

403.761 Substantial violation of domestic violence order -- Hearing -- Imposition of global positioning monitoring in lieu of imprisonment -- Cost to be paid by respondent -- Exceptions -- Violation of global positioning monitoring requirements.

- (1) As used in this section, "substantial violation" means a violation of a domestic violence order that has resulted in one (1) or more of the following acts by the respondent against the petitioner, minor child of a petitioner, family member, or member of an unmarried couple protected in the order:
 - (a) An assault prohibited by KRS Chapter 508;
 - (b) Menacing as prohibited by KRS 508.050;
 - (c) Terroristic threatening as prohibited by KRS Chapter 508;
 - (d) Stalking as prohibited by KRS Chapter 508;
 - (e) Wanton endangerment as prohibited by KRS Chapter 508;
 - (f) Kidnapping or a related offense as prohibited by KRS Chapter 509;
 - (g) A sexual offense as prohibited by KRS Chapter 510 other than indecent exposure;
 - (h) Burglary as prohibited by KRS Chapter 511;
 - (i) Destruction or damage to property as prohibited by KRS Chapter 512;
 - (j) Theft as prohibited by KRS Chapter 514;
 - (k) Harassment or harassing communications as prohibited by KRS Chapter 525;
or
 - (l) Any felony offense against the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order.
- (2) Following a report of an alleged substantial violation of a domestic violence order by a respondent and prior to any civil hearing on the alleged violation of the order, the court shall obtain an updated report of the respondent's Kentucky criminal history from the Administrative Office of the Courts or the Department of Kentucky State Police and shall obtain from the Administrative Office of the Courts the history of Kentucky Emergency Protective Orders and Domestic Violence Orders against the respondent, together with any violations of those orders.
- (3) Following an alleged substantial violation of a domestic violence order, the court shall hold a hearing to determine if the violation occurred, and if the violation occurred, what sanctions the court may apply. At the hearing the court shall explain the sanctions which may be imposed to the petitioner and the respondent. The court shall explain to the petitioner that the court may require a respondent who has committed a substantial violation of the domestic violence order to wear a global positioning monitoring system device in lieu of imprisoning the respondent and, except as provided in this section, to pay the costs associated with operating that system in relation to the respondent and the costs associated with operating the system in relation to the petitioner if the petitioner elects to participate.
- (4) Before imposing global positioning monitoring, the court shall provide to the petitioner information regarding:

- (a) The petitioner'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 court terminate the petitioner's participation;
 - (b) 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 respondent's location and movements;
 - (c) Any locations that the respondent is ordered to refrain from going into or near and the minimum distances, if any, that the respondent shall maintain from those locations;
 - (d) Any sanctions that the court may impose on the respondent for violating, in the future, a condition of the domestic violence order imposed under this section;
 - (e) The procedure that the petitioner is to follow, and support services available to assist the petitioner, including but not limited to a designated person or office to notify if the respondent violates a condition of the domestic violence order or if the global positioning monitoring equipment of the respondent or of the petitioner fails; and
 - (f) Community services available to assist the petitioner in obtaining shelter, counseling, education, child care, legal representation, and other assistance available to address the consequences of domestic violence.
- (5) Prior to ordering the respondent to wear a global positioning monitoring system device the court shall provide the respondent an opportunity to controvert the information provided by the petitioner or any other source and to provide to the court the respondent's reasons why the respondent should not be ordered to wear a global positioning monitoring system device.
- (6) If the court orders the respondent to wear a global positioning monitoring system device, in addition to the information described in subsection (4) of this section, the court shall provide to the petitioner who participates in a global positioning monitoring system under this section, the name and telephone number of an appropriate local law enforcement agency in the county in which the order is issued whom the petitioner may call to request immediate assistance if the respondent violates a condition of the domestic violence order imposed pursuant to KRS 403.750 and this section. If the local law enforcement agency does not provide service twenty-four (24) hours per day, seven (7) days per week, the petitioner shall be instructed to call the local public safety answering point using the 911 telephone number.
- (7) If the petitioner has requested that the respondent be ordered to wear a global positioning monitoring system device, the court shall, prior to ordering the respondent to wear a global positioning monitoring system device under this section:
- (a) Consider the likelihood that without the utilization of a global positioning monitoring system the respondent will seek to kill, assault, stalk, harass,

- menace, or otherwise threaten the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order; and
- (b) Enter a determination of findings of fact and reasons as to why the petitioner's request for the respondent to be ordered to participate in global positioning monitoring is being granted or denied.
- (8) A petitioner may request that the court terminate the petitioner's participation in a global positioning monitoring system at any time.
- (9) (a) When a court determines that the respondent shall wear a global positioning monitoring system device, the court shall notify the respondent, the petitioner, and the entity providing global positioning monitoring system services of:
- 1. The fact that global positioning monitoring system participation has been ordered;
 - 2. The cost that the respondent is to pay to the entity providing the global positioning monitoring system services, including but not limited to the amount to be paid, the frequency of the payments, the location to which the payments shall be sent, and the duration of the payments;
 - 3. The cost of the administrative fee that the respondent is to pay to the county or counties providing the monitoring service;
 - 4. The restrictions on the respondent with regard to locations which the respondent is not to go into or near and the specific distances contained in the order;
 - 5. The permitted exceptions to the restrictions on the respondent which relate to permitted travel by the respondent which may bring the respondent near or into a location where the respondent normally would be prohibited from going into or near;
 - 6. The duration of time that the respondent shall wear the device which shall not exceed the duration of the underlying domestic violence order but which may be shorter than the underlying domestic violence order. The date of expiration of the requirement to wear the device shall be specified in the order;
 - 7. The notifications to be made in the event that the respondent violates the domestic violence order; and
 - 8. Such other information as the court deems appropriate.
- (b) If the court determines that a respondent is indigent, the court may, based on a sliding scale established by the Supreme Court of Kentucky by rule, require the respondent to pay the costs imposed under this section in an amount that is less than the full amount of the costs associated with operating the global positioning monitoring system in relation to the respondent or providing the petitioner with an electronic receptor device.
- (c) If a respondent pays to an entity that operates a global positioning monitoring system the amount ordered by the court under this subsection, the entity shall accept the amount as payment in full. Neither the Commonwealth, nor the Court of Justice nor the county, urban-county, charter county, or consolidated

local government shall be responsible for payment of any costs associated with operating the global positioning monitoring system in relation to an indigent respondent or petitioner.

- (d) A court that imposes a condition described by this section shall order the entity that operates the global positioning monitoring system to immediately notify the petitioner, the court, and the appropriate local law enforcement agency named in the order if a respondent violates a condition of the domestic violence order imposed under this section or KRS 403.750.
- (10) The provisions of this section do not limit the authority of a court to impose any other reasonable conditions authorized by KRS 403.740, 403.750, or 403.747.
- (11) (a) A respondent who has been ordered by a court to wear a global positioning monitoring system monitoring device pursuant to this section shall not, without written permission from the court issuing the order or a higher court to which the issuance of the order has been appealed:
- 1. Fail to wear the device;
 - 2. Remove a device that the respondent has been ordered to wear; or
 - 3. Tamper with or destroy a device that the respondent has been ordered to wear.
- (b) A respondent who violates paragraph (a) of this subsection shall be guilty of a Class D felony.
- (c) The provisions of this section shall not apply to a respondent who, upon the expiration of the order that required the respondent to wear the global positioning monitoring system device, permits the entity providing the monitoring to remove the device.
- (12) A person, county, or other organization may voluntarily agree to pay all or a portion of a defendant's monitoring costs specified in this section.
- (13) (a) The provisions of this section shall not prohibit a court from imposing any other authorized sanction for a substantial violation of a domestic violence order.
- (b) The provisions of this section shall not prohibit a court from imposing any authorized sanction, other than ordering the respondent to wear a global positioning system monitoring device, for a violation of a domestic violence order which does not constitute a substantial violation as defined in this section.

Effective: July 15, 2010

History: Created 2010 Ky. Acts ch. 170, sec. 7, effective July 15, 2010.