

TESTIMONY IN FAVOR OF SB 244

**PRESENTED TO THE
JUDICIARY COMMITTEE
OF THE
OHIO SENATE**

**By: Bernie Rochford
Executive Vice President**

May 14, 2008

Good morning Chairman Grendell and members of the Senate Judiciary Committee, my name is Bernie Rochford and I am an Executive Vice President with Oriana House, Inc. Oriana House is a community corrections and chemical dependency treatment agency with operations in Summit, Seneca and Cuyahoga Counties. We operate a number of residential and non-residential programs including a large electronic monitoring program. We have been involved in electronic monitoring since 1989 and are one of a handful of electronic monitoring programs nationally that are accredited by the American Corrections Association. We average over 325 clients on monitoring on any given day.

We have experience with all forms of monitoring; traditional house arrest, passive, intermediate and active Global Positioning Systems (GPS) as well as continuous alcohol monitoring. Through our experience, I believe that electronic monitoring can assist the courts and law enforcement in monitoring offenders who seek to violate civil and other protection orders. While any form of electronic monitoring has its limitations, electronic monitoring (especially GPS) can provide a measure of surveillance that will help in the majority of the stalking situations that come to the attention of the authorities.

Stalking often involves an escalation of unwanted contacts over a period of time. By placing an offender or violator under electronic monitoring surveillance, the courts can, with great assurance, know that the offender is complying with the court's order. The technology is to the point that a person's whereabouts can be accurately determined to within 30 feet. This information is available in near real time to the staff at a central monitoring center. A historical record of the offender's whereabouts is stored indefinitely allowing a court and/or law enforcement to analyze the offender's movements.

The information available through this technology can dramatically improve the enforcement of protection orders. The offender will be assured that any contacts will be recorded and dealt with swiftly. The days of the courts trying to evaluate the complaints of a victim over the objections of the offender in a "he said, she said" scenario will be over. The surety of enforcement will stop the escalation of the contacts since there will be no doubt that the behavior will be discovered.

Questions are often raised about whether or not a person can defeat or foul the monitoring system. While nothing in life is 100%, our experience has shown that a well run program using state of the art equipment provides for a very high level of reliability. Offenders will test the limits of the system in many different ways in attempts to avoid detection of some deviant behavior. The technology in almost every instance records the anomaly and registers a tamper. Depending on the nature of the tamper, such activity in and of itself can be used as a violation. Over the years we have heard all sorts of excuses as to why the "equipment malfunctioned" when in reality the client was trying to defeat the system. Low level offenders may be given the "benefit of the doubt"; more serious offenders are dealt with quickly for such transgressions. It is this certainty of discovery that

will provide the safety sought through this legislation. The game playing will be over.

The victim will have, perhaps for the first time, some assurance that the court's order has real teeth because it will be enforced. The victim still must remain vigilant and take steps towards his or her own self protection; they will have a new ally standing with them 24 hours a day, seven days a week.

Electronic monitoring has already assisted in public safety. One anecdote I can personally share involved a recent case where the Akron police and the Ohio Adult Parole Authority were aided in apprehending a parolee who was involved in a domestic dispute. Knowing that the suspect was on GPS monitoring, the APA officer contacted the Oriana House monitoring center to determine the suspect's whereabouts. The monitoring center staff was able to relay the location of the suspect and maintained contact with the APA officer as the suspect moved through out the community. In a matter of minutes the Akron police were able to take the suspect into custody without further incident. The historical record clearly placed the suspect at the exact location of the dispute at the exact time of the offense.

Like any piece of technology or tool, there are limits to its use and we all must guard against becoming too complacent. While I firmly believe using electronic monitoring can greatly aid the courts, it cannot prevent an offender bent on harm from taking action against a potential victim. No amount of monitoring can guarantee safety. The reality is that an offender who does not care about getting caught will not be stopped by an electronic device. I would like to tell you that we could devise a system that could react quickly enough to prevent the type of tragedy that this legislation is designed to stop. The fact that an offender may only need a few minutes to strike out at the victim means that the best designed system will not provide security 100% of the time. Thankfully the cases in which victims are physically harmed are much less frequent. Utilizing this technology may in a very real sense keep a stalker from getting to the point of violence. I am convinced this legislation will help in many cases.

Another issue I would like to address is the cost of the monitoring. Basic house arrest that involves the offender being monitored while at home is relatively inexpensive at a cost ranging from about \$6.00 to 8.00 dollars per day. This provides limited surveillance and assumes the offender is trustworthy enough to be in the community for extended periods of time working or going to school. This form of monitoring is used as a basic form of punishment that I liken to grounding an adult. It is not useful to monitor a person's whereabouts in the community.

GPS monitoring does provide a much greater level of monitoring and tracking of an offender's movements within the community. As I previously stated, , there are essentially three levels of monitoring. Passive GPS tracks the offender's

movements 24/7 but only reports the results at predetermined time periods. This method provides a detailed history of the offender's movements over the previous 24 hours.

Intermediate GPS monitoring tracks the offender's whereabouts 24/7 but reports back to the monitoring center once every 4 to 5 hours. This method also provides a history of movements like the passive monitoring.

Active GPS monitoring tracks the offender in near real time (there is an inherent delay of up to 2 minutes in reporting the whereabouts to the center). This is certainly the most aggressive form of monitoring with the greatest degree of control.

All of the forms of GPS monitoring have features that make them well suited to the intent of this legislation. The monitoring center can create exclusion zones where the offender is not permitted to enter. The victim's home, place of employment, family members and other locations can be deemed off limits to the offender. If the offender enters any of these areas it is registered as a violation and recorded as such. On active GPS, an immediate notification is sent to both the staff at the monitoring center and to the offender showing he is in violation of a restricted area. The offender must acknowledge the notice and the monitoring center can communicate directly to the offender giving the offender direct instructions to leave the area immediately. There would be no doubt that the offender was in a location he was not permitted to be and that he received notification to leave. Victim notification could also be given in certain circumstances so the victim could take adequate precautions to protect him or herself.

The cost of GPS monitoring is certainly more than that of traditional house arrest. The three levels cost between \$9.00 and 14.00. The variable costs take into account the additional equipment, satellite time and other costs. The central monitoring station also involves more staff time to set up and monitor the offender.

Local protocols will need to be established with the various law enforcement agencies in each county to respond to the violations that occur. This can be accomplished through a coordinated effort with the prosecutor, local police and county sheriffs. I would suspect all of the law enforcement agencies involved would welcome this effort given this legislation seeks to benefit victims

The legislation places the burden on the offender for the costs which is where it belongs. There is a concern that the expense may be prohibitive for some offenders to manage for such a lengthy period of time (up to five years). I would ask you to consider some provision to assist in the cost of the program for those who truly cannot afford the costs. We don't want to create a situation where

offenders without funds end up in custody at a greater cost to the tax payers simply because they couldn't afford the program.

I hope my comments have proved helpful to you and would welcome the opportunity to respond to any of your questions.

Bernie Rochford, Esq.
Executive Vice President
Oriana House, Inc.
330-535-8116



Ohio Judicial Conference

Serving Ohio Judges - Enhancing Judicial Leadership

Senate Bill 244

Senate Judiciary on Criminal Justice Committee

May 14, 2008

Interested Party Testimony

Retired Judge Mark R. Schweikert, Executive Director, Ohio Judicial Conference

Chairman Grendell and members of the Senate Judiciary on Criminal Justice Committee, on behalf of the Ohio Judicial Conference's Civil Law and Procedure Committee, I would like to thank you for the opportunity to appear before you today to testify on Senate Bill 244.

At the outset, I want to note that the Judicial Conference recognizes the important public purpose served by civil stalking protection orders. We also recognize that, even though electronic monitoring is not a completely fail-safe technology, it might provide stalking victims with additional protection under some circumstances. At the same time, we are concerned that the existing civil protection order process may not guarantee respondents sufficient due process protections to allow courts to order electronic monitoring as part of that process.

Even though an allegation of criminal conduct underlies petitions for civil stalking protection orders, the process by which the protection orders are issued is civil, rather than criminal, in nature. This means that respondents are not entitled to the due process protections that are typically afforded criminal defendants, such as court-appointed counsel and the guarantee that no criminal sanctions will be imposed unless guilt is proven beyond a reasonable doubt.

In most cases, the absence of those procedural protections works only minimal hardship upon respondents because the degree to which their individual liberty is restrained by the protection order is fairly limited. Typically, the respondent is prohibited from going to the petitioner's residence or place of employment or otherwise making contact with the petitioner. When the intrusion upon liberty is minimal, any potential injustice done respondents by the absence of substantial procedural protections is arguably offset by the need to provide petitioners with immediate protection.

Electronic monitoring, on the other hand, can constitute a fairly substantial infringement upon an individual's liberty. It is a physical intrusion upon an individual's privacy and freedom of movement. It carries with it social stigmatization.

The Judicial Conference understands that the bill is intended to give stalking victims greater protections rather than to punish respondents. However, the degree to which electronic monitoring infringes upon individual liberty makes electronic monitoring punitive in character, notwithstanding the benign intentions that underlie the bill. Because electronic monitoring is in the nature of a criminal sanction, the Judicial Conference questions the constitutionality of

OHIO JUDICIAL CONFERENCE

65 South Front Street, 4th Floor Columbus OH 43215 614.387.9750 800.282.1510 FAX 614.387.9759 www.ohiojudges.org

imposing electronic monitoring through a civil protection order process that guarantees only minimal procedural protections.

Putting constitutional considerations aside for the moment, the Judicial Conference respectfully suggests that, if electronic monitoring is made part of the relief available under civil stalking protection orders, judges should be given the widest possible discretion in ordering that relief. At line 109, the bill *requires* a court to order electronic monitoring for some duration of time whenever the petitioner shows by clear and convincing evidence that the respondent's conduct over a one-year period created in the petitioner a reasonable fear for the petitioner's health, welfare, or safety and that the respondent presents a continuing danger to the petitioner. While that showing might be an appropriate threshold to obtaining electronic monitoring, the ultimate decision as to whether to grant that relief should be left to the courts to make on a case by case basis.

Preserving judicial discretion relative to electronic monitoring is particularly important if the bill is not going to designate a source of funding to electronically monitor indigent respondents. If, for example, monitoring costs \$6 per day, the cost to monitor one offender for one year would be \$2,190. Though the bill requires respondents to pay their daily monitoring costs, there will be some who will be unable to pay.

Thank you again for the opportunity to share with you the Judicial Conference's observations about Senate Bill 244. I will gladly answer any questions you have for me at this time.