

State of Wisconsin



2011 Senate Bill 104

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2011 WISCONSIN ACT 266

AN ACT *to amend* 16.705 (1n), 16.71 (5m), 20.410 (1) (gk) (title), 813.12 (8), 813.125 (7), 946.465, 971.37 (1m) (c) 1. (intro.) and 971.37 (1m) (c) 2.; and *to create* 20.410 (1) (gL), 301.49, 813.129, 814.75 (8m), 969.02 (3) (e), 973.05 (2m) (jm), 973.057 and 973.09 (2) (ar) of the statutes; **relating to:** requiring persons who violate certain restraining orders or injunctions to be monitored by a global positioning system, granting rule-making authority, making an appropriation, and providing a penalty.

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:

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

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

20.410 (1) (gL) *Global positioning system tracking devices for certain violators of restraining orders.* All moneys received under s. 301.49 (5) and all moneys

received from the global positioning system tracking surcharge on court fines, as authorized under s. 971.37 (1m) (c) 1. or 973.057, for expenditures related to the global positioning system tracking program under s. 301.49. If the unencumbered balance in this appropriation account exceeds \$100,000 immediately before the end of any fiscal year, the department of corrections shall transfer the excess to the appropriation account under s. 20.437 (1) (hh) at the end of that fiscal year.

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

301.49 Global positioning system tracking for persons who violate certain orders or injunctions. (1)

DEFINITIONS. In this section:

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

(am) "Exclusion zone violation" means entry into an exclusion zone except for purposes of traveling through an exclusion zone to get to another destination, unless the person is prohibited by the department from making such entry

(b) "Global positioning system tracking" means tracking using a system that actively monitors and identifies a person's location and timely reports or records the person's presence in an exclusion zone. "Global posi-

* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

tioning system tracking” includes comparable technology.

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

(d) “Restraining order or injunction” means an order or an injunction issued pursuant to s. 813.12 or 813.125.

(2) WHO IS COVERED; DURATION OF COVERAGE. (a) The department shall maintain global positioning system tracking of a person who is not in jail or in prison and who is ordered by a court to submit to monitoring under s. 813.129 for the duration of the person’s period of probation.

(b) The department shall maintain global positioning system tracking of a person who is subject to global positioning system tracking as a condition of extended supervision.

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

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

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

3. Immediately alert the department if the person commits an exclusion zone violation. The department shall immediately notify the law enforcement agency having jurisdiction over the exclusion zone and the petitioner of any exclusion zone violation.

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

(c) For each person who is subject to global positioning system tracking under this section, the department shall create an individualized exclusion zone for the person, as necessary to protect the petitioner. In creating an exclusion zone, the department shall consider input from the petitioner and shall include any location that the person is ordered to avoid or enjoined from entering under the restraining order or injunction that the person violated or is alleged to have violated.

(4) TERMINATION IF PERSON MOVES OUT OF STATE. Notwithstanding sub. (2), if a person who is subject to being tracked under this section moves out of state, the depart-

ment shall terminate the person’s tracking. If the person returns to the state during the duration of the restraining order or injunction, the department shall immediately reinstate the person’s tracking.

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

1. The cost of global positioning system tracking for the person.

2. How much of the cost under subd. 1. the person is able to pay based on the factors listed in par. (c).

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

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

1. The person’s financial resources.

2. The present and future earning ability of the person.

3. The needs and earning ability of the person’s dependents.

4. Any other factors that the department considers appropriate.

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

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

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

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

SECTION 5d. 813.12 (8) of the statutes is amended to read:

813.12 (8) PENALTY. (a) Whoever knowingly violates a temporary restraining order or injunction issued under sub. (3) or (4) shall be fined not more than ~~\$1,000~~ \$10,000 or imprisoned for not more than 9 months or both.

SECTION 5r. 813.125 (7) of the statutes is amended to read:

813.125 (7) PENALTY. Whoever violates a temporary restraining order or injunction issued under this section shall be fined not more than ~~\$1,000~~ \$10,000 or imprisoned not more than 90 days or both.

SECTION 6. 813.129 of the statutes is created to read:
813.129 Global positioning system tracking. (1) If a person knowingly violates a temporary restraining order or injunction issued under s. 813.12 or 813.125, in

addition to other penalties provided in those sections, the court may report the violation to the department of corrections immediately upon the person's conviction and may order the person to submit to global positioning system tracking under s. 301.49.

(2) Before issuing an order under sub. (1), the court must find that the person is more likely than not to cause serious bodily harm to the person who petitioned for the restraining order or injunction, weighing the following factors:

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

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

(c) Whether the person has a history of improperly using or threatening to use a firearm or other dangerous weapon.

(d) Whether the person has expressed suicidal ideation.

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

(f) The person's mental health history.

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

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

(b) The court may request a domestic violence prevention or treatment center in the court's county to complete a danger assessment of the person in order to make the findings required in sub. (2).

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

(5) If, after weighing the factors set forth under sub. (2), the court determines that a person is more likely than not to cause serious bodily harm to the person who petitioned for the restraining order or injunction, and the court determines that another alternative, including imprisonment, is more likely to protect the person who petitioned for the restraining order or injunction, the court may not enter an order under sub. (1).

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

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

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

946.465 Tampering with a global positioning system tracking device. Whoever, without the authoriza-

tion of the department of corrections, intentionally tampers with, or blocks, diffuses, or prevents the clear reception of, a signal transmitted by, a global positioning system tracking device or comparable technology that is provided under s. 301.48 or 301.49 is guilty of a Class I felony.

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

969.02 (3) (e) If the person is charged with violating a restraining order or injunction issued under s. 813.12 or 813.125, may require the person to participate in mental health treatment, a batterer's intervention program, or individual counseling. The judge shall consider a request by the district attorney or the petitioner, as defined in s. 301.49 (1) (c), in determining whether to issue an order under this paragraph.

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

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

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

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

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

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

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

973.057 Global positioning system tracking surcharge. (1) If a court convicts a person under s. 813.12 or 813.125, or a conforming municipal ordinance, the court shall impose a global positioning system tracking surcharge under ch. 814 of \$200 for each offense.

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

(b) If the surcharge is imposed by a municipal court, after a determination by the court of the amount due, the

court shall collect and transmit the amount to the treasurer of the county, city, town, or village, and that treasurer shall make payment to the secretary of administration as provided in s. 66.0114 (1) (bm).

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

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

SECTION 13m. 973.09 (2) (ar) of the statutes is created to read:

973.09 (2) (ar) Notwithstanding par. (a) 1r., and except as provided in par. (a) 2., for a violation punishable under s. 813.12 (8) or 813.125 (7), not less than 6 months or more than the period of the injunction issued under s. 813.12 or 813.125.

SECTION 14. Nonstatutory provisions.

(1) The department of corrections shall promulgate rules to implement section 301.49 of the statutes, as

created by this act. The department of corrections shall consult with one or more organizations or agencies that are dedicated to the prevention of domestic violence, law enforcement agencies, judges, district attorneys, and probation officers in developing the implementation plan.

SECTION 15. Initial applicability.

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

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

SECTION 16. Effective dates. This act takes effect on January 1, 2014, except as follows:

(1) The treatment of sections 16.705 (1n), 16.71 (5m), 20.410 (1) (gk) (title) and (gL), 814.75 (8m), 971.37 (1m) (c) 1. (intro.) and 2., 973.05 (2m) (jm), and 973.057 of the statutes and SECTIONS 14 and 15 (1) of this act take effect on July 1, 2013.
