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(AC-CJ)**

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- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

PUBLIC HEARING ON THE REPEAT DOMESTIC VIOLENCE PREVENTION ACT

“CINDY’S LAW”

Packet

ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE

MAY 29, 2009

Lead Authors:

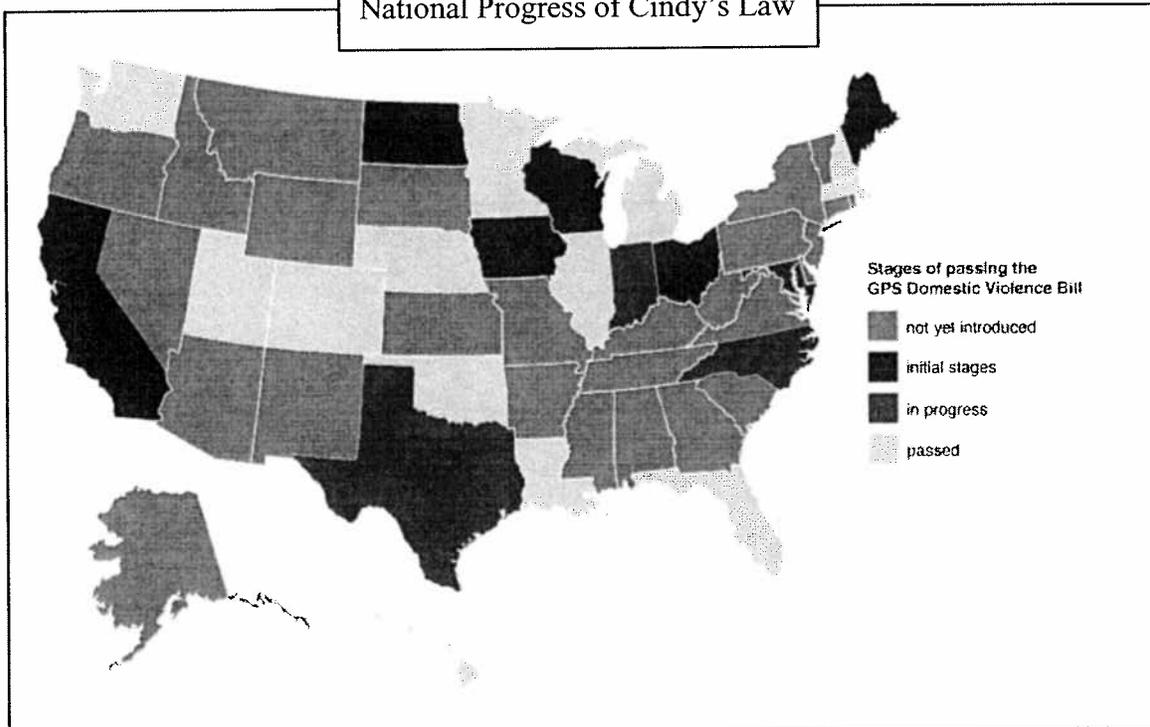
Rep. Rich Zipperer (R-Pewaukee)
Sen. Tim Carpenter (D-Milwaukee)

AB 263
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National Progress of Cindy’s Law





STATE REPRESENTATIVE

RICH ZIPPERER

Rep. Rich Zipperer
Testimony on Assembly Bill 263
Assembly Committee on Criminal Justice
May 28, 2009

Thank you Chairman Turner and committee members for holding this hearing today on the Repeat Domestic Violence Prevention Action -- Wisconsin's version of "Cindy's Law." It was the murder of Cindy Bischof, and the relentless determination of her family and friends to honor her memory and defend other victims that has sparked this growing national effort. The committee will have the opportunity to hear Cindy's story from her bother, Mike Bischof, during his testimony later, but first I would like lay out what this bill proposes.

Today marks another step forward in our state's effort to protect victims of domestic abuse. This legislation will grant judges the discretion to order GPS monitoring on high risk individuals who are charged with violating a protective order placed against them. The protective order delineates specific safe zones - such as the victim's home and place of work - where the offender may not go. Once under GPS monitoring, local police and the victim will immediately be notified if an offender enters a restricted area -- allowing for quick, and potentially life saving, response.

Illinois, Massachusetts, and at least 10 other states have already implemented similar proposals and the results have been highly encouraging -- in fact a study of the Massachusetts program found no new assaults by those high risk offenders subject to GPS monitoring. Lives are being saved across the country and it is time to bring this successful effort to Wisconsin.

In other states, the cost of one system has ranged from \$8 to \$19 dollars per day and, under this proposal, that cost will be paid for by fines levied on those who violate protection orders -- creating no new cost to the taxpayers.

In developing this legislation, we have reached out to other states and organizations to learn from what is happening around the country. As a result, I am drafting an amendment to clarify several portions of this bill and ensure that the GPS monitoring is applied to the appropriate individuals. The amendment will provide for a set of criteria and risk assessments to guide judges in deciding when to require the monitoring. It will also allow for a time period for counties, municipalities, and the state to work together to develop implementation plans. And, among other provisions, it will provide information to victims so that they understand the limits of the technology.

I am pleased to announce that we have a broad, bipartisan coalition of 51 cosponsors in the Assembly, including the Chairman and several members of this committee. Given this level of support, I am hopeful this legislation will quickly work its way through the legislature and to the Governor's desk so that victims of violence can receive these added protections as soon as possible.

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**STATEMENT IN SUPPORT OF
ASSEMBLY BILL No. 263
Submitted by
Diane L. Rosenfeld, J.D., LL.M
Lecturer on Law
Harvard Law School¹**

Dear Assembly Committee on Criminal Justice, Chair Representative Bob Turner and Honorable Members of the Wisconsin Assembly Committee on Criminal Justice:

Almost one year ago to the day, Elisabeth Witte, a leader of the Milwaukee Symphony Chorus was stabbed to death by her ex-husband in the parking lot of Marcus Center for the Performing Arts. She had previously obtained a restraining order against him, and court records show that he was accused of violating the order.¹ A few days ago on May 22, 2009, Pa Hou Vang was murdered by her estranged husband Dang Xiong who then committed suicide. Xiong had previously been arrested for domestic abuse in La Crosse County and had made previous threats to Pa Vang.²

The story is all too familiar. A woman trying to escape a violent intimate partner seeks help from the justice system by obtaining an order of protection. He violates it, his violence towards her escalates in retaliation for her leaving him, and ultimately, he kills her in revenge. As you may know, Cindy Bischof, a well-loved real estate broker from Illinois, was killed by an ex-boyfriend who had violated his order of protection at least three times.

These tragedies, however, are preventable. The good news is that we now have tools to make orders of protection much more effective through the use of GPS electronic monitoring of a domestic violence offender. Orders of protection (also called restraining orders or stay-away orders) mandate that an offender be excluded from certain areas to give the victim safety in her home, her job, schools the children may attend, and other places. Through the use of GPS technology, law enforcement can ensure that the offender is staying away from those exclusion zones. Moreover, they can respond immediately to any breach and can notify the victim. This warning could make the difference between life and death for a domestic violence victim. And in Wisconsin, the Wisconsin Coalition Against Domestic Violence reports 49 deaths in 2007 up from 36 domestic violence homicides in 2006.³

¹ "MSO Chorus singer killed after concert: Ex-husband arrested in downtown attack," <http://www.jsonline.com/news/waukesha/29544699.html> (last visited May 27, 2009).

² "Man Shoots, Kills Estranged Wife and Himself on La Crosse's North Side" http://www.wkbt.com/Global/story.asp?S=10407914&nav=menu239_12_7_2 (last visited May 27, 2009).

³ Wisconsin Coalition Against Domestic Violence, Domestic Abuse Homicide Report (2006-2007) http://store.wcadv.org/merchant.mvc?Screen=PROD&Store_Code=WCADV&Product_Code=HOM2006-7 (last accessed May 27, 2009).

Wisconsin can join the states that are on the forefront in the fight to end domestic violence homicide. The state should be proud of the Wisconsin Assembly's prompt and careful attention to this critical piece of legislation. In honor of Cindy's memory, and all the victims and their families in Wisconsin, and to prevent this tragic fate befalling yet another victim of domestic violence homicide, I urge you to pass this Bill.

In Massachusetts, we have legislation authorizing the use of Global Positioning System (GPS) monitoring for those who violate civil domestic violence protection orders. Implementation of this legislation throughout the state has been very successful. The Greater Newburyport High Risk Case Management Team has been using GPS monitoring in addition to danger assessments, and has prevented re-assaults of the victims who have been identified as at high risk. This is described in more detail below. Wisconsin can learn from and build upon the success in Massachusetts. As a graduate of the University of Wisconsin Law School and a member of the Wisconsin bar, I stand ready to help assist in any way that I can.

My testimony will first offer an explanation of the use of GPS in Massachusetts. Then I will offer some brief comments specific to the current draft of the Assembly Bill 263.

Introduction

Approximately three women a day are killed in the US by their intimate partners.⁴ Yet domestic violence homicide is the most predictable—and therefore preventable—type of homicide. Domestic violence escalates along predictable lines, and if the State does not intervene to the fullest extent of the law, the situation can become lethal.

In Cindy Bischof's tragic case, law enforcement was aware that her estranged boyfriend presented an extremely high danger to her. He had violated the orders of protection she had against him at least three times; he was suicidal and had mental health problems. But the system failed her. Despite her pleading with the court for increased protection against her perpetrator, and all the self-help measures she employed, the criminal justice system did not provide her the necessary protection. Her case is a sharp illustration that the justice system—even for a domestic violence victim who does everything right—is not currently set up to offer meaningful protection from repeat attacks.

But it does not have to be this way. Our study of domestic violence homicides indicates that the **use of danger assessments to identify high-risk cases** in combination with GPS electronic monitoring and other offender containment options can effectively stop the violence. Thus, we recommend the use of **GPS electronic monitoring** for batterers to ensure his compliance with the terms of the order of protection.

Global Positioning System (GPS) Monitoring

- Wisconsin should enact legislation to provide for GPS electronic monitoring of batterers to give an order of protection meaning. Many orders of protection are violated, and **batterers inflict retributive violence** against their partners for trying

⁴ (Bureau of Justice Statistics, <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm>) (2004).

to leave, or seeking help in the justice system. Violations are not always taken seriously by the justice system, but they must be. **Violations of restraining orders are signs of increased danger and possible lethality to a battered woman!**

- GPS monitoring is:
 - the use of global positioning satellite devices to track batterers for real-time notification of violations of orders of protection.
 - Done by law enforcement officials or private companies who monitor the offenders and notify the police and the victim immediately in case of a breach.
- GPS monitoring benefits are:
 - more protection for battered women – law enforcement will know the moment that a batterer has entered a prohibited zone and can intercept him *before* he is able to reach her.
 - this technology can provide safety for the battered partner so that she doesn't bear the burden of hiding out in a shelter—this will enable her to stay safely at home and go about her daily life without the fear of being re-assaulted.
 - Requiring a batterer to wear a GPS monitor is tailored precisely to the crime of domestic violence. It is highly effective in these situations because we know who the intended victim is and where she is likely to be. Thus, his movements can be contained through the monitoring, while she receives actual protection from his future assaults.
 - He may be able to avoid jail while still being held responsible for his violence.
 - It costs less than incarceration; if the batterer keeps his job, he can be required to contribute to the cost of the monitoring. Costs are estimated to be about \$10 per day—certainly worth the price of safety to an endangered woman.
 - Judges will be more willing to actually impose meaningful sanctions (like GPS monitoring) when it allows batterers to keep their jobs, contribute to child support, and avoid incarceration without endangering their victims.
- GPS monitoring provides an effective method of enforcing the terms of an order of protection by notifying law enforcement and the victim if the offender breaches a forbidden zone.
- GPS monitoring also provides law enforcement with immediate proof of violations, so that sanctions can be increased along with any escalation of danger.
- GPS monitoring will reveal stalking violations that were previously undetected, and that may reflect lethal danger to the victim.

Best Available Technology

Every GPS surveillance system for domestic violence offenders should have a few uniform, key components in order to ensure that it is able to effectively save lives by providing quick, accurate information to the authorities and victims who need it most.

- A GPS surveillance system should include technology that automatically notifies the victim when the batterer has breached the woman's protected zone or has left his inclusion zone. This notification will allow the victim to seek an area of greater security and get children to safe areas.

- GPS surveillance should also enable state officers to respond immediately to any breach of a restraining order.
- The GPS device must be worn on a tamper-proof bracelet or ankle-bracelet to ensure that the batterer is tracked at all times. The GPS unit should immediately notify authorities if it has been tampered with or removed.
- Best available technology also includes the ability of the monitors to speak to the offender through a cell phone implanted in the bracelet device enabling the monitors to verbally apprehend the offender, as well as a loud alarm that can be activated to warn the potential victim of the offender's presence in a forbidden zone.⁵
- The inclusion zone should be drawn around the offender, allowing him to go between his place of residence, his employment, and other places in a circumscribed area. Containing the offender's movements restores freedom and liberty to the victim.

All Domestic Violence Incidents Must be Treated as Potentially Lethal

- The key to a successful program is to treat ALL domestic violence cases as potentially lethal.
- First responders and other professionals (law enforcement, advocates, counselors) should administer a risk assessment of the victim to ascertain the level of risk that the offender might present. The presence of risk factors in an otherwise ordinary cases may indicate that the offender's threats are real and must be taken seriously.
- Risk assessments are easy to administer and are being used with great success in Maryland.⁶
- These assessments are the tool to separate the dangerous cases and determine who is an appropriate candidate for GPS monitoring. However, if the offender is highly dangerous, he should be incarcerated. GPS is not a substitute for jail! Rather, it is an additional tool to contain batterers that can save lives, and should be considered as part of a graduated sanction. If the level of danger increases at any point, incarceration is most likely warranted.
- **Lethality assessments (also called risk assessments or danger assessments)** are a vital part of a coordinated community response. Research by medical experts has identified a set of questions to identify when batterers present a high risk to their victims. Factors like threats of suicide, threats to murder the victim, and previous attempts to choke the victim are proven indicators that the victim may be in extreme danger. (See Attachment A) For an adaptation of the danger assessment instrument used by the Greater Newburyport Domestic Violence High Risk Case Response Team, see Attachment B.
- When a court finds that a batterer poses a high lethality risk, as a condition of probation or parole, a defendant convicted of domestic violence is released with a

⁵ Two companies for example are Secure Alert (www.securealert.com) which monitors offenders with a unit that is worn on the ankle bracelet that includes a cell phone, a GPS, and an alarm, and isecuretrac <http://www.isecuretrac.com/>

⁶ "Police use tool to assess domestic violence lethality" Washington Post, <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/01/AR2007100101793.html> (last visited May 28, 2009).

Global Positioning System technology (GPS) monitoring device that ensures that the offender does not contact the victim, or violate the order of protection.

GPS Should be a Part of a Coordinated Community Response to Keep Victims Safe

- Coordinated community response programs ensure that high risk cases are accurately identified, victims are provided with adequate protection and services, law enforcement personnel and judges are made aware of the danger posed by the individual, and adequate containment or surveillance methods are incorporated to keep victims safe.
- This approach utilizes the cooperation of police departments, district attorneys, probation officers, victim's advocacy groups, victim's services providers, batterer intervention programs and health care workers.

The Success of the Newburyport Massachusetts Model

- The Greater Newburyport High-Risk Case Management Team is proving that the criminal justice system CAN offer meaningful intervention in domestic violence cases. The Team is composed of law enforcement, probation officials, professionals in victims' services, batterers' intervention services, and health care workers. Each partner screens cases and helps in the development of an intervention plan to keep victims safe.
- The Newburyport system is currently being modeled in other communities in the state of Massachusetts, and the model has been presented to other groups on a state and national level.
- The Newburyport system has resulted in increased incarcerations of offenders before trial, which is often one of the most dangerous times for domestic violence victims. In addition, 3 cases were placed on GPS for pretrial monitoring while four more batterers were placed on GPS post release.
- In the team's first two years of operation, there have been only two re-assaults in the 42 cases the team identified as high risk, a 95% success rate. Of the offenders monitored by GPS, there have been no re-assaults—a 100% success rate!

Comments on Assembly Bill 263

1. There can be NO exception for an offender to enter an exclusion zone to get to another location. The exception would absolutely obviate the rule, and domestic violence offenders would fabricate excuses to be in a prohibited area. Moreover, the victim would lose any sense of safety and security she had gained through knowing that the offender was meaningfully prohibited from entering zones where she lives, works and frequents. Thus, all language regarding this should be removed. (See Section 5, 301.49(1)a, and (3)(1) take out language after word "monitored.")
2. Anger management is not an acceptable treatment for domestic violence offenders. Batterer intervention programs have been demonstrated to be the appropriate sanction in combination with other sanctions that require an offender to take responsibility for his actions.

3. Determination of who should be put on GPS electronic monitoring should be based on a danger assessment. First responders should be trained to administer these assessments, and cases that present as high risk must be monitored more closely.
4. Victim notification and a victim liaison should become part of this Bill. Victims should not be required to do anything, including submitting themselves to monitoring. However, they should be referred with encouragement to victim services to make a safety plan and obtain information that can be crucial to their continued safety. We must take care not to give victims a false sense of security—GPS monitoring is a part of increased safety. It is not in itself a guarantee of safety.

CONCLUSION

GPS monitoring of batterers in high-risk cases is not a panacea, nor is it appropriate for all domestic violence cases. Rather, GPS monitoring must be used as part of a coordinated community response by teams that identify and respond to high-risk cases. When used in this way, in combination with other graduated sanctions (such as the use of jails or detention facilities), these teams of people working together can save lives. Domestic violence homicide can be prevented. In honor of Cindy Bischof's life, we urge the Wisconsin assembly to pass this Act to help avoid future unnecessary and preventable tragedies.

Respectfully submitted,

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ⁱ Ms. Rosenfeld is a Lecturer on Law at Harvard Law School where specializes in legal policy on violence against women. She serves as a consultant to the Greater Newburyport Domestic Violence High Risk Case Response Team. Ms. Rosenfeld previously served as the Senior Counsel in the Violence Against Women's Office at the U.S. Department of Justice, and as an Executive Assistant Attorney General to Illinois Attorney General. She is a member of the Illinois, Wisconsin and Massachusetts State Bars. This statement was written with the assistance of April Ward Farris, Harvard Law School, Class of 2009, and Heather Thomas, Class of 2010.

GREATER NEWBURYPORT DOMESTIC VIOLENCE HIGH RISK
CASE RESPONSE TEAM

Domestic Violence Danger Assessment

Victim: _____

Perpetrator: _____

Date: _____

***Risk Indicators**

- Threats to kill you or children
 - Threats or use of a weapon against you
 - Victim believes the suspect could or might try to kill her/him
 - Access or ownership of weapons
 - Suspect threatened to commit suicide
 - Strangulation
 - Sexual violence
 - Violence toward children
 - Increased severity or frequency of violence
 - Stalking behaviors (follow, spy or leave threatening messages)
 - Suspect unemployed
 - Violently jealous
 - Suspect controls most of your daily activities
 - Child in the home that is not the suspect's
 - Drug/alcohol abuse
 - Recent separation after living together/married in the past year
-

Other Factors to Consider

- Prior 911 calls to the home
- Hostage taking
- Named as defendant on previous restraining orders
- History of violating restraining orders
- History of domestic violence with others
- Suspect is depressed
- Violence toward animals
- Violence during pregnancy
- History of physical abuse

Conversation: GPS Monitoring of Domestic Violence Offenders

**CORRELATIVE RIGHTS AND THE BOUNDARIES OF FREEDOM:
PROTECTING THE CIVIL RIGHTS OF ENDANGERED WOMEN**

Diane L. Rosenfeld [FN1]

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When Bonnie Woodring went to court to seek an order of protection from abuse by her husband—as so many women in this country do every day—she checked off boxes on the court form identifying six places where she wished to be shielded: her home, her workplace, her child's school, her child's day care, any place where she might be receiving 'temporary shelter,' and 'other.' For 'other,' she wrote in "stores (Walmart) within 50-100 feet." [FN1] In effect, when battered women [FN2] check off such boxes, they are selecting circumscribed areas where they may be free from violence, conceding the persistence of danger outside of them. The forms reflect the common understanding that such places are sites of expected re-assault by the batterer, but underlying this accurate assumption is a far more troubling proposition: the state is acknowledging its inability or unwillingness to protect women outside of these spaces.

As a society, we have come to expect that this is an appropriate response to a battered woman's pleas for help, but that expectation is deeply suspect. By granting an abused person rights to move freely only within these circumscribed zones, the state is implicitly granting the abuser the right to move freely in all the other zones. Although the state appears to be granting freedom and protection to a recipient of an order of protection, a more critical look reveals that it is not in fact offering much. Instead, the state is preserving a system of entitlements that guarantees a man's freedom of movement at the expense of a woman's. In effect, one might say that the restraining order has the perverse effect of restraining the liberty of the person protected by the order, rather than that of the person subject to the order. [FN3]

In the context of domestic violence, the civil rights analysis sketched above is complicated by the relationship between the two parties involved. Because of the unique nature of domestic abuse, the liberty interests at stake can amount to a zero-sum game in which one party may retain her liberty at the cost of the other's liberty. As a practical matter, the rights of the parties are "correlative." [FN4] This condition demands a legal policy analysis that takes into account the texture and reality of the lived experience of an endangered woman and seeks to reverse the injustices of the present regime.

Orders of protection provide limited and unreliable protection from further abuse of the victim by the offender. Studies reveal that around a quarter of all orders of protection are violated [FN5] and that those violations commonly go unpunished, leaving many battered women to fend for themselves. Aware of this under-enforcement, many battered women do not report violations of their orders, assuming (accurately) that the

criminal justice system will not take their complaints seriously. Moreover, the alarming incidence of so-called "retribution assault," in which a batterer attacks his partner to punish her for seeking protection from him in the courts, [FN6] highlights the hollowness of the order. Not only do the orders not benefit the victims, they sometimes expose the victims to even more harm. Batterers are well aware of this situation. Indeed, they often invoke law enforcement's lax response in specific threats to further harm the victim. [FN7]

In Bonnie Woodring's case, John Woodring beat her again when she went home after receiving her order of protection from the court. There is no record of her reporting this violation. Bonnie went to the hospital, and when she left the hospital, fled with her thirteen-year-old son to a battered women's shelter instead of trying to go back home, even though her order of protection ostensibly gave her a legal right to be safe there. Over the next week, John called and e-mailed her repeatedly and sent flowers to her place of employment—all in violation of the order of protection prohibiting any contact with her. The night before Bonnie and John were to return to court for a full hearing on the order of protection, John tracked Bonnie down at a shelter and shot her to death in the kitchen. Her son was in another room at the time. [FN8]

Bonnie's murder at a battered women's shelter calls into question the safety of shelters and demonstrates how hiding from a stalking predator is often not a viable option. Her fate is all too common. With distressing frequency, domestic violence ends, not in escape and reconstruction of the woman's life, but in murder or murder/suicide. In the United States, three women are killed each day by their intimate partners. [FN9] Approximately one-quarter of them are known to have had an order of protection. [FN10] This murder rate is atrocious and signifies a grave deprivation of civil rights. [FN11] While the number of women murdered by their intimate partners is only a small percentage of women who report being beaten and abused, [FN12] these murders have enormous symbolic value. They are the background against which so much sub-lethal violence is committed. Many battered women do not know whether the next beating will be a fatal one. [FN13] Batterers know that their victims are aware that murder is possible and consequently terrorize them more easily.

Unlike most other homicides, domestic violence homicides are so predictable as to be preventable. [FN14] The cases that result in murder are not a random sample of domestic violence cases. Death is far more likely when certain factors are present than when they are absent. When the state intervenes effectively in a domestic situation, it can prevent the violence from escalating. On the other hand, weak state intervention will leave battered women in a more dangerous situation—even worse off than if she had not sought help from the criminal justice system in the first place. [FN15]

In recent years, the legal rights of women to be protected against male sexual violence have become weaker, not stronger. The Supreme Court has struck down the right to be free from gender-motivated violence [FN16] and the right to compel enforcement of an order of protection from domestic violence. [FN17] The probability that these decisions will be reversed in the near future is low. If we wish to right the current imbalance, we need to look for new approaches.

One promising initiative is the use of Global Positioning System (GPS) monitoring of domestic abusers. This technology offers a way to enforce the terms of an order of protection, holding both the offender and the state accountable for making the order offer the protection it claims to provide. This technology monitors the offender with an ankle

bracelet to make sure that he does not violate the terms of the order of protection by entering forbidden zones where he would have the opportunity to re-assault or further terrorize the victim. Thus, rather than another legal-reform effort, the GPS initiative is a way to ensure that rights already promised by the justice system are delivered.

Several jurisdictions are now beginning to use GPS technology for domestic violence offenders. In Massachusetts, recent legislation explicitly authorizes the use of this technology in domestic violence cases. The Massachusetts legislation (“An Act Relative to Enhanced Protection for Victims of Domestic Violence”) provides judges with the option of ordering offenders who have violated an order of protection to wear a GPS monitoring device. [FN18] The bill allows the court to establish, as a condition of probation, geographic exclusion zones, which can include the victim's residence, place of work, her children's schools, or other places that she frequents. These GPS devices track the offender's movements to ensure that he is obeying the terms of the order of protection. If an offender enters geographic exclusion zones set by the court while wearing a GPS device, both the authorities and the victim are automatically notified. If the court finds that the offender violated the order of protection, it can order imprisonment, a fine, or both. The bill also allows the court to require the violator to pay the costs associated with the monitoring, which are estimated to be about ten dollars per day. The Probation Department is responsible for administration of the program. [FN19]

Different vendors offer various plans for GPS monitoring of domestic violence offenders. Systems appropriate for use in domestic violence cases will focus on victim safety without infringing on privacy rights of the victim. Secure Alert is a company that does its own monitoring of domestic violence offenders with trained staff who operate from a script to avoid personal bonding with the offender. [FN20] The operators work closely with law enforcement and describe the relationship as serving as “personal assistants” to probation officers or other officials. When their attempts to control the behavior of the offender fail, they immediately notify law enforcement for follow-up. Secure Alert also has a victim-safety program, in which the victim is given a special monitor that informs her if the offender has breached a forbidden zone. [FN21] Rather than giving law enforcement all the information about an offender's whereabouts, the company retains the information and only reports if there is a violation. Moreover, the company gives the information to law enforcement only when necessary to prove violations. Thus, concerns about excessive surveillance abate.

Another company that provides GPS monitoring for law enforcement is iSECUREtrac.

Both agencies and victims can be notified in real-time if the offender has entered a forbidden zone. When this happens, a violation flag is raised and the monitoring agent is notified. Monitoring is done on computers by probation or other law enforcement officials. [FN22]

Part of the potential for GPS to change the paradigm of domestic abuse is that it ‘operationalizes’ a battered woman's right to be free from the violent control of the perpetrator. It puts the law on her side by helping to enforce the terms of the order of protection and gives law enforcement knowledge of violations where previously they may have had none. Thus, it facilitates law enforcement response by pinpointing the location of the offender and by proving violations so that a court can impose more stringent controls on the offender.

Traditionally, law enforcement and the criminal justice system as a whole tended to discount the level of danger that an abuser presents to a victim. The use of GPS monitoring could make this danger clear by showing which perpetrators were violating orders of protection. This feature is important because violations of an order of protection signify that the offender believes he can violate the court order with impunity. The violations themselves are indications of increased dangerousness.

Whether a judge is willing to employ this new remedy may well reveal how seriously the judge takes the issuance of an order of protection. Moreover, the court may take the process of evaluating the domestic violence situation in terms of potential lethality much more seriously if there are real consequences for violating the order. [FN23]

This monitoring, in the context of a comprehensive law enforcement response discussed more fully below, has the potential to disrupt the cycle of domestic violence and give meaning to an order of protection. Specifically, aligning responsibility with the person who committed an illegal act - rather than placing the responsibility on the person who suffered the violence - will enable a battered woman to stay safely at home rather than being forced to hide in a battered women's shelter, thus reversing the injustices in the current system. [FN24]

A key component of a comprehensive response to domestic violence, as well as to the effective administration of a GPS monitoring program, is the use of dangerousness assessments. A sophisticated body of research supports the administration of a fairly simple tool that law enforcement authorities can use to identify which batterers present a high risk to their victims. Years of study of domestic homicides by experts, such as Dr. Jacqueline Campbell of Johns Hopkins Medical School, have revealed that specific factors-referred to as "risk assessment factors"-are present in domestic homicides and attempted murders. [FN25] Because domestic homicides take place in the context of an abusive relationship, analyzing features of domestic violence attacks and patterns in a relationship can help to predict the chance of future lethal attacks.

A dangerousness assessment red flags cases with lethality indicators so that the criminal justice system can monitor the batterer and be responsive to any signs of increased danger. The dangerousness assessment must be conducted and re-evaluated on an ongoing basis as the nature of the danger an offender poses to a victim changes at predictable trigger points, such as court dates, the expiration of an order of protection, or a new intimate partner relationship involving the victim/survivor.

Examples of lethality indicators include whether the abuser has threatened to kill the victim; whether the abuser has attempted strangulation; whether the abuser owns a weapon; whether the victim is attempting or has attempted to leave the abuser; whether the abuser has committed violence to children or pets; whether the abuser has previously been violent or threatened to the victim; and (perhaps less obviously) whether the abuser has threatened suicide. When called to a domestic violence scene, police can easily screen for these and other factors. [FN26]

The importance of requiring the criminal justice system to investigate the potential lethality of a domestic violence assault cannot be underestimated. Dangerousness assessment and risk management protocols will help judges, prosecutors, and probation officers to determine which domestic violence cases would be appropriate for GPS monitoring of the offender. These tools enable a coordinated community response,

including law enforcement, victims' services, batterer intervention programs, and courts working together to identify who may be at greatest risk of being further victimized.

A promising program based in Newburyport, Massachusetts, which relies in part on GPS technology, is receiving national attention for its efforts [FN27] and is serving as a model for other jurisdictions seeking new ways of effectively addressing domestic violence. The Greater Newburyport Domestic Violence High Risk Case Response Team was formed after Dorothy Giunta-Cotter was gunned down in her home by her estranged husband while she had an order of protection and was receiving assistance from advocates at the Jeanne Geiger Crisis Center. As the founders explained, “[t]he system was not equipped to protect a high risk victim who chose not to leave her life, job and support system behind and live in hiding. We realized that while each individual component of the system worked, the lack of coordination and communication of our efforts created gaps in the system, ultimately compromising Dorothy's safety.” [FN28]

This team of professionals works to identify the most dangerous cases of domestic violence and monitor the cases more closely according to the level of danger indicated. The team recently published its two-year report, and the results demonstrate the effectiveness of using both dangerousness assessments and GPS monitoring. In the forty-two cases the team has identified as high-risk, there have only been two re-assaults. Eight offenders are on GPS monitoring, and neither of the re-assaults involved these men. [FN29]

As the success of the Newburyport program suggests, GPS monitoring is most effective when used as part of an expanded system of options, including dangerousness assessment tools to identify high-risk cases and different containment options that are part of a graduated sanctions structure to address any threat of or commission of further violence. Fortunately, years of study of domestic violence enable us to incorporate an entire body of knowledge into effective law enforcement initiatives that are responsive to the unique but ubiquitous commission of domestic violence.

Although a significant step forward, the GPS legislation in itself will not provide protection. Further steps must be taken to protect endangered women, and we need to rethink the fundamental civil rights and civil liberties underlying the current and proposed protections. Other important initiatives in this area include the mandatory use of dangerousness assessments and other containment options for the batterer, such as detention centers. The implementation of GPS monitoring is an important step that requires state officials to acknowledge the inadequacy of the protection currently offered to victims of intimate partner violence.

Rights exist only to the extent that there are remedies to enforce them. A failure by states to pass legislation authorizing the use of GPS monitoring in domestic violence cases, or a refusal by judges or police to use this new tool, would expose the hollowness of the promises of protection we currently make to battered women. That exposure, in turn, might start us down a path of intensified activism by women around questions of equal protection.

RECOMMENDATIONS FOR MODEL GPS MONITORING LEGISLATION

Model legislation authorizing GPS monitoring must center on the organizing principle of victim safety. The key component of legislation is its responsiveness to the likelihood of increased danger that a batterer poses to the victim once the crime has been

reported or alleged in the context of a civil proceeding. Set forth below are recommended features of such a statute:

- * Law enforcement officers responding to any call involving a domestic incident should assess the potential lethality of the situation through the use of an approved dangerousness assessment and risk-management protocol to evaluate the risk of escalating violence in the situation.

- * Upon reviewing conditions of dangerousness posed by a person alleged to have committed any type of domestic assault, a judge may, in her discretion, require the use of GPS electronic monitoring of an alleged offender as a condition of bail.

- * A judge may order a domestic violence offender to be placed on GPS electronic monitoring to augment and help enforce the terms of an order of protection.

- * A judge may furnish the domestic violence victim with a protective tracking device that informs the victim if the offender breaches impermissible geographic zones.

- * Upon a showing of dangerousness, an alleged offender can be held until a hearing before a judge, in order to prevent re-assault opportunities and to protect the victim pending trial.

- * The state may not use information gained through the use of GPS monitoring of domestic violence offenders for purposes unrelated to the domestic assault.

[FN1]. The author would like to thank Sandra Pullman, Grace Spulak, Kathy Banks, Terry Fisher, Lisa Cloutier, Shauna Shames, Lauren Birchfield, April Farris Ward, and Kirstin Sheffler for valuable input throughout the writing of this article. I also thank Suzanne Dubus, Kelly Dunne, and Marta Chadwick from the Jeanne Geiger Crisis Center for their outstanding collaboration and leadership in applying these ideas in practice through the Greater Newburyport High Risk Case Response Team, and Mary Lauby from Jane Doe, Inc. for helping bring this work to national prominence.

[FN1]. Complaint and Motion for Domestic Violence Protective Order at 2, *Woodring v. Woodring*, No. 06CVD575 (N.C. Dist. Ct. Sept. 13, 2006) (on file with author).

[FN2]. Because statistics indicate that 85% of intimate partner violence is committed against women by their partners, largely in heterosexual relationships, I use male referents for the batterer or abuser, and female referents for the victim. Further, femicide statistics indicate the prevalence of murders of female intimate partners by their male partners. See **CALLIE MARIE RENNISON, U.S. DEPT OF JUSTICE, BUREAU OF JUSTICE STATISTICS. INTIMATE PARTNER VIOLENCE, 1993-2001 (2003)**, <http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv01.pdf>. [hereinafter **RENNISON, INTIMATE PARTNER VIOLENCE**].

[FN3]. The author thanks Grace Spulak for this insight.

[FN4]. This is a very brief reference to the concept of correlative rights, as proposed by Wesley Newcomb Hohfeld. See Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 *YALE LJ.* 16, 30 (1913).

[FN5]. See SUSAN L. KEILITZ ET AL., U.S. DEPT OF JUSTICE, NATL INST. OF JUSTICE, CIVIL PROTECTION ORDERS: VICTIMS' VIEWS ON EFFECTIVENESS 2 (1998), available at <http://www.ncjrs.gov/pdffiles/fs000191.pdf>.

[FN6]. The term "separation assault" was developed by Martha Mahoney to describe the intensified violent assault an abuser inflicts upon his victim as a punishment for her attempting to leave the relationship. See Martha Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65-66 (1991). I use the term "retribution assault" to describe how the batterer's sense of entitlement is violated when the abused partner seeks protection from the justice system, often in direct contravention of his explicit instructions not to do so. Diane Rosenfeld with Kirstin Sheffler, *GPS Monitoring Systems for Batterers: Exploring a New Paradigm of Offender Accountability and Victim/Survivor Safety*, DOMESTIC VIOLENCE REPORT, Apr./May 2007 at 58. For example, Dorothy Giunta-Cotter stated to the court in her affidavit that her husband beat her specifically as punishment, saying "I told you never to get a restraining order out against me." Affidavit of Dorothy Giunta-Cotter at p.2, Feb. 22, 2002. Commonwealth of Massachusetts. The Trial Court, Probate and Family Court, Essex, No. 02D-0079-CUI. The numerous lethal attacks on victims that coincide with court dates further attest to the retributive nature of this violence.

[FN7]. For example, in Lewiston, Maine, Kenneth Emrick killed his long-time intimate partner Carol Cross the day after she obtained an order of protection. Abused women in the area, hearing of the murder, stopped showing up for their order of protection hearings at the rate of 75%, according to Chris Fenno, the executive director of the Abused Women's Advocacy Project. In addition to the crisis in citizenship this statistic describes - when citizens are unable to access the justice system - the way in which batterers in the area were using the murder to further threaten their victims was chilling. "What upsets her the most, [Fenno] says, is that callers are saying their abusers are using the murder as a threat, clipping newspaper articles about it and leaving them around the house, threatening that the women could end up like Cross if they dare leave." Meadow Rue Merrill, *Murder Has Abuse Victims Terrified*, BOSTON GLOBE, Sept. 12, 1999, at C11.

[FN8]. David Lohr, "Crime Writer Turns Fugitive After Gunning Down His Estranged Wife," COURT TV CRIME LIBRARY, Sept. 26, 2006, available at http://www.crimelibrary.com/news/original/0906/2601_crime_writer_killer.html.

[FN9]. Family Violence Prevention Fund, *Domestic Violence is a Serious, Widespread Social Problem in America: The Facts*, available at <http://www.endabuse.org/resources/facts/> (last visited Oct. 31, 2007).

[FN10]. See LINDA LANGFORD ET AL., PEACE AT HOME, HOMICIDES RELATED TO INTIMATE PARTNER VIOLENCE IN MASSACHUSETTS 1991-1995 11 (1999), <http://www.peaceathome.org/pdfs/homrepo.pdf>.

[FN11]. For further discussion, see Catharine MacKinnon, *ARE WOMEN HUMAN?: AND OTHER INTERNATIONAL DIALOGUES* (2007).

[FN12]. Around 1,300 women a year are killed by intimate partners. RENNISON, *INTIMATE PARTNER VIOLENCE*, supra note 2. Between two and four million women a year report being battered. Domestic Violence is a Serious, Widespread Social Problem in America, supra note 9.

[FN13]. See Andrea Dworkin, *A Battered Woman Survives*, in *LETTERS FROM A WAR ZONE: WRITINGS 1976-1989*, 100-06 (1988).

[FN14]. Diane Rosenfeld, *Law Enforcement Sends Mixed Signals*, *CHICAGO TRIBUNE*, July 30, 1994, at 19.

[FN15]. Weak state intervention forecloses the battered woman's access to the justice system, or at least her belief that it will provide help and protection. For example, one woman described how her husband would laugh after the police left following their response to a domestic violence call to the home without arresting the batterer. See *DEFENDING OUR LIVES* (Cambridge Documentary Films 1993) (recording a woman's account of how her abuser laughed at her, continued the beatings, and said "What are you going to do now?").

[FN16]. *U.S. v. Morrison*, 529 U.S. 598 (2000). The Court struck down the civil rights remedy provision of the Violence Against Women Act, which provided that "[a] person ... who commits a crime of violence motivated by gender and thus deprives another of ... [the right to be free from crimes motivated by gender] shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate." The analysis centered around whether violence against women had a sufficient relationship to interstate commerce to justify congressional action, and found it did not. Despite four years of congressional testimony establishing a record precisely to this effect, the Court ruled that remedies for gender-motivated violence lay more properly within state jurisdiction. This decision failed to recognize that states had conducted and presented their own studies of gender bias in the court system, and had not only supported the civil rights remedy, but had also asked for it to assist them in addressing the persistent problem of gender violence and inequality. For an in-depth analysis of *Morrison*, see Catharine MacKinnon, *Disputing Male Sovereignty: On United States v. Morrison*, 114 *HARV. L. REVV.* 135 (2000).

[FN17]. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 767 (2005). The plaintiff, Jessica Gonzales, sought assistance from the Castle Rock police in enforcing her order of protection against her estranged husband Simon Gonzales. Simon kidnapped their three daughters from Jessica's front lawn. The police refused to help over the course of an evening. At first, they said that they could not enforce the order because they did not know where Simon was, and they told Jessica to call back after ten o'clock PM if he did not show up with the girls. Jessica then found out where Simon was, called the police back, and informed them of his location, again pleading for them to enforce her court order. The police refused. This went on for several hours, culminating in the lack of any police action to attempt to apprehend Mr. Gonzales. At three o'clock the following morning, Simon

drove his truck into the police station, opened fire, and the police shot him dead. The three girls lay murdered in the back of Simon's truck, shot with a gun he had purchased that night. For a discussion of the Gonzales case and its effect on state protection from gender violence, see G. Kristian Miccio, *Exiled from the Province of Care: Domestic Violence, Duty and Conceptions of State Accountability*, 37 RUTGERS LJ. 111 (2005).

[FN18]. H.B. 30, 184th Gen. Ct., Reg. Sess. (Mass. 2005).

[FN19]. MASS. GEN. LAWS ANN. ch. 209A § 7 (2007). For a description of the legislation and its potential to protect victims of domestic violence, see Kerry Healey & Jarrett Barrios, *Op-Ed., Technology Against Violence*, BOSTON GLOBE, Jan. 11, 2007, at A11. Former Massachusetts lieutenant governor Kerry Healey was instrumental in passing this groundbreaking legislation.

[FN20]. The GPS tracking device is an ankle bracelet with a phone and an alarm built in to the unit. Communication takes place with the phone; a 90-decibel alarm can be activated remotely by the monitors. For a demonstration, see <http://www.securealert.com/tpfeatures.htm>.

[FN21]. Care must be given here to avoid any monitoring of the victim's movements, as this may give rise to unintended infringements on her liberty.

[FN22]. See www.isecuretrac.com.

[FN23]. Indeed, courts could develop a system of different levels of orders of protection based upon how dangerous the situation appears, according to a dangerousness assessment. Thanks to Alexis Kuznick for this insight.

[FN24]. For a more detailed analysis of this concept, see Diane L. Rosenfeld, *Why Doesn't He Leave?: Restoring Liberty to Battered Women*, in *DIRECTIONS IN SEXUAL HARASSMENT LAW 535* (Catharine MacKinnon & Reva Siegel eds., 2003).

[FN25]. JACQUELYN C. CAMPBELL ET AL., NAT'L INST. OF JUSTICE, *ASSESSING RISK FACTORS FOR INTIMATE PARTNER HOMICIDE 1, 14-19* (2003), available at <http://www.ncjrs.gov/pdffiles1/jr000250e.pdf>.

[FN26]. A pilot program in Maryland based on Campbell's model is showing positive results. See Donna St. George, *Police Tool Assesses Domestic Abuse 'Lethality'*, WASHINGTON POST, Oct. 2, 2007, at A1.

[FN27]. The Jeanne Geiger Crisis Center's Greater Newburyport High Risk Case Response Team was awarded the first Spirit of Advocacy Award for its work by the National Network to End Domestic Violence in October 2007. See Laura Crimaldi, *Special Report; Program Offers Hope in Domestic Abuse Cases*, BOSTON HERALD, Sept. 3, 2007, at 4.

[FN28]. Kelly Dunne & Marta Chadwick, Redefining Safety: Do You Have a Safety Plan If a Victims Says “No” to Shelter?, DOMESTIC VIOLENCE REPORT VOL. 12 NO. 4 (Civic Research Institute), April/May 2007, at 60.

[FN29]. GREATER NEWBURYPORT DOMESTIC VIOLENCE HIGH RISK CASE RESPONSE TEAM, REPORT 2005-2007 (on file with author). In this report, 100% of the cases involved a male perpetrator and a female victim; 86% of the victims had restraining orders against their perpetrators at the time the case was accepted; and 55% had reported non-fatal strangulation incidents.

Lary Hill

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WARNING SIGNS

State Laws Allow GPS Tracking for High-Risk Abusers, Stalkers

After several tragic domestic violence cases ended in murder, at least 13 states have passed laws allowing courts to require an abuser or stalker to wear GPS devices. The devices send signals to victims when their abusers or stalkers are near or when the offender breaks restraining orders. Backed by an army of victims and family members of victims, GPS domestic violence bills are being considered this session in at least three more states.

By Mikel Chavers



For the better part of 10 months, Cindy Bischof lost her freedom.

She was endlessly stalked by her ex-boyfriend, Michael L. Giroux, who just wouldn't let go of their relationship after Bischof ended it.

She carried Mace and had security cameras installed in both her Illinois and Florida homes. She changed her living arrangements and escaped to her Florida property frequently. She even hired a security guard the night of her office Christmas party for her—and her co-workers'—protection.

Her ex not only threatened her life and did thousands of dollars worth of damage on her townhouse, he also threatened her family. "Our family lived in fear," said her brother, Mike Bischof.

Then on March 7, 2008, Giroux gunned her down on a Friday

afternoon in the parking lot as she left her commercial real estate office in Illinois. He then shot himself.

"She was known at the courthouse as the girl with the wish list—her whole nature was she was an extremely cerebral thinker, she was creative. She put deals together by thinking outside the box," Bischof said of his sister, who was a commercial real estate broker.

One of Cindy's wishes was to have a GPS tracking bracelet put on her ex so she could be notified when he violated her orders of protection against him. Like many tragic domestic violence and stalking stories, Cindy was a victim who was doing everything she could to protect herself. She pursued every protection the justice system could offer her, Mike Bischof said.

"If he had that bracelet on, signals would have been set off for her to remain in the office and not walk out to her car," Bischof said.

Since his sister's death, Bischof has gone on a never-ending campaign to lobby for state GPS laws that allow judges to make



Michigan Gov. Jennifer Granholm signs Mary's Law, the GPS domestic violence bill in July 2008 with (left to right) Mary Babb, aunt and uncle, Frank and Jim Andresen; Michigan Rep. Bill Caud, the bill's author; Granholm; Babb's brother Mike Anderson; and Babb's mother Jamie Anderson. Photo courtesy of the Michigan Governor's office.

high-risk domestic violence offenders wear special GPS bracelets or anklets. Those devices send a signal to a receiver or cell phone the victim carries. When the stalker or abuser is nearby or in an area that violates court orders of protection—the victim is alerted.

"I would imagine that I'm not going to find a bigger crusade than this in my lifetime," Bischof said. In early February, he was on the road to Indiana to testify at a hearing before the Indiana House Judiciary Committee for a similar law, House Bill 153, which allows GPS to be used for high-risk domestic violence offenders in Indiana.

The most recent state to pass the GPS domestic violence bill is Illinois, where Cindy was killed. The Illinois bill was signed into law by former Illinois Gov. Rod Blagojevich just five months after Cindy was killed and went into effect just this year.

GPS domestic violence laws exist in at least 12 states. At least three states—Texas, Indiana and Wisconsin—are set to consider similar bills this year, according to information gathered by *State News* and the Cynthia L. Bischof Memorial Foundation.

When Restraining Orders Don't Work

Supporters of the GPS domestic violence laws say victims need this type of technology as an option to monitor their abuser or stalker because court-issued restraining orders just aren't working.

Many experts and victims of domestic violence say a restraining order is hard to enforce and victims often have to protect themselves, said Diane Rosenfeld, a professor at Harvard Law School.

But these GPS laws allow an offender to be tracked, often sending a warning signal to the victim when the offender is near or is breaking a restraining order.

"It's a technological and legal response that requires the criminal justice system to step up to the plate," Rosenfeld said.

Victims often spend years in court gathering police reports of violence and stalking before they can get a court order of protection such as a permanent restraining order.

One such victim is Alexis Moore from California.

In November 2004 she fled for her life after being seriously abused and knocked unconscious by her ex. They were married, but the marriage was annulled.

"This one particular occurrence he knocked me unconscious and I woke up with him on the cellular telephone; I was lying face down and I still remember it like it was yesterday—it was him on the phone telling his mother, 'I think I killed her, can you come over here to help me,'" Moore said.

And she fled. She left everything behind except the jogging suit she was wearing, which was bloodied and ripped in places. She left her dogs, all her clothes and possessions collected over the years, including childhood items that can never be replaced.

Then he started stalking her.

He not only followed Moore; he also followed her mother and her grandmother, she said. "And then he would call us—that was the scary part—and depict what we were wearing and where we were."

Moore and her family members lived in fear.

"It got to the point where he was telling me more and more frequently that he was going to kill me, or in his words, he was going to 'bury me in the backyard' and then he made threats against my mother and grandmother and grandparents," Moore said.

It took her two and a half years to get a permanent domestic violence restraining order against her ex. The restraining order came after about 70 different complaints of stalking she filed against him.

But Moore doesn't put much stock in what she calls a worthless piece of paper.

"The worst part was when you go and you do get a re-

straining order finally like I did and you go through all of this hell to get one—in order to prove your case you've got to have all these police reports and documentation and everything else—the restraining order didn't do any good," Moore said.

"For me it was a big waste of time and energy. I felt like it was, you know, the only thing I could do. But that fact that he laughs at it—to him it's like well, he knows that he's gotten away with so much over the past few years."

So she constantly looks over her shoulder and although the incidents are becoming less frequent, Moore is still careful. She knows to shop at certain shopping centers that have cameras. When fueling up, she visits gas stations that have video surveillance.

"I figure I have to do this in order to save my life and a woman should not have to do this," Moore said.

Moore believes the ability to monitor her stalker's movements would help.

But some critics of the GPS domestic violence laws say the tragic situations are too few and far between for such a response.

Mike Bischof disagrees.

"We do need to broaden the scope and take the blinders off," he said. "While there might be 50 people who die, there are far more whose lives are uprooted and have to live in constant fear."

Levels of Danger

Some experts believe that fear doesn't always merit constant monitoring. They maintain that GPS tethers should only be used for extreme cases where the victim is in danger and fearing for their life.

"It's clearly not the answer for all domestic violence cases," Rosenfeld said.

And the costs of the laws shouldn't be based as if GPS should be used in all cases, Mike Bischof said. In Indiana, for instance, a cost-analysis of the GPS bill proposal is based on the per diem cost of the technology times the *total* number of people who violate orders of protection, he said.

But that's not the best way to calculate the cost of the bill because experts believe not all the domestic violence offenders who violate their orders of protection are considered dangerous enough to have to wear an irremovable GPS device.

That's where special danger assessments can come in pretty handy, Rosenfeld said. She works closely with a well-established program in Massachusetts that uses the GPS devices for the most dangerous abusers.

The program is called the Greater Newburyport High Risk Response Team and is run through the Jeanne Geiger Crisis Center in Massachusetts. They've been using GPS since 2006.

Of the high-risk cases taken on by the team in Massachusetts from 2006 to 2008, 20 percent of the high-risk offenders were monitored using GPS. Of those, 34 percent were monitored pre-trial while 56 percent were monitored using GPS post-sentencing, according to the team's Safety and Accountability report, a three-year status report released in October.

And out of all the cases where the Greater Newburyport High Risk Response Team used GPS, at the time of the report, there had been no recorded GPS violations. It seems the technology combined with the risk assessments was working.

"We're not saying that everybody that violates an order of protection should mandate the use of the bracelet," Bischof said.

But in cases like Cindy Bischof's murder in Illinois and others, violent threats were often repeated and documented.

In fact, Rosenfeld believes homicides from domestic violence are extremely preventable because of the escalating warning signs. She points to the danger assessments developed by expert Jacquelyn Campbell of Johns Hopkins University.

Those are used in the Massachusetts program and look to signs such as whether the offender threatens to kill the victim, whether the offender owns a weapon and whether the victim tries to leave the offender to determine the level of danger the victim is in.

"GPS in itself is not the answer. It has to be done with a danger assessment, because circumstances can change the level of danger," Rosenfeld said at a policy session on the topic at the CSG annual meeting in Omaha in December.

But some experts are concerned that the GPS bracelets will be over-prescribed and the costly technology will be put on every domestic violence offender that goes before the court. Not true, Bischof said. It's basically a funnel system, he said. Judges determine the offenders who pose the highest risk and what victims are in imminent danger.

States Take up GPS Bill

In a lot of the states, tragic murders involving domestic violence often set the GPS laws in motion.

In Michigan, Mary Babb was killed by her estranged husband in 2007 after he rammed into her vehicle, overturning it. He then shot her as she hung upside down in the overturned vehicle, helpless. She repeatedly did everything in her power to protect herself, according to her aunt, Paula Andresen.

Andresen took up the effort in Babb's memory and lobbied for the law in Michigan, which eventually passed (please see sidebar *Mary Babb's Story*) and is known as Mary's Law or House Bill 4453.

"(The GPS law) provides for the court to use it in instances where they feel the circumstances have risen to a level where the victim needs a higher level of protection," said Michigan Rep. Bill Caul.

Babb was killed in Caul's community and she worked for his hometown newspaper.

In Michigan, the accused perpetrator pays for use of the device—"basically as a way to continue on with their life and not be put in jail," Caul said.

And since the law went into effect last July, instead of using the new law, individuals are staying in jail because they can't afford to pay for the GPS device, Caul said. The cost ranges from \$6 to \$12 a day depending on the sophistication of the technology, he said.

"We felt that this is the responsibility of the individual that's being accused. And since they're the ones that have



Mary Babb at Thanksgiving 2006, just two months before she was killed by her estranged husband. Photo courtesy of Paula Andresen.

Living and Dying in Terror

Mary Babb's Story

Mary Babb, the domestic violence victim for which Michigan's Mary's law is named, was killed by her estranged husband in Michigan in January 2007. Her aunt, Paula Andresen, believes that if Tom Babb had been ordered to wear a special GPS tracking device, Mary would have been alerted he was near and could have avoided her horrific death.

Andresen testified before the Michigan House Judiciary Committee in April 2008 in support of Mary's law, House Bill 4453.

Larry Burdick, the Isabella County, Mich., prosecutor who prosecuted Tom, also testified. Burdick brought an actual GPS tether and explained the tether and its usage, Andresen said. Isabella County had implemented GPS tracking earlier.

The bill in Michigan passed the committee unanimously and Gov. Jennifer Granholm signed Mary's law in July 2008.

Here's how Andresen recounted Mary's story in her testimony:

"Mary called me the night of Aug. 23, 2006, to come pick them up at the Kalkaska Sheriff's Department. That night, she literally escaped from Tom. She took (her son) Sam, clad only in his diaper, and fled in terror straight to the nearest police station she could find. She gave her statement to them and pressed charges, and called me to come pick them up. She was frantic and distraught, too upset to drive, too terrified to be alone. My husband Jim and I went to pick them up, and we brought them back to our house.

"We were up most of the night with her, while she talked nonstop, terrified and frantic. She was terrified of what Tom had done and of what he might do next—petrified of what he would do if he found her. (She was) panic-stricken at the thought of the one thing she feared the most: that he would take Sam and she would never see her son again. All the threats he had made over and over came back to haunt her that night, and they never left her again.

"My heart broke as I listened as Sammy asked her, 'Did Daddy do that?' and touch her bruises. I fought back the tears as 3-year-old Sammy told us, 'My daddy smashed my mom's glasses and he smashed all the phones.'

"Mary left Tom and she pressed charges against him. She filed for divorce; she got her personal protection order. Mary did everything right. She did exactly what she needed to do, but the system failed to understand that paper does not stop bullets. Mary did everything right, but the system failed her, and now she is dead. He murdered her, just like he promised he would do.

"Mary lived the rest of her life in constant fear, and at times in sheer terror. She was always looking over her shoulder, afraid to be alone, always worrying about what Tom was going to do next. She never knew another peaceful day.

"Tom's reign of terror over Mary ended on Jan. 9, 2007, when he carried out his threat. That day he got in his truck in Evart, drove 50 miles to the *Morning Sun* in Mount Pleasant where she worked, sat in his truck and he waited. He waited for her to leave the building and get into her car. Then he proceeded to ram her car until it was overturned, walked calmly up to her window and shot and killed her—murdered her in cold blood while she hung upside down and helpless in her seat belt, in broad daylight, and in front of witnesses.

He killed her, just like he said he would."



Mary Babb and her son Sam during Christmas 2006. Her son was not with Babb when she was killed tragically by her estranged husband. Photo courtesy of Paula Andresen.

The New York Times

May 9, 2009

More States Use GPS to Track Abusers

By ARIANA GREEN

NEWBURYPORT, Mass. — When Theresa, a 51-year-old mother of two living near this coastal town, filed for a restraining order against her husband, she thought it would help put an end to the beatings, death threats and stalking that had tormented her family for years.

She won the order, but her husband, Joel, a West Point graduate with a master's degree who police reports say hid 17 guns in their home, did not seem to care. He violated the restraining order three times, she said.

"He'd come to our child's school and beat both of us up in front of everyone," Theresa said.

In Massachusetts, where about one-quarter of restraining orders are violated each year, according to the state's probation office, a recent law has expanded the use of global positioning devices to include domestic abusers and stalkers who have violated orders of protection. A judge ordered Joel to wear a Global Positioning System monitor, alerting law enforcement officials if he went near his wife's house, her work or their children's school.

"It was the first time I could turn my house alarm off and feel O.K.," said Theresa, who has since been divorced and who insisted that only her first name be used, to protect her children's privacy.

Twelve other states have passed similar legislation — most recently, Indiana this week — and about 5,000 domestic abusers are being tracked nationwide, said George Drake, who oversees Colorado's Electronic Monitoring Resource Center, which gathers data from equipment vendors.

But the path to the system's widespread use has been bumpy. It is still hard to protect families who live in rural areas or where there are not enough police officers to respond quickly. With the economic downturn, states have cut money for training the police and judges in GPS use, and some places with legislation in place say they cannot afford it.

It is up to a judge, in cases of extreme violence, to decide whether to order its use before trial, as a condition of bail or as a sentence. That has led to complaints by the American Civil Liberties Union and others of too much leeway for judges.

"Until they know how GPS can be used and how successful it can be, judges are reluctant to order it because it's unfamiliar," said Judge Peter Doyle of Newburyport District Court. "Without seminars and convincing presentations, I wouldn't have been comfortable ordering it."

The scope of stalking was revealed in a study released by the Justice Department in January, which found that 3.4 million people had been subjected to stalking over a one-year period. As this week's fatal shooting of a Wesleyan University student showed — the victim, Johanna Justin-Jinich, 21, told the authorities two years ago that the suspect, Stephen P. Morgan, had repeatedly sent harassing e-mail messages — stalking often includes sending threats online and lurking outside homes, offices and schools. Often the only way victims can prove that they are being stalked, experts say, is through new technologies like GPS.

Newburyport, a city of 17,000 about 35 miles north of Boston, has been a testing ground for some of the most effective training programs in preventing domestic abuse.

Kelly Dunne, associate director of the Jeanne Geiger Crisis Center here, has helped seven other cities follow the model of the Greater Newburyport High Risk Response Team, which brings together police officers, district attorneys, probation officers and others to decide which domestic violence cases should be recommended for GPS monitoring. Last year, her group trained over 1,000 advocates, prosecutors and officials from other states, alerting them to the danger signs in offenders' behavior.

Experts say the program can help save lives. Domestic-violence-related homicides increased 300 percent in Massachusetts from 2005 to 2007, according to Jane Doe Inc., the Massachusetts Coalition Against Sexual Assault and Domestic Violence, while in Newburyport, where a High Risk Team was in place, there were no such homicides in that period.

"Using GPS monitoring to enforce an order of protection makes the order more than just a piece of paper," said Diane Rosenfeld, a lecturer at Harvard Law School and a longtime advocate of using GPS in domestic abuse cases. "It's a way of making the criminal justice system treat domestic violence as potentially serious. By detecting any escalation in the behavior of a batterer, GPS can prevent these unnecessary tragedies."

Ms. Rosenfeld's research found that about one quarter of women who were killed by their domestic abusers already had restraining orders.

Alexis A. Moore, 34, founder of Survivors in Action, a nonprofit organization for crime victims, said that her former partner had violated a restraining order more than 30 times over four years, but that she had no way of proving it. She said he had slashed her tires, lurked outside her home and harassed her online. She said California lawmakers had told her there was no money to pay for GPS monitoring where she lives, although legislation allowed for it.

"My stalker continues to make a game of getting away with restraining order violations — because he can," Ms. Moore said.

In Massachusetts, about 100 people accused of domestic abuse are monitored by GPS. They are charged \$8 a day for a cellphone-like device that clips to a belt, an ankle bracelet and a home charger. Their movements are monitored by three control centers, and if they break an "exclusion zone" around the victim or her children, the police are notified.

Tracey Mutz, 43, who works in sales in Louisiana, said she was raped at gunpoint by her former boyfriend, a sheriff's deputy who is currently on GPS monitoring while awaiting trial. "I don't think GPS is enough to keep

us safe," Ms. Mutz said. "Five women have come out in public about his abuse."

Violent abusers can always remove their GPS monitors, as Theresa's former husband did in Massachusetts.

After being a fugitive for eight months, Joel was caught and began a yearlong prison sentence in March. Theresa, who now has a permanent restraining order, said she wanted GPS monitoring ordered for him when he is released.

"I'm hoping next time that he will be too scared of being caught to take it off," she said.

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ROD BLAGOJEVICH - GOVERNOR

NEWS

IMMEDIATE RELEASE
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Governor Blagojevich signs legislation to increase protections for domestic violence victims

Cindy Bischof Law allows courts to order that abuser wear GPS tracking device as condition of bail in stalking situations

CHICAGO – Joined by a bipartisan group of state legislators, domestic violence prevention advocates and the family of domestic abuse victim Cindy Bischof, Governor Rod R. Blagojevich today signed legislation to strengthen protections for domestic violence victims from their abusers. Senate Bill 2719, sponsored by State Senator Susan Garrett (D-Highwood) and State Representative Suzanne Bassi (R-Palatine), allows the courts to order an abuser to wear a GPS tracking device as a condition of bail in instances when a restraining order has been violated.

The legislation was sparked by the tragic event surrounding the death of Cindy Bischof whose ex-boyfriend was able to obtain a gun and shoot her in the parking lot of her real estate business, even after he had been arrested and prosecuted for violating a restraining order on two occasions.

“It is with a heavy heart for the Bischof family that I sign this legislation to enhance our state’s protections for domestic abuse victims,” said Governor Blagojevich. “The loss of their daughter was a terrible tragedy, but the Bischof family has used the heartbreak of her death to protect others like Cindy, who live in fear of their abuser. With this legislation, we will further help victims of domestic violence by monitoring their abusers whereabouts and aiding law enforcement in tracking violations of a restraining order.”

The law is effective January 1, 2009.

In a domestic violence case, if a domestic abuser is arrested for violating a restraining order and appeals for bail, the Cindy Bischof Law requires that the abuser must undergo a risk assessment evaluation and gives the court authority to require a GPS device be worn if bail is granted. In addition, the court must order the abuser to be evaluated by a partner abuse intervention program and order the respondent to follow all recommendations. The law also establishes an abuser’s failure to attend and complete a partner abuse intervention program as a new offense if the restraining order is violated.

The new law also adds at least a \$200 additional fine to every penalty on a violation of a restraining order conviction. The fines will be deposited into the newly established Domestic Violence Surveillance Fund.

“Our family, friends, and foundation thank the General Assembly and the Governor for acting quickly and decisively to pass this legislation which will go a long way toward helping victims of domestic violence maintain some semblance of freedom from their offender in stalking situations,” said Michael Bischof, brother of Cindy Bischof.

Finally, the bill establishes the Domestic Violence Surveillance Program where the supervising authority over the abuser (whether it is the Illinois Department of Corrections, the Patrol Review Board or the court) will use the most modern GPS technology to track domestic violence offenders and defines what capabilities the GPS tracking system must have. The Division of Probation Services must establish all standards and protocols to implement the program.

The Governor was joined today at the Jane Addams Hull House by Illinois House Minority Leader Tom Cross (R-Plainfield), State Senator Susan Garrett (D-Highwood), State Representative Michael McAuliffe (R-Chicago), State Representative Patricia Bellock (R-Westmont), State Representative Dennis Reboletti (R-Addison), family and friends of Bischof Family, Assistant State’s Attorney Ketki Steffan of the 3rd Municipal District, Denise Snyder of the Illinois Coalition against Domestic Assault, Maria Pesquiera of Mujeres Latina en Accion, and other advocates who provide assistance for domestic violence victims.

“Here today we honor the memory of Cindy Bischof by helping to protect battered women from their abusive stalkers. I am pleased to stand here with this bipartisan group to witness the signing of this important legislation,” said House Minority Leader Cross.

“The Cindy Bischof Law will help law enforcement officials protect families through use of GPS systems, strengthen existing laws for protecting families, and may save lives,” said Senator Garrett.

“It was my honor to be a part of drafting and passing this important piece of legislation which will provide a much greater degree of protection for victims of domestic violence than has thus far been the case,” said Representative Bassi who was out of the state for the bill signing.

The legislation signed by the Governor is similar legislation passed in Massachusetts last year which tracked domestic abusers with GPS and used GPS to enforce protection orders against convicted abusers. Until today, GPS use in Illinois has been only utilized by the Department of Corrections and the Department of Juvenile Justice to track sex offenders.

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Governor Granholm Signs Legislation Protecting Victims of Domestic Violence, Stalking

July 10, 2008

LANSING - Governor Jennifer M. Granholm has signed legislation into law that helps protect stalking victims by authorizing courts to order suspects in domestic violence cases and prisoners convicted of aggravated stalking who are paroled to wear global positioning system (GPS) devices. The new laws, which were given immediate effect, also give victims new rights in requesting restrictions on defendants and parolees.

"We want to ensure that people who are targets of stalking or domestic violence are protected," Granholm said. "Experience has shown that too often, criminal charges and personal protection orders are not enough to keep someone from harm's way and so today we are putting additional safeguards in place."

Under House Bill 4453 sponsored by Rep. Bill Caul of Mt. Pleasant, a defendant charged with a crime involving domestic violence could be required to carry or wear a global positioning system (GPS) device as a condition of release. Domestic violence victims could receive information from the GPS device, notifying them if the alleged stalker comes within certain proximity.

Additionally, victims are to be given contact information for the local law enforcement agency so they can request immediate assistance if the defendant is located within that proximity. Victims can also provide the court with a list of areas from which they want the defendant excluded.

Courts are now required to instruct the GPS systems to notify authorities if the defendant violates the order.

Under House Bill 4330 sponsored by Rep. Paul Condino of Southfield, prisoners serving a sentence for aggravated stalking who are paroled would be required to wear a GPS device if their victim requested.

House Bill 4330 is Public Act 190 of 2008 and House Bill 4553 is Public Act 191 of 2008.

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