

2011 DRAFTING REQUEST

Bill

Received: 02/23/2011

Received By: phurley

Wanted: As time permits

Companion to LRB:

For: Rich Zipperer (608) 266-9174

By/Representing:

May Contact:

Drafter: phurley

Subject: Criminal Law - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Zipperer@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Global positioning monitoring for injunteees

Instructions:

ASA1 to 09 AB 263, as amended by AA1

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 02/28/2011	jdye 03/11/2011		_____			S&L Crime
/1			rschluet 03/11/2011	_____	sbasford 03/11/2011		S&L Crime
/2	phurley 05/05/2011	jdye 05/05/2011	mduchek 05/05/2011	_____	sbasford 05/05/2011	sbasford 05/23/2011	

FE Sent For: At Intro.

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FE Sent For:

md  
5/5  
RS  
5/5  
<END>

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/?	phurley	1 3 / kjld					
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FE Sent For:

<END>

# "RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

 DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN


(Request Made By: PJH) (Date: 2/23/11)

## Note:


**BOTH DRAFTS SHOULD HAVE THE SAME "REQUESTOR"**


*(exception: companion bills)*



 Please transfer the drafting file for  
**2009 LRB** S 0145 (For:  Rep. /  Sen. Zipperer)  
to the drafting file for  
**2011 LRB** 1532 (For:  Rep. /  Sen. Zipperer)

-----OR-----

 Please copy the drafting file for  
**2011 LRB** \_\_\_\_\_ / \_\_\_\_\_ (include the version) (For: Rep. / Sen. \_\_\_\_\_)  
and place it in the drafting file for  
**2011 LRB** \_\_\_\_\_ (For: Rep. / Sen. \_\_\_\_\_)

 Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history  
("guts") from the original file: \_\_\_\_\_

## Hurley, Peggy

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**From:** Schroeder, Lauren  
**Sent:** Wednesday, February 23, 2011 1:08 PM  
**To:** Hurley, Peggy  
**Subject:** Bill drafting

Hi Peggy,

Senator Zipperer asked me to have you draft 2009 AB 263, as amended by aa1 to ASA1. Please contact me if you have any questions.

Thanks--

**Lauren Schroeder**  
*Office of Sen. Rich Zipperer*  
33rd State Senate District  
Phone: (608) 266-9174  
E-mail: [lauren.schroeder@legis.wisconsin.gov](mailto:lauren.schroeder@legis.wisconsin.gov)

50145  
a0872



1532/1

LRB:01458  
PJH:awr/nd

2011 BILL

Ernr

ASSEMBLY SUBSTITUTE AMENDMENT 1,

jld

TO 2009 ASSEMBLY BILL 263

2-28-11

LPS-check auto refs

LPS PWF (Dove)

October 14, 2009 - Offered by Representative ZIPPERER.

4

Regen

1 AN ACT *to amend* 16.705 (1n), 16.71 (5m), 20.410 (1) (gk) (title), 946.465, 971.37

2 (1m) (c) 1. (intro.) and 971.37 (1m) (c) 2.; and *to create* 20.410 (1) (gL), 301.49,

3 813.129, 814.75 (8m), 969.02 (3) (e), 973.05 (2m) (jm) and 973.057 of the

4 statutes; **relating to:** requiring persons who violate certain restraining orders

5 or injunctions to be monitored by a global positioning system, making an

6 appropriation, and providing a penalty.

granting rule-making authority,

**Analysis by the Legislative Reference Bureau**

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

If the court determines that the person has engaged in, or may engage in, acts of abuse, harassment, or threats against the victim, the court may issue an injunction against the person. An injunction may stay in effect for up to four years and bars the person from contacting the victim, requires the person to stay away from

the victim's residence, and may require the person to stay away from other locations temporarily occupied by the victim.

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

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

Under the ~~substitute amendment~~, DOC must monitor the person's whereabouts with a GPS device and, if the person enters into an area that he or she is required to avoid under the terms of the restraining order or injunction, DOC must immediately notify local law enforcement and the victim. Under the ~~substitute amendment~~, everyone who violates a restraining order is required to pay a \$200 surcharge in addition to his or her fine that will be used toward the costs of GPS tracking. Under the ~~substitute amendment~~, the court may order the person to pay for the costs of GPS tracking. The ~~substitute amendment~~ 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:*

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

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

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

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

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

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

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

4           20.410 (1) (gL) *Global positioning system tracking devices for certain violators*  
5 *of restraining orders.* All moneys received under s. 301.49 (5) ✓ and all moneys received  
6 from the global positioning system tracking surcharge on court fines, as authorized  
7 under s. 971.37 (1m) (c) 1. ✓ or 973.057, ✓ for expenditures related to the global  
8 positioning system tracking program under s. 301.49. ✓ If the unencumbered balance  
9 in this appropriation account exceeds \$100,000 ✓ immediately before the end of any  
10 fiscal year, the department of corrections shall transfer the excess to the  
11 appropriation account under s. 20.437 (1) (hh) ✓ at the end of that fiscal year.

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

13           **301.49 Global positioning system tracking for persons who violate**  
14 **certain orders or injunctions.** ✓ (1) DEFINITIONS. In this section: ✓

15           (a) “Exclusion zone” means a zone in which a person who is tracked using a  
16 global positioning system tracking device ✓ is prohibited from entering.

17           (b) “Global positioning system tracking” ✓ means tracking using a system that  
18 actively monitors and identifies a person’s location and timely reports or records the  
19 person’s presence in an exclusion zone. ✓ “Global positioning system tracking”  
20 includes comparable technology.

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

23           (d) “Restraining order or injunction” means an order or an injunction issued  
24 pursuant to ss. 813.12 to 813.125 ✓ or enforced under s. 813.128. ✓

1           (2) WHO IS COVERED; DURATION OF COVERAGE. (a) The department shall maintain  
2 global positioning system tracking of a person who is not in jail or in prison and who  
3 is ordered by a court to submit to monitoring under s. 813.129 or 969.02 (3) (e) for the  
4 duration of the restraining order or injunction. If a restraining order or injunction  
5 is extended beyond its original expiration date, the department shall maintain global  
6 positioning system tracking of the person for the duration of the extended  
7 restraining order or injunction.

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

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

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

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

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

25           4. Immediately alert the petitioner if the person enters any exclusion zone.

1 (b) The department shall contract with a vendor using a competitive process  
2 as described under s. 16.75<sup>✓</sup> to provide staff in this state to install, remove, and  
3 maintain equipment related to global positioning system tracking for purposes of  
4 this section<sup>✓</sup>. The term of the contract may not exceed 3<sup>✓</sup> years.

5 (c) For each person who is subject to<sup>✓</sup> global positioning system tracking under  
6 this section<sup>✓</sup>, the department shall create an individualized exclusion zone for the  
7 person, if necessary to protect public safety. In creating an exclusion zone, the  
8 department shall include any location that the person is ordered to avoid or enjoined  
9 from entering under the restraining order or injunction that the person violated or  
10 is alleged to have violated.<sup>✓</sup>

11 (4) TERMINATION IF PERSON MOVES OUT OF STATE.<sup>✓</sup> Notwithstanding sub. (2),<sup>✓</sup> if a  
12 person who is subject to being tracked under this section<sup>✓</sup> moves out of state, the  
13 department shall terminate the person's tracking. If the person returns to the state  
14 during the duration of the restraining order or injunction, the department shall  
15 reinstate the person's tracking.<sup>✓</sup>

16 (5) COSTS.<sup>✓</sup> (a) The department shall determine all of the following for each  
17 person tracked:<sup>✓</sup>

- 18 1. The cost of global positioning system tracking<sup>✓</sup> for the person.
- 19 2. How much of the cost under subd. 1.<sup>✓</sup> the person is able to pay based on the  
20 factors listed in par. (c).<sup>✓</sup>

21 (b) If required by the department, a person who is subject to global positioning  
22 system tracking<sup>✓</sup> shall pay for the cost of tracking up to the amount calculated for the  
23 person under par. (a) 2.<sup>✓</sup> The department shall collect moneys paid by the person  
24 under this paragraph<sup>✓</sup> and credit those moneys to the appropriation account under  
25 s. 20.410 (1) (gL).<sup>✓</sup>

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

- 3 1. The person's financial resources.
- 4 2. The present and future earning ability of the person.
- 5 3. The needs and earning ability of the person's dependents.
- 6 4. Any other factors that the department considers appropriate.

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

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

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

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

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

17 **813.129 Global positioning system tracking.** (1) If a person knowingly  
18 violates a temporary restraining order or injunction issued under <sup>ss.</sup> 813.12 to <sup>ga</sup> (s.)  
19 813.125 ✓ or any order enforced under s. 813.128, ✓ in addition to other penalties  
20 provided in those sections, ✓ the court may report the violation to the department of  
21 corrections immediately upon the person's conviction and may order the person to  
22 submit to global positioning system tracking under s. 301.49. ✓

23 (2) Before issuing an order under sub. (1), ✓ the court shall consider whether the  
24 person is likely to cause serious bodily harm to the person who petitioned for the

1       restraining order or injunction, poses a serious threat to public safety, or is likely to  
2       intimidate witnesses, weighing the following factors: ✓

3           (a) Whether the person has allegedly caused physical injury, intentionally  
4       abused pets or damaged property, or committed sexual assault, an act of  
5       strangulation or forcible entry to gain access to the petitioner. ✓

6           (b) Whether the person has threatened any individual, including the petitioner,  
7       with harm. ✓

8           (c) Whether the person has access to a firearm or other dangerous weapon and  
9       a history of improperly using or threatening to use a firearm or other dangerous  
10      weapon. ✓

11          (d) Whether the person has expressed suicidal ideation. ✓

12          (e) Whether the person and the petitioner have recently separated, divorced,  
13      or otherwise terminated their relationship. ✓

14      ~~4(e)~~ ~~(f)~~ Whether the person has exhibited obsessive or controlling behavior toward  
15      the petitioner or any member of the petitioner's family, including stalking,  
16      surveillance, or isolation of the petitioner or any member of the petitioner's family. ✓

17      ~~4(f)~~ ~~(g)~~ The person's mental health history. ✓

18      ~~4(g)~~ ~~(h)~~ Whether the person has a history of abusing alcohol or a controlled  
19      substance. ✓

20          (3) The court may request the department of corrections to provide a validated  
21      danger assessment of the person in order to make the findings required in sub. (2). ✓

22          (4) If a court enters an order under sub. (1), ✓ the court shall provide the person  
23      who petitioned for the restraining order or injunction with a referral to a domestic  
24      violence or sexual assault victim service provider. ✓

1 (5) If, after weighing the factors set forth under sub. (2),<sup>✓</sup> the court determines  
2 that a person is likely to cause serious bodily harm to the person who petitioned for  
3 the restraining order or injunction, poses a serious threat to public safety, or is likely  
4 to intimidate witnesses, and the court determines that another alternative,  
5 including imprisonment, is more likely to protect the person who petitioned for the  
6 restraining order or injunction or the public or more likely to prevent the  
7 intimidation of witnesses, the court may not enter an order under sub. (1).<sup>✓</sup>

8 **SECTION 7.** 814.75 (8m)<sup>✓</sup> of the statutes is created to read:

9 814.75 (8m) The global positioning system tracking surcharge under s. 971.37  
10 (1m) (c) 1.<sup>✓</sup> or 973.057.<sup>✓</sup>

11 **SECTION 8.** 946.465<sup>✓</sup> of the statutes is amended to read:

12 **946.465 Tampering with a global positioning system tracking device.**

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

17 **SECTION 9.** 969.02 (3) (e)<sup>✓</sup> of the statutes is created to read:

18 969.02 (3) (e) If the person is charged with violating a restraining order or  
19 injunction issued under ss. 813.12<sup>✓</sup> to 813.125<sup>✓</sup> or an order or modification enforced  
20 under s. 813.128<sup>✓</sup>, require the person to submit to global positioning system tracking  
21 under s. 301.49<sup>✓</sup> and may require the person to participate in mental health  
22 treatment, a batterer's intervention program, or individual counseling. The judge  
23 shall consider a request by the district attorney or the petitioner, as defined in s.  
24 301.49 (1) (c),<sup>✓</sup> in determining whether to issue an order under this<sup>✓</sup> paragraph.

25 **SECTION 10.** 971.37 (1m) (c) 1. (intro.) of the statutes is amended to read:

1           971.37 (1m) (c) 1. (intro.) The agreement may provide as one of its conditions  
2 that a person covered under sub. (1) (b) or (c) pay the domestic abuse surcharge under  
3 s. 973.055 and, if applicable, the global positioning system tracking surcharge<sup>✓</sup> under  
4 s. 973.057.<sup>✓</sup> If the agreement requires the person to pay the global positioning system  
5 tracking surcharge under s. 973.057,<sup>✓</sup> the agreement shall also require the person to  
6 pay the domestic abuse surcharge under s. 973.055.<sup>✓</sup> Payments and collections of the  
7 domestic abuse surcharge and the global positioning system tracking surcharge  
8 under this subdivision are subject to s. 973.055 (2) to (4) or ~~s. 973.057~~<sup>10</sup> (2)<sup>✓</sup> and (3)<sup>✓</sup>,  
9 respectively, except as follows:

10           **SECTION 11.** 971.37 (1m) (c) 2.<sup>x</sup> of the statutes is amended to read:

11           971.37 (1m) (c) 2. If the prosecution is resumed under sub. (2) and the person  
12 is subsequently convicted, a court shall give the person credit under s. 973.055 and,  
13 if applicable, s. 973.057<sup>✓</sup> for any amount paid under subd. 1.

14           **SECTION 12.** 973.05 (2m) (jm)<sup>x</sup> of the statutes is created to read:

15           973.05 (2m) (jm) To payment of the global positioning system tracking  
16 surcharge until paid in full.<sup>✓</sup>

17           **SECTION 13.** 973.057<sup>x</sup> of the statutes is created to read:

18           **973.057 Global positioning system tracking surcharge.** (1) If a court  
19 convicts a person under ~~s. 813.12~~<sup>SS.</sup> to 813.128<sup>✓</sup>, or a conforming municipal ordinance,  
20 the court shall impose a global positioning system tracking surcharge under ch. 814<sup>✓</sup>  
21 of \$200<sup>✓</sup> for each offense.

22           (2) (a) If the surcharge is imposed by a court of record, after the court  
23 determines the amount due, the clerk of the court shall collect and transmit the  
24 amount to the county treasurer as provided in s. 59.40 (2) (m).<sup>✓</sup> The county treasurer

1 shall then make payment to the secretary of administration as provided in s. 59.25

2 (3) (f) 2. ✓

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

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

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

#### 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 the ✓ Wisconsin Coalition Against Domestic Violence, law enforcement  
18 agencies, judges, district attorneys, and probation officers in developing the  
19 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 sixth  
4 month beginning after publication, except as follows:

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.

ar. ↗ ↘

(END)

9

e 6th

## Hurley, Peggy

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**To:** Reader, Chris

**Subject:** RE: lrb 1532 quick changes

Hi Chris,

No problem. I'll get those to you as soon as I can.

---

**From:** Reader, Chris

**Sent:** Thursday, May 05, 2011 9:30 AM

**To:** Hurley, Peggy

**Subject:** lrb 1532 quick changes

Hey Peggy, could you make 3 quick changes to our draft on the gps tracking for domestic violence, LRB 1532?

1. page 5, line 14-15 – amend so that it is the department shall IMMEDIATELY reinstate the person's tracking
2. page 7, line 8. delete "access to a firearm or other dangerous weapon and"
3. page 10, line 13. instead of naming Wisconsin Coalition Against Domestic Violence, use non-specific wording, such as "one or more anti-domestic violence groups"

thank you!

**Chris Reader**

Chief of Staff

Senator Rich Zipperer

State Capitol Room 323 South

(608) 266-9174



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1532/1  
PJH:jld:rs

2  
mr

2011 BILL

5-5-11

X Regen

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

***Analysis by the Legislative Reference Bureau***

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

If the court determines that the person has engaged in, or may engage in, acts of abuse, harassment, or threats against the victim, the court may issue an injunction against the person. An injunction may stay in effect for up to four years and bars the person from contacting the victim, requires the person to stay away from the victim's residence, and may require the person to stay away from other locations temporarily occupied by the victim.

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

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

Under the bill, DOC must monitor the person's whereabouts with a GPS device and, if the person enters into an area that he or she is required to avoid under the terms of the restraining order or injunction, DOC must immediately notify local law enforcement and the victim. Under the bill, ~~everyone~~ <sup>a</sup> ~~who violates a restraining order~~ <sup>person</sup> 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.

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

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

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

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

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

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

2           20.410 (1) (gk) (title) *Global positioning system tracking devices for certain sex*  
3 *offenders.*

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

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

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

14           **301.49 Global positioning system tracking for persons who violate**  
15 **certain orders or injunctions. (1) DEFINITIONS.** In this section:

16           (a) “Exclusion zone” means a zone in which a person who is tracked using a  
17 global positioning system tracking device is prohibited from entering.

18           (b) “Global positioning system tracking” means tracking using a system that  
19 actively monitors and identifies a person’s location and timely reports or records the  
20 person’s presence in an exclusion zone. “Global positioning system tracking”  
21 includes comparable technology.

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

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

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1           **(2) WHO IS COVERED; DURATION OF COVERAGE.** (a) The department shall maintain  
2 global positioning system tracking of a person who is not in jail or in prison and who  
3 is ordered by a court to submit to monitoring under s. 813.129 or 969.02 (3) (e) for the  
4 duration of the restraining order or injunction. If a restraining order or injunction  
5 is extended beyond its original expiration date, the department shall maintain global  
6 positioning system tracking of the person for the duration of the extended  
7 restraining order or injunction.

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

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

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

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

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

25           4. Immediately alert the petitioner if the person enters any exclusion zone.

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

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

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

16 (5) COSTS. (a) The department shall determine all of the following for each  
17 person tracked:

- 18 1. The cost of global positioning system tracking for the person.
- 19 2. How much of the cost under subd. 1. the person is able to pay based on the  
20 factors listed in par. (c).

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

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

- 3 1. The person's financial resources.
- 4 2. The present and future earning ability of the person.
- 5 3. The needs and earning ability of the person's dependents.
- 6 4. Any other factors that the department considers appropriate.

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

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

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

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

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

17 **813.129 Global positioning system tracking.** (1) If a person knowingly  
18 violates a temporary restraining order or injunction issued under ss. 813.12 to  
19 813.125 or any order enforced under s. 813.128, in addition to other penalties  
20 provided in those sections, the court may report the violation to the department of  
21 corrections immediately upon the person's conviction and may order the person to  
22 submit to global positioning system tracking under s. 301.49.

23 (2) Before issuing an order under sub. (1), the court shall consider whether the  
24 person is likely to cause serious bodily harm to the person who petitioned for the



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1       restraining order or injunction, poses a serious threat to public safety, or is likely to  
2       intimidate witnesses, weighing the following factors:

3           (a) Whether the person has allegedly caused physical injury, intentionally  
4       abused pets or damaged property, or committed sexual assault, an act of  
5       strangulation or forcible entry to gain access to the petitioner.

6           (b) Whether the person has threatened any individual, including the petitioner,  
7       with harm.

8           (c) Whether the person has access to a firearm or other dangerous weapon and  
9       a history of improperly using or threatening to use a firearm or other dangerous  
10      weapon. ✓

11          (d) Whether the person has expressed suicidal ideation.

12          (e) Whether the person has exhibited obsessive or controlling behavior toward  
13      the petitioner or any member of the petitioner's family, including stalking,  
14      surveillance, or isolation of the petitioner or any member of the petitioner's family.

15          (f) The person's mental health history.

16          (g) Whether the person has a history of abusing alcohol or a controlled  
17      substance.

18          **(3)** The court may request the department of corrections to provide a validated  
19      danger assessment of the person in order to make the findings required in sub. (2).

20          **(4)** If a court enters an order under sub. (1), the court shall provide the person  
21      who petitioned for the restraining order or injunction with a referral to a domestic  
22      violence or sexual assault victim service provider.

23          **(5)** If, after weighing the factors set forth under sub. (2), the court determines  
24      that a person is likely to cause serious bodily harm to the person who petitioned for  
25      the restraining order or injunction, poses a serious threat to public safety, or is likely

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

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

6 814.75 (8m) The global positioning system tracking surcharge under s. 971.37  
7 (1m) (c) 1. or 973.057.

8 **SECTION 8.** 946.465 of the statutes is amended to read:

9 **946.465 Tampering with a global positioning system tracking device.**

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

14 **SECTION 9.** 969.02 (3) (e) of the statutes is created to read:

15 969.02 (3) (e) If the person is charged with violating a restraining order or  
16 injunction issued under ss. 813.12 to 813.125 or an order or modification enforced  
17 under s. 813.128, require the person to submit to global positioning system tracking  
18 under s. 301.49 and may require the person to participate in mental health  
19 treatment, a batterer's intervention program, or individual counseling. The judge  
20 shall consider a request by the district attorney or the petitioner, as defined in s.  
21 301.49 (1) (c), in determining whether to issue an order under this paragraph.

22 **SECTION 10.** 971.37 (1m) (c) 1. (intro.) of the statutes is amended to read:

23 971.37 (1m) (c) 1. (intro.) The agreement may provide as one of its conditions  
24 that a person covered under sub. (1) (b) or (c) pay the domestic abuse surcharge under  
25 s. 973.055 and, if applicable, the global positioning system tracking surcharge under

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

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

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

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

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

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

15 **973.057 Global positioning system tracking surcharge.** (1) If a court  
16 convicts a person under ss. 813.12 to 813.128, or a conforming municipal ordinance,  
17 the court shall impose a global positioning system tracking surcharge under ch. 814  
18 of \$200 for each offense.

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

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

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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 14. Nonstatutory provisions.**

11 (1) The department of corrections shall promulgate rules to implement section  
12 301.49 of the statutes, as created by this act. The department of corrections shall

13 consult with the Wisconsin Coalition Against Domestic Violence, law enforcement  
14 agencies, judges, district attorneys, and probation officers in developing the  
15 implementation plan.

16 **SECTION 15. Initial applicability.**

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

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

23 **SECTION 16. Effective dates.** This act takes effect on the first day of the 6th  
24 month beginning after publication, except as follows:

agencies  
one or more organizations  
or agency that are  
dedicated to the prevention of  
domestic violence

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**Basford, Sarah**

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**From:** Reader, Chris

**Sent:** Monday, May 23, 2011 8:48 AM

**To:** LRB.Legal

**Subject:** Draft Review: LRB 11-1532/2 Topic: Global positioning monitoring for injunctees

Please Jacket LRB 11-1532/2 for the SENATE.