



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 4453 (Substitute H-1 as passed by the House)  
Sponsor: Representative Bill Caul  
House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 6-9-08

### **CONTENT**

**The bill would amend Chapter 5 (Bail) of the Code of Criminal Procedure to do all of the following:**

- Allow a judge or district court magistrate to order a defendant charged with a crime involving domestic violence, to carry or wear a global positioning system (GPS) device as a condition of release.**
- Allow the court, with the victim's informed consent, to order the defendant to give the victim a device to receive information from the defendant's GPS device.**
- Allow the victim to give the court a list of areas from which he or she wanted the defendant excluded, and require the court to consider the request.**
- Allow the defendant to be released only if he or she agreed to pay the GPS costs or perform community service in lieu of payment.**
- Require the court to impose a condition that the defendant not purchase or possess a firearm.**

The amendments enacted by the bill would be named "Mary's Law".

### **GPS Monitoring Order**

The Code allows a judge or district court magistrate to release a defendant subject to conditions reasonably necessary for the protection of one or more named people. The judge or magistrate must make a finding of the need for protective conditions and inform the defendant on the record of the specific conditions imposed and that if the defendant violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bail forfeited or revoked and new conditions of release imposed, in addition to any other penalties that may be imposed if the defendant is found in contempt of court.

Under the bill, if a defendant charged with a crime involving domestic violence were released under these provisions, the judge or district court magistrate could order him or her to carry or wear a global positioning system device as a condition of release. In determining whether to order a defendant to participate in GPS monitoring, the court would have to consider the likelihood that the defendant's participation would deter him or her from seeking to kill, physically injure, stalk, or otherwise threaten the victim before the trial.

With the victim's informed consent, the court also could order the defendant to provide the victim with an electronic receptor device capable of receiving the GPS information from the

device the defendant carried or wore that notified the victim if the defendant were located within a proximity to the victim as determined by the judge or magistrate in consultation with the victim. The victim also would have to be given a telephone contact with the local law enforcement agency to request immediate assistance if the defendant were located within that proximity to the victim.

The victim could provide the court with a list of areas from which he or she would like the defendant excluded. The court would have to consider the victim's request and determine the areas from which the defendant should be excluded.

The victim could request the court to terminate the victim's participation in GPS monitoring of the defendant at any time. The court could not impose sanctions on the victim for refusing to participate in GPS monitoring.

The court would have to instruct the global positioning monitoring system to notify the proper authorities if the defendant violated the order.

A defendant ordered to participate in GPS monitoring could be released only if he or she agreed to pay the cost of the GPS device and any monitoring of it as a condition of release or to perform community service in lieu of paying that cost.

### Firearm Prohibition

The Code allows a release order to impose a condition that the defendant not purchase or possess a firearm. The bill would require the court to impose that condition if it ordered GPS monitoring as a condition of release.

### Defined Terms

"Domestic violence" would mean that term as defined in the domestic violence prevention and treatment Act (MCL 400.1501), i.e., the occurrence of any of the following acts by a person that is not an act of self-defense:

- Causing or attempting to cause physical or mental harm to a family or household member.
- Placing a family or household member in fear of physical or mental harm.
- Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
- Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

"Global positioning monitoring system" would mean a system that electronically determines and reports the location of an individual by means of an ankle bracelet transmitter, or similar device worn by the individual, that transmits latitude and longitude data to monitoring authorities through global positioning satellite technology but does not contain or operate any GPS technology or radio frequency identification technology or similar technology that is implanted in or otherwise invades or violates the corporeal body of the individual.

"Informed consent" would mean that the victim was given information concerning all of the following before consenting to participate in GPS monitoring:

- The victim's right to refuse to participate in GPS monitoring and the process for requesting the court to terminate the victim's participation after it has been ordered.

- The manner in which the GPS monitoring technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements.
- The boundaries imposed on the defendant during the GPS monitoring.
- Sanctions that the court may impose on the defendant for violating a GPS monitoring order.
- The procedure that the victim is to follow if the defendant violates a GPS monitoring order or if GPS equipment fails.
- Identification of support services available to assist the victim to develop a safety plan to use if a GPS monitoring order is violated or if GPS equipment fails.
- Identification of community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other help in addressing the consequences and effects of domestic violence.
- The nonconfidential nature of the victim's communications with the court concerning GPS monitoring and the restrictions to be imposed upon the defendant's movements.

MCL 765.6b

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. If global positioning monitoring were ordered, the court could release only those defendants who agreed to pay for the cost of that monitoring or who performed community service in lieu of paying the costs. It is unclear who would bear the cost if the defendant performed community service, or whether that community service would completely offset the cost of monitoring, but it is likely the trial courts or local law enforcement would incur some costs. The Department of Corrections estimates the cost of active global positioning monitoring to be \$13 per diem, though this may vary depending on whether local units contract with the Department or another provider. In 2007, 18,355 adult personal protection orders were issued in domestic cases.

Fiscal Analyst: Stephanie Yu

S0708\4453sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.