

Maximal Safety, Minimal Intrusion: Monitoring Civil Protective Orders Without Implicating Privacy

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Under federal privacy jurisprudence, electronically monitoring batterers¹ subject to civil protective orders would be permissible if the monitoring occurred on a limited basis. If, instead of providing round-the-clock location data, the Global Positioning System (GPS) monitors provided only location data indicating protective order violations, Fourth Amendment privacy rights would not be infringed. Since the GPS monitors would only be able to transmit a batterer's location when he violated his court order, law enforcement would not obtain data from inside a batterer's home or other private areas. The only information the GPS system would recognize would be information necessary to effectuate the protective order, namely geographic information related to the zones from which the batterer is excluded—the victim's liberty zones.

Fourth Amendment privacy rights cannot be violated by a GPS system that only obtains geographic data representing court order violations because a batterer cannot claim to have a reasonable expectation of privacy within a victim's liberty zones. A lawful presence in an area is a prerequisite to reasonably expecting freedom from governmental intrusion.² Since a batterer can never be legitimately present in a place where a court order has forbidden him to be, he can never reasonably expect privacy there. Instead, a batterer who enters his victim's liberty zones is on notice of government observation since he is engaged in the commission of a crime. If the batterer does not have such an expectation, it is only because he knows there is a lack of enforcement.

Modifying GPS devices so that they are more focused observation tools will moot invasion of privacy claims, even in states, such as Washington,

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¹ Because the statistics indicate that 85% of intimate partner violence is committed against women by their partners, largely in heterosexual relationships, I use male referents for the batterer or abuser, and female referents for the victim. Further, femicide statistics bear out the prevalence of murders of female intimate partners by their male partners. *See* CALLIE MARIE RENNISON, U.S. DEPT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, INTIMATE PARTNER VIOLENCE, 1993-2001 (2003), <http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv01.pdf>. [hereinafter RENNISON, INTIMATE PARTNER VIOLENCE].

² *See* *Rakas v. Illinois*, 439 U.S. 128, 143 (1978); *United States v. Gomez*, 770 F.2d 251, 254 (1st Cir. 1985).

that provide broader privacy protections than the United States Constitution.³ GPS monitors that can only track a batterer's whereabouts when he is in violation of his court order would not record any intimate details of a batterer's life. Law enforcement would not learn of a batterer's personal travel, such as a trip to the doctor or the bank. Instead, the only geographic information the government would receive would be related to order violations.

Permissible monitoring of civil protective orders is not mere fantasy. GPS technologies can feasibly be modified such that only violations of court orders would be known. Multiple methods of accomplishing permissible monitoring exist. The two most promising methods are reverse tagging and filtering.

Reverse tagging is a GPS technology specifically developed to respond to the needs of domestic violence situations.⁴ By only recognizing the victim and her liberty zones, reverse tagging allows effective monitoring without requiring continuous knowledge of a batterer's whereabouts. The batterer wears only the signal receiving component of the GPS device, while the monitoring unit, which reads the location data captured by the signal receiver, is placed with the endangered woman. Preferably, multiple monitoring units are used, one that the woman wears on her person and others that are placed in each of the woman's liberty zones. The monitoring units read location information from a distance. The signal receiver could be designed so that the distances at which information is read correspond with, but do not exceed, the bounds of the liberty zones designated by the civil protective order.

Reverse tagging does not implicate constitutional privacy rights because no communication occurs between the signal receiving unit and the monitoring unit unless the batterer is within sufficient proximity of a monitoring unit and therefore in violation of his protective order.⁵ Since the monitoring unit is the component of the GPS system that conveys data to law enforcement and the endangered woman, a batterer's location will remain private so long as he does not violate his protective order. Importantly, it is also the monitoring unit, and not the signal receiver, that conveys information to a central database for storage. The signal receiver does not retain any geographic data. Therefore, any information regarding a batterer's whereabouts that is not read by a monitoring unit will be erased and not acquirable by law enforcement at a later date.

³ WASH. CONST. art. I, § 7 ("No person shall be disturbed in his private affairs, or his home invaded, without authority of law.").

⁴ See DICK WHITFIELD, *THE MAGIC BRACELET: TECHNOLOGY AND OFFENDER SUPERVISION* 86 (2001).

⁵ Because signal receiving units have unique digital identifiers, a batterer's location will not inadvertently be read by an improper monitoring unit. See Elec. Sys. and Method for Monitoring Abusers for Compliance with a Protective Order, U.S. Patent No. 5,266,944 (filed June 26, 1991) (issued Nov. 30, 1993).

Technology enabling reverse tagging was contemplated as early as 1991, when an application for the patent “Electronic System and Method for Monitoring Abusers for Compliance with a Protective Order” was filed.⁶ The problem reverse tagging encountered at this early stage was that it could only detect the signal receiving unit when it was within approximately seventy yards.⁷ This was an insufficient distance because notice to the endangered women and law enforcement authorities occurred too late to allow anyone to respond effectively.⁸ It was also ineffective in deterring batterers since it was evident that law enforcement could not react in time to prevent a violent incident. Since then, however, GPS technology has improved dramatically. By 2000, reverse tagging technology was capable of monitoring a liberty zone of 400 yards.⁹ With the ability to recognize a signal receiving unit at 400 yards or farther, reverse tagging can add real protective and deterrent abilities to civil orders by giving police time to respond and the endangered woman time to get away, and by providing an additional incentive for a batterer to reconsider violating his order.

As an alternative to using reverse tagging technology, filtering technology can be used to limit the information that GPS devices transmit and store. This technology requires that batterers, who are subject to civil protective orders, wear both the signal receiving unit and the monitoring unit. The signal receiver continuously detects satellite radio frequency signals and translates these signals into geographic pinpoint data. Filtering occurs between the signal receiving unit and the monitoring unit. Instead of the monitor reading all of the geographic data collected by the signal receiving component, it is programmed to accept only certain latitudinal and longitudinal data. The latitudinal and longitudinal data that can pass through the filter correspond to the endangered woman’s court-ordered liberty zones. Since the monitoring unit is responsible for transmitting geographic information to law enforcement and the victim, the only data that anyone can receive is data that indicates the batterer is in violation of his protective order. The rest of the information, because it is filtered out before acquisition by the monitoring unit, never reaches law enforcement, the victim, or any storage database, and it therefore remains entirely private. Filtering technology may be preferable to reverse tagging in rural jurisdictions where police need longer periods of time to respond to a violation.¹⁰

As a result of both types of modified GPS monitoring systems, civil protective orders can be supplemented with GPS monitoring and yet not infringe on a batterer’s constitutional right to privacy. Instead, the altered

⁶ *Id.*

⁷ WHITFIELD, *supra* note 2, at 86.

⁸ *See id.*

⁹ *Id.* at 87.

¹⁰ In some rural parts of Maine, it can take over an hour for police to respond to an emergency call. *See* David Hench, *Response From Police Key to Safety*, PORTLAND PRESS HERALD, Dec. 18, 2000, at 1A.

GPS monitors would immediately alert law enforcement and the victim to protective order violations, while allowing the batterer's location to remain unknown under normal circumstances. The GPS monitors would not be used for constant surveillance but only to serve as watchdogs of court-ordered boundaries.