



New Bill Proposes GPS Tracking of Domestic Violence Offenders

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A bill has been introduced in the legislature that would allow for GPS tracking of domestic violence offenders. Has that been tried elsewhere? Would it be constitutional? Would it open the door to tracking other types of people? This post tackles those questions.

The bill. House Bill 41 provides in part that “[t]he North Carolina Department of Public Safety, in consultation with local law enforcement agencies, the courts, and other appropriate local entities, shall conduct a pilot program for the use of [GPS] tracking devices on domestic violence offenders. The pilot program shall be conducted in Forsyth County.” Though the details of the program would be determined by the participating agencies, the general idea is to track some or all “offenders who violate a domestic violence protective order.”

This would go beyond provisions in current law. Current law allows defendants with pending charges to be released under “[h]ouse arrest with electronic monitoring.” [G.S. 15A-534 \(a\)\(5\)](#). It also allows defendants on probation to be required to remain at home, enforced by electronic monitoring. [G.S. 15A-1343\(b1\)\(3c\)](#). By contrast, the pilot program seemingly would not be limited to defendants awaiting trial or to offenders on probation, and it would not be limited to persons ordered to remain at home.

As an aside, for defendants or offenders who are subject to a domestic violence protective order, current [G.S. 50B-3\(a\)\(13\)](#) states that a DVPO may include “any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.” However, I’m not aware of that provision having been used to justify GPS monitoring.

Other states. [According to Diane Rosenfeld](#), the Director of the Gender Violence Program at Harvard Law School, at least 23 states already use GPS to track some domestic violence offenders, with at least 11 more states considering similar measures. [An opinion piece in Wired](#) argues that the GPS programs have been successful in safeguarding victims.

Different states have different programs. For example, most allow monitoring only of defendants convicted of violating a protective order or committing a domestic violence crime, but a few allow a judge to order monitoring when issuing a DVPO. See Fred Medick, *Domestic Violence Defendants’ Jury Trial Rights in GPS Monitoring*, 43 Harv. Civ. Rights-Civ. Lib. L. Rev. 277 (2008) (“These laws usually permit GPS monitoring only after the defendant has violated a protective order.”); Natalie Fox Malone, Note, *GPS Monitoring of Domestic Violence Offenders in Tennessee: Generating Problems Surreptitiously*, 43 U. Memphis L. Rev. 171 (2012) (noting that Louisiana and Ohio allow GPS monitoring to be ordered in an initial DVPO). States also vary regarding the duration of GPS monitoring, though it seems often to be on the order of a year or two.

Legal issues. Using a GPS tracking device to monitor a person is a search under the Fourth Amendment. See *United States v. Jones*, 565 U.S. 400 (2012) (“We hold that the Government’s installation of a GPS device on a target’s vehicle, and its use of that device to monitor the vehicle’s movements, constitutes a ‘search.’”); *Grady v. North Carolina*, __ U.S. __, 135 S.Ct. 1368 (2015) (holding that GPS monitoring of sex offenders “is plainly designed to obtain information . . . by physically intruding on a subject’s body,” and therefore “effects a Fourth Amendment

search”). In the context of GPS monitoring of sex offenders, the appellate courts have so far set a relatively high bar for allowing such searches. Jamie Markham noted in [a blog post last year](#) that there haven’t been *any* reported appellate decisions finding GPS monitoring of a convicted sex offender to be constitutional, though that may change as prosecutors become more accustomed to presenting evidence to support the individualized need for monitoring.

It may be similarly difficult for the state to establish that GPS monitoring of a domestic violence offender is lawful. But some domestic violence cases involve repeated abuse, express threats, and other factors that may tend to support monitoring. Even though GPS monitoring of domestic violence offenders is permitted in many other states, I couldn’t locate a reported case addressing the Fourth Amendment issues associated with such monitoring.

Other offenders? There is a trend towards expanding the use of GPS tracking in the criminal justice system. Nationally, the Pew Public Safety Performance Project [reports](#) that “[t]he number of accused and convicted criminal offenders monitored with electronic tracking devices in the United States increased 140 percent between 2005 and 2015, from approximately 53,000 to more than 125,000.” In North Carolina, GPS tracking is used for some sex offenders and for some defendants on pretrial release. Perhaps soon it will be used for tracking domestic violence offenders after conviction. It’s easy to imagine arguments for using it to track other violent offenders, including defendants convicted of gang offenses and defendants convicted of child abuse offenses.

Is this a slippery slope? The privacy-minded Electronic Frontier Foundation [argues that](#) “[a]ll too often, new police surveillance tools are initially applied only to the ‘worst of the worst’ and then slowly – but surely – expanded to include an ever-growing number of less culpable individuals. . . . [W]e’re starting to see it with GPS tracking.” The contrary view is that there is nothing nefarious about a successful tool being used more often.

Further reading. [This post](#) associated with the *Richmond Journal of Law and Technology* dives a little deeper into some of the legal and practical issues associated with GPS tracking in domestic violence cases. And if you’re interested in ancient history, I wrote [this post](#) way back in 2009 about GPS monitoring in domestic violence cases.