

SUBJECT: GPS monitoring of defendants charged with a family violence offense

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Gallego, Fletcher, Kent, Miklos, Pierson, Vaught, Vo

0 nays

4 absent — Christian, Hodge, Moody, Riddle

WITNESSES: For — Rachel Benavides, Corpus Christi Housing Authority; Abigail Drennon, on behalf of the family of Rumalda Nino; Ursula Hernandez and Paulette Maier, Women's Shelter of South Texas; Roger Moore, Professional Bondsmen of Texas; Vickie Sedillo; (*Registered, but did not testify*: Laura Andersen, San Antonio Police Department; Michael Blake, The Texas Police Chiefs Association; Rudy Garza, City of Corpus Christi, Corpus Christi Police Department; Scott Siscoe, Houston Police Department)

Against — None

On — (*Registered, but did not testify*: Stuart Jenkins, Texas Department of Criminal Justice)

BACKGROUND: Code of Criminal Procedure, ch. 17 includes procedures for a defendant's release on bond. It requires magistrates, on their own motion or at the request of the victim, victim's guardian, peace officer, or state attorney, to issue an order for emergency protection at a defendant's appearance after arrest for certain offenses involving family violence.

DIGEST: CSHB 1506 would allow a magistrate to require, as a condition of release on bond, that a defendant charged with an offense involving family violence:

- refrain from going near a location, specifically described in the bond, frequented by an alleged victim of the offense;
- carry or wear a global positioning monitoring system device (GPS), and pay costs associated with operating that system; or

- pay the costs associated with providing the victim with an electronic receptor that was capable of receiving the GPS information from the defendant's device, and notified the victim if the defendant was at or near a prohibited location.

A magistrate could require a defendant charged with an offense involving family violence, sexual assault, aggravated sexual assault, or stalking to participate in the GPS program as a condition in an order for emergency protection.

A magistrate would have to allow an indigent defendant to perform community service in lieu of paying the costs.

“Global positioning monitoring system” would be defined as a system that electronically determines and reports the location of an individual through the use of a transmitter or similar device carried or worn by the individual that transmits latitude and longitude data to a monitoring entity through global positioning satellite technology. The term would not include a system that was implanted or otherwise invaded or violated the individual's body.

In determining whether to order the defendant to carry or wear a GPS, the magistrate would have to consider the likelihood that the defendant would be deterred from seeking to kill, physically injure, stalk, or otherwise threaten the victim before trial.

At any time, a victim could request that the magistrate terminate the victim's participation in a global positioning system, and the magistrate could not impose sanctions on the victim for this request or for refusing to participate.

Before a magistrate set the locations from which the defendant would be excluded, the victim would have to be given the opportunity to provide a list of locations from which the victim would like the defendant to be excluded, and the magistrate would have to consider the request in determining those locations.

Before requiring a defendant to pay costs associated with a victim's receptor, the magistrate would have to provide the victim information regarding:

- the victim's right to participate, refuse to participate, or terminate participation in the GPS program;
- the way the GPS technology functions, its limitations and risks, and the extent to which it would track and record the victim's movements;
- any locations from which the defendant was excluded and what, if any, minimum distance the defendant would have to maintain;
- possible sanctions against the defendant for violating the GPS program conditions;
- the procedure and available support services for the victim if the defendant violated a bond condition or the GPS equipment failed;
- community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other assistance available to address the consequences of family violence; and
- the fact that the victim's communications with the court regarding the GPS and restrictions imposed on the defendant would not be confidential.

The magistrate also would be required to provide a victim participating in the GPS program with the name and telephone number of an appropriate law enforcement agent whom the victim could call to request immediate assistance if the defendant violated a GPS program condition.

A magistrate that required a defendant's participation in the GPS program would be required to order the entity that operated the GPS monitoring system to notify the court and appropriate law enforcement agency if a defendant violated a condition of bond imposed under the GPS program.

The GPS provision would not limit the magistrate's authority to impose any other reasonable conditions of bond or enter any orders of protection under other applicable statutes.

The bill would take effect September 1, 2009, and apply only to a defendant released on bond or to an order for emergency protection issued on or after this date.

**SUPPORTERS
SAY:**

CSHB 1506 would give victims time to alert law enforcement if an attacker was in or near a restricted area and would give time to escape to safety. While family violence offenders currently can be ordered to

maintain a certain distance from their victims, if an offender violates the order, a victim often finds out too late to escape. Giving victims time to flee would save victims from further abuse and save lives.

The bill could deter future threats and attempts at violence because the offender would know that the offender's proximity to the victim was being monitored. Knowledge of the offender's location would give peace of mind to victims and allow them freedom to live their lives without a constant fear of attack.

CSHB 1506 would not require magistrates to order GPS programs, so costs only would be incurred to local jurisdictions if they chose to institute such programs. To relieve the financial burden, the bill would authorize magistrates to order defendants to absorb some of the associated costs. There would be no cost to the victim, and an indigent defendant could perform community service in lieu of paying the GPS program costs.

The GPS program only would be used to track the defendant's location in relation to the victim and restricted zones. It would not be used as a homing device to monitor the location of the defendant at all times.

OPPONENTS
SAY:

Requiring a defendant to wear or carry a GPS device could allow the defendant's location to be monitored at any time, not just during violations of the GPS program.

OTHER
OPPONENTS
SAY:

While CSHB 1506 would provide a valuable tool in protecting victims of family violence, the costs associated with the GPS program might be prohibitive for some smaller locales. Though some offenders would absorb the associated costs, local jurisdictions still would have to pay the costs for indigent defendants.

NOTES:

The committee substitute differs from the bill as filed by adding a provision that would authorize a magistrate to order a defendant's participation in the GPS program as a condition in an order for emergency protection.

According to the fiscal note, the Montgomery County Auditor's Office estimates that the cost of GPS equipment rental and monitoring fees per participant would be \$350 per month. If all of the approximately 200 eligible cases participated in the program, the cost to the county would be \$70,000 per month. According to the Texas Department of Criminal

Justice, the monthly cost per person for an active system, in which the data is transmitted in real time, would be \$298, and the cost for a passive system, in which the data is downloaded and reviewed at the end of the day, is \$132.

The companion bill, SB 1902 by Hinojosa, has been referred to the Senate Criminal Justice Committee.