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February 5, 2013

House Judiciary Committee
State Capitol
Juneau, AK 99801

Re: HB 73 – Governor's Crime Bill

Dear House Judiciary Members:

For the record, my name is Peggy Brown and I am the Executive Director of the Alaska Network on Domestic Violence and Sexual Assault. The Network is a statewide, non-profit, membership organization representing 18 community based programs throughout the state that provide direct services to victims of domestic violence and sexual assault.

We thank the Governor for bringing forth HB 73 and support many of its provisions which will eliminate the civil and criminal statute of limitations for sex trafficking, close a gap in the unlawful contact statute, prohibit probation/parole officers from engaging in sexual activity with individuals under their supervision, expand the authority of the VCCB to include claims of compensation from victims of sex trafficking, human trafficking and unlawful exploitation of a minor, and expand the rape shield law, among others.

Victim Safety and Right to Privacy

However, we are concerned about Sections 24-26 of the bill which would allow judges to order GPS monitoring as a condition in a civil proceeding. While certainly not intended to do so, for us, this creates a significant safety concern for victims.

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. Domestic violence 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.

For GPS monitoring to work, victims must disclose these "safe places" 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 "safe places" for victims through disclosure to the defendant, but puts victims, their children and family and friends who are providing safe haven at risk.

Further, 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. The NNEDV has not found a monitoring company that does not retain this information.

Finally, the Governor of Maine's Task Force report that we have provided to committee members made a specific finding that GPS monitoring is not appropriate in civil cases, and we agree. Allowing judges the discretion to add a condition to civil protective orders requiring GPS monitoring in this civil context eviscerates the safety that protective orders provide. Therefore, we ask that Sections 24-26 of the bill be removed and a new provision placed in sentencing/post-conviction statue(s).

Bail and Victim Consent

Section 10 of the bill adding GPS monitoring to bail conditions is also problematic for similar reasons. For a GPS monitoring program to be effective, victim safety must be paramount. As indicated above, to insure victim safety and privacy, victim consent is an absolute necessity BEFORE any GPS monitoring is ordered.

While a victim has a right to be present during a bail hearing, few often are present for various reasons ranging from relocating to a new "safe place" prior to the defendant's release, seeking safety in shelter or other reasons that vary individual to individual. GPS monitoring should NEVER be ordered absent victim consent and this is unlikely to happen at a bail hearing.

In reviewing some other states that have passed legislation allowing judges to order GPS monitoring as a bond condition or as part of sentencing post-conviction, several common themes emerged. First, of the states we looked at CT (three judicial districts), NY (Staten Island), MN (Ramsey County), ME (one rural and one urban TBD) and TN (Davidson County) all took the prudent and less costly approach of piloting a GPS monitoring program for domestic violence offenders in discrete, smaller areas where there existed several necessary components that would potentially lead to favorable outcomes. Specifically, it was consistently found that the key to enhance victim safety was the existence of coordinated community response teams or high risk response teams in the piloted areas, ability for immediate law enforcement response, required risk assessments performed to determine whether the individual was a suitable candidate for GPS monitoring, and required pre-trial supervision services through either a third party or through a probation department for offender accountability. By establishing pilot sites, these states are able to evaluate the effectiveness of the program, document and address technological challenges, of which many have noted, especially in rural areas, develop performance measures on the efficacy and efficiency of the program, including cost benefit analysis and most importantly, the impact on victim safety.

Another commonality of note is that of those jurisdictions we have looked at: we have yet to find one where a law enforcement agency is the lead agency. In Connecticut, the GPS program is monitoring and evaluated by the Judicial Branch, in the other states, the lead agency is the Department of Corrections/or Department of Probation. In fact, the Maine Taskforce Report indicates that after initially supposing that DPS would be the proper agency, after the taskforce completed their work, they found it more appropriate to sit in their Board of Corrections.

Recommendation: Post-Conviction Conditions of Probation

We believe that Alaska can benefit from the findings in other states by authorizing one rural and one urban pilot site, if the Governor and the Legislature wish to pursue some type of GPS monitoring, post-conviction. This approach makes sense in Alaska. It also makes sense to have the DOC as the lead agency.

DOC has authority over all defendants post-conviction and in fact, DOC has a pilot project it is currently administering in Fairbanks for domestic violence misdemeanants under the Governor's Initiative, the PACE project, where risk assessment tools have already been developed and staff trained on how to evaluate risks based on these assessments. Further, DOC has an existing "passive monitoring" system in place and would only need to work with their current monitoring contractor to explore expanding to "active monitoring". DOC works directly with the courts and provides the assessments necessary for the judge to consider in presentence reports.

Since DOC is doing assessments post-conviction, perhaps they are the appropriate agency to determine recommendations as to whether GPS monitoring should be an option. This change in lead agency would enhance Section 40 of the bill which provides that judges must insure victim input before considering a presentence report or document why victim input is not available. In any case, in cases where the victim is unwilling or unable to participate, then GPS monitoring should not be ordered.

Sincerely,

Peggy Brown, Executive Director

cc: Lisa Mariotti, Policy Director