

By: Hinojosa

S.B. No. 1902

A BILL TO BE ENTITLED

AN ACT

relating to the imposition of conditions on certain defendants charged with an offense involving family violence.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 17.292, Code of Criminal Procedure, is amended by adding Subsection (c-1) to read as follows:

(c-1) In addition to the conditions described by Subsection (c), the magistrate in the order for emergency protection may impose a condition described by Article 17.49(b) in the manner provided by that article, including ordering a defendant's participation in a global positioning monitoring system or allowing participation in the system by an alleged victim or other person protected under the order.

SECTION 2. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.49 to read as follows:

Art. 17.49. CONDITIONS FOR DEFENDANT CHARGED WITH OFFENSE INVOLVING FAMILY VIOLENCE. (a) In this article:

(1) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2) "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

1 satellite technology. The term does not include a system that
2 contains or operates global positioning system technology, radio
3 frequency identification technology, or any other similar
4 technology that is implanted in or otherwise invades or violates
5 the individual's body.

6 (b) A magistrate may require as a condition of release on
7 bond that a defendant charged with an offense involving family
8 violence:

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

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

16 (3) except as provided by Subsection (h), if the
17 alleged victim of the offense consents after receiving the
18 information described by Subsection (d), pay the costs associated
19 with providing the victim with an electronic receptor device that:

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

23 (B) notifies the victim if the defendant is at or
24 near a location that the defendant has been ordered to refrain from
25 going to or near under Subdivision (1).

26 (c) Before imposing a condition described by Subsection
27 (b)(1), a magistrate must afford an alleged victim an opportunity

1 to provide the magistrate with a list of areas from which the victim
2 would like the defendant excluded and shall consider the victim's
3 request, if any, in determining the locations the defendant will be
4 ordered to refrain from going to or near. If the magistrate imposes
5 a condition described by Subsection (b)(1), the magistrate shall
6 specifically describe the locations that the defendant has been
7 ordered to refrain from going to or near and the minimum distances,
8 if any, that the defendant must maintain from those locations.

9 (d) Before imposing a condition described by Subsection
10 (b)(3), a magistrate must provide to an alleged victim information
11 regarding:

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

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

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

23 (4) any sanctions that the court may impose on the
24 defendant for violating a condition of bond imposed under this
25 article;

26 (5) the procedure that the victim is to follow, and
27 support services available to assist the victim, if the defendant

1 violates a condition of bond or if the global positioning
2 monitoring system equipment fails;

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

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

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

18 (f) In determining whether to order a defendant's
19 participation in a global positioning monitoring system under this
20 article, the magistrate shall consider the likelihood that the
21 defendant's participation will deter the defendant from seeking to
22 kill, physically injure, stalk, or otherwise threaten the alleged
23 victim before trial.

24 (g) An alleged victim may request that the magistrate
25 terminate the victim's participation in a global positioning
26 monitoring system at any time. The magistrate may not impose
27 sanctions on the victim for requesting termination of the victim's

1 participation in or refusing to participate in a global positioning
2 monitoring system under this article.

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

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

11 (j) This article does not limit the authority of a
12 magistrate to impose any other reasonable conditions of bond or
13 enter any orders of protection under other applicable statutes.

14 SECTION 3. Articles 17.292(c-1) and 17.49, Code of Criminal
15 Procedure, as added by this Act, apply only to a defendant released
16 on bond, or to an order for emergency protection issued, in
17 connection with an offense committed on or after the effective date
18 of this Act. A defendant released on bond, or an order for
19 emergency protection issued, in connection with an offense
20 committed before the effective date of this Act is governed by the
21 law in effect when the offense was committed, and the former law is
22 continued in effect for that purpose. For purposes of this section,
23 an offense was committed before the effective date of this Act if
24 any element of the offense occurred before that date.

25 SECTION 4. This Act takes effect September 1, 2009.