

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 1506  
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Criminal Justice  
5/20/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, if a person has been harmed as a result of domestic violence, there often is no way for the victim to know if the attacker is close enough to harm the victim again until it is too late to escape the location in which the person is in immediate danger. Even if a victim is able to get a protective order from a court, the victim often has no way of knowing if the offender has violated the order until a time when the offender is close enough to hurt the victim again. Current law is not structured to completely ensure that the offender is unable to threaten or harm a victim because the offender is able to be near the victim without the victim knowing the offender is in the vicinity.

This bill grants a judge discretion in ordering a global positioning monitoring device to be issued to an offender at the time the offender is released on bond for an offense involving family violence or to an offender who is the cause of an order for emergency protection resulting from an offense involving family violence, sexual assault, aggravated sexual assault, or stalking.

C.S.H.B. 1506 amends current law relating to the imposition of conditions on certain defendants charged with an offense involving family violence.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 17.292, Code of Criminal Procedure, by adding Subsection (c-1) to authorize the magistrate in the order for emergency protection, in addition to the conditions described by Subsection (c) (relating to authorization for a magistrate in the order for emergency protection to prohibit the arrested party from going near certain locations), to impose a condition described by Article 17.49(b) in the manner provided by that article, including ordering a defendant's participation in a global position monitoring system or allowing participation in the system by an alleged victim or other person protected under the order.

SECTION 2. Amends Chapter 17, Code of Criminal Procedure, by adding Article 17.49, as follows:

Art. 17.49. **CONDITIONS FOR DEFENDANT CHARGED WITH OFFENSE INVOLVING FAMILY VIOLENCE.** (a) Defines "family violence" and "global positioning monitoring system."

(b) Authorizes a magistrate to require as a condition of release on bond that a defendant charged with an offense involving family violence:

(1) refrain from going to or near a residence, school, place of employment, or other location, as specifically described in the bond, frequented by an alleged victim of the offense;

(2) carry or wear a global positioning monitoring system device and, except as provided by Subsection (h), pay the costs associated with operating that system in relation to the defendant; or

(3) except as provided by Subsection (h), if the alleged victim of the offense consents after receiving the information described by Subsection (d), pay the costs associated with providing the victim with an electronic receptor device that is capable of receiving the global positioning monitoring system information from the device carried or worn by the defendant and notifies the victim if the defendant is at or near a location that the defendant has been ordered to refrain from going to or near under Subdivision (1).

(c) Requires a magistrate, before imposing a condition described by Subsection (b)(1), to afford an alleged victim an opportunity to provide the magistrate with a list of areas from which the victim would like the defendant excluded and to consider the victim's request, if any, in determining the locations the defendant will be ordered to refrain from going to or near. Requires the magistrate, if the magistrate imposes a condition described by Subsection (b)(1), to specifically describe the locations that the defendant has been ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations.

(d) Requires a magistrate, before imposing a condition described by Subsection (b)(3), to provide to an alleged victim information regarding:

(1) the victim's right to participate in a global position monitoring system or to refuse to participate in that system and the procedure for requesting that the magistrate terminate the victim's participation;

(2) the manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements;

(3) any locations that the defendant is ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations;

(4) any sanctions that the court is authorized to impose on the defendant for violating a condition of bond imposed under this article;

(5) the procedure that the victim is to follow, and support services available to assist the victim, if the defendant violates a condition of bond or if the global positioning monitoring system equipment fails;

(6) community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other assistance available to address the consequences of family violence; and

(7) the fact that the victim's communications with the court concerning the global positioning monitoring system and any restrictions to be imposed on the defendant's movements are not confidential.

(e) Requires a magistrate, in addition to the information described by Subsection (d), to provide to an alleged victim who participates in a global positioning monitoring system under this article the name and telephone number of an appropriate person employed by a local law enforcement agency whom the victim may call to request immediate assistance if the defendant violates a condition of bond imposed under this article.

(f) Requires the magistrate, in determining whether to order a defendant's participation in a global positioning monitoring system under this article, to consider the likelihood that the defendant's participation will deter the defendant

from seeking to kill, physically injure, stalk, or otherwise threaten the alleged victim before trial.

(g) Authorizes an alleged victim to request that the magistrate terminate the victim's participation in a global positioning monitoring system at any time. Prohibits the magistrate from imposing sanctions on the victim for requesting termination of the victim's participation in or refusing to participate in a global positioning monitoring system under this article.

(h) Authorizes a magistrate to allow a defendant to perform community service in lieu of paying the costs required by Subsection (b)(2) or (3) if the magistrate determines that the defendant is indigent.

(i) Requires a magistrate that imposes a condition described by Subsection (b)(1) or (2) to order the entity that operates the global positioning monitoring system to notify the court and the appropriate local law enforcement agency if a defendant violates a condition of bond imposed under this article.

(j) Requires a magistrate that imposes a condition described by Subsection (b)(2) to require the defendant to execute a bail bond in the form of a surety bond and, notwithstanding any other provision of this chapter, prohibits the magistrate from allowing or requiring the defendant to execute or be released under any other type of bond.

(k) Requires the magistrate, at a hearing to determine whether a defendant violated a condition of bond imposed under Subsection (b), if the magistrate finds by a preponderance of the evidence that the violation occurred, to revoke the defendant's bond and order that the defendant be immediately returned to custody. Provides that once the defendant is placed in custody, the revocation of the defendant's bond discharges the sureties on the bond from any future liability on the bond. Provides that a discharge under this subsection from any future liability on the bond does not discharge any surety from liability for previous forfeitures on the bond.

(l) Provides that this article does not limit the authority of a magistrate to impose any other reasonable conditions of bond or enter any orders of protection under other applicable statutes.

SECTION 3. Makes application of Articles 17.292(c-1) and 17.49, Code of Criminal Procedure, as added by this Act, prospective.

SECTION 4. Effective date: September 1, 2009.