

# Memo



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**To:** Members of the Assembly Committee on Criminal Justice  
**From:** Tony Gibart, Policy Coordinator, Wisconsin Coalition Against Domestic Violence  
**Date:** October 15, 2009  
**Re:** Assembly Bill 263—Assembly Substitute Amendment 1

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When the Committee heard Assembly Bill 263 in May, the Wisconsin Coalition Against Domestic Violence (WCADV) expressed support for the intent of the legislation, but asked the sponsors to consider amendment of the bill to address a number of concerns. I have provided original testimony below for your reference.

The substitute amendment offered by Representative Zipperer addresses these concerns, and, therefore, WCADV supports the bill as amended. WCADV thanks Rep. Zipperer for his work to improve this legislation. I encourage you to adopt the substitute amendment and recommend passage.

## Testimony from May 28, 2009:

Thank you very much for the opportunity to provide testimony on AB 263. My name is Tony Gibart, and I represent the Wisconsin Coalition Against Domestic Violence (WCADV). WCADV is the statewide voice for local domestic abuse service providers. In principle, WCADV supports the idea of allowing courts to require violators of restraining orders to submit to GPS monitoring. Indeed, GPS technology can be an important tool as part of a comprehensive law enforcement response to domestic violence. Since the introduction of AB 263, WCADV has been working with the lead sponsors to ensure that the legislation will enable Wisconsin to have a GPS monitoring system that is most effective for victims. The focus of our discussions has been to make certain that the courts, law enforcement and victims do not view—or come to mistakenly rely on—GPS monitoring as a panacea for violations of restraining orders.

### ***Risk Assessment***

First, WCADV has worked with the sponsors to craft an amendment that would integrate risk assessment into courts' decisions to order GPS monitoring. WCADV believes that risk assessment is critically important to correctly identify appropriate offenders for GPS monitoring. Because GPS monitoring is both not cost free and not a panacea for future violence, it cannot be used on every offender and definitely should not be used in place of incarceration on offenders who are determined to harm victims. If released, even while on GPS monitoring, these very high risk offenders may be able to harass or harm victims.

Therefore, WCADV has proposed that the sponsors put forth an amendment which would prompt courts contemplating an order of GPS monitoring to use a validated risk assessment tool and consider factors that are indicative of high risk cases.<sup>1</sup> Some characteristics that indicate a high

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<sup>1</sup> Illinois's GPS legislation provides for the use of a risk assessment tool. 725 ILCS 5/110-5 (f)(12).

risk of lethality include acts of strangulation, harm to pets, a history of improperly using deadly weapons, obsessive or controlling behaviors, and expressions of suicidal or homicidal ideations.

### ***Victim Safety and Notification***

Second, WCADV is concerned that GPS monitoring will give victims a false sense of security. As I said earlier, GPS monitoring can be an important crime prevention tool, but it certainly does not guarantee that offenders will not attempt to harass or harm victims. GPS monitoring will be most effective if victims understand the limitations of the technology and take additional steps to remain safe while the offender is out in the community. Therefore, WCADV has asked the sponsors to amend the bill so that victims are given information about the GPS monitoring program. It is critically important that victims understand the applicable exclusion zones, the system's failure rate and if there are situations in which the offender's position may not be detectable. In addition, victims should be explicitly told that GPS monitoring does not guarantee their safety, and victims should be referred to the local domestic violence or sexual assault victim service provider. Local programs can help the victim take other precautions during the offender's release.

### ***Implementation***

Third, WCADV has a strong desire to see that the GPS program is well implemented. GPS monitoring will only provide safety if there are systems in place to notify victims of violations and trigger immediate law enforcement responses. WCADV believes the bill should provide appropriate latitude to DOC, local law enforcement and victim advocates, so that they may develop policies and practices that ensure a timely emergency response. The specifics of these best practices will vary among localities and jurisdictions. WCADV has asked the sponsors to allow DOC and counties to stagger implementation of the bill so that DOC, local courts, law enforcement and victim advocates have time to consider the unique issues in each community, learn from other jurisdictions and develop appropriate policies.

### ***Funding***

Lastly, WCADV has asked the sponsors to carefully consider the costs of the program and address some technical points regarding the creation of a surcharge.

WCADV has a general concern that assessing a \$200 surcharge on top of other surcharges and fines in some case will hinder violators' ability to pay child support. The possible economic impact of the surcharge on abused families needs to be considered in relation to the benefits of the GPS program. Under section 973.05 (4m), certain child support wage assignments take priority over wage assignments for criminal fines and surcharges. At a minimum, the priority of the new surcharge should be limited in the same way as other surcharges and fines.

WCADV has also asked the sponsors to rename the surcharge created under the bill. As drafted the bill terms the new surcharge the *domestic violence surcharge*. The existing surcharge, which currently funds domestic violence programs, is called the *domestic abuse surcharge*. WCADV is concerned that court officials could inadvertently treat the two surcharges as one. Moreover, because restraining orders under sections 813.122, 813.123, and 813.125 (child abuse, individual at risk and harassment restraining orders) may not relate to domestic violence, a general name for the GPS monitoring surcharge would be more appropriate.

In addition, Wisconsin Statute section 973.05 (2m) specifies the order in which payments from defendants are applied to the outstanding surcharges. As many defendants do not pay the full amount owed, the position of a surcharge in section 973.05 (2m) can greatly affect the amount of funds available for specific programs. It does not appear that the bill currently specifies the rank order of the GPS program surcharge. The new surcharge should not take priority over the domestic abuse surcharge.

In conclusion, thank you for the opportunity to provide testimony on AB 263. I believe that WCADV, the sponsors and members of this committee can work together to improve AB 263 and thereby ensure that victims are effectively protected through GPS monitoring in Wisconsin.