

Legislative Analysis



GPS MONITORING FOR CERTAIN OFFENDERS RELEASED ON BAIL OR PAROLE

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House Bill 4330 (Substitute H-1)
Sponsor: Rep. Paul Condino

House Bill 4453 (Substitute H-1)
Sponsor: Rep. Bill Caul
Committee: Judiciary

First Analysis (4-24-08)

BRIEF SUMMARY: House Bill 4330 would require a prisoner released on parole for aggravated stalking to wear a GPS device and House Bill 4453 would grant a court the discretion to require a defendant released on bail for a domestic violence crime to wear a GPS device.

FISCAL IMPACT: A fiscal analysis is in process.

THE APPARENT PROBLEM:

According to friends, family, and law enforcement members, Mary Babb did everything right. When her husband became abusive, she called the police, filed for divorce, obtained a personal protection order (PPO), maintained a separate residence, and continued to work to support herself and the couple's young son. Thomas Babb was charged with several domestic violence-related crimes but had been released on bail while awaiting trial. On January 9, 2007, Mary Babb died. On that day, her estranged husband waited in the parking lot of her employer. When she left work, he chased her vehicle with his pickup truck, ramming her SUV until it flipped over. Then, while she dangled upside down from her seatbelt, he shot out a window and then continued to fire into the vehicle with a shotgun, striking her twice in the chest while several witnesses watched.

Mary Babb's murder was not an isolated incident. In March of 2002, Thomas Wendt shot and killed his ex-wife, her niece, and their friend on the steps of the Isabella County Courthouse. Forty-two people were killed in Michigan in 2005 in domestic violence related incidents. From 1999 to 2001, 316 violent deaths that were connected to intimate partner relationships were registered in the Michigan Intimate Partner Homicide Surveillance System.

In many of these murders, the perpetrator had a history of domestic violence, assault, stalking, and/or making verbal threats against the victim. Many of the victims had obtained PPOs and were doing "everything right" in regards to protecting themselves. However, in many of these incidents, the murderer laid in wait for and then ambushed the victim.

The failure of the "system" to protect these victims has led some to believe an additional approach is needed. Some states have recently started to require the use of global positioning monitoring devices to be used by some offenders, with their victims simultaneously using receptor devices. If the offender comes within a certain range of the victim, the victim receives a page by phone or text message and the police are alerted as well. Advocates of GPS monitoring programs believe even a few seconds of warning could provide a victim the opportunity to seek shelter, stay indoors, call 9-1-1, or take evasive action if in a vehicle - moments which could be the difference between life and death for many.

THE CONTENT OF THE BILLS:

House Bill 4330 would amend the Corrections Code (MCL 791.236) to require that a parole order for a prisoner serving a sentence for aggravated stalking include a requirement that the prisoner's location be monitored by a global positioning monitoring system during the entire period of parole.

Before being released on parole with a GPS device, the prisoner would have to be evaluated to determine whether he or she needed psychiatric, psychological, or social counseling. If the prisoner did have such a need, he or she would have to receive the counseling before or during the period of parole, or both, depending on what would be appropriate for that prisoner.

As used in the bill, "global positioning monitoring system" would mean a system that electronically determined and reported the location of an individual by means of an ankle bracelet transmitter or similar device worn by the individual, which transmitted latitude and longitude data to monitoring authorities through global positioning satellite technology.

House Bill 4453, known as "Mary's Law," would amend the Code of Criminal Procedure (MCL 765.6b). Under the bill, a court could order a defendant charged with a crime involving domestic violence who is released on bail to carry or wear a global positioning system device as a condition of release. "Domestic violence" would mean that term as defined in Section 1 of Public Act 389 of 1978.

In making a determination to order the defendant to utilize a GPS device, the court would have to consider the likelihood that the defendant's participation in GPS monitoring would deter him or her from seeking to kill, physically injure, stalk, or otherwise threaten the victim prior to trial.

With the informed consent of the victim, the court could also order the defendant to provide the victim with an electronic receptor device capable of receiving the global positioning system information from the defendant's device that would notify the victim if the defendant was located within a proximity to the victim that had been determined by the court in consultation with the victim. (The term "informed consent" would be defined to mean that the victim had been given information as specified in the bill before

consenting to participate in GPS monitoring. The information would include the right to refuse participation in GPS monitoring, how GPS monitoring functions and its risks and limitations, the physical boundaries imposed on the defendant during the monitoring, sanctions the court could impose on the defendant for violating an order related to GPS monitoring, procedures the victim would follow in case of an equipment failure or a violation by the defendant, identification of various community services that could be needed by the victim in addressing the consequences and effects of domestic violence, and the nonconfidential nature of the victim's communications with the court concerning GPS monitoring and the restrictions imposed upon the defendant's movements.)

The victim would also have to be furnished with a telephone contact with the local law enforcement agency so that he or she could request immediate assistance if the defendant were located within the proximity established by the court.

The victim could opt out of the monitoring program by requesting the court to terminate his or her participation in the GPS monitoring of the defendant at any time. Sanctions could not be imposed by the court on the victim for refusing to participate in GPS monitoring.

A defendant charged with a domestic violence-related crime could only be released under the bill's provisions if he or she agreed to pay the cost of the device and any monitoring of the device as a condition of release or to perform community service work in lieu of paying that cost. The defendant would also be prohibited, as a condition of release, from purchasing or possessing a firearm.

BACKGROUND INFORMATION:

More information on domestic violence can be found at many sites on the Internet, including the National Coalition Against Domestic Violence at www.ncadv.org.

ARGUMENTS:

For:

The bills are similar, but have important differences. House Bill 4330 would apply only to individuals serving a prison sentence for stalking who were paroled. Use of a GPS monitoring device would be a condition for release on parole, and if needed, the prisoner would have to receive appropriate counseling—either before or during his or her term of parole.

House Bill 4453, named after Mary Babb, would apply to persons charged with a domestic violence-related crime at the time the person was released on bail pending trial. The bill would not require these individuals to submit to GPS monitoring, but would instead give a court the discretion to order it. In making a determination, the court would have to consider the likelihood that use of the monitoring system would deter the defendant from harming or killing his or her victim. In many cases in which defendants released on bail pending trial killed their victims, the defendants had repeatedly

threatened harm to the victim, either directly to the victim or to the defendant's own friends, family, and coworkers. Victims could choose whether to carry a receptor device that would alert them to the approach of the defendant. Further, a defendant released under this bill could not purchase or possess a firearm. Domestic violence advocates have stressed the need for flexibility on the part of judges and district court magistrates in ordering a defendant to use a GPS monitoring system if released on bail. They fear a chilling effect on a victim's likelihood to report an incident of domestic violence if the bill mandated use of a GPS monitoring system. Further, not all incidents of domestic violence rise to the level of necessitating mandatory use of a GPS monitoring system.

For:

Reportedly, advances in technology have made GPS monitoring systems as required, or allowed, by the legislation very accurate. They are lightweight, and produce a warning to police and the victim if the device is not charged, deactivated, or removed. Enactment of the bills may not prevent harm to all victims of stalking or domestic violence in the future, but the ability to save even one life makes the legislation worthy.

POSITIONS:

The Michigan Coalition Against Domestic and Sexual Violence indicated support for the bills. (4-23-08)

A representative of the Isabella County Prosecutor's Office testified in support of House Bill 4453. (4-23-08)

The Michigan Department of Corrections is neutral on the bills. (4-23-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.