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January 30, 2013

Senator John Coghill, Jr., Chair
Senate Judiciary Committee
State Capitol
Juneau, AK 99801

Re: SB 22 – Governor's Crime Bill – GPS Monitoring Provisions

Dear Senator Coghill:

In 1996, the Domestic Violence Prevention and Victim Protection Act provided victims of domestic violence with a powerful, victim-centered tool that has become the heart of victim safety planning: the civil protective order. Countless women and children have used this tool to secure their safety and many lives have been saved. Unfortunately, the proposal in HB 73 and SB 22 to add GPS monitoring as a possible condition in civil protective orders will eviscerate the very heart of the safety provided by civil protective orders. Therefore, for the reasons stated below, we would respectfully request that Sections 10, 24, 25, and 26 be removed from HB 73 and SB 22.

How GPS Technology Works

- There are two types of GPS tracking: **passive and active**. With passive tracking, an offender wears a device 24 hours a day but the monitoring official might only receive an offender's location information once a day when the offender uploads it from home. Because domestic violence situations are uniquely dangerous, passive monitoring is neither safe nor recommended for domestic violence and stalking offenders.
- Active tracking is most often used with violent offenders since it provides real-time location of the offender 24 hours a day. Active monitoring is only effective if an administrator continually monitors the location of the offender, 24/7 and there are sufficient law enforcement resources to provide for an immediate response. In some places, monitoring is done by corrections or local police officers who know the offender and the victim and has found to be a best practice over other communities' programs that outsource this function to an outside vender that works elsewhere.
- In order to work, an electronic monitoring program sets up "exclusion zones" around the victim's home, work, children's school, etc. and an enrolled offender may not enter those

geographic areas. If the offender enters those zones, an alert can be immediately sent to the monitor with notification to the victim. It is essential that these "exclusion zones" be large enough to provide enough time for law enforcement response to intervene, a likely challenge in most areas of the state.

- Some systems notify the victim with a pager if the offender enters any exclusion zone. Other systems track the *victim's* real-time location by using GPS on the victim's pager device. If the victim is not in the exclusion zone and the offender comes near the victim, the system will typically alert both the monitoring official and the victim. The offender can also be contacted and police can be dispatched.
- In order for GPS Technology to be effective, there must be a coordinated, community response and available law enforcement to immediately respond to GPS violations. Many communities in Alaska, especially municipalities with limited funding and resources, will not likely be able to meet this challenge, therefore negating victim safety and the effectiveness of GPS technology.

Safety Risks

Victims seek protective orders when they are trying to leave abusers. It is well documented that at this time of separation, abusers are most likely to seriously injure or kill victims. DV program advocates are trained to work with victims to develop safety plans, identify safe locations that are unknown to the abuser. These can include staying with family and friends or by obtaining their own safe, affordable housing. The very essence of safety planning and working with victims to determine safe places is that they are unknown and not disclosed the abuser. The Network has done extensive work with the Court System to insure that protective orders are part of this safety planning by developing a system where a victim can apply for a protective order without disclosing her actual location to enhance her safety.

For GPS monitoring to work, victims must disclose these safety zones so that they can be set as zones of exclusion from which the abuser is not allowed to enter. These locations must be disclosed to the abuser in order for him to comply with this civil court order. This not only eliminates safety zones for victims but puts victims, their children and family and friends who are providing safe haven at risk.

Further, allowing judges the discretion to add a condition to civil protective orders without victim consent is problematic and violates a victim's right to privacy by requiring her to disclose her safe locations and is not something that we can support. However, even more problematic would be judges seeking victim consent as part of the protective order hearing placing the victim in the untenable position of being the one requesting that the abusers liberty interests be restrained, with financial impacts on him. If the judge then denies the long-term order, which is not uncommon, the unintended consequence could be deadly.

Finally, GPS monitoring systems that track victim's real-time locations not only violates a victim's right to privacy but has a significant unintended consequence. In our discussion with the National Network to End Domestic Violence, the director of victim safety and technology, has found that companies retain the victim's location data and abusers and their attorneys have used this to subpoena those records and use the information to harass and intimidate victims and

as evidence to overturn child custody determinations. The NNEDV has not found a monitoring company that does not retain this information.

Technological Challenges

GPS technology, even when working at optimum capacity, has known and substantial limitations. GPS technology is not fool-proof; satellite signals are subject to known limitations, so reliance on such fallible technology creates a false sense of security. Unlike the current Alaska Department of Corrections passive monitoring system, active monitoring systems must be monitored and provide real-time data 24/7. Other states have found that this technology often fails in hilly areas, valleys, and remote rural areas and in urban population centers with tall, concrete/stone buildings. For example, in one case shared with us from another state coalition, a violent abuser was being monitored and the victim was wearing the receiver while she was at the courthouse in a downtown area. She looked up and saw her abuser walking directly toward her, where he confronted her and began threatening her. The monitor never made a sound. It wasn't working due to the thick walls and interference from surrounding buildings.

In Alaska, technological challenges with active monitoring are likely to be exacerbated given our unique geological landscape where even cell phones relying on the same satellite technology have large gaps in coverage in rural hubs and very limited or no coverage in villages. Even in the in the urban populations centers of Anchorage, Fairbanks and Juneau, and frequent disruptions are common. Without reliable 24/7 coverage, at best GPS active monitoring only leaves victims with a false sense of security.

Costs

Active GPS monitoring is extremely expensive. Enforcing agencies must pay for the initial purpose or lease of equipment, cross-systems training, regular maintenance and replacement of devices, and additional staff law enforcement staff to provide 24/7 monitoring and immediately respond to violations.

In 2004, estimates in Pennsylvania showed it would cost $3.5 million per year to monitor the violent sex predators and other sex offenders to enforce their Megan's Law registration rules. At that time, there were 31 people classified as sexually violent predators and 7,012 sex offenders subject to monitoring. Even with the option of charging offenders daily fees for monitoring, they found that many of those offenders would be unable to pay, leaving state to bear the brunt of the substantial cost. Similarly, in Connecticut, it was found that less than 1% of monitoring fees were paid by defendants, with the rest picked up by federal grant funds.

According to the Department of Public Safety's Fiscal Note, monitoring alone will burden the state with an ongoing monitoring liability of nearly $1.7 million annually, each and every year. With Alaska facing deficit spending in the foreseeable future, we think this money could be better invested in solutions to issues with victim safety, rather than on something with questionable impact and significant unintended consequences. For example, for a fraction of this cost, a VINE module to the Central Protective Order Registry would allow victims to receive up-to-date notice of service of a protective order. All too often, despite law enforcement's best

attempts, it is not uncommon for days to pass before notification of service on an abuser is provided to the victim. This creates great anxiety on the part of victims by waiting periods of time between the issuance of a protective order and when it actually becomes effective. Adding a VINE component that links to a return of service and requiring that return of service be entered immediately would greatly enhance victim safety, would save local and state peace officers, dispatchers and advocates considerable time in tracking down confirmation of service of process so that victims know that protective orders are in effect.

Thank you for your consideration in removing Sections 10, 24-26 from SB 22. I would be happy to discuss this matter with you further, at your convenience.

Sincerely,

Peggy Brown, Executive Director

cc: Senator Lesil McGuire
Senator Bill Wielechowski
Senator Donny Olson
Senator Fred Dyson