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## **Summary and Recommendations: Improving Victim Safety with Global Positioning System (GPS) Monitoring as a Condition of Release for Defendants Accused of Domestic Violence**

Domestic violence is prevalent in Tennessee and across the United States. Tennessee’s definition of domestic violence includes that which occurs within domestic relationships between parents and children, siblings, or even roommates, but violence between intimate partners—most often men against women—is the most commonly discussed and studied. Governmental and non-governmental agencies at the national, state, and local levels have focused not only on reducing domestic violence but also on improving victim safety. One of the most dangerous periods for victims of domestic violence is the pretrial period after their abuser has been charged with the crime and has been released pending trial.

Under both the Tennessee Constitution and state statute, criminal defendants have a right to bail in all non-capital cases. When determining conditions of release for defendants accused of domestic violence, sexual assault, stalking, or violating orders of protection, magistrates are required to “review the facts of the arrest and detention of the defendant and determine whether the defendant is a threat to the alleged victim or public safety or reasonably likely to appear in court.” If they find the defendant is a threat or is unlikely to return to court, they are required to set at least one condition of release. In domestic violence cases, these conditions usually include bonds and no-contact orders. But another condition available to magistrates in Tennessee is pretrial global positioning system (GPS) monitoring.

Although GPS monitoring nationwide is most commonly used within the criminal justice system for tracking convicted offenders, it is also used for pretrial monitoring of domestic violence defendants in some jurisdictions, with the intent of quickly alerting a victim if the defendant comes too close. Some experts and researchers in the field of domestic violence, however, question GPS monitoring’s effectiveness in keeping victims safe and reducing recidivism during the pretrial period. Funding GPS monitoring is also a challenge. But in light of its potential as a tool to improve victim safety in domestic violence cases, Public Chapter 827, Acts of 2018, directs the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) to conduct a study of the effects and implementation of GPS monitoring as a condition of release for defendants accused of stalking, sexual assault, domestic abuse, and violations of orders of protection.

***GPS monitoring for domestic violence is most effective in improving victim safety when implemented within a well-coordinated system.***

Rather than a free-standing solution for protecting victims of domestic violence during the pretrial period, GPS monitoring requires coordination among courts, local law enforcement, local government, private vendors, and victim support services to be effective. According to the National Network to End Domestic Violence,

It is critical to understand that GPS monitoring of offenders is only effective as part of a larger coordinated system. If not enough trained officers can respond quickly when an offender approaches a victim and if courts lack resources to hold offenders accountable, the monitoring devices will not be effective. It is vital that a community-based advocate explains to the victim how the offender tracking system works and its benefits and risks.

Examples of support services that can be used to implement a coordinated approach include

- family safety or justice centers, which are physical locations where multiple agencies are available in one building for victims to safely receive assistance and services;
- domestic violence high-risk teams, which review high-risk domestic violence cases and involve the participation of multiple agencies to determine and plan needed interventions to help victims; and
- lethality assessments, sometimes more broadly referred to as danger or risk assessments, which use victims' responses to a series of standardized questions to help law enforcement in the field and victim advocates determine the danger a victim is in and connect high-risk victims to services in an attempt to improve their safety.

In Tennessee, Memphis' and Shelby County's GPS monitoring pilot program, which operated from 2016 to 2019, monitored approximately 400 defendants at a given time as a condition of release for certain domestic violence offenses. The program developed its own assessment scoring tool, which incorporated a lethality assessment, pretrial risk assessment, and victim statement, to determine who should be monitored. Its goal was to improve victim safety by reducing repeat instances of domestic aggravated assault and by increasing the number of victims who seek support services. The program evaluation found that defendants who were monitored were more likely to be arrested for violation of bond conditions, and their cases took longer to be dismissed for lack of prosecution. Victims who carried

a device were less likely to be repeat victims. The evaluation concluded that to continue with an effective program, courts, law enforcement, local government, and organizations providing victim support services need to be engaged and committed, and expectations, roles, and procedures for each need to be clear. For example, to help improve victim safety, monitoring needs to be “real-time,” meaning it is done 24 hours a day, seven days a week. This requires coordination and communication between agencies so that staff are available to constantly monitor and immediately respond to alerts and assist victims, as opposed to responding the next day.

A pilot project in three judicial districts in Connecticut offers another example of collaboration. It began in 2010 to test the effectiveness of GPS monitoring of high-risk domestic violence offenders, and by 2013 none of the 168 offenders had re-injured or killed victims. The program is limited to violations of orders of protection and uses an assessment tool to determine which cases are high-risk and which defendants should be monitored. Each participating district established local implementation teams—similar to high-risk teams—which include judges, prosecutors, public defenders, court clerks, law enforcement, victim advocates, court support staff, and the department of correction. According to the program manager, “the key to the program’s success is a combination of aggressive enforcement and tight collaboration between the judicial system, local police, and domestic violence workers.”

The outcomes of pilot programs like those in Memphis and Shelby County and Connecticut suggest a way forward for communities interested in implementing similar pretrial programs for victim safety. **To help maximize GPS monitoring’s effectiveness for increasing the safety of domestic violence victims during the pretrial period, local jurisdictions should consider adopting it as but one component of a larger coordinated community response—including strong interagency partnerships, cooperation and commitment from stakeholders, education and training, and victim support services such as family safety centers, domestic violence high-risk teams, and lethality assessments. Local governments that choose to implement GPS monitoring programs should work with partner agencies to clarify roles and expectations and develop and commit to procedures and policies. Regardless of whether local governments choose to implement GPS monitoring programs, law enforcement and victim advocate agencies should be encouraged to adopt validated lethality assessments because they are an effective tool for identifying victims most at risk of serious harm or death, and they help prioritize victims’ access to safety planning and other services.** The Tennessee Law Enforcement Training Academy already provides training for the Maryland Lethality Assessment Program (LAP), which is designed for intimate partner violence and has been found to be effective by the US Centers for Disease Control and Prevention (CDC), at no cost to local law enforcement or victim advocate agencies. To participate in the program

and receive training, law enforcement agencies and victim advocates are required to adopt and implement the LAP as part of their protocol.

***The cost of pretrial GPS monitoring programs varies, and local governments may need state assistance to fund their use.***

The cost of funding GPS monitoring programs depends on how they are structured, including the extent to which local governments partner with private vendors. In Memphis and Shelby County, for example, the contracted private vendor leased equipment and software to the program, and the city and county used their own staff and facilities to manage devices, monitor, communicate, and send alerts. But the demand for 24/7 dedicated personnel can be difficult to meet for local governments and can be stressful for staff who are on-call. Alternatively, for a higher fee, local governments can contract with their vendor to provide all services up to the point when law enforcement responds to calls, as is done in Grundy County, for example. In general, local governments' GPS program costs range from about \$4 to \$15 per defendant per day, depending on the type and total number of devices, which services the vendor provides, whether the government agency or defendant is paying, and whether the victim also carries a device.<sup>1</sup>

Finding sufficient and recurring funding for pretrial GPS monitoring in domestic violence cases is an obstacle to implementation. In Tennessee, funding sources include defendants, grants, local revenue, and the state's Electronic Monitoring Indigency Fund (EMIF). Although Tennessee law authorizes magistrates to order defendants to pay for monitoring, the majority of defendants cannot afford to. The Administrative Office of the Courts estimated in 2012 that "over 75% of persons charged with a criminal offense in Tennessee trial courts are determined to be indigent," and TACIR staff have not found evidence that indigency rates for defendants in domestic violence cases are significantly different. While grants are often used to fund programs initially and can be helpful to get a program started, they are limited to specified timeframes and are not sustainable, long-term funding sources.

Tennessee's EMIF is now available to pay 50% of the cost of pretrial GPS monitoring for indigent domestic violence defendants, following the enactment of Public Chapter 505, Acts of 2019, with the other 50% covered by local governments. The fund is also used to pay for alcohol monitoring devices in driving under the influence (DUI) cases. However, depending on how many local governments choose to participate in the EMIF, current

<sup>1</sup> These cost estimates do not include the agencies' administrative or personnel costs, the cost of law enforcement's response to calls and alerts, extra expense for lost or damaged devices, or additional cost to victim advocates to provide services. Local governments decide how to allocate their resources and work with the vendor to most effectively implement their program.

funding most likely will not be enough to cover the state's share in all cases. Court fees for domestic violence and DUI offenses are earmarked for the fund but have resulted in approximately \$300,000 in annual revenue, and revenue is trending down according to Treasury Department staff. Although Governor Lee's fiscal year 2020 budget proposed an additional \$1.5 million for the EMIF, which the General Assembly appropriated, the amount is non-recurring. Moreover, the EMIF currently prioritizes funding for ignition interlock devices in DUI cases, with the cost of other types of alcohol and GPS monitoring covered only with money remaining. As of October 2019, 18 counties have committed to participation in the program and budgeted a total of \$492,000 for fiscal year 2020, which the state is required to match if funds are available.

If every local government opted into the EMIF program for pretrial GPS monitoring for indigent defendants in every domestic violence case, the cost to local governments would be approximately \$16.6 million annually—which the state would match if funds were available.<sup>2</sup> If funding were limited to all intimate partner violence, the state's share of funding would be approximately \$10.9 million annually, given the same assumptions. And if it were limited to higher risk cases, which typically involve stalking, sexual offenses, and aggravated assaults, the state's share would be \$1.8 million annually. However, the state treasurer is authorized to stop accepting and reimbursing claims if the fund is insufficient to pay the claims.

Given the importance of operating a pretrial GPS program within a larger coordinated community response, **if the General Assembly appropriates additional funds specifically for real-time GPS monitoring of domestic violence defendants, it should require that local governments drawing money from the fund, at a minimum, adopt a validated lethality assessment tool to both help identify which domestic violence victims are in the greatest danger and immediately connect those victims with safety planning and other services to improve their safety.**

The number of defendants subject to GPS monitoring will also affect program costs. Because defendants have not yet been convicted of a crime, deciding which defendants should be monitored requires balancing victim safety with defendants' rights. Following a recommendation in its program evaluation, Memphis and Shelby County determined that going forward their program would be limited to the subset of aggravated assault domestic violence cases involving intimate partners. **Other local governments adopting pretrial GPS monitoring programs may also choose to prioritize high-risk cases and certain types of offenses,**

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<sup>2</sup> These estimates assume all defendants are monitored and are based on data provided by the Tennessee Bureau of Investigation as of August 14, 2019, an indigency rate of 75% for defendants, an average cost of \$10 per device per day, and an average pretrial monitoring period of 90 days.



**including intimate partner violence, strangulation, stalking, threats involving firearms, or violations of protection orders.**

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## The Implementation and Effects of Global Positioning System (GPS) Monitoring as a Condition of Release for Domestic Violence Offenses

***Although the rate of domestic violence is decreasing, the issue remains a serious one in the US and in Tennessee.***

Since 1979, violent behavior has been considered a public health priority in the United States, and since 1980 the US Department of Health and Human Services Centers for Disease Control and Prevention (CDC) has been studying its patterns.<sup>3</sup> Violence that happens within the home, commonly called domestic violence, is a complex crime that is prevalent in Tennessee and across the United States. Although domestic violence can be defined to include domestic relationships between parents and children, siblings, or even roommates,<sup>4</sup> violence between intimate partners—usually men against women—is generally the most discussed and studied. Intimate partner relationships can include current and previous relationships between spouses, domestic partners, boyfriends and girlfriends, and same-sex couples. The CDC considers intimate partner violence to be a public health problem, and in 2015 the CDC’s National Intimate Partner and Sexual Violence Survey found that about one in four women and one in ten men experienced sexual violence, physical violence, or stalking by an intimate partner—and reported a negative effect during their lifetime.<sup>5</sup>

The US government has been making an effort to address domestic violence for decades, taking action as far back as Prohibition in the 1920s—which was partially an attempt to curb domestic violence because of the link between alcohol abuse and battered women.<sup>6</sup> The major federal laws enacted that address domestic violence by providing funding and services for victims and families are the Family Violence Prevention and Services Act (FVPSA) and Victims of Crime Act (VOCA) of 1984 and the Violence Against Women Act (VAWA) of 1994. VOCA helps victims of crime through means other than punishment of the criminal, including the Crime Victims Fund for compensating victims of crime.<sup>7</sup> VAWA funds programs that address domestic violence, sexual assault, dating violence, and stalking through the criminal justice system, community response, and prevention.<sup>8</sup> State and local governments, as well as non-government organizations, have also focused on addressing domestic violence.

<sup>3</sup> Centers for Disease Control and Prevention 2019a.

<sup>4</sup> Tennessee Code Annotated, Section 36-3-601(5) defines “domestic abuse victim” in Tennessee.

<sup>5</sup> Smith et al. 2018.

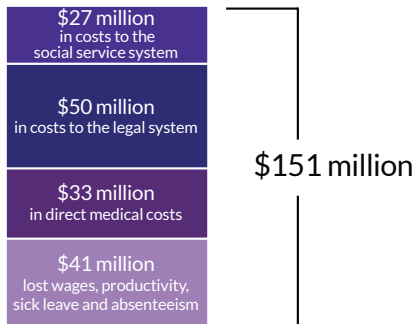
<sup>6</sup> Masson 1997.

<sup>7</sup> Office for Victims of Crime “About OVC.”

<sup>8</sup> Sacco 2019.

Though the rate of domestic violence has been decreasing in Tennessee, it remains a serious and frequent crime—49% of all crimes against persons reported in 2018.<sup>9</sup> The same year, the Tennessee Bureau of Investigation (TBI) reported 73,568 domestic violence crimes, a decrease of 5.8% from 2017.<sup>10</sup> Intimate partner crimes were over half of all domestic violence crimes. Since 2009, the number of domestic violence victims decreased 13%,

Figure 1. Estimated Tangible Costs of Domestic Violence in Tennessee, 2013



Source: Nashville-Davidson County Domestic Violence Safety and Accountability Assessment 2013.

and the number of intimate partner domestic violence victims decreased 15%.<sup>11</sup> Appendix A shows the number of intimate partner violence victims reported by TBI by type of offense and county in Tennessee in 2018. However, the number of domestic violence murder victims increased from 81 in 2017 to 98 in 2018,<sup>12</sup> and the Violence Policy Center ranked Tennessee as having the country's fifth highest rate of women murdered by men in 2017, tied with South Carolina.<sup>13</sup> Furthermore, a 2013 Nashville-Davidson County Domestic Violence Safety and Accountability Assessment said that the tangible costs of domestic violence in Tennessee, including costs to the social service and legal systems, direct medical costs, lost wages and productivity, sick leave, and absenteeism, have been estimated to be as much as \$151 million annually (see figure 1).<sup>14</sup>

### The Tennessee General Assembly continues to enact laws to help keep victims safe and hold offenders accountable.

Starting with the 91<sup>st</sup> General Assembly in 1979, Tennessee's legislature has enacted domestic abuse laws and amended them over the years with the intent to improve victim safety and offender accountability. The law defines a domestic abuse or assault victim as any person, and their adult and minor children, who are in the following categories: adults or minors who are current or former spouses; who live together or who have lived together; who are dating or who have dated or who have or had a sexual relationship; who are related by blood or adoption; or who are related or were formerly related by marriage.<sup>15</sup> Common examples of offenses that are considered domestic abuse when they involve the relationships listed above are stalking, sexual assault, strangulation, use of a firearm, and violations of orders of protection.<sup>16</sup>

<sup>9</sup> Tennessee Bureau of Investigation 2019a.

<sup>10</sup> Tennessee Bureau of Investigation 2019b.

<sup>11</sup> In this report, domestic violence offenses include crimes against persons, not crimes against property such as vandalism or theft. Rates of offenses are based on Tennessee Bureau of Investigation 2018 victim data for type of offenses as of August 14, 2019. Tennessee Bureau of Investigation "Tennessee Crime Online Statistics Website."

<sup>12</sup> Tennessee Bureau of Investigation 2018; Tennessee Bureau of Investigation 2019b.

<sup>13</sup> Violence Policy Center 2019.

<sup>14</sup> Nashville-Davidson County Domestic Violence Safety and Accountability Assessment 2013.

<sup>15</sup> Tennessee Code Annotated, Sections 36-3-601(5) and 39-13-111.

<sup>16</sup> Tennessee Code Annotated, Sections 36-3-601, 39-13-113, and 39-17-315. Strangulation is a specific type of domestic physical abuse discussed often in the literature and by stakeholders.

In 1995, the General Assembly created the Tennessee Domestic Violence State Coordinating Council to “increase the awareness and understanding of domestic and family violence and its consequences and to reduce the incidence of domestic and family violence within the state.”<sup>17</sup> The 23 council members, who include stakeholders representing various perspectives on domestic violence, meet quarterly and are responsible for designing statewide domestic violence policies and training programs for law enforcement and judges in conjunction with the Tennessee Coalition to End Domestic and Sexual Violence, Judicial Commissioner Association of Tennessee, Tennessee Judicial Conference, Tennessee General Sessions Judges Conference, and the Administrative Office of the Courts.<sup>18</sup> The council is also required to develop regulations and certify batterer’s intervention programs for domestic abusers.<sup>19</sup> Judges may order a defendant to complete a certified batterer’s intervention program as part of a sentence.<sup>20</sup>

Both a victim’s safety and an accused abuser’s rights are protected by law. A defendant’s rights to reasonable bail and due process are protected by the US Constitution,<sup>21</sup> and the Tennessee Constitution, Article 1, Section 15, makes the right to bail mandatory in all except capital cases. State statute addresses how the court makes decisions on bail and determines the conditions of release for people accused of certain offenses, including domestic violence, sexual assault, stalking, or violating orders of protection.<sup>22</sup> Magistrates are required to “review the facts of the arrest and detention of the defendant and determine whether the defendant is a threat to the alleged victim or public safety or reasonably likely to appear in court.” If they find the defendant is a threat or is unlikely to return to court, magistrates are required to impose bail or at least one other condition of release to protect the victim and public and to ensure the defendant appears in court. In domestic violence cases, these conditions usually include money bonds and no-contact orders. But another condition available to magistrates in Tennessee is pretrial global positioning system (GPS) monitoring. Tennessee Code Annotated, Section 40-11-150, included in figure 2, describes the determination of risk to the victim and conditions of release. See appendix B for an explanation of the difference between bail, bond, and conditions of release.

<sup>17</sup> Public Chapter 376, Acts of 1995; Tennessee Code Annotated, Section 38-12-101 et seq.

<sup>18</sup> Tennessee Code Annotated, Sections 38-12-102 and 38-12-103; email correspondence with Kathy Walsh, executive director, Tennessee Coalition to End Domestic and Sexual Violence, October 1, 2019; and Michelle Consiglio-Young, assistant general counsel/legislative liaison, Tennessee Supreme Court, Administrative Office of the Courts, October 1 and November 15, 2019.

<sup>19</sup> Tennessee Code Annotated, Section 38-12-110.

<sup>20</sup> Tennessee Code Annotated, Section 39-13-111(d).

<sup>21</sup> United States Constitution 5th, 8th, and 14th Amendments.

<sup>22</sup> Tennessee Code Annotated, Sections 40-11-102, 40-11-116, 40-11-118, and 40-11-150.

**Figure 2. Tennessee Code Annotated, Sections 40-11-150(a) and (b): Determination of Risk to Victim Prior to Release and Conditional Release**

(a) In addition to the factors set out in § 40-11-118, in making a decision concerning the amount of bail required for the release of a defendant who is arrested for the offense of child abuse, child neglect, or child endangerment, as defined in § 39-15-401, the offense of aggravated child abuse, aggravated child neglect, or aggravated child endangerment, as defined in § 39-15-402, the offense of stalking, aggravated stalking or especially aggravated stalking, as defined in § 39-17-315, any criminal offense defined in title 39, chapter 13, in which the alleged victim of the offense is a victim as defined in § 36-3-601(5), (10) or (11), or is in violation of an order of protection as authorized by title 36, chapter 3, part 6, the magistrate shall review the facts of the arrest and detention of the defendant and determine whether the defendant is:

- (1) A threat to the alleged victim;
- (2) A threat to public safety; and
- (3) Reasonably likely to appear in court.

(b) Before releasing a person arrested for or charged with an offense specified in subsection (a), or a violation of an order of protection, the magistrate shall make findings on the record, if possible, concerning the determination made in accordance with subsection (a), and shall impose one (1) or more conditions of release or bail on the defendant to protect the alleged victim of any such offense and to ensure the appearance of the defendant at a subsequent court proceeding. The conditions may include:

- (1) An order enjoining the defendant from threatening to commit or committing specified offenses against the alleged victim;
- (2) An order prohibiting the defendant from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, either directly or indirectly;
- (3) An order directing the defendant to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;
- (4) An order prohibiting the defendant from using or possessing a firearm or other weapon specified by the magistrate;
- (5) An order prohibiting the defendant from possession or consumption of alcohol, controlled substances or controlled substance analogues;
- (6) An order requiring the defendant to carry or wear a global positioning monitoring system device and, if able, pay the costs associated with operating that device and electronic receptor device provided to the victim, pursuant to § 40-11-152; and
- (7) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the defendant in court.

Tennessee law also provides that individuals who have been arrested for certain domestic violence and stalking offenses “shall not be released within twelve (12) hours of arrest if the magistrate or other official duly authorized to release the offender finds that the offender is a threat to the alleged victim.” This is intended to help keep victims safe immediately after the incident by mandating a “cooling off” period for the defendant and giving the victim time to seek safety and implement their safety plan if they have one. If the magistrate finds that the defendant either seriously injured the victim or used or displayed a deadly weapon, the magistrate is required to issue a no-contact order. Magistrates continue to have discretion and are permitted to release a defendant in less than 12 hours if the magistrate determines the defendant is not a threat to the alleged victim. In this case, the magistrate must “make all reasonable efforts to directly contact the victim” and inform them that the defendant has been released. Figure 3 explains the difference between a no-contact order and an order of protection.

Figure 3. The Difference Between a No-Contact Order and an Order of Protection

“No-contact orders” and “orders of protection” are both used to help protect a victim from an offender. The key difference is that a “no-contact order” is a condition of bail for a criminal defendant and remains in effect until the criminal case is concluded, while an “order of protection” is a civil order that a victim petitions the court to order and can remain in effect for one year but can be extended by the court for additional time. Violation of either is a criminal offense punishable as a class A misdemeanor.

Source: Tennessee Code Annotated, Sections 36-3-601, 39-13-113, and 40-11-150.

### **Magistrates are authorized to order GPS monitoring for defendants as a condition of release.**

In 2011, Tennessee enacted Public Chapter 406, aimed at protecting victims of domestic violence through the use of GPS monitoring, a type of electronic monitoring.<sup>23</sup> See appendix C for a copy of the Act. It defines “global positioning monitoring system” as “a system that electronically determines and reports the location of an individual through the use of a transmitter or similar device carried or worn by the individual that transmits latitude and longitude data to a monitoring entity through global positioning satellite technology” and specifies that it doesn’t include technology that is implanted in or invades a person’s body. The city or county where the court is located is responsible for providing the GPS monitoring system.<sup>24</sup>

<sup>23</sup> Tennessee Code Annotated, Sections 40-11-150 and 40-11-152.

<sup>24</sup> Tennessee Code Annotated, Section 40-11-152.



Magistrates are authorized to order a defendant to wear a GPS monitoring device as a condition of bail in cases of domestic violence, stalking, or violation of a protection order. When determining whether to order GPS monitoring, the magistrate “shall 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.”<sup>25</sup> If a magistrate determines a defendant is high-risk, and the case is serious, the magistrate is most likely to set a high bond amount in addition to other conditions such as a no-contact order or prohibiting possession of a firearm. If these defendants are able to pay the bond and are released, they might be the most appropriate to monitor using GPS. For medium-risk defendants, monitoring could be ordered in addition to a cash bond and no-contact order—those defendants who are able to pay the bond could also be monitored when they are released. If a magistrate determines the defendant is low risk and the offense less serious, the magistrate may determine that GPS monitoring is not necessary or appropriate and set a lower cash bond amount along with a no-contact order as conditions of release.<sup>26</sup> Additionally, magistrates may order GPS monitoring in lieu of bond and may order defendants to pay the costs “associated with operating that system,” including the cost of the victim’s device if the victim chooses to carry one, unless the magistrate determines the defendant is indigent, in which case the defendant is ordered to pay the portion of the cost that they are able. Any portion that the defendant is unable to pay comes from the Electronic Monitoring Indigency Fund if the local government participates in the program and funds are available.<sup>27</sup>

The law also specifies how magistrates communicate with victims.<sup>28</sup> Magistrates must provide information to the victim regarding their rights, available services, and their voluntary participation in the program and explain the functioning, procedures, and potential risks of the monitoring system. Victims must also be given an opportunity to provide a list of areas from which they would like the defendant excluded, and magistrates must consider victims’ requests. If the victim chooses to carry a monitoring device and be notified when the defendant is near a prohibited location, they may decide at any time to stop carrying the device and stop receiving the notifications. Magistrates are also required to provide a law enforcement officer’s contact information so victims can call for immediate assistance if the defendant violates a condition. The agency or company operating the GPS system is required to notify the magistrate and local law enforcement if the defendant violates an imposed condition. In light of its potential as a tool to improve victim safety in domestic violence cases, Public Chapter 827, Acts of 2018, directs the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) to conduct a study

<sup>25</sup> Ibid.

<sup>26</sup> Tennessee Code Annotated, Sections 40-11-116, 40-11-118, and 40-11-150.

<sup>27</sup> Tennessee Code Annotated, Section 40-11-152.

<sup>28</sup> Tennessee Code Annotated, Section 40-11-152.

of the implementation and effects of GPS monitoring as a condition of bail for defendants accused of stalking, aggravated stalking, especially aggravated stalking, domestic abuse, sexual assault, or a violation of an order of protection.<sup>29</sup> The Act is included as appendix D.

### **Tennessee’s executive branch remains focused on crime and safety.**

In recent years, former Governor Bill Haslam’s administration developed two Public Safety Action Plans—an initial plan for 2012-2015 and an update for 2016-2018—that aimed to make Tennessee safer by focusing on reducing drug abuse and trafficking, curbing violent crime, and decreasing the number of repeat offenders.<sup>30</sup> Several recommended actions from the initial plan were implemented that directly relate to victim safety, including mandatory incarceration for repeat domestic violence offenders and the opening of four additional family safety or justice centers to better serve and support domestic violence victims.<sup>31</sup> As of 2018, nine centers have been established, one each in Chattanooga, Jackson, Johnson City, Knoxville, Memphis, Nashville, Putnam County, Scott County, and Sullivan County,<sup>32</sup> and as of July 1, 2019, four additional counties—Anderson, Claiborne, Haywood, and Overton—have received grants for planning and implementation of new family justice centers.<sup>33</sup> The updated 2016-2018 plan made several recommendations related to victim safety, including moving third and subsequent convictions for domestic violence offenses from a misdemeanor to a felony and increasing “victim safety in domestic violence cases by (1) developing an assessment tool to help law enforcement determine the level of danger and (2) supporting legislation to allow law enforcement to seek (a) emergency orders of protection and (b) automatic orders of protection for cases where there has been an arrest and deadly force used.”

In response to the 2016-2018 plan’s recommendation to develop an assessment tool to help law enforcement determine the level of danger, the Tennessee Law Enforcement Training Academy (TLETA) is providing lethality assessment training for law enforcement and victim advocate agencies across the state. Though there are several available tools that assess dangerousness or lethality of domestic violence situations that law enforcement and victim advocate agencies in Tennessee could adopt, TLETA provides the training for the Maryland Lethality Assessment Program (LAP) at no cost to local law enforcement or victim advocates, using a five-year federal “STOP Violence Against Women” grant awarded

<sup>29</sup> Public Chapter 208, Acts of 2019, extends the deadline for the TACIR report from January 1, 2020 to February 1, 2020.

<sup>30</sup> Tennessee State Government 2016.

<sup>31</sup> Ibid.

<sup>32</sup> Tennessee Department of Finance and Administration 2018.

<sup>33</sup> Tennessee Department of Finance and Administration 2019.



and administered by the Office of Criminal Justice Programs (OCJP) in the Tennessee Department of Finance and Administration.<sup>34</sup> The LAP—which is designed for intimate partner violence and has been found to be effective by the US Centers for Disease Control and Prevention (CDC)<sup>35</sup>—uses victims’ responses to a series of standardized questions asked by law enforcement at the domestic violence scene to determine the level of lethality or danger to the victim. Victims’ responses to the questions help law enforcement officers identify high-risk victims and immediately connect them to victim advocates and services with the main goal of helping victims develop safety plans. The questions asked in the LAP are included as appendix E. Both TLETA and OCJP recommend the adoption of the Maryland LAP by all law enforcement agencies in the state, have committed to continue funding the program, and hope to eventually train all agencies. To participate in the program and receive training, law enforcement agencies and victim advocates are required to adopt and implement the LAP as part of their protocol. However, because lethality assessments are not required by law in Tennessee, they are not consistently conducted across the state. According to the National Institute of Justice in 2018, jurisdictions in 32 states have adopted the Maryland LAP.<sup>36</sup>

In 2019, Tennessee Governor Bill Lee’s administration created a criminal justice investment task force to address public safety in the state.<sup>37</sup> In his first state of the state address, Governor Lee mentioned appropriating funds to the Electronic Monitoring Indigency Fund (EMIF) and adding GPS monitoring to the fund “so that low-risk, non-violent individuals can keep their jobs and provide for their families instead of spending unnecessary time in jail.”<sup>38</sup> Although Tennessee state government’s fiscal year 2020 budget includes an additional \$1.5 million for the EMIF, the amount is non-recurring.<sup>39</sup>

***Although electronic monitoring is commonly used in Tennessee and other states, it is less commonly used for domestic violence defendants before trial.***

Electronic monitoring is not a new practice. The Tennessee Department of Safety and Homeland Security (DOSHS) began using ignition interlock devices in 1989 and transdermal alcohol monitoring in 2014 for driving under the influence (DUI) convictions, two types of electronic monitoring

<sup>34</sup> Interviews with Jennifer Brinkman, director, Tennessee Department of Finance and Administration, Office of Criminal Justice Programs, July 15 and October 15, 2019; and Teddy Murphy, law enforcement training instructor, Tennessee Law Enforcement Training Academy, July 17, 2019; email correspondence with Mike Hill, program manager, Tennessee Department of Finance and Administration, Office of Criminal Justice Programs, March 16, 2018.

<sup>35</sup> Niolon et al. 2017; Lethality Assessment Program “How LAP Works” and “Recognition.”

<sup>36</sup> National Institute of Justice 2018.

<sup>37</sup> Tennessee Office of the Governor 2019a.

<sup>38</sup> Tennessee Office of the Governor 2019b.

<sup>39</sup> Tennessee State Government 2019.

that measure and track alcohol use.<sup>40</sup> In 2004, the Tennessee Department of Correction (TDOC) began using GPS to monitor sexual offenders.<sup>41</sup> As of August 2019, TDOC supervises 3,524 sex offenders.<sup>42</sup> Registered sex offenders are placed on electronic monitoring for the first 90 days of supervision; the use of GPS after that time period is a sanction for non-compliance. In addition to those two instances, any offender convicted of rape of a child or aggravated rape of a child will remain on GPS for their entire supervision. TDOC has 797 offenders, mostly registered sex offenders, assigned to electronic monitoring. The others are defendants ordered by the court to be monitored for other offenses. The cost is \$3.80 per person per device per day—the offender pays \$50 a month, and the state pays the rest.<sup>43</sup> Although both state agencies monitor compliance with their programs,<sup>44</sup> TDOC leases the devices from a vendor, and in contrast, under the DOSHS ignition interlock program, offenders lease the devices directly from a vendor. The electronic monitoring implemented by the DOSHS and TDOC happens after defendants are convicted, not during the pretrial period; local governments are responsible for monitoring that is ordered by the court as a condition of bail.<sup>45</sup>

Other states use different types of electronic monitoring for various purposes, but no state requires electronic monitoring as an automatic condition of release for domestic violence defendants.<sup>46</sup> When looking at all offenses, not just domestic violence, the National Conference of State Legislatures found that 33 states specifically authorize the use of technology to monitor a defendant's compliance with other conditions of release.<sup>47</sup> However, except for North Carolina, New York, Utah, and West Virginia, states authorize courts to impose any condition of release the court deems reasonably necessary. Brenner, in the 2013 article "Transcending the Criminal Law's 'One Size Fits All,'" found that as of 2013 "a total of fourteen states have enacted provisions for using GPS or electronic monitoring of batterers against whom courts have issued victim protection orders or in other contexts. All of the statutes are permissive, not mandatory, giving the courts authority to require electronic monitoring under certain conditions and contexts." Tracking of domestic violence defendants is usually ordered at the time the domestic violence order of protection is issued, when the defendant is accused of committing a domestic violence crime, or when the defendant has violated a protective order.

<sup>40</sup> Tennessee Code Annotated, Sections 55-10-417 and 55-10-402.

<sup>41</sup> Tennessee Code Annotated, Section 40-39-201 et seq.

<sup>42</sup> Interview with Susan Siedentop, correctional administrator, Community Supervision, Tennessee Department of Correction, April 5, 2019; and email correspondence August 20, 2019.

<sup>43</sup> Interview with Susan Siedentop, correctional administrator, Community Supervision, Tennessee Department of Correction, April 5, 2019; and email correspondence August 20, 2019.

<sup>44</sup> Interview with Susan Siedentop, correctional administrator, Community Supervision, Tennessee Department of Correction, April 5, 2019. Tennessee Code Annotated, Sections 40-39-301 et seq. and 55-10-417.

<sup>45</sup> Tennessee Code Annotated, Section 40-11-152(k).

<sup>46</sup> TACIR staff review of other states' statutes.

<sup>47</sup> National Conference of State Legislatures 2016.

Examples of electronic monitoring programs in other states illustrate both successes and challenges. The pretrial electronic monitoring program in Alleghany County, Pennsylvania, focuses on high-risk defendants, not just on domestic violence defendants.<sup>48</sup> In 2015, the program reported that 78% of more than 130 defendants who were electronically supervised successfully completed their supervision, meaning they followed the rules and complied with court orders. The program's annual report for that year says it "has proven to be an effective alternative to pretrial incarceration while keeping the safety of the community as a priority." The US Department of Justice's National Institute of Justice reported findings from a 2010 Florida study of electronic monitoring, including GPS monitoring, which concluded that offenders who were electronically monitored were 31% less likely to fail than those on other forms of community supervision.<sup>49</sup> It also found that GPS monitoring is more effective at reducing recidivism than other types of electronic monitoring, such as radio frequency systems. However, the challenges are illustrated by Orange County, Florida, where electronic monitoring was stopped in 2012 when a witness was killed by a man who was supposed to be monitored under home confinement. The local chief judge said, "In many ways [GPS] sounds good in theory, but working out the logistical issues is very challenging. . . . One concern is that it might provide a false sense of security to victims in that it would stop them from being harmed. But there's little you can do to stop a person bent on harming someone else."<sup>50</sup>

Some stakeholders, such as defense attorneys and civil liberties organizations, are also concerned that when used for pretrial release, electronic monitoring, including GPS monitoring, is not a fair and effective tool, and they question the limitations of the technology. Though it is interpreted as constitutional as long as the defendant is given due process before electronic monitoring is ordered, some question whether it is an unfair burden on them because defendants have not been convicted of a crime, and pretrial conditions of release are typically set at initial hearings where defendants might not yet have legal representation. The Pretrial Justice Institute (PJI), a nonprofit organization that aims to "advance safe, fair, and effective juvenile and adult pretrial justice practices and policies that honor and protect all people,"<sup>51</sup> advises to "proceed with caution" and to question the appropriateness and necessity when considering electronic monitoring. In 2011, the PJI surveyed research of pretrial electronic monitoring and found that "utilizing EM [electronic monitoring] as a condition of pretrial release does not reduce failure to appear or rearrest."<sup>52</sup> Another report noted that the technology can be prone to failure and that, "if defendants are intent on harming someone or skipping town, the

<sup>48</sup> Alleghany County Pretrial Services 2015.

<sup>49</sup> National Institute of Justice 2011.

<sup>50</sup> Cherney 2015.

<sup>51</sup> Pretrial Justice Institute 2018a.

<sup>52</sup> Pretrial Justice Institute 2018b.

bracelet, which can be easily removed with a pair of scissors, would not stop them. Studies showing that people tracked by GPS appear in court more reliably are scarce, and research about its effectiveness as a deterrent is inconclusive.”<sup>53</sup>

### ***Domestic violence is a complex issue that requires a coordinated response.***

Domestic violence is a unique and complex crime because the victim and accused offender are in a relationship—often a familial or intimate one, their lives and social networks are intertwined, and the abuser knows details of the victim’s life. Because of strong emotional attachment, interconnections, and fear, victims often don’t leave, or leave and go back to the relationship more than once—on average, victims make seven attempts to leave before leaving for good. In the article “50 Obstacles to Leaving” the author explains that “domestic violence victims stay for many valid reasons that must be understood by lawyers, judges, and the legal community if they are to stem the tide of homicides, assaults, and other abusive behavior. . . . We must acknowledge that many obstacles exist for the victims fleeing such terror.”<sup>54</sup>

Both the experts and the literature agree that although domestic violence can be reduced, solutions are not quick or simple. Domestic violence has a huge effect on children, often starts in adolescence, is associated with many risk factors, and is linked to other forms of violence. The CDC uses the term “Adverse Childhood Experiences” (ACEs) to describe all types of abuse, neglect, and other potentially traumatic experiences that occur to people under the age of 18. ACEs have been linked to risky health behaviors, chronic health conditions, low life potential, and early death—as the number of ACEs increases, so does the risk for these outcomes.<sup>55</sup> The effects are multi-generational and reach beyond the victims, offenders, children, and families to the broader community, state, and nation. According to the CDC, “although the personal consequences of IPV [intimate partner violence] are considerable, there are also considerable societal costs associated with medical services for IPV-related injury and health consequences, mental health services, lost productivity from paid work, childcare, and household chores, and criminal justice and child welfare costs.”<sup>56</sup> The National Institute of Justice says,

Violence by an intimate partner is linked to both immediate and long-term health, social, and economic consequences. Factors at all levels—individual, relationship, community, and societal—contribute to intimate partner violence. . .

<sup>53</sup> Kofman 2019. See also Karsten and West 2017.

<sup>54</sup> Buel 1999.

<sup>55</sup> Centers for Disease Control and Prevention 2019b.

<sup>56</sup> Niolon et al. 2017.

Preventing intimate partner violence requires reaching a clear understanding of those factors, coordinating resources, and fostering and initiating change in individuals, families, and society.<sup>57</sup>

While continuing to work on finding effective long-term interventions to address intimate partner violence, short-term measures can be implemented to improve victim safety. The entire pretrial period, especially around court dates, is a particularly dangerous time for victims.<sup>58</sup> The defendant is often agitated by being accused, prosecuted, and ordered to stay away from the victim. Pretrial GPS monitoring can be used as a condition of release for the defendant with the intent to improve victim safety. Though the main purposes are to help keep victims safe and to reduce recidivism while the defendant is awaiting trial, GPS monitoring as a condition of release can also help ensure that a defendant will appear in court and not violate other court orders. It is seen as a way to strengthen offender accountability and enforce orders of protection.<sup>59</sup> A frequently cited 2012 study funded by the US Department of Justice, “GPS Monitoring Technologies and Domestic Violence: An Evaluation Study,” found that, when used as a form of pretrial supervision and a method for enforcing no-contact orders in domestic violence cases, “GPS tracking seems to increase defendants’ compliance with program rules compared to those who are monitored but not tracked.”<sup>60</sup> Defendants did not attempt to contact victims and had fewer program violations.

Although GPS monitoring nationwide is most commonly used within the criminal justice system for tracking convicted offenders, it is also used for pretrial monitoring of defendants in some jurisdictions.<sup>61</sup> GPS monitoring is seen as a tool to help keep domestic violence victims safe by alerting them if the defendant physically comes too close and giving the victim time to activate their safety plan. Judges and victim advocates work with domestic violence victims to identify exclusion zones where the defendant is prohibited from entering. To best keep victims safe, monitoring needs to be active or “real-time,” meaning it is done 24 hours a day, seven days a week, with staff available to respond to alerts and assist victims.<sup>62</sup> In contrast, with passive tracking, the defendant wears a device, but the monitoring official might only receive information once a

<sup>57</sup> National Institute of Justice 2007.

<sup>58</sup> Erez 2012; Rosenfeld 2007; Rosenfeld 2008.

<sup>59</sup> National Institute of Justice 2011; Rosenfeld 2007; Rosenfeld 2008; interviews with Diane Lance, director, Office of Family Safety, Metropolitan Government of Nashville & Davidson County, July 8, 2019; Beth Ashe, executive director, Tennessee Sheriffs’ Association, May 6, 2019; and Maggi McLean Duncan, executive director, Tennessee Association of Chiefs of Police, April 5, 2018.

<sup>60</sup> Erez 2012.

<sup>61</sup> TACIR staff review of other states’ statutes; National Conference of State Legislatures 2016.

<sup>62</sup> Interviews with Mike Hill, program manager, Tennessee Department of Finance and Administration, Office of Criminal Justice Programs, April 18, 2018; Deborah Clubb, executive director, Memphis Area Women’s Council, March 22, 2018; and Kathy Walsh, executive director, Tennessee Coalition to End Domestic and Sexual Violence, March 26, 2018.



day or week when it is uploaded. The defendant is ordered to wear a GPS device on their ankle that allows their location to be monitored either by government employees or by employees of a contracted vendor. These ankle-monitoring devices are designed to be difficult to tamper with or to remove. In addition to sending the person's current location, devices can send signals indicating that their battery charge is running low, diagnostic codes suggesting a malfunction, and alerts that the device seems to have been tampered with. The person wearing the device is responsible for keeping it charged, which is one of the most common challenges with the implementation of GPS monitoring—the wearer does not keep up with charging the device, either intentionally or unintentionally.<sup>63</sup>

If GPS monitoring alerts that the defendant has entered an exclusion zone, the usual practice is to alert both the victim and law enforcement to give the victim time to activate a safety plan.<sup>64</sup> If the intrusion into an exclusion zone is found to be intentional, this is considered a violation, and the court is expected to impose some kind of sanction, often return to jail. An intrusion could be inadvertent, such as driving on a section of interstate that happens to be located within the exclusion zone, and staff involved in monitoring must make the sometimes-difficult determination as to whether there was ill intent on the part of the defendant. In addition to stationary exclusion zones around locations where the victim is regularly present, such as home, work, and school, there can also be a mobile exclusion zone that follows the victim should the victim choose to carry a device. The court may order the defendant to keep a certain distance from the victim, and the device allows the zone to move with the victim. Training and educating all participants, especially victims and defendants, about GPS monitoring programs is critical. There have been instances in Tennessee when victims have been unaware that their abuser was wearing a GPS monitor or how it might affect them.<sup>65</sup>

### **A coordinated system is critical to the success of GPS monitoring.**

Although GPS monitoring is a commonly used tool, it does not guarantee victim safety, nor does it address the root causes of domestic violence. A 2015 study of the Denver program's use of GPS for pretrial supervision of intimate partner and domestic violence offenses said that while it is effective,

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<sup>63</sup> Interviews with Don Crowe, deputy chief, Memphis Police Department, April 19, 2018, and April 16, 2019; Thomas Castelli, legal director, and Brandon Tucker, policy director, ACLU Foundation of Tennessee, May 22, 2019; and Susan Siedentop, correctional administrator, Community Supervision, Tennessee Department of Correction, April 5, 2019; National Network to End Domestic Violence 2008.

<sup>64</sup> Gur et al. 2016.

<sup>65</sup> Gur et al. 2016; interviews with Don Crowe, deputy chief, Memphis Police Department, April 19, 2018; and Olliette Murray-Drobot, executive director, Family Safety Center of Memphis and Shelby County, April 9, 2018.

it must be continually acknowledged that GPS is a tool to monitor defendants. GPS does not protect victims from defendants and should not be described as such. Jurisdictions should be aware of the benefits and limitation of GPS technology and its use in supervising defendants. These benefits and limitations should be communicated to all stakeholders.<sup>66</sup>

While simply using GPS to track pretrial domestic violence defendants' whereabouts will not necessarily result in significant increases in victim safety given the complexities of domestic violence, one generally accepted key to success is to implement GPS monitoring within a coordinated system. Technology can be used as a tool to improve safety within the complex domestic violence realm, but both stakeholders and the literature agree that to be effective GPS monitoring needs to be implemented as part of a collaborative system, often called a coordinated community response, in which agencies cooperate as partners.<sup>67</sup> In a 2008 brief about GPS monitoring, the National Network to End Domestic Violence said,

It is critical to understand that GPS monitoring of offenders is only effective as part of a larger coordinated system. If not enough trained officers can respond quickly when an offender approaches a victim and if courts lack resources to hold offenders accountable, the monitoring devices will not be effective. It is vital that a community-based advocate explains to the victim how the offender tracking system works and its benefits and risks.<sup>68</sup>

A system includes, but is not limited to, law enforcement, judges, prosecutors, defense attorneys, pretrial services, victim advocates, the victim, the offender, the local government, and the agency or vendor doing the monitoring. Education and training of all stakeholders, victim safety planning, court support, and "wrap-around" support services for the victim, offender, children, or families—such as shelters, counseling, substance abuse programs, and family support services—are important components. One 2016 study concluded that "collaborations between the criminal justice and social service systems appear to enhance system outcomes, particularly in the criminal justice arena."<sup>69</sup> Family safety centers, domestic violence high-risk teams, and lethality assessments are

<sup>66</sup> Grommon and Carter 2015.

<sup>67</sup> Interviews with Jennifer Brinkman, director, Tennessee Department of Finance and Administration, Office of Criminal Justice Programs, April 18, 2018; David Connor, executive director, Tennessee County Services Association, May 14, 2019; Timothy Lee, owner, Mid South Court Diversion Services, April 1, 2019; Susan Siedentop, correctional administrator, Community Supervision, Tennessee Department of Correction, April 5, 2019; and Beth Whiting, account manager, Sentinel Offender Services, LLC, July 3, 2019.

<sup>68</sup> National Network to End Domestic Violence 2008.

<sup>69</sup> Messing and Campbell 2016.



a few examples of tools that are commonly used as part of a collaborative system. Even though not every jurisdiction will have the resources to develop and adopt these specific support tools, at the very least, committed partner agencies such as law enforcement, the court, pretrial services, and victim advocates that consistently communicate and coordinate can help to implement GPS monitoring effectively.

*Family safety centers and domestic violence high-risk teams are examples of tools within a coordinated response system.*

Like a “one-stop shop” for victims and their families, family safety or justice centers are physical locations where agencies and stakeholders are available in one building for victims to safely receive assistance and services.<sup>70</sup> In 2005, Congress showed its support for the model by identifying it in the Violence Against Women Act (VAWA). The Office on Violence Against Women in the US Department of Justice also encourages the model and supports grants to

plan, develop, and establish comprehensive victim service and support centers, such as family justice centers, designed to bring together victim advocates from non-profit, non-governmental victim services organizations, law enforcement officers, prosecutors, probation officers, governmental victim assistants, forensic medical professionals, civil legal attorneys, chaplains, legal advocates, representatives from community-based organizations, and other relevant public or private agencies or organizations into one centralized location, in order to improve safety, access to services, and confidentiality for victims and families.<sup>71</sup>

The US Department of Justice has identified the family justice center model as a best practice in the field of domestic violence intervention and prevention services, with many documented and published outcomes. However, centers are not recommended in communities where agencies do not have a history of collaboration and a focus on domestic violence situations.<sup>72</sup> Although Tennessee currently has nine family safety or justice centers, and four more are in development, not every community will have the resources to establish and operate them.

Domestic violence high-risk teams, also called intervention teams, are another tool that can be incorporated into a coordinated domestic violence intervention and protection system. These multi-disciplinary teams identify and review high-risk domestic violence cases in their jurisdictions to develop and implement plans that try to keep victims safe and hold

<sup>70</sup> Tennessee Department of Finance and Administration 2018.

<sup>71</sup> Violence Against Women and Department of Justice Reauthorization Act of 2005, 119 Stat. 2960.

<sup>72</sup> Office on Violence Against Women 2007.

offenders accountable, particularly when the situation is potentially lethal. The model, first developed and implemented in Massachusetts in 2005, is based on four basic strategies: “early identification of high-risk cases through the use of risk assessment, engagement of a multi-disciplinary team, ongoing monitoring and containment of high-risk offenders, and victim services.”<sup>73</sup> High-risk teams involve the participation of multiple agencies and stakeholders that determine and plan needed interventions for each case, usually including some of the same partners engaged with the family safety centers.<sup>74</sup> Interventions can include providing the victim with various services or recommending enhanced supervision for the defendant, such as GPS monitoring. High-risk teams usually rely on some type of lethality, danger, or risk assessment to determine which cases are high-risk and need specialized attention.<sup>75</sup> Some jurisdictions in Tennessee have these types of teams in place, including Memphis and Nashville.<sup>76</sup>

#### *Lethality assessment tools help connect high-risk victims with services.*

There are a variety of assessment tools that agencies can use to determine the level of risk in domestic violence cases. These tools each have strengths and weaknesses, and the questions asked in the assessment vary depending on whether the tool is focused on the victim, the defendant, or both. Some jurisdictions modify an existing tool to create their own local version of it—like Memphis, Tennessee; Denver, Colorado; and the state of Connecticut have done. See appendix F for an overview and examples of a few commonly used assessment tools. Some questions for agencies to consider when deciding whether to use an assessment and which one to use include:

- How will law enforcement officers conduct the assessment?
- Will law enforcement have access to all necessary information?
- What training is required to implement the assessment?
- How much time can be spent completing the assessment?
- What if the victim does not want to cooperate?
- What outcome are we trying to predict (e.g., lethality, violence)?
- What will the information be used for?
- Are there any unintended effects of having law enforcement officers conduct the assessment?<sup>77</sup>

<sup>73</sup> Jeanne Geiger Crisis Center “Domestic Violence High Risk Training;” Alliance for Hope International 2016.

<sup>74</sup> Jeanne Geiger Crisis Center 2019.

<sup>75</sup> Jeanne Geiger Crisis Center “Domestic Violence High Risk Training.”

<sup>76</sup> Interviews with Olliette Murray-Drobot, executive director, Family Safety Center of Memphis and Shelby County, April 15, 2019; and Diane Lance, director, Office of Family Safety, Metropolitan Government of Nashville & Davidson County, July 8, 2019.

<sup>77</sup> Labrecque 2016.

Lethality assessments, sometimes more broadly referred to as danger or risk assessments, are specific assessment tools that focus on the victim to help improve victim safety. The authors of a 2016 study said that “in 2013, the Violence Against Women Act (VAWA), national US legislation that largely governs the response to IPV [intimate partner violence], added language suggesting that lethality assessment and collaborative interventions are imperative for effective IPV intervention.”<sup>78</sup> Trained law enforcement officers, victim advocates, or other professionals, such as counselors, usually conduct the assessments. The lethality assessment used in Tennessee, the Maryland LAP, requires coordination of law enforcement officers, who respond to calls and conduct the assessment at the scene, as well as victim advocates, who are available by phone at all times to connect victims immediately with services, including safety planning and shelter.<sup>79</sup> When a victim’s responses indicate a high risk of future violence, the officer at the scene, who has the initial (and sometimes only) contact with the victim, explains that they are in danger and calls a victim advocate. As a result, these assessments also help victims recognize their own risk level and, over time, help law enforcement officers better understand and respond to domestic violence situations. Studies show that validated lethality assessments are effective, and victim advocates agree that they are important for victims of intimate partner violence.<sup>80</sup> For example, in a 2018 article titled “How Effective are Lethality Assessment Programs for Addressing Intimate Partner Violence?” the National Institute for Justice found that although the lethality assessment program “did not appear to have a significant effect on reducing the frequency of intimate partner violence, at follow-up, it appeared to significantly reduce the severity and frequency of the violence that survivors experienced. . . and appeared to increase help seeking and safety planning.”<sup>81</sup>

Some studies and stakeholders also agree that information about the level of risk provided by lethality assessments could help magistrates determine whether a defendant should be monitored using GPS during the pretrial period in order to improve victim safety while effectively using limited funds. A 2008 study, discussing the use of danger and lethality assessments with GPS monitoring, emphasized that “a key component of

<sup>78</sup> Messing and Campbell 2016; Violence Against Women Reauthorization Act of 2013, 113 P.L. 4, 127 Stat. 54.

<sup>79</sup> Lethality Assessment Program “How LAP Works,” interviews with Jennifer Brinkman, director, Tennessee Department of Finance and Administration, Office of Criminal Justice Programs, May 3, 2019; and Teddy Murphy, law enforcement training instructor, Tennessee Law Enforcement Training Academy, July 17, 2019.

<sup>80</sup> Niolon et al. 2017; Messing et al. 2014; Messing and Campbell 2016; National Institute of Justice 2018; interviews with Jennifer Brinkman, director, Tennessee Department of Finance and Administration, Office of Criminal Justice Programs, July 15, 2019; Becky Bullard, senior director of programs, Office of Family Safety, Metropolitan Government of Nashville & Davidson County, July 18, 2019; Teddy Murphy, law enforcement training instructor, Tennessee Law Enforcement Training Academy, July 17, 2019; Olliette Murray-Drobot, executive director, Family Safety Center of Memphis and Shelby County, April 9, 2018; and Glenn Funk, District Attorney General, 20th Judicial District, Tennessee, July 21, 2019.

<sup>81</sup> National Institute for Justice 2018.

a comprehensive response to domestic violence, as well as to the effective administration of a GPS monitoring program, is the use of dangerousness assessments. A sophisticated body of research supports the administration of a fairly simple tool that law enforcement authorities can use to identify which batterers present a high risk to their victims.<sup>82</sup> The author of the study also suggests that model legislation should include a lethality assessment conducted by law enforcement and used by judges to order GPS as a condition of release. Appendix G includes a copy of the author's recommendations for model legislation.

Although some jurisdictions use assessment tools to determine whether defendants are monitored, some stakeholders—including prosecutors, defense attorneys, and civil liberties organizations—are concerned about the use of assessments, especially when they are used to determine conditions of release.<sup>83</sup> These concerns include possible retaliation by the defendant against the victim and the possibility that magistrates might rely too heavily on assessments when setting conditions for pretrial release. Some question whether risk assessments accurately identify whether a defendant is dangerous because the assessment score, which determines the level of risk, is based on the victim's responses to several questions asked by law enforcement at the scene. In effect, the assessment score could make the process of determining conditions of release less fair and biased against defendants. Although the Battered Women's Justice Project, a national non-profit victim advocacy organization, says that one of the benefits of assessments is to determine conditions of release and supervision for defendants, it also acknowledges some of the limitations of assessment tools: "Of course, no instrument can predict with certainty the risk of re-assault or lethality in domestic violence cases. Instruments should be viewed as an aid to the evaluation of risk and to inform decision-makers during points of the criminal justice process such as arrest, bail, disposition, sentencing, and probation."<sup>84</sup>

Examples from other states illustrate that the adoption and use of lethality assessments at the state level varies. Arizona requires the use of risk or lethality assessments for determining bail,<sup>85</sup> whereas Vermont law directs that when deciding bail and conditions of release, "the assessment shall not assess victim safety or risk of lethality in domestic assaults."<sup>86</sup> Arkansas<sup>87</sup> and Oklahoma<sup>88</sup> require the use of lethality assessments by law enforcement

<sup>82</sup> Rosenfeld 2008.

<sup>83</sup> Interviews with Glenn Funk, district attorney general, 20th Judicial District, Tennessee, August 21, 2019; Patrick Frogge, executive director, Tennessee District Public Defenders Conference, August 1, 2019; and Thomas Castelli, legal director, and Brandon Tucker, policy director, ACLU Foundation of Tennessee, May 22, 2019.

<sup>84</sup> Battered Women's Justice Project 2019.

<sup>85</sup> Ariz. Rev. Stat. § 13-3967.

<sup>86</sup> 13 V.S.A. § 7554c.

<sup>87</sup> Ark. Code Ann. § 12-12-108.

<sup>88</sup> Okla. Stat. tit. 21, § 142A-3.

in the field when interacting with victims. Maine allows validated, evidence-based domestic violence risk assessments that are recommended by the Maine Commission on Domestic and Sexual Abuse, established in statute, and approved by the Department of Public Safety,<sup>89</sup> and Rhode Island permits the use of a lethality or danger assessment.<sup>90</sup> California requires that basic training for law enforcement officers includes adequate instruction in “the assessment of lethality or signs of lethal violence in domestic violence situations.”<sup>91</sup> Washington requires the use of a lethality risk assessment in determining treatment in domestic violence perpetrator programs.<sup>92</sup>

*A few examples of GPS programs illustrate the use of these collaborative tools.*

Some programs in Tennessee and other states provide examples of collaboration between agencies and how these tools can be incorporated. Programs in Memphis, Tennessee; Charlotte-Mecklenburg, North Carolina; Denver, Colorado; and three judicial districts in Connecticut vary in their implementation and show that tools can be modified and adapted to specific needs and resources.

In Tennessee, Memphis’ and Shelby County’s GPS monitoring pilot program—which operated from 2016 to 2019—monitored approximately 400 defendants per month as a condition of release for certain domestic violence offenses.<sup>93</sup> To determine which defendants to monitor, the program developed a three-part assessment tool that included a lethality assessment of the victim, along with the victim’s statement and the pretrial risk assessment of the defendant, and weighted each part resulting in one score. The initial intent was that defendants who met a score threshold would be ordered to wear a GPS device. However, after the first two months of the program, administrators felt the scoring process was not allowing enough GPS devices to be assigned and began offering devices to everyone who committed a qualifying domestic violence offense. The program’s goal was to improve victim safety by reducing repeat instances of domestic aggravated assault and increasing the number of victims who seek support services. The program evaluation found that, in addition to other results, monitored defendants were more likely to be arrested for violation of bond conditions, and their cases took longer to be dismissed for lack of prosecution. Victims who carried a device were less likely

<sup>89</sup> 15 M.R.S. § 1026.

<sup>90</sup> R.I. Gen. Laws § 12-13-24.1.

<sup>91</sup> Cal Pen Code § 13519.

<sup>92</sup> Revised Code of Washington 26.50.150.

<sup>93</sup> Interviews with Don Crowe, deputy chief, Memphis Police Department, April 19, 2018, and April 16, 2019; and Angela Madden, director, Themis Center for Justice Policy, Practice & Research, June 19, 2019; email correspondence with Angela Madden, June 19, 2019.



to be repeat victims.<sup>94</sup> Out of 2,051 monitored defendants, 391 (19.1%) were arrested 511 times; the primary reason for arrest was exclusion zone violations, and the secondary reason was battery violations. Additionally, the combined pretrial risk and lethality assessment components of the tool were more effective at predicting outcomes than the overall weighted score.<sup>95</sup>

The Memphis and Shelby County program evaluation also concluded that to continue with an effective program, partner agencies—including courts, law enforcement, local government, and organizations providing victim support services—need to be engaged and committed, and expectations, roles, policies, and procedures for each need to be clear.<sup>96</sup> For example, because real-time monitoring is necessary to help keep victims safe, coordination and communication between agencies is critical so that staff are available to constantly monitor and immediately respond to alerts and assist victims, as opposed to responding the next day. The deputy police chief directing the program said that to effectively continue the program, “we will need complete participation from our current team,”<sup>97</sup> and some stakeholders also expressed the need to more actively engage the family safety center, high-risk team, and other victim advocates.<sup>98</sup> Additionally, following a recommendation in its program evaluation, Memphis and Shelby County determined that going forward their program would be limited to the subset of aggravated assault domestic violence cases involving intimate partners.<sup>99</sup> Appendix H includes all the recommendations and conclusions in the program evaluation.

The Charlotte-Mecklenburg Police Department’s (CMPD) electronic monitoring unit focuses on high-risk offenders and a variety of crimes and often requires monitoring for pretrial release in domestic violence cases.<sup>100</sup> In 2018, 85% of the 2,200 defendants that were monitored using GPS complied with all conditions of their bail.<sup>101</sup> Of the 2,200 total defendants,

<sup>94</sup> Email correspondence with Angela Madden, director, Themis Center for Justice Policy, Practice & Research, September 25, October 17, and December 15, 2019.

<sup>95</sup> Email correspondence with Angela Madden, director, Themis Center for Justice Policy, Practice & Research, December 15, 2019.

<sup>96</sup> Ibid.

<sup>97</sup> Email correspondence with Don Crowe, deputy chief, Memphis Police Department, July 19, 2019.

<sup>98</sup> Interviews with Olliette Murray-Drobot, executive director, Family Safety Center of Memphis and Shelby County, April 9, 2018; Sandy Bromley, deputy administrator, Crime Victims Center & Rape Crisis Center, Shelby County Government, April 17, 2019; and Angela Madden, director, Themis Center for Justice Policy, Practice & Research, May 18, 2018.

<sup>99</sup> Email correspondence with Don Crowe, deputy chief, Memphis Police Department, July 19, 2019; and Angela Madden, director, Themis Center for Justice Policy, Practice & Research, June 19 and December 15, 2019.

<sup>100</sup> Charlotte-Mecklenburg Police Department 2018; interview with Stephen Iyevbele, sergeant, electronic monitoring supervisor, Charlotte-Mecklenburg Police Department, March 21, 2019.

<sup>101</sup> Interview with Stephen Iyevbele, sergeant, electronic monitoring supervisor, Charlotte-Mecklenburg Police Department, March 26, 2019.

199 were monitored for domestic violence-related offenses,<sup>102</sup> although the program typically only monitors defendants accused of intimate partner violence, not other familial relationships listed in state statute—such as parent-child, grandparent-grandchild, or roommates. CMPD’s domestic violence protocol requires that a lethality assessment be used to help determine which defendants are most appropriate for monitoring. Currently the CMPD uses the Maryland LAP.<sup>103</sup> The CMPD’s electronic monitoring protocol says “Domestic violence offenders with a history of escalating violence, a current DVPO [domestic violence protective order], and a propensity to violate the order can be ordered on to electronic monitoring by the judge in DV [domestic violence] court based on referral from the ADA [assistant district attorney] or DV Unit.” This protocol includes several factors that should be considered for electronic monitoring:

- The use of electronic monitoring on domestic offenders requires a higher level of monitoring than other offenders.
- The inability to predict which cases could escalate into domestic homicides.
- CMPD must be careful not to suggest any guarantee of safety to victims, which could bring additional liability onto the department.
- CMPD previously decided not to provide victims with tracking devices, which would alert them when an offender was in the area, due to cost, liability, and potential communication failures.<sup>104</sup>

The Department of Public Safety in Denver, Colorado, began electronic monitoring in 1999, and as of March 2019 was monitoring 589 defendants during pretrial for a variety of charges, including domestic violence, DUIs, felonies, and major misdemeanors.<sup>105</sup> In 2012, it began using an assessment tool called the Ontario Domestic Assault Risk Assessment for domestic violence cases. The protocol requires judges to order a GPS device when a defendant reaches a certain score, meaning the risk to the victim is high, and not every person accused of domestic violence is monitored during pretrial. The program later developed its own customized scoring tool for making bond recommendations, including GPS monitoring, for judges to consider. Judges continue to have discretion but follow the recommendation in about 80% of the cases. The 2015 study of the program found that although pretrial probation officers, victim advocates, victims,

<sup>102</sup> Email correspondence with Addie Auman, victim advocate/electronic monitoring liaison, Special Victims Division-Domestic Violence Unit, Charlotte-Mecklenburg Police Department, June 21, 2019.

<sup>103</sup> Email correspondence with Addie Auman, victim advocate/electronic monitoring liaison, Special Victims Division-Domestic Violence Unit, Charlotte-Mecklenburg Police Department, August 9, 2019.

<sup>104</sup> Email correspondence with Stephen Iyevbele, sergeant, electronic monitoring supervisor, Charlotte-Mecklenburg Police Department, March 26, 2019.

<sup>105</sup> Interview with Mary Beth Wise, manager, Denver Department of Public Safety E-Monitoring Program, March 29, 2019.



and defendants perceived GPS as an effective way to monitor defendants, “The quantitative analyses suggest that if effectiveness is defined as reducing failures to appear or reducing law enforcement contact, GPS supervision may not be effective.”<sup>106</sup>

A pilot project in three judicial districts in Connecticut offers an example of a GPS program that uses both lethality assessments and intervention teams. In 2010, the state began to test the effectiveness of real-time GPS monitoring of high-risk domestic violence offenders, and by 2013 none of the 168 offenders had re-injured or killed victims.<sup>107</sup> The program is limited to violations of orders of protection and uses an assessment tool to determine which cases are high-risk and which defendants should be monitored. Each participating district established local implementation teams, called family intervention units—similar to high-risk teams—that review cases and make recommendations to the court for GPS monitoring. The units include judges, prosecutors, public defenders, court clerks, law enforcement officers, victim advocates, court support staff, and department of correction personnel. According to the program manager, “The key to the program’s success is a combination of aggressive enforcement and tight collaboration between the judicial system, local police, and domestic violence workers.”<sup>108</sup>

### ***Funding GPS monitoring as a condition of release is challenging.***

Even when using best practices, GPS monitoring is logistically challenging, labor intensive, and expensive. As noted above, to help keep victims safe, monitoring needs to be active or “real-time,” meaning it is done 24 hours a day, seven days a week, with staff available to respond to alerts and assist victims. This demand for dedicated personnel at all times can be difficult to meet for local government agencies that are managing GPS programs in their jurisdictions and can be stressful for staff who are on-call. Based on their needs and available resources, agencies decide how they will ensure enough staffing to monitor in real-time, track alerts, and respond swiftly.

Local governments typically contract with private vendors that provide electronic monitoring services and negotiate the extent of the types of services depending on their needs and resources. In Memphis and Shelby County, for example, the contracted private vendor leased equipment and software to the program, and the city and county used their own staff and facilities to manage and monitor devices, communicate with those involved, and send alerts. Although the government agency pays

<sup>106</sup> Grommon and Carter 2015.

<sup>107</sup> Merritt 2013; interview with GERALYN O’NEIL-WILD, director of legal advocacy, Connecticut Coalition Against Domestic Violence, July 23, 2019, and email correspondence with GERALYN O’NEIL-WILD, July 23 and August 16, 2019.

<sup>108</sup> Merritt 2013.

the company less, the program is more labor intensive for the agency.<sup>109</sup> At the other extreme, local governments can pay their vendor to provide all services up to the point that law enforcement responds to calls, as is done in Grundy County, for example.<sup>110</sup> This makes the contract more expensive, but it is less labor intensive for the agency. There are also mixes between the two extremes. Several private companies operate in Tennessee and contract with local governments to provide monitoring services. However, because Tennessee does not have rigorous standards in place to regulate electronic monitoring companies, local governments need to exercise due diligence in contracting.<sup>111</sup>

In general, local governments' program costs range from about \$4 to \$15 per defendant per day, depending on the type and total number of devices, which services the vendor provides, whether the government or defendant is paying, and whether the victim also carries a device.<sup>112</sup> These cost estimates do not include the agencies' administrative or personnel costs, the cost of law enforcement's response to calls and alerts, extra expense for lost or damaged devices, or additional cost for victim advocates to provide services. Local governments decide how to allocate their resources and work with the vendor to most effectively implement their program. Table 1 shows examples of the different types of technology and their estimated cost. **Technology continues to evolve and improve.**

**Some stakeholders have expressed concerns about the use of GPS data, related both to keeping victims safe and protecting defendants' right to privacy. GPS data typically belongs to a department of correction or local law enforcement agency,<sup>113</sup> and sometimes law enforcement agencies use pretrial monitoring GPS data of domestic violence defendants to solve unrelated crimes such as robberies.<sup>114</sup> In Tennessee, at least one company keeps the data archived indefinitely and considers the data to belong to the law enforcement agency they contract with.<sup>115</sup> At a minimum, ensuring that records involving victims' devices are not subject to open records requests would be important because defendants could use the information to find out where their victims are staying.**

Because defendants have not yet been convicted of a crime, deciding which defendants should be monitored requires balancing victim safety with

<sup>109</sup> Interview with Don Crowe, deputy chief, Memphis Police Department, April 19, 2018.

<sup>110</sup> Email correspondence with Clint Shrum, sheriff, Grundy County, August 27, 2019; WRCBtv 2015.

<sup>111</sup> Interview with Beth Ashe, executive director, Tennessee Sheriffs' Association, May 6, 2019.

<sup>112</sup> Email correspondence with Scott Cranmore, vice president, Tennessee Recovery and Monitoring, July 6, 2019; and Leo Carson, vice president strategic sales, Sentinel Offender Services, LLC, July 11, 2019.

<sup>113</sup> Kilgore and Sanders 2018.

<sup>114</sup> Testimony by Don Crowe, deputy chief, Memphis Police Department, at the TACIR December 12, 2019 meeting.

<sup>115</sup> Testimony by Leo Carson, vice president strategic sales, Sentinel Offender Services, LLC, at the TACIR December 12, 2019 meeting.

defendant’s rights in each case. To determine whether GPS monitoring as a condition of release is the best option and to prioritize which defendants are monitored, interviewed stakeholders and the available literature suggest that high-risk cases and certain types of offenses would be more suitable and critical to monitor—including intimate partner violence, threats with a firearm, strangulation, stalking, or violations of orders of protection.

Table 1. Examples of Monitoring Technology Used in Domestic Violence Cases

Type	Description (varies widely by size, battery life, durability, and other features such as voice technology)	Estimated Cost Per Day (varies widely depending on vendor and contract)
Ankle bracelet	Defendant wears a tamper-resistant monitoring device on their ankle.	\$4-\$15
Victim device	Victim carries a device that is not attached and allows mobile exclusion zones.	\$5
Smartphone app with wrist bracelet	Defendant wears a device on their wrist that communicates with a smartphone app.	\$12 if defendant has own phone, \$15 if vendor supplies phone
Smartphone app	Can be used for both victim alerts and defendant management and is not attached to defendant so can't be relied on for GPS tracking. Some can interface with ankle monitor.	\$1

Source: Email correspondence with Scott Cranmore, vice president, Tennessee Recovery and Monitoring, July 6, 2019; Leo Carson, vice president of strategic sales, Sentinel Offender Services, LLC., July 11, 2019; and Kris Keyton, president, E-Cell House Arrest, June 26, 2019; interview with Matt Lewis, regional sales manager-southeast, Track Group, Inc. October 2, 2019.

**Tennessee has a few options for funding GPS monitoring.**

There are a few ways GPS monitoring could be funded in Tennessee, including relying on defendants to pay, obtaining grants, using local government revenue, and drawing from the state’s Electronic Monitoring Indigency Fund (EMIF). Although Tennessee law authorizes magistrates to order defendants to pay for monitoring, the majority of defendants cannot afford to, and many have other court fees and financial obligations to meet. The Administrative Office of the Courts (AOC) estimated in 2012 that “over 75% of persons charged with a criminal offense in Tennessee

trial courts are determined to be indigent,<sup>116</sup> and TACIR staff have not found evidence that indigency rates for defendants in domestic violence cases are significantly different. As a result, relying on defendants to fund GPS monitoring is a significant obstacle to implementation. An alternative model used by some jurisdictions, such as Cumberland County, Maine, incorporates a sliding scale based on the defendant's income.<sup>117</sup> While grants are often used to fund programs initially, as with the Memphis and Shelby County pilot program, and can be helpful to get a program started, they are limited to specified timeframes and are not sustainable, long-term funding sources. Local governments could also fund GPS monitoring with revenue and include it in their budget, as does the Department of Public Safety in Denver, Colorado.<sup>118</sup> In Tennessee, another potential funding source was introduced in 2018 by Senate Bill 1133 (by Senator Kyle) and House Bill 849 (by Representative Hardaway), which proposed funding GPS monitoring for indigent defendants using domestic assault funds currently earmarked for family violence shelters and shelter services. The bill would have shifted funds from victim services to offender monitoring; it didn't pass.

Tennessee has been funding electronic monitoring for indigents since 2010. Public Chapter 921, Acts of 2010, created the interlock assistance fund to pay for ignition interlock devices for indigent persons with a DUI conviction. The fund has been modified over the years to include new types of alcohol monitoring technology and is now called the Electronic Monitoring Indigency Fund (EMIF).<sup>119</sup> Public Chapter 1046, Acts of 2018, added a \$10 domestic assault and abuse court fee, a portion of which goes into the fund, as well as a portion of ignition interlock and other DUI court fees that are already earmarked for the fund, and Public Chapter 505, Acts of 2019, added GPS monitoring as a type of electronic monitoring that can be funded through the EMIF. The 2019 law, included as appendix I, limits the amount paid from the fund to \$200 per month per monitoring device. Local governments may set up their own indigency fund, as Sullivan and Warren counties have,<sup>120</sup> and they may also create agreements with other local governments to share cost and resources.<sup>121</sup>

As of July 1, 2019, Tennessee's EMIF is available to pay 50% of the cost of pretrial GPS monitoring for indigent domestic violence defendants, with the remaining costs covered by local governments in their jurisdictions.<sup>122</sup>

<sup>116</sup> Memorandum by Sykes 2012.

<sup>117</sup> Interview with Faye Luppi, project director, Violence Intervention Partnership, Cumberland County, Maine, April 12, 2019.

<sup>118</sup> Interview with Mary Beth Wise, manager, Denver Department of Public Safety E-Monitoring Program, March 29, 2019.

<sup>119</sup> Public Chapter 1046, Acts of 2018; Tennessee Code Annotated, Section 55-10-419.

<sup>120</sup> Castle 2014; email correspondence with John Partin, public defender, 31<sup>st</sup> Judicial District, Tennessee, May 3, 2019.

<sup>121</sup> University of Tennessee County Technical Assistance Service "Interlocal Agreements."

<sup>122</sup> Tennessee Code Annotated, Section 55-10-419.

However, the fund is limited. Although a portion of domestic assault and DUI court fees are earmarked for the fund, criminal court fee collections are low—the collection rate was 30% in 2012, according to the AOC<sup>123</sup>—and annual revenue to the fund is approximately \$300,000 and is trending down.<sup>124</sup> The budgeted amount for fiscal year 2020 is \$2,011,100, including the additional \$1.5 million non-recurring appropriation to the EMIF.<sup>125</sup> Moreover, the fund is also used to pay for other types of electronic monitoring for indigent defendants, and currently the state prioritizes and fully funds ignition interlock devices in DUI cases. The cost of other types of alcohol and GPS monitoring are covered only with money remaining. To participate in the EMIF program and receive funds, in addition to budgeting 50% of the cost for electronic monitoring in their jurisdiction, local governments’ legislative bodies are required to pass a resolution and enter into a memorandum of understanding with the Tennessee Department of Treasury.<sup>126</sup> As of October 2019, 18 counties have committed to participation in the program and budgeted a total of \$492,000 for fiscal year 2020, which the state is required to match if funds are available (see table 2).<sup>127</sup>

Table 2. Counties Committed to EMIF Participation in Fiscal Year 2020 as of October 2019

County	Budgeted Amount	County	Budgeted Amount
Blount	\$ 50,000	Jefferson	\$ 15,000
Claiborne	2,000	Knox	80,000
Davidson	6,000	Lewis	5,000
Fayette	20,000	Lincoln	2,500
Grainger	15,000	McNairy	10,000
Grundy	30,000	Robertson	25,000
Hamblen	14,000	Rutherford	35,000
Hamilton	80,000	Sumner	2,500
Haywood	60,000	Williamson	40,000
<b>Total</b>			<b>\$ 492,000</b>

Source: Email correspondence with Ashley Fuqua, manager of legislative and agency affairs, Tennessee Department of the Treasury, October 28, 2019.

Limited state and local government funding is a big obstacle to expanding GPS statewide. If all local governments opted into the program for

<sup>123</sup> Email correspondence with Amanda Hughes, application support manager, court clerk liaison, Tennessee Supreme Court, Administrative Office of the Courts, March 8, 2016.

<sup>124</sup> Interview with Ashley Fuqua, manager of legislative and agency affairs, Tennessee Department of the Treasury, May 10, 2019.

<sup>125</sup> Tennessee State Government 2019.

<sup>126</sup> Email correspondence with Ashley Fuqua, manager of legislative and agency affairs, Tennessee Department of the Treasury, October 18, 2019.

<sup>127</sup> Email correspondence with Ashley Fuqua, manager of legislative and agency affairs, Tennessee Department of the Treasury, October 28, 2019.

pretrial GPS monitoring, the limited amount of funding in the EMIF would likely not be able to cover the state's share of all GPS monitoring of indigent domestic violence defendants. Furthermore, the state treasurer is authorized to stop accepting and reimbursing claims if the fund is insufficient to pay the claims and is determined to be insolvent.<sup>128</sup> To estimate the cost for statewide implementation, TACIR staff created a few hypothetical scenarios, shown in table 3.<sup>129</sup> The offenses in the analysis are limited to those identified by experts as most likely to lead to further violence, specifically intimate partner violence (IPV). IPV accounts for over half of all domestic violence in the state, and most stakeholders and the literature agree that GPS monitoring is most appropriate in such cases. For example, based on Tennessee Bureau of Investigation data, in 2018 there were 794 victims of stalking, 575 victims of sexual offenses, and 6,845 victims of aggravated assault, for a total of 8,214 victims of these select intimate partner offenses. Assuming the estimated indigency rate of 75%, and that 25% of defendants could pay, governments would be responsible for the cost of monitoring approximately 6,161 indigent defendants. Assuming a cost of \$10 per day per defendant for an average of 90 days of monitoring performed by a vendor, if every local government opted into the program for pretrial GPS monitoring in all such cases, and the state and local governments were to pay 50% each under EMIF guidelines, the state would reimburse \$1,848,150 to vendors; local governments would cover another \$1,848,150. Given the \$200 per device per month maximum reimbursement from the EMIF, there would be another \$1,848,150 that would not be covered by the fund. It is not clear how this remaining amount would be funded. To cover the entire cost without exceeding the monthly \$200 maximum, \$6.66 is the most that could be paid per device per day from the fund. If the state were to increase the EMIF and pay the entire amount for 6,161 defendants with the given conditions, the estimated cost would be \$5,544,450.

It is important to note that these scenarios are limited to intimate partner violence and select offenses—if considering all domestic violence cases the estimate would be much higher. Although not feasible, if every local government opted into the EMIF program for pretrial GPS monitoring of every indigent defendant in all domestic violence cases, the cost to local governments would be approximately \$16.6 million annually—which the state would be required to match if funding were available.<sup>130</sup> If funding were limited to all intimate partner violence, the state's share of funding would be approximately \$10.9 million annually, given the same assumptions.

<sup>128</sup> Tennessee Code Annotated, Section 55-10-419.

<sup>129</sup> Although the Tennessee Bureau of Investigation reports the number of victims, not defendants, for the purpose of creating GPS monitoring cost scenarios for this report, table 3 assumes one defendant per victim. However, a defendant can have more than one victim and be charged with more than one offense per victim.

<sup>130</sup> These estimates assume all defendants are monitored and are based on data provided by the Tennessee Bureau of Investigation as of August 14, 2019, an indigency rate of 75% for defendants, an average cost of \$10 per device per day, and an average pretrial monitoring period of 90 days.



Table 3. Cost Scenarios for Statewide Pretrial GPS Monitoring of Indigent Domestic Violence Defendants

	Cost Per Day Per Device	Type of Intimate Partner Offense	Total Number of Defendants in 2018*	Estimated Number of Indigent Defendants**	Number of Days***	Estimated Annual Cost to Monitor All Indigent Defendants	Monitoring Cost to State if EMIF (50% of total funded)****	Monitoring Cost to Local Governments if EMIF (50% of total funded)****	Remaining Amount not Covered by EMIF	
Scenario 1: Defendant-pay or agency-pay, company provides full service	\$10	Stalking	794	596	30	\$178,650	\$59,550	\$59,550	\$59,550	
					60	\$357,300	\$119,100	\$119,100	\$119,100	
					90	\$535,950	\$178,650	\$178,650	\$178,650	
					120	\$714,600	\$238,200	\$238,200	\$238,200	
		Sexual Offenses	575	431	30	\$129,375	\$43,125	\$43,125	\$43,125	\$43,125
					60	\$258,750	\$86,250	\$86,250	\$86,250	
					90	\$388,125	\$129,375	\$129,375	\$129,375	
					120	\$517,500	\$172,500	\$172,500	\$172,500	
		Aggravated Assault	6,845	5,134	30	\$1,540,125	\$513,375	\$513,375	\$513,375	\$513,375
					60	\$3,080,250	\$1,026,750	\$1,026,750	\$1,026,750	
					90	\$4,620,375	\$1,540,125	\$1,540,125	\$1,540,125	
					120	\$6,160,500	\$2,053,500	\$2,053,500	\$2,053,500	

	Cost Per Day Per Device	Type of Intimate Partner Offense	Total Number of Defendants in 2018*	Estimated Number of Indigent Defendants**	Number of Days***	Estimated Annual Cost to Monitor All Indigent Defendants	Monitoring Cost to State if EMIF (50% of total funded)	Monitoring Cost to Local Governments if EMIF (50% of total funded)
Scenario 2: Agency-pay, private company only provides equipment and web-based services, agency does everything else	\$5	Stalking	794	596	30	\$89,325	\$44,663	\$44,663
					60	\$178,650	\$89,325	\$89,325
					90	\$267,975	\$133,988	\$133,988
					120	\$357,300	\$178,650	\$178,650
		Sexual Offenses	575	431	30	\$64,688	\$32,344	\$32,344
					60	\$129,375	\$64,688	\$64,688
					90	\$194,063	\$97,031	\$97,031
					120	\$258,750	\$129,375	\$129,375
		Aggravated Assault	6,845	5,134	30	\$770,063	\$385,031	\$385,031
					60	\$1,540,125	\$770,063	\$770,063
					90	\$2,310,188	\$1,155,094	\$1,155,094
					120	\$3,080,250	\$1,540,125	\$1,540,125

\*Although the Tennessee Bureau of Investigation reports the number of victims, not defendants, for the purpose of creating GPS monitoring cost scenarios for this report, table 3 assumes one defendant per victim. However, a defendant can have more than one victim and be charged with more than one offense per victim.

\*\*Based on Tennessee Bureau of Investigation 2018 victim data for type of offenses as of August 14, 2019. Data is limited to victims for which there was a county identified. In 2012, the Administrative Office of the Courts estimated that at least 75% of criminal defendants are indigent.

\*\*\* Time to trial varies by jurisdiction.

\*\*\*\*Because the maximum amount that can be paid from the fund per month for an indigent person's device is \$200, under the \$10 per day scenario, only 2/3 of the entire cost of the device for 30 days would be covered by the EMIF. Tennessee Code Annotated, Section 55-10-419(a)(1)(B).

The estimated costs in this table do not include overhead costs of government agencies.

Source: Tennessee Bureau of Investigation "Tennessee Crime Online Statistics Website;" email correspondence with Scott Cranmore, vice president, Tennessee Recovery and Monitoring, July 6, 2019; and Leo Carson, vice president strategic sales, Sentinel Offender Services, LLC, July 11, 2019.



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## Appendix A: Intimate Partner Violence Victims Reported by Tennessee Bureau Investigation by Type of Offense and County in Tennessee, 2018

Jurisdiction by Geography	Murder	Kidnapping/Abduction	Forcible Rape	Forcible Rape	Forcible Sodomy	Sexual Assault w/Object	Forcible Fondling	Statutory Rape	Aggravated Assault	Simple Assault	Intimidation	Stalking	Total	Rate Per 100,000	2018 Population Estimate
Anderson	0	12	5	0	0	0	2	3	97	237	15	3	374	489	76,482
Bedford	0	3	3	0	0	0	1	1	62	311	32	2	415	846	49,038
Benton	0	0	0	1	0	0	0	0	6	22	0	0	29	179	16,184
Bledsoe	0	0	0	0	0	0	0	0	2	8	0	0	10	68	14,755
Blount	1	4	7	0	1	1	4	5	134	546	26	2	730	556	131,349
Bradley	0	15	6	1	0	0	0	1	148	526	95	5	797	747	106,727
Campbell	1	4	1	0	0	0	1	0	14	135	7	2	165	417	39,583
Cannon	0	1	0	0	0	0	0	0	9	22	1	0	33	228	14,462
Carroll	0	0	0	0	0	0	0	0	11	54	3	0	68	243	28,020
Carter	0	2	0	0	0	0	1	0	41	129	30	0	203	360	56,351
Cheatham	0	2	1	0	0	0	0	0	23	95	33	1	155	383	40,439
Chester	0	3	0	0	0	0	0	1	11	40	9	2	66	382	17,276
Claiborne	0	0	0	0	0	0	0	1	13	53	2	0	69	217	31,756
Clay	0	0	0	0	0	0	1	0	5	24	1	0	31	402	7,717
Cocke	0	4	1	0	0	0	0	1	32	136	24	2	200	559	35,774
Coffee	1	0	3	0	0	0	0	0	48	238	32	3	325	583	55,700
Crockett	0	4	1	0	0	0	0	0	6	52	8	1	72	503	14,328
Cumberland	1	2	1	0	0	1	1	0	23	114	8	4	155	260	59,673
Davidson	4	87	47	13	13	13	11	14	965	4,705	795	71	6,725	971	692,587
Decatur	0	0	0	0	0	0	0	0	6	30	2	1	39	333	11,706
DeKalb	0	0	0	0	0	1	0	1	8	45	0	1	56	278	20,138
Dickson	0	2	4	0	0	0	0	4	65	175	67	0	317	593	53,446
Dyer	0	12	1	0	0	0	0	1	55	237	12	9	327	876	37,320
Fayette	0	1	0	0	0	0	0	0	20	63	10	1	95	235	40,507
Fentress	0	0	1	0	0	0	0	1	8	39	1	7	57	313	18,217
Gibson	0	5	0	0	0	0	0	0	44	213	39	5	306	624	49,045
Giles	1	4	1	0	0	0	1	1	38	135	5	4	190	644	29,503
Grainger	0	3	1	0	0	0	0	0	14	41	4	1	64	277	23,145
Greene	2	13	6	0	0	0	1	0	68	253	43	5	391	566	69,087
Grundy	1	1	1	0	0	0	0	0	13	56	8	0	80	599	13,346
Hamblen	0	11	6	0	0	1	0	2	87	343	93	1	544	843	64,569
Hamilton	3	29	15	0	0	1	1	2	453	1,579	35	27	2,145	589	364,286
Hancock	0	0	0	0	0	0	0	0	0	4	0	0	4	61	6,549
Hardeman	0	2	0	0	0	0	1	1	29	61	23	1	118	468	25,220

### Appendix A: Intimate Partner Violence Victims Reported by Tennessee Bureau Investigation by Type of Offense and County in Tennessee, 2018 (continued)

Jurisdiction by Geography	Murder	Kidnapping/Abduction	Forcible Rape	Forcible Rape	Forcible Sodomy	Sexual Assault w/Object	Forcible Fondling	Statutory Rape	Aggravated Assault	Simple Assault	Intimidation	Stalking	Total	Rate Per 100,000	2018 Population Estimate
Hardin	0	1	2	2	0	0	2	0	25	113	19	2	164	636	25,776
Hawkins	0	0	0	0	0	0	2	0	36	237	11	3	289	511	56,530
Haywood	0	2	2	2	0	0	1	0	15	148	9	5	182	1,050	17,335
Henderson	0	1	2	2	0	0	0	0	45	147	47	4	246	883	27,847
Henry	1	1	0	0	0	0	0	1	24	81	11	3	122	377	32,358
Hickman	1	0	0	0	0	0	1	1	22	81	29	3	138	551	25,063
Houston	0	0	0	0	0	0	0	0	6	22	9	0	37	448	8,263
Humphreys	0	0	1	1	0	0	0	0	17	62	3	0	83	449	18,486
Jackson	0	1	0	0	0	1	0	0	9	17	0	0	28	238	11,758
Jefferson	0	3	2	2	0	0	0	1	36	124	23	1	190	352	54,012
Johnson	0	4	2	2	0	0	0	1	17	41	10	0	75	422	17,778
Knox	3	30	35	2	2	1	6	8	445	1,943	198	55	2,726	586	465,289
Lake	1	0	0	0	0	0	0	0	4	24	1	0	30	405	7,411
Lauderdale	0	4	1	1	0	0	0	0	25	108	17	2	157	608	25,825
Lawrence	0	2	1	1	0	0	0	0	42	153	29	4	231	528	43,734
Lewis	0	2	2	0	0	0	0	1	18	21	4	1	49	405	12,086
Lincoln	0	4	3	3	0	0	0	0	40	164	46	3	260	762	34,117
Loudon	0	4	5	5	0	0	0	2	27	168	33	5	244	460	53,054
Macon	0	0	0	0	0	0	0	0	16	50	0	0	66	124	53,054
Madison	1	12	3	3	0	1	1	3	161	808	128	14	1,132	2,134	53,054
Marion	0	2	1	1	0	0	0	0	19	53	14	2	91	172	53,054
Marshall	0	2	1	1	0	0	0	0	23	141	23	2	192	362	53,054
Mauzy	1	11	8	8	0	0	2	2	92	705	54	6	881	934	94,340
McMinn	0	13	1	1	0	0	1	0	40	230	29	3	317	336	94,340
McNairy	0	1	0	0	0	0	1	0	25	65	12	2	106	112	94,340
Meigs	0	2	0	0	0	0	0	1	11	40	7	0	61	496	12,306
Monroe	0	5	2	2	0	0	0	0	76	268	68	1	420	906	46,357
Moore	0	0	0	0	0	1	0	0	3	13	4	0	21	328	6,411
Morgan	0	1	0	0	0	0	0	0	26	29	0	1	57	264	21,579
Obion	0	0	0	0	0	0	0	1	26	147	22	2	198	654	30,267
Overton	0	0	0	0	0	0	0	0	6	21	2	1	30	136	22,068
Perry	0	0	0	0	0	0	0	0	3	10	0	0	13	161	8,064
Pickett	0	0	0	0	0	0	0	0	2	7	0	0	9	177	5,082
Polk	0	0	0	0	0	0	0	0	14	58	5	0	77	456	16,898

**Appendix A: Intimate Partner Violence Victims Reported by Tennessee Bureau Investigation by Type of Offense and County in Tennessee, 2018 (continued)**

Jurisdiction by Geography	Murder	Kidnapping/Abduction	Forcible Rape	Forcible Rape	Forcible Sodomy	Sexual Assault w/Object	Forcible Fondling	Statutory Rape	Aggravated Assault	Simple Assault	Intimidation	Stalking	Total	Rate Per 100,000	2018 Population Estimate
Putnam	0	2	4	0	0	0	0	2	54	277	34	2	375	476	78,843
Rhea	0	3	0	0	0	0	1	0	34	105	16	5	164	496	33,044
Roane	0	20	3	0	0	0	2	1	33	192	15	3	269	506	53,140
Robertson	0	7	4	0	0	0	0	2	66	234	24	9	346	487	71,012
Rutherford	3	47	12	0	1	1	3	6	241	1,516	1,166	42	3,037	935	324,890
Scott	0	1	0	0	0	0	0	0	13	38	9	1	62	281	22,039
Sequatchie	0	1	1	0	0	0	0	1	16	54	10	0	83	558	14,876
Sevier	0	8	4	2	2	1	0	0	94	413	201	13	736	752	97,892
Shelby	13	84	66	7	7	1	11	17	1,650	9,016	2,150	354	13,369	1,429	935,764
Smith	0	0	1	0	0	0	0	1	8	48	10	0	68	341	19,942
Stewart	0	2	0	0	0	0	2	0	6	25	2	0	37	273	13,561
Sullivan	4	41	16	3	3	0	3	9	149	766	66	25	1,082	686	157,668
Sumner	4	16	11	1	1	0	3	3	117	588	55	15	813	434	187,149
Tipton	0	2	6	0	0	0	3	1	60	332	132	1	537	872	61,581
Trousdale	0	0	0	0	0	0	0	0	10	42	1	0	53	481	11,012
Unicoi	0	1	2	0	0	0	1	0	10	38	4	1	57	321	17,761
Union	0	0	0	0	0	0	0	0	15	68	9	0	92	467	19,688
Van Buren	0	0	0	0	0	0	0	0	0	4	0	0	4	69	5,765
Warren	0	2	2	0	0	0	0	0	51	198	11	4	268	656	40,878
Washington	1	7	5	1	1	1	2	1	99	477	37	11	642	499	128,607
Wayne	0	0	0	0	0	0	0	0	4	23	3	2	32	193	16,558
Weakley	0	0	1	0	0	0	0	0	12	81	15	1	110	329	33,415
White	1	1	1	0	0	0	0	0	13	57	7	0	80	295	27,107
Williamson	2	6	2	1	1	0	0	1	50	248	32	15	357	154	231,729
Wilson	2	3	5	2	2	0	0	2	86	473	35	4	612	435	140,625
<b>Total</b>	<b>53</b>	<b>588</b>	<b>332</b>	<b>34</b>	<b>26</b>	<b>74</b>	<b>109</b>	<b>6,845</b>	<b>32,333</b>	<b>6,374</b>	<b>794</b>	<b>47,562</b>	<b>714</b>	<b>6,659,821</b>	

Note: Based on Tennessee Bureau of Investigation 2018 victim data for type of offenses as of August 14, 2019. A defendant can have more than one victim and be charged with more than one offense per victim. Data is limited to victims for which there was a county identified.  
Source: Tennessee Bureau of Investigation "Tennessee Crime Online Statistics Website."

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## Appendix B: Explanation of Bail, Bond, and Conditions of Release

Although the term “bail” is often used as a synonym for money, actually, it is the conditions of release that may or may not involve money. The National Institute of Corrections defines bail as “a process of releasing a defendant from jail or other governmental custody with conditions set to provide reasonable assurance of court appearance or public safety.”

Under Article I, Section 15 of the Tennessee Constitution and Tennessee Code Annotated, section 40-11-102, a criminal defendant has a right to bail before conviction in all non-capital cases. Tennessee statute requires that the authority making the bail determination release the defendant under the “least onerous conditions reasonably likely to assure the defendant’s appearance in court.”<sup>1</sup> These “conditions” – which are commonly and collectively called “bail” – are defined by several terms depending on who may be responsible for the defendant’s non-appearance. The various types of bail are described as follows:

- Release on recognizance or “R.O.R.” The defendant simply promises to appear in court on the charges. No dollar amount is fixed for his non-appearance.
- Release to the custody of another. This is similar to R.O.R. except that another person vouches for the defendant’s ability to appear. The other person is not financially liable for the defendant’s non-appearance.
- Unsecured appearance bond or “signature bond.” A dollar amount of bond is fixed and the defendant executes an agreement to be liable for this amount for a failure to appear. This bond is unsecured by property, cash or securities.
- Release to a probation officer. Some counties have a pretrial release program where the defendant is supervised by a governmental agency which is responsible for notifying him to appear in court. This agency is not liable for the defendant’s non-appearance although the agency will actively pursue the defendant if he fails to appear in court.
- Secured bail bond. A dollar bond is fixed. The defendant may gain his release only by (a) paying the full amount in cash, (b) executing a bond secured by real estate, (c) executing a bond signed by at least two approved sureties, or (d) paying a premium to a professional bail bondsman or corporate surety who is liable for the defendant’s non-appearance.<sup>2</sup>

All of the above bails may be supplemented by additional conditions and restrictions by the authority fixing the bail.

<sup>1</sup> Tennessee Code Annotated, Section 40-11-116.

<sup>2</sup> See Tennessee Practice, Criminal Practice & Procedure, Chapter 4, Section 1, David Louis Raybin, December 2018.

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## Appendix C: Public Chapter 406, Acts of 2011



**State of Tennessee**  
**PUBLIC CHAPTER NO. 406**

**SENATE BILL NO. 567**

**By Berke, Burks, Marrero, Harper, Ford, Campfield, Herron**

Substituted for: House Bill No. 685

By Hardaway, Jones, Gilmore, Pruitt, Sontany, Richardson, Stewart, Camper, Coley, Dean, Todd,  
Rich

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3, Part 6; Title 39, Chapter 13,  
Part 1; Section 39-17-315 and Title 40, Chapter 11, Part 1, relative to domestic violence.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-11-150(b), is amended by adding the  
following as a new subdivision (6) and redesignating the subsequent subsections accordingly:

(6) An order requiring the defendant to carry or wear a global positioning monitoring  
system device and, if able, pay the costs associated with operating that device and electronic  
receptor device provided to the victim, pursuant to § 40-11-152;

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 11, Part 1, is amended by adding  
the following as a new section:

40-11-152.

(a)(1) For the purposes of this part, "global positioning monitoring system"  
means a system that electronically determines and reports the location of an  
individual through the use of a transmitter or similar device carried or worn by  
the individual that transmits latitude and longitude data to a monitoring entity  
through global positioning satellite technology.

(2) "Global positioning monitoring system" does not include a system  
that contains or operates global positioning system technology, radio  
frequency identification technology or any other similar technology that is  
implanted in or otherwise invades or violates the individual's body.

(b) Pursuant to § 40-11-150, the magistrate may order any defendant who is  
arrested for the offense of stalking, aggravated stalking or especially aggravated  
stalking, as defined in § 39-17-315, any criminal offense defined in Title 39, Chapter  
13, in which the alleged victim of the offense is a victim as defined in § 36-3-601(5),  
(10) or (11), or is in violation of an order of protection as authorized by Title 36,  
Chapter 3, Part 6, to do the following as a condition of bail:

(1) 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

(2) If the alleged victim of the offense consents after receiving the  
information described by subsection (d) and, except as provided by  
subsection (h), pay the costs associated with providing the victim with an  
electronic receptor device that:

(A) Is capable of receiving the global positioning monitoring  
system information from the device carried or worn by the defendant;  
and

(B) 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 § 40-11-150.

Improving Victim Safety with Global Positioning System (GPS) Monitoring as a Condition  
of Release for Defendants Accused of Domestic Violence

SB 567

(c) Before imposing a condition described by subsection (b), the magistrate must 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 shall consider the victim's request, if any, in determining the locations the defendant will be ordered to refrain from going to or near. If the magistrate imposes a condition described by subsection (b), the magistrate shall 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) Before imposing a condition described by subdivision (b)(2), the magistrate must provide to an alleged victim information regarding:

(1) The victim's right to participate in a global positioning 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 magistrate may impose on the defendant for violating a condition of bond imposed under this section;

(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 domestic violence; and

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

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

(f) In determining whether to order a defendant's participation in a global positioning monitoring system under this section, the magistrate shall 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) An alleged victim may request that the magistrate terminate the victim's participation in a global positioning monitoring system at any time. The magistrate may not impose 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 section.

(h) The magistrate may allow a defendant to perform community service in lieu of paying the costs required by subsection (b) if the magistrate determines that the defendant is indigent.

(i) The magistrate that imposes a condition described by subsection (b) shall order the entity that operates the global positioning monitoring system to notify the magistrate and the appropriate local law enforcement agency if a defendant violates a condition of bond imposed under this section.

(j) This section shall not limit the authority of the magistrate to impose any other reasonable conditions of bond or enter any orders of protection under other applicable statutes.

Improving Victim Safety with Global Positioning System (GPS) Monitoring as a Condition  
of Release for Defendants Accused of Domestic Violence

SB 567

(k) The global positioning monitoring of any defendant ordered pursuant to this section shall be provided by the county or municipality in which the court ordering the monitoring is located and shall not be provided by the board of probation and parole.

SECTION 3. This act shall take effect July 1, 2011, the public welfare requiring it, and shall apply to all arrests on or after such date.

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SENATE BILL NO. 567

PASSED: May 21, 2011

  
\_\_\_\_\_  
RON RAMSEY  
SPEAKER OF THE SENATE

  
\_\_\_\_\_  
BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 6 day of June 2011

  
\_\_\_\_\_  
BILL HASLAM, GOVERNOR



## Appendix D: Public Chapter 827, Acts of 2018



### State of Tennessee

#### PUBLIC CHAPTER NO. 827

##### HOUSE BILL NO. 849

By Representatives Hardaway, Miller, Goins, Thompson, Camper, Carter, Coley, Turner,  
Moon

Substituted for: Senate Bill No. 1133

By Senator Kyle

AN ACT to amend Tennessee Code Annotated, Section 39-13-111 and Title 40, Chapter 11, relative to conditions of bail for certain offenders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

#### SECTION 1.

(a) The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to perform a study of the implementation and effects of global positioning monitoring as a condition of bail for defendants accused of stalking, aggravated stalking, or especially aggravated stalking, as defined in § 39-17-315; any criminal offense defined in title 39, chapter 13, in which the alleged victim of the offense is a victim as defined in § 36-3-601(5), § 36-3-601(10), or § 36-3-601(11); or a violation of an order of protection as authorized by title 36, chapter 3, part 6.

(b) All appropriate state departments and agencies shall provide assistance to TACIR in connection with the study required by subsection (a). TACIR shall seek input from pilot programs implementing global positioning monitoring and interested groups including, but not limited to, the following:

- (1) Administrative office of the courts;
- (2) Tennessee bureau of investigation;
- (3) Tennessee sheriff's association;
- (4) Tennessee association of chiefs of police;
- (5) Office of criminal justice programs; and
- (6) The Tennessee Association of Professional Bail Agents.

(c) On or before January 1, 2020, TACIR shall report its findings and recommendations, including any proposed legislation, regarding global positioning monitoring to the speakers of the senate and the house of representatives and the chair of the senate judiciary committee and the chairs of the house of representatives criminal justice and civil justice committees.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

HOUSE BILL NO. 849

PASSED: April 12, 2018



BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES



RANDY MCNALLY  
SPEAKER OF THE SENATE

APPROVED this 24<sup>th</sup> day of April 2018



BILL HASLAM, GOVERNOR

## Appendix E: Maryland Lethality Assessment Program Questions



### Domestic Violence Lethality Screen For First Responders



Officer:

Date:

Case:

Victim:

Offender:

Check here if victim did not answer any of the questions.

▶ A "Yes" response to any of Questions #1-3 automatically triggers the protocol referral.

- |   |                              |                             |                                   |
|---|------------------------------|-----------------------------|-----------------------------------|
| 1. Has he/she ever used a weapon against you or threatened you with a weapon? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Ans. |
| 2. Has he/she threatened to kill you or your children?                        | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Ans. |
| 3. Do you think he/she might try to kill you?                                 | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Ans. |

▶ Negative responses to Questions #1-3, but positive responses to at least four of Questions #4-11, trigger the protocol referral.

- |  |                              |                             |                                   |
|--|------------------------------|-----------------------------|-----------------------------------|
| 4. Does he/she have a gun or can he/she get one easily?  | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Ans. |
| 5. Has he/she ever tried to choke you?   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Ans. |
| 6. Is he/she violently or constantly jealous or does he/she control most of your daily activities? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Ans. |
| 7. Have you left him/her or separated after living together or being married?                      | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Ans. |
| 8. Is he/she unemployed?   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Ans. |
| 9. Has he/she ever tried to kill himself/herself?  | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Ans. |
| 10. Do you have a child that he/she knows is not his/hers?   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Ans. |
| 11. Does he/she follow or spy on you or leave threatening messages?                                | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Ans. |

▶ An officer may trigger the protocol referral, if not already triggered above, as a result of the victim's response to the below question, or whenever the officer believes the victim is in a potentially lethal situation.

Is there anything else that worries you about your safety? (If "yes") What worries you?

- Check one:  Victim screened in according to the protocol  
 Victim screened in based on the belief of officer  
 Victim did not screen in

If victim screened in: After advising her/him of a high danger assessment, did the victim speak with the hotline counselor?  
 Yes  No

**Note:** The questions above and the criteria for determining the level of risk a person faces is based on the best available research on factors associated with lethal violence by a current or former intimate partner. However, each situation may present unique factors that influence risk for lethal violence that are not captured by this screen. Although most victims who screen "positive" or "high danger" would not be expected to be killed, these victims face much higher risk than that of other victims of intimate partner violence.

MNADV 08/2005

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## Appendix F: Battered Women’s Justice Project “Risk Assessment”

The legal response to domestic violence has changed dramatically during the last 30 years. In the United States, all 50 states and the District of Columbia have enacted statutes that allow police officers to make warrantless arrests for domestic violence when probable cause exists,<sup>1</sup> and many states now have mandatory or preferred arrest laws. Both the scope of relationships and behaviors covered under these laws has resulted in an ever-increasing case load for the criminal justice system.

### ***What is Risk Assessment?***

To meet the goal of enhanced safety for an increasing number of victims, service providers and interveners are inevitably involved in attempting to identify the most dangerous offenders and manage the risks posed to victims. In response, risk assessment tools in the domestic violence field have been developed to assess both an offender’s risk of re-offending, and a victim’s risk of lethal assault.

“Risk assessment is a procedure whereby we measure some characteristic of a person or situation and then use that information to predict the likelihood of some negative event—re-abuse, for example, as measured by re-arrest.”<sup>2</sup>

### ***Benefits of Using Risk Assessments***

- Assist victims and domestic violence workers to develop more realistic safety plans
- Help the criminal justice system identify which offenders need higher bail, inform conditions of release, and craft enhanced supervision strategies.
- Educate criminal justice practitioners and service providers about domestic violence and provide a shared language about risk factors.
- Assist perpetrator treatment programs to select the amount and types of treatment

Several evidence-based tools have been developed to identify the potential of lethal violence, the risk of re-assault, and severity of the assault. Each tool was developed for a specific purpose, to be used in certain settings, by identified practitioners, and each obtains information from different sources, or combination of sources: public information (including past and present police reports), criminal history, past or present protective orders, violations of court orders or conditions, probation history, information from the perpetrator, and/or information from the victim.

### ***The following are some examples of current instruments being used to predict risk.***

#### **Danger Assessment (DA)**

The DA is a clinical and research instrument designed by Dr. Jacqueline Campbell to help victims assess their danger of killed or re-assaulted. It was originally developed for use by health personnel in consultation with victims to enhance their ability to plan for their safety. All risk information is obtained from the victim. This

<sup>1</sup> Zeoli, A.M., Norris, A., Brenner, H., A Summary and Analysis of Warrantless Arrest Statutes for Domestic Violence in the United States, *Journal of Interpersonal Violence*, September 2011, vol. 26, no. 14. 2811-2833.

<sup>2</sup> Moyer, R., Ph.D. Emeritus Prof. of Psychology, Bates College, “Evidence-based Risk Assessment of Domestic Violence Offenders: The State of the Science in 2006.”

tool is appropriate in confidential settings, or where protocols and practices have been put in place to ensure that this information does not come into the hands of the offender. The Danger Assessment Scale is “one of the few instruments with any published empirical evaluation of psychometric properties such as test-retest and internal consistency reliability.”<sup>3</sup>

### **Domestic Violence Screening Instrument (DVSI-R)**

The DVSI can be completed by a review of prior court and probation records. It was developed for use as a domestic violence risk screen to be followed by more intensive evaluation if the DVSI-R score indicates a high level of risk. It has also been shown to have predictive validity in identifying those who will reoffend. It is currently used as to inform pre-trial evaluations and as a corrections case management tool for offenders screened as high risk for domestic violence-related re-offense.<sup>4</sup>

### **Ontario Domestic Assault Risk Assessment (ODARA)**

The ODARA is an actuarial tool which indicates the likelihood that a person who has already committed an assault on a domestic or dating partner will do so again in the future. It also predicts the amount of time until a new assault, and greater severity of new assaults. The ODARA was developed to be used by police officers to identify high risk domestic violence cases, and provide a shared language about escalated risk to aid communication among criminal justice and other agencies responding to domestic assault. The ODARA’s 13 yes-or-no items identify the perpetrator’s history of substance abuse, violent and criminal behavior, details of the most recent assault, and the victim’s vulnerabilities (poverty, having children in common, etc.).<sup>5</sup>

### **Spousal Assault Risk Assessment (SARA)**

The SARA, developed at the British Columbia Institute on Family Violence, is “a set of guidelines for the content and process of a thorough risk assessment.” It comprises 20 items derived from the research literature on domestic violence and from the clinical literature on male perpetrators of domestic violence: criminal history, psychological adjustment, spouse abuse history, current offence characteristics, and other (e.g. stalking, torture). Application of the SARA is limited to presentence evaluations and recommendation, and probation case management strategies. It can also be applied to pretrial evaluations in charged individuals. The SARA gathers data from: interviews with the accused and with victims, standardized measures of physical and emotional abuse and of drug and alcohol use, and a review of police reports, victim statements, criminal records.<sup>6</sup>

### **CAADA-DASH Risk Identification Checklist**

The CAADA-DASH Risk Identification Checklist is a new 24-item tool being used in England and Wales by frontline agencies that identify or respond to domestic violence such as law enforcement, domestic violence

<sup>3</sup> Goodman, L.A., Dutton, M.A., & Bennett, L. (2000). Predicting repeat abuse among arrested batterers: Use of the Danger Assessment Scale in the Criminal Justice System. *Journal of Interpersonal Violence*, 15, 1.

<sup>4</sup> Williams, K., Family Violence Risk Assessment: A Predictive Cross-Validation Study of the Domestic Violence Screening Instrument-Revised (DVSI-R), *Law and Human Behavior* © 2011 American Psychological Association, 2012, Vol. 36, No. 2.

<sup>5</sup> Muskie School of Public Service, University of Southern Maine, “An Evaluation Comparing the Effectiveness of Two Evidence-Based Risk Assessment Tools for Domestic Violence Offenders.” August, 2008.

<sup>6</sup> Dutton, D. G. & Kropp, R. P. 2000, ‘A review of domestic violence risk instruments,’ *Trauma, Violence and Abuse*, vol. 1, no. 2, pp.171-181.



advocacy organizations, batterer intervention programs, health care, mental health services, and children's court.<sup>7</sup>

The DVSI, ODARA, and SARA were designed to predict likelihood of an offender's re-assault against a current or former domestic or dating partner, while the DA was designed to assess the victim's risk of lethal or near lethal violence. They differ in risk factors identified in the instrument, the intended use of the instrument, and how the instrument is validated. For example, the DA, DVSI, ODARA, and SARA each have yes/no questions or scored items that deal with the offender's past assaults and substance abuse. However, only the DA has a question about strangulation, which has been identified as a risk factor for homicide of women.

## Other Risk Tools

The **Lethality Screen** portion of the Domestic Violence Lethality Assessment Program (DVLAP) promoted by the Maryland Network against Domestic Violence, uses 11 of the 20 questions asked by the Danger Assessment. Law enforcement uses the Lethality Screen to identify high risk victims and connect them with local advocates.

The **Duluth Police Pocket Card** has adapted several key questions from risk assessment instruments to guide responding officers in asking open-ended questions (instead of yes/no questions) of victims. The responses are included in the narrative of the police report and aren't intended to be viewed as a valid risk score, but rather to describe to the court possible danger to the victim.

The **Practitioner's Guide to Risk** contained within the Blueprint for Safety is based on not only on risk and danger factors, but also on other research about violence against women.<sup>8</sup>

*Of course, no instrument can predict with certainty the risk of re-assault or lethality in domestic violence cases. Instruments should be viewed as an aid to the evaluation of risk, and to inform decision-makers during points of the criminal justice process such as arrest, bail, disposition, sentencing, and probation.*

## Considerations

- A risk assessment tool should not be used as the sole basis for safety planning with victims, but rather used in conjunction with other information.<sup>9</sup>
- Listen to victims. Research has shown that a victim's perception that she is at risk of future harm is "a reasonably accurate predictor of repeated re-assault. . . and improves the prediction of risk factors and instruments."<sup>10</sup> These findings support the longstanding argument that many victims are good

<sup>7</sup> Richards, L., <http://www.dashriskchecklist.co.uk/>.

<sup>8</sup> <http://files.praxisinternational.org.s3.amazonaws.com/Blueprint/BPSupp1APractitioners%20GuidetoRiskandDangerDec2012.pdf>.

<sup>9</sup> Websdale, N. 2000a, Lethality Assessment Tools: A Critical Analysis, [web page]. National Electronic Network on Violence Against Women. [www.vaw.umn.edu/Vawnet/lethality.htm](http://www.vaw.umn.edu/Vawnet/lethality.htm) [2002, 11th September].

<sup>10</sup> Gondolf, E., & Heckert, A., Determinants of Women's Perceptions of Risk in Battering Relationships, 18 *Violence & Victims* 371 (2003).

predictors of their own safety, and they send a message to those working in the field that they should pay attention to the victim’s self-appraisal of risk.

- The use of risk assessment scores by police, probation officers and prosecutors should not be a substitute for listening to victims. There is a risk that, because of the aura of “science” around risk assessment tools, victim’s voices and experiences may be disregarded.<sup>11</sup>
- Victims should not be placed in the situation of completing these tools where there is any possibility that this can place them at further risk from abusers.<sup>12</sup>
- It is important to be clear about “what type of risk you are assessing for, and what change in intervention will occur as a result of the assessment.”<sup>13</sup> Risk assessment should not be used to limit eligibility for services, but rather to identify when enhanced or expedited intervention is necessary.

Source: Battered Women’s Justice Project. 2020. “Risk Assessment.”<https://www.bwjp.org/our-work/topics/risk-assessment.html>.

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<sup>11</sup> Websdale, N. 2000a, Lethality Assessment Tools: A Critical Analysis, [web page]. National Electronic Network on Violence Against Women. [www.vaw.umn.edu/Vawnet/lethality.htm](http://www.vaw.umn.edu/Vawnet/lethality.htm) [2002, 11th September].

<sup>12</sup> Ibid.

<sup>13</sup> Abrams, M. L., Belknap, J., & Melton, H. C. 2001, When Domestic Violence Kills: The Formation and Findings of the Denver Metro Domestic Violence Fatality Review Committee. Denver: Project Safeguard.

## Appendix G: Recommendations for Model GPS Monitoring Legislation

Model legislation authorizing GPS monitoring must center on the organizing principle of victim safety. The key component of legislation is its responsiveness to the likelihood of increased danger that a batterer poses to the victim once the crime has been reported or alleged in the context of a civil proceeding. Set forth below are recommended features of such a statute:

- Law enforcement officers responding to any call involving a domestic incident should assess the potential lethality of the situation through the use of an approved dangerousness assessment and risk-management protocol to evaluate the risk of escalating violence in the situation.
- Upon reviewing conditions of dangerousness posed by a person alleged to have committed any type of domestic assault, a judge may, in her discretion, require the use of GPS electronic monitoring of an alleged offender as a condition of bail.
- A judge may order a domestic violence offender to be placed on GPS electronic monitoring to augment and help enforce the terms of an order of protection.
- A judge may furnish the domestic violence victim with a protective tracking device that informs the victim if the offender breaches impermissible geographic zones.
- Upon a showing of dangerousness, an alleged offender can be held until a hearing before a judge, in order to prevent re-assault opportunities and to protect the victim pending trial.
- The state may not use information gained through the use of GPS monitoring of domestic violence offenders for purposes unrelated to the domestic assault.

Source: Rosenfeld 2008.

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## **Appendix H: Memphis and Shelby County GPS (Global Positioning System) Monitoring of Domestic Violence Suspects in Shelby County, Tennessee**

### **Final Evaluation Report: Recommendations and Conclusions**

#### ***Recommendations***

Following is a list of recommendations for program administration and management should the program continue in Shelby County or be adopted elsewhere:

1. Develop a standardized, centralized system of collecting, maintaining, and sharing program-relevant data. Numerous databases and contributors impacted the validity and reliability of the data;
2. Review policies and procedures to develop common sets for participating agencies to clarify expectations and roles;
3. Secure local government buy-in because it is key to effectively administering and managing the program;
4. Whichever agency assumes primary responsibility for the administration and management of the program should:
  - a. Hire a program manager to manage the daily operations;
  - b. Streamline the attachment and removal process;
  - c. Consider developing a specialized unit to handle the logistics of device maintenance, storage, inventory, distribution, attachments, and removals;
  - d. Provide regular training opportunities and encourage staff buy-in;
5. Law enforcement should not be administering and managing the program but should be a central partner with responsibility for real-time tracking, responding to violations, issuing warrants, making arrests, and assisting victim service agencies with victim participants.

In addition to recommendations related to the administration and management of the program, the following recommendations for program design and implementation also are offered:

1. Focus on IPDV [intimate partner domestic violence] suspects, AA/DV [aggravated assault/domestic violence], SA/DV [simple assault/domestic violence];
2. Consider including intimidation and stalking as qualifying offenses;
3. Focus on preventing repeat suspects by emphasizing the participation of first-time IPDV suspects;
4. GPS in lieu of bond, not as a condition of bond release;

5. Violations should have real penalties (i.e., bond revocation);
6. Suspects should be recommended for GPS in a data-driven manner;
7. The scoring modified PTS [Pretrial Services] tool should be compared to the standard PTS tool. However, this may be moot since PTS has switched to another tool;
8. Judicial commissioners should be encouraged to follow recommendations;
9. More engagement with the Family Safety Center and Crime Victims Center to close the feedback loop with respect to service provision for victims whose offenders are in the program and to encourage victim participation;
10. Consider community outreach to encourage victim participation;
  - a. Encourage victims to seek Orders of Protection;
  - b. Engage victims throughout prosecution (reduce DLOPs [dismissal for lack of prosecution]);
  - c. Address serial IPDV victimization;
  - d. Consider a GPS program victim liaison to regularly communicate with victims.

## **Conclusion**

Although GPS program administrators could not claim that monitoring made victims safer, the 391 suspects who were arrested 511 times were at least detected and intercepted before they could make victim contact. This means there were potentially 511 fewer victimizations.

Repeat suspects and intimate partner victimizations were correlated. Victims of intimate partner violence and repeat victims were less likely to accept GPS devices. This indicates a need to focus specifically on encouraging victims of IPDV to seek and accept help to reduce the chances of becoming repeat victims. However, a significant proportion of suspects victimize multiple individuals over their offending careers and a significant proportion of victims are victimized by multiple individuals. That is, patterns of offending and victimization seem to follow individuals from intimate relationship to intimate relationship. There is a clear need to provide intervention for individuals who get caught up in this vicious repetitive cycle.

There also is a clear need to encourage more victim participation. Very few victims accepted GPS devices. In addition, DLOPs remain a serious issue with cases being dismissed because victims do not follow through with prosecution.

Because the system through which the GPS devices were assigned changed from the program design, and assignment was not necessarily based on any objective measure of risk, comparisons between suspects with GPS and suspects without GPS are not necessarily valid. That is, some individuals at lower risk were assigned GPS when they did not necessarily need to be monitored while other individuals at higher risk were not assigned GPS when they should have been monitored. In the future, a systematic, evidence-based system should be used for recommending GPS monitoring.



The GRiT [GPS Risk Tool] scoring process did result in significant distinctions between individuals who scored at or above the cutoff of 23 and those who did not. This suggests that the scoring process, had it been continued, may have provided a clear distinction between those at high risk of pretrial misbehavior and those with lower risk. Moreover, the cutoff score was refined to 18.65 based on retrospective analyses of program participants and their behaviors; those with 18.65 or higher were statistically more likely to be repeat suspects and to get arrested on GPS. The modified pretrial risk tool was the component most predictive of outcomes, but it has been replaced with another risk tool.

Domestic violence remains a serious problem in Shelby County. However, while both AA/DV and AA/DV perpetrated by intimate partners increased during the program period, victimizations by intimate partners increased at a significantly lesser degree. As a result, the proportion of AA/DV committed by intimate partners significantly declined during the GPS program. This may mean that intimate partner situations are particularly amenable to GPS monitoring.

Whether the GPS program continues in Shelby County or is adopted by other jurisdictions is ultimately a question for city councils, county commissions, or state legislatures. It is not an inexpensive endeavor. A cost-benefit analysis was beyond the scope of this evaluation but should probably be conducted prior to any subsequent implementation, keeping in mind the recommendations for program design changes and administration and management considerations. The ultimate question is whether potentially deterring a small number of suspects or arresting a larger number of suspects prior to victim contact is worth the cost.

Source: Email correspondence with Angela Madden, director, Themis Center for Justice Policy, Practice & Research, December 15, 2019.

DRAFT

## Appendix I: Public Chapter 505, Acts of 2019



State of Tennessee

### PUBLIC CHAPTER NO. 505

HOUSE BILL NO. 950

By Representatives Lamberth, Gant, Curcio, Griffey, Hardaway

Substituted for: Senate Bill No. 806

By Senators Johnson, Jackson, Stevens, Dickerson

AN ACT to amend Tennessee Code Annotated, Title 39; Title 40; Title 55 and Title 69, Chapter 9, relative to funds for services to indigent persons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-10-419(a)(1)(A), is amended by deleting the subdivision and substituting instead the following:

(i) There is created in the state treasury a fund known as the electronic monitoring indigency fund. The fund shall be composed of two (2) accounts, each of which shall be used for one (1) of the following purposes:

(a) The eligible costs associated with the lease, purchase, installation, removal, and maintenance of ignition interlock devices or with any other cost or fee associated with a functioning ignition interlock device required by this part for persons determined by the court to be indigent; and

(b) The eligible costs associated with the use of a transdermal monitoring device, other alternative alcohol or drug monitoring device, or global positioning monitoring device, if required by the court pursuant to § 40-11-152, § 55-10-402(d)(2)(A)(iii) or (h)(7), or any other statute specifically authorizing payment under this section, for persons determined by the court to be indigent.

(ii) The money in the two (2) accounts created by subdivision (a)(1)(A)(i) may be commingled for investment purposes, but will be accounted for separately with separate accounting for each account's principal and income. The account for ignition interlock devices shall contain state-appropriated monies as well as a portion of the fees assessed in accordance with this section and as provided in other applicable law. The account for other monitoring devices, as provided in subdivision (a)(1)(A)(i)(b), shall contain excess funds from the ignition interlock account as well as money from each local government that chooses to utilize this fund, and may contain state-appropriated monies. The treasurer is authorized to transfer money from one (1) account to the other to pay for eligible devices.

SECTION 2. Tennessee Code Annotated, Section 55-10-419(a)(1)(B), is amended by deleting the subdivision and substituting instead the following:

(B) Notwithstanding subdivision (a)(1)(A), no more than two hundred dollars (\$200) per month shall be expended from the fund to pay the costs associated with an indigent person's interlock ignition device, pursuant to subdivision (a)(1)(A)(i)(a), or other monitoring device pursuant to subdivision (a)(1)(A)(i)(b).

SECTION 3. Tennessee Code Annotated, Section 55-10-419(f), is amended by deleting the subsection in its entirety and substituting instead the following:

(f) In the event that the state treasurer determines or anticipates that the electronic monitoring indigency fund has or will have insufficient funds to pay for eligible claims or invoices as they are received, the state treasurer is authorized to stop accepting, determining eligibility for, or paying claims or invoices submitted by providers of ignition interlock devices, transdermal monitoring devices, other alternative alcohol or drug monitoring devices, or global positioning monitoring devices for a period of time

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determined by the state treasurer. The state treasurer may begin accepting or paying claims or invoices submitted by providers of ignition interlock devices, transdermal monitoring devices, other alternative alcohol or drug monitoring devices, or global positioning monitoring devices with service dates on or after the date on which the state treasurer determines that there is a sufficient amount of money in the fund. The state treasurer shall notify providers and the administrative office of the courts of the anticipated date that provider claims and invoices will be accepted and paid from the fund again. The state treasurer may establish an order of priority for paying claims and invoices from the fund after the period of insolvency.

SECTION 4. Tennessee Code Annotated, Section 55-10-419(g)(2)(A)(ii), is amended by deleting the subdivision and substituting instead the following:

(ii) All the costs associated with the use of a transdermal monitoring device, other alternative alcohol or drug monitoring device, or global positioning monitoring device, if required by the court pursuant to § 40-11-152 or § 55-10-402(d)(2)(A)(iii) or (h)(7); and

SECTION 5. Tennessee Code Annotated, Section 55-10-419(g)(3)(A), is amended by deleting subdivisions (g)(3)(A)(i) - (iii) and substituting instead the following:

(i) Fifty percent (50%) of such surplus shall be transmitted to the department of mental health and substance abuse services and placed in the alcohol and drug addiction treatment fund; and

(ii) Fifty percent (50%) of such surplus shall be used by the department of safety, Tennessee highway safety office, to provide grants to local law enforcement agencies for purposes of obtaining and maintaining equipment or personnel needed in the enforcement of alcohol-related traffic offenses.

SECTION 6. Tennessee Code Annotated, Section 55-10-419, is amended by adding the following as new, appropriately designated subsections:

( ) The money in the electronic monitoring indigency fund's ignition interlock account shall be used to pay for eligible costs associated with ignition interlock devices, and the money in the account for transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices shall pay for eligible costs associated with such devices, subject to the treasurer's ability to transfer funds between the two (2) accounts. Periodically, the treasurer shall determine whether there is excess money in the fund's ignition interlock account that may be transferred to the account for transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices to pay for costs associated with such devices. If there is no excess money, the treasurer shall not pay eligible claims or invoices for transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices until there is excess money in the ignition interlock account to be transferred to the transdermal monitoring device, other alternative drug and alcohol monitoring device, and global positioning monitoring device account, or until the state appropriates monies in the transdermal monitoring device, other alternative drug and alcohol monitoring device, and global positioning monitoring device account.

( ) No later than a date certain established by the treasurer, each local government shall have the option to participate in the transdermal monitoring device, other alternative drug and alcohol monitoring device, and global positioning monitoring device account by having the costs for eligible devices paid from the fund for each local government's indigent defendants. The local government shall demonstrate participation through a resolution legally adopted and approved by the local government's legislative body providing acceptance of the liability associated with participation and containing the maximum liability that the local government commits to its participation in the fund. For each subsequent year of participation and no later than a date certain established by the treasurer, the local government shall notify the treasurer of the budgeted amount that is approved for participation in the fund within thirty (30) days from when a budget is approved by the local legislative body and shall provide a copy of the approved budget to the treasurer. The state will provide funds matching each local government's maximum liability or budgeted amount for participation in the fund, subject to an

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appropriation by the state. Each participating local government will pay fifty percent (50%) of the costs associated with transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices for indigent defendants within the local government's jurisdiction, and the state will match the local government's cost by providing the other fifty percent (50%) of funding.

( ) In obtaining money from participating local governments, the state may either bill the local governments for costs associated with eligible devices or draw revenue from the local government's state-shared taxes.

( ) In paying claims or invoices for indigent defendants in a participating city or county, the state shall only pay for the costs associated with transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices when the local government has remitted fifty percent (50%) of the total eligible costs to the state.

( ) A local government may withdraw from participation in the transdermal monitoring device, other alternative drug and alcohol monitoring device, and global positioning monitoring device account at any time and reenter as a participant within the time frame established by the treasurer. After a local government's withdrawal from participation, the local government shall continue to pay all outstanding liabilities for eligible devices.

( ) The electronic monitoring indigency fund shall be administered by the treasurer. Through the administration of the fund, the treasurer shall have the authority to:

(1) Determine that the money is paid out of the fund for eligible devices and offenses pursuant to applicable laws and rules; and

(2) Promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the administration of the fund.

( ) For the efficient administration of the fund, providers of ignition interlock devices, transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices shall:

(1) Submit a claim to the treasurer electronically on a form prescribed by the treasurer no later than ninety (90) calendar days after the device has been ordered by the court accompanied by:

(A) The court order requiring the device;

(B) The affidavit of indigency; and

(C) An attestation from the provider for each claim indicating that the charges contained in the claim are true and accurate and do not contain duplicate claims or charges previously submitted to the treasurer for reimbursement;

(2) Submit invoices to the treasurer no later than one hundred eighty (180) calendar days from the date of service;

(3) Submit amendments to documents previously submitted or new documentation in support of a claim or invoice to the treasurer no later than ninety (90) calendar days after the provider's receipt of the amended or new documentation; and

(4) Submit any additional information or complete any additional forms requested by the treasurer.

( ) The provider shall ensure that the court orders submitted to the treasurer do not contain handwritten changes and are submitted on a uniform court order prescribed by the treasurer.

Improving Victim Safety with Global Positioning System (GPS) Monitoring as a Condition  
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( ) If a provider filing a claim or invoice for reimbursement from the fund knowingly makes a false, fictitious, or fraudulent statement or representation, or knowingly submits false, fictitious, or fraudulent documentation or information to the treasurer for reimbursement, the provider may be liable under the False Claim Act compiled in title 4, chapter 18.

( ) If a provider is overpaid from the fund for any reason, the treasurer is authorized to exercise a right of set-off against any amount due to the provider from the fund.

SECTION 7. Tennessee Code Annotated, Section 55-10-402(d)(2)(A)(iii), is amended by deleting the subdivision and substituting instead the following:

(iii) Global positioning monitoring system, as defined in § 40-11-152. If the court determines that the person is indigent, the court shall order the person to pay any portion of the costs of such a system for which the person has the ability to pay, as determined by the court. Any portion of the costs of such a system that the person is unable to pay shall come from the electronic monitoring indigency fund established pursuant to § 55-10-419, subject to the availability of funds; or

SECTION 8. Tennessee Code Annotated, Section 55-10-402(h)(7)(C), is amended by deleting the subdivision in its entirety and substituting instead the following:

(C) The use of a global positioning monitoring system, as defined in § 40-11-152. If the court determines that the person is indigent, the court shall order the person to pay any portion of the costs of such a system for which the person has the ability to pay, as determined by the court. Any portion of the costs of such a system that the person is unable to pay shall come from the electronic monitoring indigency fund established pursuant to § 55-10-419, subject to the availability of funds; or

SECTION 9. Tennessee Code Annotated, Section 40-11-152(h), is amended by deleting the subsection and substituting instead the following:

(h) If the magistrate determines that the defendant is indigent, the magistrate shall order the defendant to pay any portion of the costs required by subsection (b) for which the defendant has the ability to pay, as determined by the magistrate. Any portion of the costs required by subsection (b) that the defendant is unable to pay shall come from the electronic monitoring indigency fund established pursuant to § 55-10-419, subject to the availability of funds.


SECTION 10. Notwithstanding any law to the contrary, the state treasurer may use any funds in the electronic monitoring indigency fund to pay for the use of global positioning monitoring devices by indigent persons for eligible offenses as a condition of bail or sentencing ordered by a court between July 1, 2016, and August 16, 2018, that were previously submitted to the state treasurer for approval on or before August 16, 2018.

SECTION 11. This act shall take effect July 1, 2019, the public welfare requiring it.

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PASSED: April 30, 2019

  
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GLEN CASADA, SPEAKER  
HOUSE OF REPRESENTATIVES

  
\_\_\_\_\_  
RANDY MCNALLY  
SPEAKER OF THE SENATE

APPROVED this 24<sup>th</sup> day of May 2019

  
\_\_\_\_\_  
BILL LEE, GOVERNOR