under s. 813.129 is released from incarceration.

(b) The exclusion zones that the person must avoid and the amount of time that the person is allowed to remain in an exclusion zone before the department and law enforcement receive an alert.

(c) An explanation of the failure rates associated with global positioning system tracking programs and an explanation of situations in which a person may not be detected by the tracking program.

SECTION 5d. 813.12 (8) of the statutes is amended to read:

813.12 **(8)** PENALTY. (a) Whoever knowingly violates a temporary restraining order or injunction issued under sub. (3) or (4) shall be fined not more than ~~$1,000~~ $10,000 or imprisoned for not more than 9 months or both.

SECTION 5r. 813.125 (7) of the statutes is amended to read:

813.125 **(7)** PENALTY. Whoever violates a temporary restraining order or injunction issued under this section shall be fined not more than ~~$1,000~~ $10,000 or imprisoned not more than 90 days or both.

SECTION 6. 813.129 of the statutes is created to read:

813.129 Global positioning system tracking. (1) If a person knowingly violates a temporary restraining order or injunction issued under s. 813.12 or 813.125, in addition to other penalties provided in those sections, the court may report the violation to the department of corrections immediately upon the person's conviction and may order the person to submit to global positioning system tracking under s. 301.49.

(2) Before issuing an order under sub. (1), the court must find that the person is more likely than not to cause serious bodily harm to the person who petitioned for the restraining order or injunction or poses the petitioner weighing the following factors:

1 (a) Whether the person has allegedly caused physical injury, intentionally
2 abused pets or damaged property, or committed sexual assault, an act of
3 strangulation or forcible entry to gain access to the petitioner.
4 (b) Whether the person has threatened any individual, including the petitioner,
5 with harm.
6 (c) Whether the person has a history of improperly using or threatening to use
7 a firearm or other dangerous weapon.
8 (d) Whether the person has expressed suicidal ideation.
9 (e) Whether the person has exhibited obsessive or controlling behavior toward
10 the petitioner or any member of the petitioner's family, including stalking,
11 surveillance, or isolation of the petitioner or any member of the petitioner's family.
12 (f) The person's mental health history.
13 (g) Whether the person has a history of abusing alcohol or a controlled
14 substance.
15 **(3)** (a) The court may request the department of corrections to provide a
16 validated risk assessment of the person in order to make the findings required in sub.
17 (2).
18 (b) The court may request a domestic violence prevention or treatment center
19 in the court's county to complete a danger assessment of the person in order to make
20 the findings required in sub. (2).
21 **(4)** If a court enters an order under sub. (1), the court shall provide the person
22 who petitioned for the restraining order or injunction with a referral to a domestic
23 violence or sexual assault victim service provider.
24 **(5)** If, after weighing the factors set forth under sub. (2), the court determines
25 that a person is more likely than not to cause serious bodily harm to the person who

petitioned for the restraining order or injunction or poses the petitioner and the court determines that another alternative, including imprisonment, is more likely to protect or prevent the intimidation of the person who petitioned for the restraining order or injunction, the court may not enter an order under sub. (1).

SECTION 7. 814.75 (8m) of the statutes is created to read:

814.75 **(8m)** The global positioning system tracking surcharge under s. 971.37 (1m) (c) 1. or 973.057.

SECTION 8. 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 9. 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 s. 813.12 or 813.125, may require the person to participate in mental health treatment, a batterer's intervention program, 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 10. 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 global positioning system tracking surcharge under s. 973.057. If the agreement requires the person to pay the global positioning system</u>

1 tracking surcharge under s. 973.057, the agreement shall also require the person to
2 pay the domestic abuse surcharge under s. 973.055. Payments and collections of the
3 domestic abuse surcharge and the global positioning system tracking surcharge
4 under this subdivision are subject to s. 973.055 (2) to (4) or to s. 973.057 (2) and (3),
5 respectively, except as follows:

6 **SECTION 11.** 971.37 (1m) (c) 2. of the statutes is amended to read:

7 971.37 **(1m)** (c) 2. If the prosecution is resumed under sub. (2) and the person
8 is subsequently convicted, a court shall give the person credit under s. 973.055 and,
9 if applicable, s. 973.057 for any amount paid under subd. 1.

10 **SECTION 12.** 973.05 (2m) (jm) of the statutes is created to read:

11 973.05 **(2m)** (jm) To payment of the global positioning system tracking
12 surcharge until paid in full.

13 **SECTION 13.** 973.057 of the statutes is created to read:

14 **973.057 Global positioning system tracking surcharge. (1)** If a court
15 convicts a person under s. 813.12 or 813.125, or a conforming municipal ordinance,
16 the court shall impose a global positioning system tracking surcharge under ch. 814
17 of $200 for each offense.

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

23 (b) If the surcharge is imposed by a municipal court, after a determination by
24 the court of the amount due, the court shall collect and transmit the amount to the

1 treasurer of the county, city, town, or village, and that treasurer shall make payment
2 to the secretary of administration as provided in s. 66.0114 (1) (bm).

3 **(3)** All moneys collected from global positioning system tracking surcharges
4 shall be deposited by the secretary of administration in s. 20.410 (gL) and utilized
5 in accordance with s. 301.49.

6 **(4)** If the moneys collected under this section prove inadequate to fund the
7 global positioning system tracking program under s. 301.49, the department may, by
8 rule, increase the surcharge under sub. (1) by not more than 5 percent each year to
9 cover the costs of the global positioning system tracking program.

10 **SECTION 13m.** 973.09 (2) (ar) of the statutes is created to read:

11 973.09 **(2)** (ar) Notwithstanding par. (a) 1r., and except as provided in par. (a)
12 2., for a violation punishable under s. 813.12 (8) or 813.125 (7), not less than 6 months
13 or more than the period of the injunction issued under s. 813.12 or 813.125.

14 **SECTION 14. Nonstatutory provisions.**

15 (1) The department of corrections shall promulgate rules to implement section
16 301.49 of the statutes, as created by this act. The department of corrections shall
17 consult with one or more organizations or agencies that are dedicated to the
18 prevention of domestic violence, law enforcement agencies, judges, district
19 attorneys, and probation officers in developing the implementation plan.

20 **SECTION 15. Initial applicability.**

21 (1) The treatment of sections 20.410 (1) (gL), 814.75 (8m), 971.37 (1m) (c) 1.
22 (intro.) and 2., 973.05 (2m) (jm), and 973.057 of the statutes first applies to a person
23 who is convicted or who enters into a deferred prosecution agreement on the effective
24 date of this subsection.

1 (2) The treatment of sections 301.49, 813.129, 946.465, and 969.02 (3) (e) of the
2 statutes first applies to violations that occur on the effective date of this subsection.

3 **SECTION 16. Effective dates.** This act takes effect on the first day of the 6th
4 month beginning after publication, except as follows: Jan 1, 2014

5 (1) The treatment of sections 16.705 (1n), 16.71 (5m), 20.410 (1) (gk) (title) and
6 (gL), 814.75 (8m), 971.37 (1m) (c) 1. (intro.) and 2., 973.05 (2m) (jm), and 973.057 of
7 the statutes and SECTIONS 14 and 15 (1) of this act take effect on the day after
8 ~~publication.~~

9 **(END)**

July 1, 2013

State of Wisconsin
2011 – 2012 LEGISLATURE

LRBa2487/1
PJH:...

jld

ASSEMBLY AMENDMENT ,

TO 2011 SENATE BILL 104

by Monday PM (2-27) please

2-21-12

At the locations indicated, amend the engrossed bill as follows:

1. Page 7, line 24: delete "or poses the petitioner" and substitute "," a comma.

2. Page 9, line 1: delete "or poses the petitioner".

3. Page 9, line 3: delete "or prevent the intimidation of".

4. Page 12, line 3: delete "the first day of the 6th".

5. Page 12, line 4: delete "month beginning after publication" and substitute "January 1, 2014".

6. Page 12, line 7: delete "the day after" and substitute "July 1, 2013".

7. Page 12, line 8: delete that line.

(END)