



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 3

TO: MEMBERS OF THE SPECIAL COMMITTEE ON PLACEMENT OF SEX OFFENDERS

FROM: Anne Sappenfield, Senior Staff Attorney

RE: GPS Tracking and Exclusion Zones Under 2005 Wisconsin Act 431

DATE: November 21, 2006

This Memo describes requirements for global positioning system (GPS) tracking and the establishment of exclusion zones for certain sex offenders under 2005 Wisconsin Act 431. Act 431 takes effect on July 1, 2007.

GPS TECHNOLOGY

GPS technology provides the opportunity to track a person's movements and location in real time. GPS is a worldwide radio-navigation system that was originally developed for the U.S. military for navigation, mapping, and weapons delivery purposes. The technology is currently used for nonmilitary purposes such as personal car and boat navigation and electronic supervision of offenders. The system relies on 24 satellites that orbit the earth. Each satellite is equipped with a clock. The satellites emit radio signals encoded with precise time messages and their positions in orbit, and these signals travel at the speed of light. The location of each satellite is tracked and monitored by ground control stations.

An offender who is subject to GPS monitoring must wear a transmitter. Also, each offender must have a portable tracking device that he or she must carry or be near at all times. There is also a charging unit for the portable tracking device that stays in the offender's home. The transmitter emits a radio signal at least twice a minute, and the signal is received by the portable tracking device to detect whether the offender is within range of the tracking device. If the portable tracking device no longer receives a signal from the transmitter, it sends an alert to the monitoring center. The tracking device contains several channels to receive messages from different satellites and computer circuitry that detects, decodes, and processes GPS satellite signals. Each location on Earth has already been mapped based on the distance of the satellites from those positions at various times. The tracking device communicates the offender's position, usually through the cellular phone system, to a monitoring center

and can be plotted accurately within a few feet. There is also a computer in the portable tracking device that continually stores the information about the offender's location.

Using a GPS system, exclusion and inclusion zones can be determined for each offender. Exclusion zones are areas the offender is not permitted to go. Inclusion zones are areas where the offender is expected to be at various times. For example, the offender may be expected to be at work during the day and at home at night. The exclusion and inclusion zones are entered using mapping software that usually requires only entering the address or pointing to the location on a computer map. The computer can be programmed to send an alert whenever the offender enters an exclusion zone or leaves an inclusion zone at the wrong time. [American Probation and Parole Association, *Offender Supervision with Electronic Technology* (2002), pp. 65-67.]

GPS TRACKING

Persons Required to be Tracked

Under Act 431, the Department of Corrections (DOC) must arrange for lifetime GPS tracking using a system that actively monitors and identifies a person's location and timely reports or records the person's presence near or at a crime scene or in an exclusion zone or the person's departure from an inclusion zone for all of the following:

- Any person who is placed on probation, extended supervision, or parole for committing a serious child sex offense.
- Any person who is placed on conditional release, discharged, or placed on parole after having been found not guilty of a serious child sex offense by reason of mental disease or defect.
- Any person who is placed on supervised release or discharged after having been found to be a sexually violent person under ch. 980, Stats.

The Act defines "serious child sex offense" as sexual assault of a child if any of the following applies: (a) the actor has sexual intercourse with a person who has not attained the age of 12 years; (b) the actor has sexual intercourse with a person who has not attained the age of 16 years by threat or use of force or violence; or (c) the actor has sexual contact with a person who has not attained the age of 16 years by threat or use of force or violence and the actor is at least 18 years of age at the time of the offense.

The Act also creates a definition of "sexual intercourse" for purposes of GPS tracking. Under the Act, "sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of an object into the genital or anal opening either by the defendant or upon the defendant's instruction. Under current law, "sexual intercourse" generally also includes the intrusion, however slight, of any part of a person's body into the genital or anal opening either by the defendant or upon the defendant's instruction.

The Act also requires DOC to have a person tracked using a GPS tracking device if: (a) the person has been convicted under federal law or the law of any other state of a crime that is comparable to a serious child sex offense or found not guilty or not responsible for such a crime by reason of mental

disease or defect; and (b) the person resides, is employed or carrying on a vocation, or is a student in this state.

Under the Act, DOC also *may* have a person tracked if the person is placed on probation, extended supervision, or parole for a sex offense that is not a serious child sex offense.

Supervision of Persons Subject to GPS Tracking

Under the Act, DOC is required to create individualized exclusion and inclusion zones for a person who is subject to GPS tracking, if necessary to protect public safety. “Exclusion zone” is defined as a zone in which a person who is GPS tracked is prohibited from entering except for purposes of traveling through to get to another destination. “Inclusion zone” is defined as a zone in which such a person is prohibited from leaving.

In creating exclusion zones, DOC must focus on areas where children congregate, with perimeters of 100 to 250 feet, and on areas where the person has been prohibited from going as a condition of probation, extended supervision, parole, conditional release, or supervised release.

The Act also requires DOC to ensure that the person’s GPS tracking device, or any comparable technology used with respect to the person, immediately alerts DOC and the local law enforcement agency having jurisdiction over the exclusion or inclusion zone if: (a) the person stays in an exclusion zone that is created for him or her for any period longer than the time needed to travel through the zone to get to another destination; or (b) leaves any inclusion zone that is created for him or her.

Under the Act, DOC may use passive positioning tracking for a person who is subject to lifetime GPS tracking once the person completes his or her sentence, including any probation, parole, or extended supervision. “Passive positioning system tracking” is defined as tracking using a system that monitors, identifies, and records a person’s position.

Costs of GPS Tracking

The Act permits DOC to require a person who is subject to GPS tracking to pay the amount DOC finds the person is able to pay towards the cost of his or her GPS tracking. In determining how much of the costs of the tracking the person is able to pay, DOC may consider: (a) the person’s financial resources; (b) the present and future earning ability of the person; (c) the needs and earning ability of the person’s dependents; (d) any other costs that the person is required to pay in conjunction with his or her supervision by DOC or DHFS; and (e) any other factors that DOC considers appropriate.

Petition for Termination of Lifetime Tracking

Under the Act, *a person who is subject to lifetime tracking* may file a petition requesting that lifetime tracking be terminated if: (a) the person has not been convicted of a crime that was committed during the period of lifetime tracking; and (b) the person’s tracking began at least 20 years prior to the filing of the petition. Following a hearing, the court may grant the petition if it determines that lifetime tracking is no longer necessary to protect the public.

If a person's petition is denied, the person may not file a subsequent petition requesting termination of lifetime tracking until at least five years have elapsed since the most recent petition was denied.

A person who is subject to lifetime tracking based upon a finding that the person is a sexually violent person may not file a petition requesting termination of lifetime tracking.

The Act provides that *DOC* may file a petition requesting that a person's lifetime tracking be terminated if the person is permanently physically incapacitated. The petition must include affidavits from two physicians that explain the nature of the person's permanent physical incapacitation. Following a hearing, the court may grant the petition if it determines that the person to whom the petition relates is permanently physically incapacitated so that he or she is not a danger to the public.

In addition, DOC may terminate a person's lifetime GPS tracking after 10 years if the victim of the serious child sex offense for which the person is being tracked is a relative of the person being tracked. The amendment defines "relative" as a child, brother, sister, first cousin, second cousin, nephew, niece, grandchild, or great grandchild, or any other person related by blood, marriage, or adoption.

Penalty for Tampering With GPS Tracking Device

The Act provides that whoever, without the authorization of DOC, intentionally tampers with a GPS tracking device or comparable technology provided because the person is a sex offender is guilty of a Class I felony, punishable by a fine not to exceed \$1,000 and imprisonment not to exceed three years and six months (maximum 18 months confinement in prison and two years extended supervision).

Report to Legislature

The Act requires DOC to submit to the Joint Committee on Finance a report on the contract entered into by DOC for GPS tracking services within six months of the effective date of the legislation.

AS:ksm