

**Controlling Sex Offender Reentry:
Jessica's Law Measures in California**

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The Political Background

“What kind of a society do we create here when you cannot even let the children go out on the playground, and you always have to worry about them getting abducted and sexually molested and all those things?... We have seen with sexual offenders and with sexual predators that they commit those crimes over and over. So how many more times should we give them the chance?”
--California Gov. Arnold Schwarzenegger, August 17, 2005, KFMB Rick Roberts radio show¹

On August 16, 2005, Governor Schwarzenegger endorsed the Sexual Predator Punishment and Control Act, a bill that would stiffen punishments for certain sex crimes and create lifetime monitoring and residence restrictions for incarcerated sex offenders released back into the community. Among other provisions, the legislation would require lifetime global positioning system (GPS) monitoring of registered felon sex offenders released to parole, bar registered sex offenders from living within 2,000 feet of schools and parks, and overhaul California’s policies for handling its most dangerous “sexually violent predators.”

The sponsors of the bill, Senator George Runner (R-Antelope Valley) and Assemblywoman Sharon Runner (R-Antelope Valley), are also spearheading a petition drive to make the bill an initiative in the November 2006 election.² If the Democrat-controlled California legislature does not pass their bill by February 15, 2006, the Runners have pledged to proceed with the ballot initiative.

On January 10, the Public Safety Committees of the Assembly and Senate both voted to reject the Runners’ bill. Criticizing the bill as costly and vaguely written, Democrats have countered with their own sex offender legislation, AB 50 in the Assembly and SB 1128 in the Senate, which feature mandatory risk assessments but lack the 2,000-foot living restrictions or widespread use of electronic monitoring.³ Democrats and the Runners both have said they are open to compromise, but negotiations will take place against the backdrop of the November election. Some Democrats fear Republicans will seek to make an election issue out of the Runners’ sex offender initiative. “It’s a highly emotional issue, and public safety initiatives have

¹ Interview by Rick Roberts with Arnold Schwarzenegger, Governor, California, in San Diego, Cal. (Aug. 17, 2005), http://www.governor.ca.gov/state/govsite/gov_htmldisplay.jsp?sFilePath=/govsite/spotlight/081705_audio_update.htm&sCatTitle=&.

² Campaign for Child Safety, Jessica’s Law 2006, <http://www.jessicaslaw2006.com/> (last visited Jan. 26, 2006).

³ In this paper, I use the term “electronic monitoring” to refer to three types of technologies used to monitor sex offenders on parole: active-GPS, passive-GPS, and radio frequency monitoring. These technologies are explained on page 20.

a history of doing well with the electorate,” said Sailaja Cherukuri, chief of staff to Senator Elaine Alquist (D-San Jose), the sponsor of SB 1128.⁴

The legislative debate comes at a pivotal moment in California’s corrections history. The Schwarzenegger administration has reorganized the California Department of Corrections and Rehabilitation (CDCR), putting an emphasis on rehabilitation in its corrections policy. The agency has committed to incorporate evidence-based research into its programming process.

In concert with this approach, CDCR is taking steps to reform its sex-offender management practices. In July 2005, the agency began using active-GPS electronic bracelets to monitor 70 high-risk sex offender parolees in San Diego County. The GPS pilot has since expanded to Orange, Riverside, San Bernadino, Fresno, and Kern Counties, and eventually will include 500 of the state’s 2,000 “high-risk” sex offenders on parole.⁵ In October 2005, CDCR received a \$250,000 federal grant to design a strategic plan for managing sex offenders in incarceration and on parole.⁶ Inside the agency, officials are weighing additional ideas for managing sex offenders on parole, including using an accredited risk assessment tool to measure the dangerousness of paroled offenders, subjecting parolees to polygraph tests, and creating a new “medium-risk” designation for paroled sex offenders.⁷

At the policy level, Schwarzenegger has made clear that the Runners’ approach for dealing with sex offenders is his own. On October 4, 2005, he vetoed a bill that would have created a Sex Offender Management Board, an entity that has helped coordinate sex offender policy in Texas and Colorado, saying it would “create more red-tape” but not improve public safety.⁸ The same day, Schwarzenegger vetoed a different bill that would have barred certain offenders who victimized children from living within a quarter mile of elementary and secondary schools while on parole, concluding that the Runners’ bill offered more comprehensive residence bans: “We should enact provisions that will allow for residency restrictions for all sex offenders, not just the 254 parolees that this bill potentially affects.”⁹

While California politicians are at odds over how to deal with sex offenders after their release from prison, it is worth noting that the legislation of both Republicans and Democrats is

⁴ Telephone Interview with Sailaja Cherukuri, Chief of Staff, Cal. State Sen. Elaine Alquist (Jan. 12, 2006).

⁵ Telephone Interview with Dan Stone, GPS Pilot Project Manager, California Department of Corrections and Rehabilitation (Jan. 23, 2006).

⁶ Center for Sex Offender Management, FY 2005 Comprehensive Approaches to Sex Offender Management Grant Program, <http://www.ojp.usdoj.gov/BJA/grant/05CASOMAwds.pdf> (last visited Jan. 15, 2006).

⁷ Internal CDCR Memorandum (Nov. 9 2005) (on file with author).

⁸ Veto Message of Arnold Schwarzenegger, Governor, California, Regarding AB 632, (Oct. 4 2005), http://www.leginfo.ca.gov/pub/bill/asm/ab_0601-0650/ab_632_vt_20051004.html.

⁹ Veto Message of Arnold Schwarzenegger, Governor, Regarding AB 240, (Oct. 4 2005), http://www.leginfo.ca.gov/pub/bill/asm/ab_0201-0250/ab_240_vt_20051004.html.

focused more on controlling paroled sex offenders than addressing the issues of housing, employment, health care, and community support, associated with successful prisoner reentry.¹⁰ As Tewksbury and Mustaine have observed, control, and not reintegration, is the leading paradigm of sex offender reentry.¹¹ This control-orientation means that preventing sexual recidivism is often the sole outcome criteria for sex offender reentry programs.

California politicians are not alone in thinking that electronic monitoring and residency bans can be effective means of control. In 2005, seven states passed laws requiring certain paroled sex offenders to be electronically monitored – in Florida, Ohio, and Missouri, legislators mandated that certain offenders be monitored for life.¹² Last year, Michigan approved 1,000-foot residency restrictions around schools, bringing to 16 the number of states that have barred released sex offenders from living near schools, day care centers, school bus stops, or parks.¹³ Not all proposed residency bans were enacted – the Texas legislature rejected a measure to bar sex offenders from living within 1,500-feet of school bus stops.¹⁴ In many of these states, legislators dubbed their bills “Jessica’s Law,” in tribute to Jessica Lunsford, a 9-year old Florida girl murdered by a convicted sex offender in March 2005.

As this legislative activity makes clear, electronic monitoring and living restrictions are the touchstone of current political efforts to deal with sex offenders that have been returned to the community. And if the Runners’ bill becomes law, California will embark on one of the most widespread uses of residency bans and electronic monitoring attempted by any state, because the bill’s sweeping language would apply to a state with a large number of sex offenders. The legislation mandates GPS monitoring for all sex offenders who have been convicted of a felony that requires registration with the state, for the duration of their parole and “once discharged from parole, for the rest of their lives.”¹⁵ At a minimum, the measure would affect all registered felon

¹⁰ JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY xxi, 324 (2005).

¹¹ Richard Tewksbury & Elizabeth E. Mustaine, *Where to Find Sex Offenders: An Examination of Residential Locations and Neighborhood Conditions*, CRIM. JUST. STUD., 2 (forthcoming, Feb. 2006).

¹² KAREN HERALD, WASH. ASS’N OF SHERIFFS AND POLICE CHIEFS, ELECTRONIC MONITORING STUDY: REPORT TO THE LEGISLATURE 13, 22-23, 32, 36, 41 (2005). Oklahoma passed a lifetime GPS-monitoring law for certain sex offenders in 2004.

¹³ Jill S. Levenson & Leo P. Cotter, *The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From the Absurd?*, 49 INT’L J. OF OFFENDER THERAPY & COMP. CRIMINOLOGY, 168 (2005); Jim Miller, *Zoning Out Sex Offenders: Proposal would ban them from living in many urban areas*, PRESS ENTERPRISE, Dec. 31, 2005, at 1.

¹⁴ Telephone Interview with Allison Taylor, Executive Director of the Texas Council on Sex Offender Treatment (Jan. 4, 2006).

¹⁵ S.B. 588, 2005-2006 Leg. Sess., 4 (Cal. 2005). http://www.leginfo.ca.gov/pub/bill/sen/sb_0551-0600/sb_588_bill_20050818_amended_sen.pdf. The statutory language used in the “Jessica’s Law” also specifies that the GPS-provision would apply to registered felon sex offenders that have served time in prison: “Every inmate who has been convicted for any felony violation of a ‘registerable sex offense’

sex offenders on parole. As of December 19, 2005, CDCR had 9,411 registered sex offenders under parole supervision.¹⁶ Further, some observers believe the bill's language could be read to allow the GPS provision to be applied retroactively to registered sex offenders that have been released from parole and are now living in the community under no supervision.¹⁷ According to CDCR figures, there are approximately 50,000 registered sex offenders living in the community without supervision, but it is not clear how many of these offenders were ever sentenced to prison and parole.¹⁸

While the Runners' have said they intend the GPS monitoring provision to apply prospectively – meaning it would only affect new felon sex offenders, and possibly offenders currently on parole – their bill still would entail significantly higher usage of GPS monitoring. “You are right that it does go beyond the traditional Jessica’s law and would make California law the toughest in this area,” said Kyle Packham, legislative analyst to Assemblywoman Runner.¹⁹

In this paper, I examine current research on the effectiveness of electronic monitoring and residential restrictions in preventing recidivism amongst sex offenders, as well as the experiences of other states that have experimented with these techniques. This paper focuses on four questions:

- What are the trends in California sex offense data and other states with sizable sex offender populations?
- What does research and other state experiences tell us about the effectiveness of electronic monitoring in preventing recidivism and absconding of sex offenders?
- What does research and other state experiences tell us about the effectiveness of residential restrictions in preventing recidivism of sex offenders?

...and who is committed to prison and released on parole...shall be monitored by a global positioning system for life.” See Sec. 22, 3004(b), <http://www.jessicaslaw2006.com/language/>.

¹⁶ Telephone Interview with California Department of Corrections and Rehabilitation official (Jan. 5, 2006).

¹⁷ CALIFORNIA SENATE PUBLIC SAFETY COMMITTEE, ANALYSIS OF S.B. 588, http://info.sen.ca.gov/pub/bill/sen/sb_0551-0600/sb_588_cfa_20060109_124259_sen_comm.html. As the Committee notes, the Constitutional bar on ex post facto punishment bars states from changing the penalties for crimes after those crimes have been committed. The key legal question is whether GPS monitoring is “punishment”: “If GPS monitoring is punishment, then it can only be applied to crimes committed after the effective date of the GPS mandate. If, on the other hand, GPS monitoring is regulatory, as courts have found sex offender registration to be, GPS monitoring can be imposed on any person who has been convicted of a sex crime for which registration is required, regardless of when the crime was committed.”

¹⁸ E-mail from California Department of Corrections and Rehabilitation official, to author (Jan. 20, 2006, 15:25:42 PST) (on file with author).

¹⁹ Telephone Interview with Kyle Packham, legislative analyst, Assemblywoman Sharon Runner (Jan. 5, 2006).

- In light of California’s sex offender population, and CDCR’s current methods for supervising paroled sex offenders, what challenges would CDCR and other state agencies likely face in implementing expanded electronic monitoring and residential restrictions?

To put this analysis in context, I will begin with a look at the sex offender population in California and other populous states, and provide a brief summary of national trends in sex offenses and research on sex offender recidivism. When comparing California with other states, I will chiefly look at the sex offender populations and policies of Texas, Florida, New York, and Pennsylvania. Like California, these states manage sizable sex offender populations and have the budget to experiment with new techniques. For example, the Florida legislature approved electronic monitoring of parolees in 1987, and the state was one of the first to monitor sex offenders via GPS bracelets. Where other states have relevant experience with monitoring or buffer zones – such as Iowa’s experience with 2,000-foot residential restrictions – I will discuss their experience as well.

I will begin with a few charts to illustrate the sex offender population in California and the other states in my comparison group.

California’s Sex Offender Population

On June 30, 2005, 21,435 registered sex offenders – 21,313 of whom were men – were incarcerated in CDCR institutions.²⁰ This figure reflects prisoners required to register under California’s sex offender registration law, Penal Code 290, which encompasses a range of offenses including sexual assaults, molestations, exposure crimes, and kidnappings, but not statutory rape.²¹ In CDCR’s annual report, *California Prisoners and Parolees*, the department provides more detailed data on a somewhat different subset of sex offenses—CDCR’s definition of sex offenses includes statutory rape, but not kidnappings. The data trends I discuss in this section reflect CDCR’s definition of sex offenses, and not the overall population of registered sex offenders in California prisons.²²

In 2004, 13,840 prisoners were incarcerated in California prisons for sex crimes—an increase of 134 percent since 1986, when CDCR imprisoned 5,909 sex criminals (Chart 1).²³

²⁰ DATA ANALYSIS UNIT, CAL. DEPT. OF CORRECTIONS AND REHABILITATION, PRISON CENSUS DATA AS OF JUNE 30, 2005 14, <http://www.corr.ca.gov/ReportsResearch/docs/Annual/Census/CENSUSd0506.pdf>.

²¹ The California Department of Justice lists all registerable sex offenses on its sex offender registry website: <http://www.meganslaw.ca.gov/registration/offenses.aspx?lang=ENGLISH>.

²² As a practical matter, CDCR does not provide data on the commitment offenses for all registered sex offenders in prison. In addition, the total number of registered sex offenders in California prisons could include registered sex offenders that are not currently incarcerated for sex crimes.

²³ DATA ANALYSIS UNIT, CAL. DEPT. OF CORRECTIONS AND REHABILITATION, CAL. PRISONERS AND PAROLEES 2004 (2005), <http://www.corr.ca.gov/ReportsResearch/docs/Annual/CalPris/CALPRISd2004.pdf>. Unless otherwise

However, the surge in California's population of sex criminals has been outpaced by the growth of the state's overall prison population, which expanded from 58,774 in 1986 to 159,437 in 2004, a 171 percent increase (Chart 2). In 2004, sex criminals represented nine percent of all CDCR prisoners, compared to 10 percent of all prisoners in 1986.

The growth of California's incarcerated sex offender population has been fueled by increases in certain sex offenses, but not rape. California incarcerated 2,255 criminals for rape in 2004, representing a slight increase from 1986, when 2,170 prisoners were in prison for rape. In 1991, California incarcerated 2,266 offenders for rape, meaning more offenders were behind bars for rape in 1991 than in 2004. In 2004, rapists represented 16 percent of all incarcerated sex offenders in California, down from almost 37 percent in 1986.

While incarceration levels for rape have remained roughly constant, incarceration levels for two different sex offense categories – “Lewd Act with Child,” and “Other Sex Offenses” – have risen sharply since 1986 (Chart 3).²⁴ “Lewd Act with Child” is a CDCR category that encompasses 12 distinct sex crimes that victimize children aged 15 and under.²⁵ “Other Sex Offenses” is a residual CDCR category that includes 25 sex crimes.²⁶

In 1986, 2,536 prisoners were incarcerated for “Lewd Act with Child.” In 2004, 7,792 prisoners were incarcerated for this offense, a 207 percent increase from 1986. Incarceration levels for “Lewd Act with Child” have gone up steadily during this period. In 1991, 3,984 offenders were in California prisons for these offenses. In 1994, the number of offenders stood at 4,975, while in 2000, 6,561 prisoners were incarcerated for “Lewd Act with Child.”

Prisoners incarcerated for “Lewd Act with Child” now represent the majority of incarcerated sex offenders in California. In 2004, 56 percent of all prisoners incarcerated for a sex crime in California were there for committing one of the 12 “Lewd Act with Child” offenses, up from 43 percent of all incarcerated sex criminals in 1986.

Unpublished CDCR data provide a look at incarceration totals for each of the 12 offenses that comprise “Lewd Act with Child” on specific dates in three recent years: August 31, 1999,

mentioned, figures in this section are from the 2004, 2000, 1994, 1991, and 1986 editions of CAL. PRISONERS AND PAROLEES. The total prison population figures I am using reflect the total number prisoners for whom commitment offense data was known.

²⁴ The number of offenders in California prisons for a third sex crime, “Penetration with Object,” also has risen dramatically over the past twenty years. In 1986, 97 offenders were in prison for this crime, while 467 offenders were incarcerated for this crime in 2004.

²⁵ E-mail from Christopher Shores, Assistant Information Systems Analyst, Data Analysis Unit, California Department of Corrections & Rehabilitation, to author (Dec. 30, 2005, 08:43:38 PST) (on file with author).

²⁶ *Id.*

December 31, 2002, and November 30, 2004.²⁷ These counts, conducted internally by CDCR, disaggregate “Lewd Act with Child” by commitment crime, providing a more detailed look at the discrete crimes committed by prisoners in this offense category. On August 31, 1999, December 31, 2002, and November 30, 2004, almost two-thirds of the prisoners incarcerated for “Lewd Act with Child” were there for committing the same crime: “Lewd or Lascivious Acts with a Child under 14 years,” an offense that seems to encompass several sex crimes against children (Chart 4).²⁸ On each date, roughly 18 percent of the prisoners incarcerated for “Lewd Act with Child” were in prison for the crime of “Continuous Sexual Abuse of a Child,” defined as repeated sexual abuse of a child aged 14 or younger by a co-resident (Chart 4).²⁹ More than eight out of ten prisoners incarcerated for “Lewd Act with Child” committed one of these two sex crimes.

The number of persons in prison for committing one of the 25 sex crimes that constitute “Other Sex Offenses” also has increased over the past eighteen years. In 1986, just 151 offenders were in prison for one of these offenses (Chart 3). In 2004, 2,376 offenders were incarcerated for committing one of the “Other Sex Offenses,” an increase of 1,474 percent from 1986.

Unpublished CDCR data show that roughly half of the offenders incarcerated for “Other Sex Offenses” in three recent years were there for failing to register with the California state sex offender registry (Chart 5).³⁰ Prisoners who committed one of two statutory rape crimes, indecent exposure, or aggravated sexual assault on a child under 14, each accounted for roughly 10 percent of “Other Sex Offenses” offenders on November 30, 2004. Because these crimes are so different – statutory rape can be punished as a misdemeanor in California, while aggravated sexual assault on a child under 14 carries a sentence of 15 years to life – it is difficult to draw conclusions from the offense totals in “Other Sex Offenses.” However, the three point-in-time reports suggest that, at least since August 31, 1999, a sizable portion of the offenders in prison for “Other Sex

²⁷ CDCR incarceration counts were not available before 1999. E-mail from Christopher Shores, Assistant Information Systems Analyst, Data Analysis Unit, California Department of Corrections & Rehabilitation, to author (Jan. 13, 2005, 08:03:34 PST) (on file with author).

²⁸ See CAL. PENAL CODE § 288(a): “Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.” The reference to “Part 1” encompasses other crimes such as rape, meaning child rape could be – but is not necessarily – included in offense totals for “Lewd or Lascivious Acts with a Child under 14 years.”

²⁹ See CAL. PENAL CODE § 288.5(a): “Any person who either resides in the same home with a minor child or has recurring access to the child, who over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with a child under the age of 14 years at the time of the commission of the offense.”

³⁰ Specifically, failing to register constituted 44 percent of all “Other Sex Offenses” as of August 31, 1999, 50 percent as of December 31, 2002, and 49 percent as of November 30, 2004.

Offenses” are there because they failed to comply with California’s sex offender registration requirements.

The unpublished data also show incarceration totals for some sex crimes that victimize children that are not captured in the “Lewd Act with Child” offense category. For example, on November 30, 2004, fifty percent of the offenders in prison for “Oral Copulation” were there for the crime of “Oral Copulation with person under 14” (367 out of 732 offenders). On the same date, about forty-five percent of California offenders in prison for “Sodomy” had committed sodomy with a person younger than 14 (102 out of 227 offenders).

The California trends are generally consistent with national studies of sex offenses and crime trends. In 2000 a survey of twelve states’ law enforcement data from 1991-1996, Snyder found that four-year olds were at the greatest risk of being a victim of forcible sodomy.³¹ Overall, 67 percent of sexual assaults reported to law enforcement involved juvenile victims.³² The victim was 12 years or younger in 34 percent of these sexual assaults.³³ A 1997 study of multiple Bureau of Justice Statistics datasets observed that 44 percent of rape victims were under the age of 18.³⁴ In a 1997 survey of 73,116 incarcerated male sex offenders, two-thirds of the respondents said their victims were under the age of 18.³⁵

The California figures also illustrate another point: It is very difficult to find out what specific criminal conduct was committed by looking at commitment offense data. Offenses such as “Lewd and Lascivious Acts with a Child under 14” are defined broadly enough to include several types of sex offenses, which gives prosecutors discretion in how they charge sex criminals. According to Victoria Brown, a Santa Clara County prosecutor who handles sex crime cases, there is considerable variation in how local district attorneys prosecute the same sex offense. In a child rape case, for example, Brown said she would charge an offender with aggravated sexual assault on a child—which carries a sentence of 15 years to life—but other prosecutors might charge an offender for a “Lewd and Lascivious Act,” which carries a maximum term of eight years.³⁶ To find out what crimes are represented by the offense totals for

³¹ Howard Snyder, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, U.S. Dept. of Justice, Bureau of Justice Statistics, July 2000, 2. In this study, “sexual assaults” include forcible rape, sodomy, and forcible fondling.

³² *Id.* at 12.

³³ *Id.* at 2.

³⁴ Lawrence A. Greenfeld, *Sex Offenses and Offenders: Analysis of Data on Rape and Sexual Assault*, U.S. Dept. of Justice, Bureau of Justice Statistics, Feb. 1997, iii, <http://www.ojp.usdoj.gov/bjs/pub/pdf/soo.pdf>.

³⁵ Patrick A. Langan, Erica L. Schmitt, and Matthew R. Durose, *Recidivism of Sex Offenders Released from Prison in 1994*, U.S. Dept. of Justice, Bureau of Justice Statistics, Nov. 2003, p. 36, <http://www.ojp.usdoj.gov/bjs/pub/pdf/rsorp94.pdf>.

³⁶ Telephone Interview with Victoria Brown, Prosecutor, Santa Clara County (Jan. 27, 2006).

“Lewd and Lascivious Acts with a Child under 14,” a person “would have to call up every district attorney in the state and find out what their policies are,” she said.³⁷

California v. Other States: Similar Trends

To compare California with the other states in my sample, I requested detailed current-year and historical sex offender incarceration totals from the state corrections departments in Florida, Texas, New York, and Pennsylvania. Each state except Pennsylvania provided some historical data. Florida and Texas were able to disaggregate offense totals by commitment crime, allowing for more detailed comparisons with California figures.³⁸

The data show that Texas incarcerates more inmates for sex crimes than California. In 2004, Texas incarcerated 22,910 prisoners for sex crimes, representing more than 15 percent of its total population of 147,455 prisoners (Chart 6). Sex criminals comprised 11 percent of Florida’s prison population in 2004/2005. By contrast, California’s 13,840 incarcerated sex criminals represent 9 percent of its 158,191 inmates. Eight percent of New York prisoners – 5,085 out of 63,665 inmates – were in prison for sex crimes in 2004.

As in California, a majority of prisoners incarcerated for sex offenses in Texas and Florida in 2004 were there for crimes that victimize children. In Texas, at least 9,900 offenders were incarcerated for sexual assaults against children,³⁹ while another 3,489 offenders were in prison for the crime of “Indecency with Child,” which prohibits sexual acts between adults and children that do not include penetration.⁴⁰ In all, at least 13,389 of Texas’ 22,103 sex criminals – 61 percent – were incarcerated for sex crimes against children in 2004 (Chart 7).

Disaggregated Florida data show an even starker trend: in 2004, 7,091 out of 9,467 Florida offenders incarcerated for sex crimes – 75 percent – committed crimes that victimize

³⁷ *Id.*

³⁸ Each of the five states in my sample use different methods to classify sex offense data. For example, Texas aggregates incarceration totals for 37 separate crimes – including rape, sodomy, and sexual assaults against children—into a single “Sexual Assaults” figure. E-mail from Alicia Frezia-King, Texas Department of Criminal Justice, Open Records Act Coordinator, to author (Dec. 22, 2005, 09:13:55 PST) (on file with author). Unfortunately, Texas was only able to disaggregate its “Sexual Assaults” figure for 2004 data. E-mail from Alicia Frezia-King, Texas Department of Criminal Justice, Open Records Act Coordinator, to author (Jan. 12, 2006, 15:31:14 PST) (on file with author).

³⁹ I arrived at the 9,900 figure by adding the 2004 offense totals for the five disaggregated “Sexual Assaults” categories that specifically mentioned offenses against children. At least one other disaggregated offense category may also include offenses against children, but it is not clear how many. Texas officials were unable to break down the offense data any further. E-mail from Alicia Frezia-King, Texas Department of Criminal Justice, Open Records Act Coordinator, to author (Jan. 24, 2006, 15:26:06 PST) (on file with author).

⁴⁰ See TEX. PENAL CODE § 21.11, available at <http://www.capitol.state.tx.us/cgi-bin/statutes/pdf/frame.cmd?filepath=/statutes/docs/PE/content/pdf/pe.005.00.000021.00.pdf&title=PENAL%20CODE%20-%20CHAPTER%2021>.

children.⁴¹ Of these 7,091 offenders, 2,633 committed sexual battery against a child younger than 12 – rape of a child – which is a capital felony in Florida.⁴² An additional 3,527 criminals were in prison for “Lewd or Lascivious Conduct,” a category of offenses that includes sex with a 12- to-16 year old child, child molestation, and exhibitionism with a child.⁴³

The trend was almost as pronounced ten years earlier. In 1994, 69 percent – 3,990 out of 5,777 sex criminals in Florida prisons – were incarcerated for sex crimes involving children. That year, 1,941 offenders were in prison for sexual battery against a child, while 1,361 criminals were incarcerated for “Lewd or Lascivious Conduct.” From 1984 to 2004, Florida incarceration totals for “Lewd or Lascivious Conduct” went from 385 to 3,527, an 816 percent increase.

At first glance, historical trends for total sex criminals show New York to be something of an anomaly among the states in my sample: From 1995 to 2004, its total population of incarcerated sex criminals increased by only 23 percent, from 4,139 to 5,085 (Chart 8). However, the total number of inmates in New York prisons dropped 7 percent during this period, from 68,432 to 63,665, which put the New York figures in context.⁴⁴ From 1994 to 2004, Florida’s population of sex criminals increased by 64 percent, while California saw a 61 percent increase in this prison population. Texas saw the largest ten year increase: it incarcerated 22,078 offenders for sex crimes in 2004, a 147 percent increase from 1994, when 8,955 criminals were in prison for these offenses.

In each state I am examining, sex offenders serve longer sentences than average offenders. The 60,553 first-time felons released from California prisons in 2004 served an average sentence of 24.8 months (Chart 9). By contrast, the 2,543 sex offenders in this group served an average sentence of 45.1 months. The 480 sex criminals released from Pennsylvania prisons in 2003 spent the most time behind bars, serving an average sentence of just over 101 months. More than two-thirds (347 of 480) of the Pennsylvania sex criminals released in 2003 were incarcerated for rape, which helps explain the high Pennsylvania figure.

⁴¹ E-mail from Jami Peacock, Florida Department of Corrections, Statistician, to author (Dec. 29, 2005, 9:42:42 PST) (on file with author). I calculated the figures for total sex crimes against children by adding totals of disaggregated offense categories that mentioned offenses against children, as provided by the Florida Department of Corrections. Department statisticians said offense totals provided by this method “should be fairly accurate.” E-mail from Jami Peacock, Florida Department of Corrections, Statistician, to author (Jan. 26, 2006, 08:53:56 PST).

⁴² See FLA. PENAL CODE § 794.011(2)(a), available at http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0794/SEC011.HTM&Title=->2005->Ch0794->Section%20011#0794.011.

⁴³ See FLA. PENAL CODE § 800.04, available at http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0800/SEC04.HTM&Title=->2005->Ch0800->Section%2004#0800.04.

⁴⁴ E-mail from Linda Foglia, New York State Department of Correctional Services, Assistant Public Information Officer, to author (Nov. 14, 2005, 16:30:16 PST) (on file with author).

Chart 9 comes with an important caveat: Texas, Florida, and Pennsylvania provide data for all prisoner releases, while the New York and California data only reflect first-time felons released from state prison. As a result, the New York and California figures likely under-represent the sentences being served by all incarcerated offenders in these states.

For a second comparison of sex offense trends, I analyzed data from the National Corrections Reporting Program (NCRP), a Justice Department survey of 37 state correctional systems that includes the five states in my sample. The NCRP measures ingress and egress from state prisons – it collects admission and release data – but does not contain yearly prison population totals. Participating states have reported data to the NCRP since 1983. I examined NCRP data from 1985, 1994, and 2001, the most recent year for which data were publicly available, using SPSS 14.0.⁴⁵

NCRP does not distinguish sexual assaults targeting children from those that victimize adults, but it does collect “lewd act” sex offenses that target children in a “Lewd Act with Children” offense category.⁴⁶ In 1985, 1994, and 2001, California admitted twice as many inmates for “Lewd Act with Children” as Texas or Florida.⁴⁷ However, in 2001, 43 percent of the California inmates admitted for “lewd acts” – 1,011 out of 2,354 – were admitted for technical parole violations, not new offenses (Chart 11). By contrast, just four out of 681 Florida inmates admitted for “lewd acts,” in 2001 were parole violators. When parole violators are excluded, California still admitted the most prisoners for “lewd acts” in all three years, but the disparity is smaller (Chart 10).

Parole violations also affect California offense totals for Rape and Indecent Liberties, two offense categories that contain the vast majority of sexual assault data in NCRP. In 1994, 63 percent – 855 of 1,362 – of California prisoners admitted for rape and indecent liberties were parole violators. The same year, parole violators accounted for 28 percent of the prisoners admitted for these sex offenses in both New York and Pennsylvania, and 29 percent of all such violators in Texas. The large number of parole violators in California suggests that CDCR’s

⁴⁵ I would like to thank Julie Harris, a Public Health Genetics student at the University of Washington, for teaching me how to recode variables and conduct cross-tabulations using SPSS 14.0.

⁴⁶ E-mail from Timothy Hughes, Bureau of Labor Statistics, Statistician, to author (Dec. 28, 2005, 12:37:32 PST) (on file with author).

⁴⁷ New York and Pennsylvania only reported “Lewd Act with Children” offenses totals in 2001, so I did not include them in Chart 10.

yearly sex offense figures in Charts 1-5 include some sex criminals that have been returned for parole violations.⁴⁸

California also released more sex criminals from prison than any state in my sample. In 1994, CDCR discharged 3,805 sex criminals to parole, while the other four states combined to release 3,384 sex criminals. Finally, in each year I examined, California released more sex criminals from parole than any other state. In 1994, California discharged from parole 32 percent of all sex criminals released in the country (Chart 12). In 2001, California accounted for 38 percent of such releases – 4,412 of 11,553 sex criminals released from parole nationwide. Because nearly all California sex criminals serve a fixed three-to-five year parole term, CDCR will release from parole a sizable number of sex offenders each year for the foreseeable future.

Sex Offender-Victim Relationship

Research indicates that high percentages of sex offenders who target children know their victims.⁴⁹ A 1997 survey of 73,116 incarcerated male sex offenders found that in 46 percent of all sexual crimes against children, offenders were related to their victims.⁵⁰ Offenders victimized their own child or stepchild in 32 percent of all assaults, while seven percent of all child sexual assaults were committed by strangers.⁵¹ By contrast, strangers committed 34 percent of sexual assaults that victimized adults.⁵²

Sex Offender Recidivism: What the Research shows

The Runners' bill finds that "sex offenders have very high recidivism rates," and that "sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon."⁵³ These statements generally are not supported by current research. In a 2003 Justice Department study that tracked 9,691 sex offenders after their release from prison, 5.3 percent of these offenders were rearrested for a new sex crime within three years of their

⁴⁸ CAL. PRISONERS AND PAROLEES does not provide type-of-commitment data by commitment offense, so it is not possible to see how many offenders incarcerated for "Lewd Act with Child" in 2004 were in prison for a technical violation of parole.

⁴⁹ Leonore M.J. Simon, *Matching Legal Policies With Known Offenders*, in PROTECTING SOCIETY FROM SEXUALLY DANGEROUS OFFENDERS, 149-150 (Bruce J. Winick and John Q. La Fond, eds., 2003).

⁵⁰ Patrick A. Langan, Erica L. Schmitt, and Matthew R. Durose, *Recidivism of Sex Offenders Released from Prison in 1994*, U.S. Dept. of Justice, Bureau of Justice Statistics, Nov. 2003, p. 36.

⁵¹ *Id.*

⁵² *Id.* A recent Justice Department survey of 2004 crime victims found that 31 percent of rapes and sexual assaults of females older than 12 were committed by strangers, while 47 percent of such assaults were committed by acquaintances. Shannon Catalano, *Criminal Victimization, 2004, Bureau of Justice Statistics, National Crime Victimization Survey*, U.S. Dept. of Justice, Bureau of Justice Statistics, Sept. 2005, <http://www.ojp.usdoj.gov/bjs/pub/pdf/cv04.pdf>.

⁵³ S.B. 588, 2005-2006 Leg. Sess., 6 (Cal. 2005), http://www.leginfo.ca.gov/pub/bill/sen/sb_0551-0600/sb_588_bill_20050818_amended_sen.pdf.

release.⁵⁴ Forty-three percent of sex offenders were rearrested for any crime during the three year period, compared to 68 percent of 262,420 non-sex offenders tracked during the same period.⁵⁵ Just 1.3 percent (3,328) of non-sex offenders were rearrested for a sex crime during the three year follow-up, indicating that sex offenders were more likely to commit future sex crimes than other former inmates.⁵⁶ In a meta-analysis of ten longitudinal studies that tracked 4,724 offenders over fifteen years, Harris and Hanson found 73 percent of all offenders were never charged with or convicted of another sex crime.⁵⁷

Other studies have found that sex offenders have low recidivism rates,⁵⁸ although re-offense levels increase in studies with longer follow-up periods.⁵⁹ These findings also may be affected by the underreporting of sex crimes to law enforcement. A 2005 Justice Department survey found that just 36 percent of rapes and sexual assaults against persons 12 or older were reported to police, compared to 50 percent of all violent crime.⁶⁰

Among the states in my sample that track sex offender recidivism, Pennsylvania found that 24 percent of 1,372 sex offenders released in 1999 were returned to state custody for any new offense or technical violation of parole within three years.⁶¹ Fifty percent of offenders convicted for property offenses were returned to custody over the same period.⁶² In California, 28 percent –

⁵⁴ Langan, et al, p. 24.

⁵⁵ *Id.* at 14.

⁵⁶ *Id.*

⁵⁷ Andrew J.R. Harris and R. Karl Hanson, *Sex Offender Recidivism: A Simple Question*, Public Safety and Emergency Preparedness Canada, Solicitor General of Canada, 2004, p. 11.

⁵⁸ See, e.g., R. Karl Hanson and Kelly Morton-Bourgon, *Predictors of Sexual Recidivism: An Updated Meta-Analysis*, Public Safety and Emergency Preparedness Canada, 8 (2004) (in a meta-analysis of 95 studies that encompassed 31,216 sex offenders, the observed sexual recidivism rate was 13 percent, the violent non-sexual recidivism rate was 14 percent, and the general rate of recidivism was 36.9 percent. The criterion for “recidivism” in 27 studies was conviction, while 28 studies used arrest, 32 studies used multiple criteria, two studies relied on self-reports, and six studies used unknown criteria to measure recidivism. The median follow-up period for their studies was 60 months); R. Karl Hanson & Monique Bussiere, *Predicting Relapse: A Meta-analysis of Sexual Offender Recidivism Studies*, 66 *Journal of Consulting and Clinical Psychology*, 348 (1998) (in a meta-analysis of 61 studies that encompassed 23,393 sex offenders, the observed sexual recidivism rate was 13 percent. The most common recidivism measures were reconviction (84 percent), arrest (54 percent), self-reports (25 percent) and parole violations (16 percent). The median follow-up period for their studies was 43 months).

⁵⁹ R. Karl Hanson, *Age and Sexual Recidivism: A Comparison of Rapists and Child Molesters*, Ottawa, Solicitor General of Canada, (2001) 1, http://ww2.psepc-sppcc.gc.ca/publications/corrections/Age200101_e.asp. In this 2001 meta-analysis of 10 studies with a seven year follow-up period, Hanson found an overall sexual recidivism rate of 17.5 percent. There were 4,673 sex offenders in these ten studies.

⁶⁰ Catalano, *supra* note 43, at 10. In 1992, 1995, and 1998, 32 percent of such sexual assaults were reported to police.

⁶¹ Robert Flaherty, *Recidivism in Pennsylvania State Correctional Institutions, 1997-2003*, Pennsylvania Department of Corrections, 8 (Dec. 2005), <http://www.cor.state.pa.us/stats/lib/stats/recidivism.pdf>. The study did not report how many sex offenders were returned for the commission of a new sex crime.

⁶² *Id.*

296 of 1,075 – of “Lewd Act with Child” offenders released in 2002 were returned to CDCR custody for any new offense or technical violation of parole within two years of release.⁶³ The overall recidivism rate of California prisoners was significantly higher: 27,569 of all 52,185 prisoners (53 percent) released from CDCR institutions in 2002 had recidivated by 2004.⁶⁴

A 2003 report by the Washington State Institute of Public Policy did find significantly higher rates of recidivism among 89 sex offenders who qualified as “sexually violent predators” but were not civilly committed.⁶⁵ Over a six year period, 29 percent of these offenders committed a new felony sex offense, while 57 percent had committed a new felony.⁶⁶ This finding is consistent with other studies that suggest certain types of sex offenders re-offend at much higher levels. In their longitudinal study, Harris and Hanson found only 13 percent of incest offenders committed another sex crime after 15 years, in contrast to 35 percent of child molesters who victimized boys.⁶⁷ Other researchers have found incest offenders are less likely to re-offend than extra-familial child molesters.⁶⁸ Overall, Harris and Hanson found sex offenders that victimized boys, had prior sex crime convictions, and were younger than 50 when released from prison, were five times as likely to commit new sex crimes within five years of release as offenders without these traits.⁶⁹ Summarizing current research, Hanson and Morton-Bourgon find a “general consensus” that sexual recidivism is associated with two general factors: deviant sexual interests and antisocial orientation/lifestyle instability.⁷⁰

Because sex offenders are a heterogeneous group, many states use risk assessment instruments to determine which offenders pose a higher risk of recidivism and require treatment and enhanced parole supervision. With the exception of California, every state in my sample uses the Static-99, a 10-item assessment that measures risk of re-offense, to evaluate sex offenders before they are released to parole. The Static-99 assesses constant variables, such as whether an

⁶³ DATA ANALYSIS UNIT, CAL. DEPT. OF CORRECTIONS AND REHABILITATION, CAL. PRISONERS AND PAROLEES 2004, 84 (2005).

⁶⁴ *Id.*

⁶⁵ Cheryl Milloy, *Six-Year Follow-Up of Released Sex Offenders Recommended for Commitment Under Washington’s Sexually Violent Predator Law, Where No Petition Was Filed*, Washington State Institute of Public Policy (Dec. 2003), <http://www.wsipp.wa.gov/rptfiles/SVPFinal.pdf>. In Washington, “sexually violent predators” are offenders who have been convicted of or charge with a sexually violent offense and suffer from a personality disorder or mental condition that make future sex crimes likely.

⁶⁶ *Id.* at p. 9.

⁶⁷ Harris and Hanson, *supra* note 57, at 11. The boy-victim child molester re-offense figure is based on 95 observations, and had a confidence interval from 29.3 percent to 40.7 percent (plus or minus 5.7 percent). Most confidence intervals in their study were less than five percent. *Id.* at 9.

⁶⁸ See, e.g., G.T. Harris, M.E. Rice, and V.L. Quinsey, “Appraisal and Management of Risk in Sexual Aggressors: Implications for Criminal Justice Policy,” 4 PSYCHOLOGY, PUBLIC POLICY AND LAW, 73; Hanson, *supra* note 49.

⁶⁹ Harris and Hanson, *supra* note 57, at 11.

⁷⁰ Hanson and Morton-Bourgon, *supra* note 58, at 1.

offender has a history of sexual and non-sexual violence, and has committed prior sex offenses. In a 2003 evaluation, Pennsylvania correctional staff scored a random sample of 550 sex offenders released in 1994-1995 and 2000 on the Static-99.⁷¹ Sixty-one percent of the 1994-1995 offenders scored as “high-risk” on the Static-99 had recidivated after six years, compared to 33 percent of offenders that scored in the “low-risk” range.⁷²

In Texas, the state Council on Sex Offender Treatment, which treats the state’s “sexually violent predators” on an outpatient basis, is researching several dynamic risk assessment tools to use alongside the Static-99.⁷³ Dynamic tools measure variables that can change over time, such as sexual arousal to deviant sexual stimuli. The Texas council already uses one dynamic tool, the penile plethysmograph, which measures an offender’s erectile response to stimuli.

Treating Sex Offenders

California is one of a few states with no formal treatment for incarcerated sex offenders – a 2000 survey found that 39 states had a treatment program⁷⁴ – and CDCR leaders recognize the need to develop a treatment option. According to Jeanne Woodford, Undersecretary of the CDCR, the lack of treatment is a major reason why CDCR supports the Runners’ bill and is experimenting with GPS surveillance. “Right now I just have to protect the public,” she said while speaking at Stanford Law School on November 9, 2005.

In the past five years, scholars have engaged in a spirited debate over evidence that clinical treatment can lower a sex offender’s risk of recidivism. In a 2002 meta-analysis of 43 studies with data on 9,454 sex offenders, Hanson et al. found offenders that received psychological treatment had a lower sexual offense rate (12.3 percent) than offenders in a comparison group (16.8 percent).⁷⁵ However, most of the studies in this meta-analysis lacked randomized designs, causing other scholars to question the validity of the treatment effect.⁷⁶

⁷¹ James Austin, Johnette Peyton, Kelly Dedel Johnson, *Reliability and Validity Study of the Static-99/RRASOR Sex Offender Risk Assessment Instruments* 12 (Jan. 2003), available at http://www.pccd.state.pa.us/pccd/lib/pccd/stats/pa_soab_final_report.pdf.

⁷² *Id.*, 22. Recidivism was defined to include both arrests and return to prison for a new offense or technical parole violation. Sixty-seven percent of the offenders released in 2000 that were scored as “high-risk” recidivated.

⁷³ Telephone interview with Allison Taylor, *supra* note 14.

⁷⁴ PAULA WENGER, COLORADO DEPT. OF CORRECTIONS, STATE SEX OFFENDER TREATMENT PROGRAMS: 50-STATE SURVEY CONDUCTED BY THE COLORADO DEPARTMENT OF CORRECTIONS (2000), AVAILABLE AT http://www.doc.state.co.us/admin_reg/PDFs/SO-report-send2.pdf.

⁷⁵ R. Karl Hanson et al., “First report of the Collaborative Outcome Data Project on the effectiveness of treatment for sex offenders,” 14 *SEXUAL ABUSE: A JOURNAL OF RESEARCH AND TREATMENT*, 169.

⁷⁶ M.E. Rice & G.T. Harris, *The size and sign of treatment effects in sex offender therapy*, in *SEXUALLY COERCIVE BEHAVIOR: UNDERSTANDING AND MANAGEMENT*, 438-440 (R.A. Prentky, E.S. Janus, & M.C. Seto, eds., 2003).

Other longitudinal studies also have found treatment effects. In a 2003 non-randomized study of 195 adult male sex offenders in Vermont, just 5.4 percent of offenders who completed treatment re-offended over six years, compared to 30 percent of offenders who did not receive treatment.⁷⁷ One clinical study that was randomized, California's Sex Offender Treatment and Evaluation Project, found no overall treatment effect: "In the context of growing optimism about the benefits of sexual offender treatment, this study's message is, 'not so fast, we are still far from understanding how and when treatment works.'"⁷⁸ Offenders in the program spent the final two years of their prison terms in treatment at Atascadero State Hospital and then received limited counseling during their first year on parole. The study's directors noted that offenders in the program might have benefited from a more structured aftercare program because offenders faced high-risk situations soon after returning to the community.⁷⁹

Many treatment providers advocate a containment model for sex offenders in reentry that includes specialized treatment, supervision by parole officers with small caseloads, and use of polygraph exams to monitor deviant behavior.⁸⁰

California: How CDCR Manages Sex Offenders on parole

Of the 9,411 registered sex offenders under CDCR parole supervision, 2,000 are classified as "high-risk" sex offenders, a designation that makes them eligible for GPS-monitoring and CDCR-paid treatment from contracted therapists. These "high-risk" offenders are supervised by 50 specially trained parole agents, each of whom has a caseload of 40 offenders.

The size of the "high-risk" sex offender program is determined by CDCR's funding levels. Because CDCR only has funds to pay 50 "high risk" parole agents, the size of the program is capped at 2,000 offenders. CDCR and observers agree that some of the other 7,400 sex offenders on parole likely should be labeled as high-risk, but "we do not have the funding for the additional caseloads," said a CDCR official.⁸¹ Further, because the program's 50 parole

⁷⁷ Robert McGrath et al., *Outcome of a Treatment Program for Adult Sex Offenders: From Prison to Community*, 18 JOURNAL OF INTERPERSONAL VIOLENCE 3, (Jan. 2003). These results could be affected by a selection bias: The treatment group was made up of volunteer offenders who by participating stood to earn meritorious good time and the prospect of shorter prison terms under Vermont's indeterminate sentencing scheme.

⁷⁸ Janice K. Marques et al., *Effects of a Relapse Prevention Program on Sexual Recidivism: Final Results From California's Sex Offender Treatment and Evaluation Project (SOTEP)*, 17 SEXUAL ABUSE: A JOURNAL OF RESEARCH AND TREATMENT, 99 (Jan. 2005).

⁷⁹ *Id.*, 102.

⁸⁰ See, e.g., California Coalition on Sexual Offending, *Effective Management of Sex Offenders Residing in Open Communities*, available at <http://ccoso.org/containment.php>; Colorado Sex Offender Management Board, *Lifetime Supervision of Sex Offenders*, 17 (Nov. 1, 2005), available at http://dcj.state.co.us/odvsom/Sex_Offender/SO_Pdfs/Annual%20Report%202005.pdf.

⁸¹ E-mail from California Department of Corrections and Rehabilitation official, to author (Jan. 4, 2006) (on file with author).

agents are unable to cover every region in the state, if a sex offender is paroled to a city without a parole agent, he cannot be in the “high-risk” program, even if he poses an extremely serious risk of sexual recidivism. CDCR has 15 high-risk parole agents in the entire Central Valley Parole Region, from Bakersfield to the Oregon Border (Figure 1). Sex offenders paroled to more rural areas of the Central Valley are de facto excluded from the “high-risk” program.⁸²

Budget constraints also limit the treatment options for sex offenders in the “high-risk” program. CDCR has enough funds to pay for 250 of the 2,000 offenders to receive treatment from four licensed therapists who have practices in ten counties throughout the state.⁸³ The therapists try to set up programs in locations with two or more high-risk parole agents.⁸⁴ The remaining 1,750 offenders may be able to attend relapse prevention sessions led by their high-risk parole agent, but not all agents conduct these sessions, and agents that do have no standardized curriculum to follow. Sex offender parolees that are not in the “high-risk” program can receive some services from CDCR’s Parole Outpatient Clinics, but these facilities were designed for parolees with mental illnesses and many of their clinicians are not trained to treat sex offenders.⁸⁵ According to an internal CDCR memorandum, counseling services for sex offenders at these clinics are “sporadic at best.”⁸⁶

CDCR uses a screening tool developed by a former employee to determine which sex offender parolees qualify for the “high-risk” program. Gary Lowe, a licensed clinician who previously served as CDCR’s sex offender program coordinator, created the three-question assessment (Figure 2) in 1989-1990, when the department was assembling specialized parole caseloads.⁸⁷ “We needed something very quickly, and I had to take into account that parole officers had very limited information available to make these [risk] determinations,” said Lowe.

Lowe’s instrument looks at some of the variables measured by accredited assessment tools like the Static-99 – such as an offender’s commitment offense and past criminal record – but it has never been externally validated and is not used by other states. Nevertheless, the tool has proved popular with high-risk parole agents in the field, who successfully resisted Lowe’s efforts

⁸² Telephone Interview with Tom Tobin, Public Policy Chair, California Coalition on Sexual Offending (Jan. 4, 2006).

⁸³ Treatment is provided in Alameda, San Francisco, Santa Clara, Orange, Riverside, San Diego, Fresno, Shasta, and Sacramento Counties. E-mail from California Department of Corrections and Rehabilitation official, to author (Jan. 26, 2006, 08:35:33 PST) (on file with author).

⁸⁴ Telephone Interview with Tom Tobin, *supra* note 82.

⁸⁵ Marcus Nieto, *Community Treatment and Supervision of Sex Offenders: How it’s Done Across the Country and in California*, California Research Bureau, 45 (Dec. 2004), <http://www.library.ca.gov/crb/04/12/04-012.pdf>.

⁸⁶ Internal CDCR Memorandum, *supra* note 7.

⁸⁷ Telephone Interview with Gary Lowe, Member, California Coalition on Sexual Offending (Jan. 20, 2006).

to update the tool during the 1990's. "Headquarters [officials] would get a lot of feedback from the field saying 'we like the current tool, we don't want to change,'" said Lowe.⁸⁸ More recently, Lowe and the California Coalition on Sexual Offending, an association of sex offender treatment providers, urged CDCR to adopt the Static-99, but this effort failed.⁸⁹ Because adopting a new screening tool would require new training for high-risk parole agents, it must be negotiated with the California Correctional Peace Officers Association, the prison guard union. According to Lowe, the union has been open to the idea of moving to the Static-99 in the past, but field parole agents have balked.

CDCR's inability to adopt a validated risk assessment tool presents challenges for its contract therapists, who must begin treatment without a firm sense of the risk posed by the offenders they treat. "To some extent, you don't know who you are getting," said Tom Tobin, one of CDCR's four contract therapists.⁹⁰ As a result, therapists often score offenders themselves on the Static-99.

In sum, CDCR's antiquated risk assessment process means the department may not know if some high-risk sex offenders are falling through the cracks and not receiving the close supervision and services that could prevent recidivism. And even if Static-99 assessments indicated that CDCR had more than 2,000 high-risk sex offenders on parole, the department would not be able to add more offenders to its "high-risk" program without first finding funds to hire additional parole agents to supervise them.

CDCR is now considering proposals to both hire more agents and adopt new risk assessment tools, including the Static-99 and perhaps a dynamic assessment tool. In one scenario, CDCR would actually have fewer "high risk" sex offender parolees, but these offenders would receive more intensive supervision. The "high risk" offenders would be monitored with GPS-bracelets, receive treatment from licensed therapists, and be supervised by parole agents with caseloads of 20 offenders.⁹¹ Offenders that progressed in treatment, as measured by the Stable-2000 or another dynamic risk assessment tool, could be shifted to a new "medium-risk" designation, under which they would not be subject to GPS surveillance.

At a minimum, officials are working to shift to the Static-99 assessment tool. "I know they are really trying to shift over to use one of the well-respected actuarial instruments,

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Telephone Interview with Tom Tobin, *supra* note 82.

⁹¹ Internal CDCR Memorandum, *supra* note 7.

specifically the Static-99,” said Tobin.⁹² However, these proposals had not been officially approved by CDCR at the time this paper was submitted.

CDCR is also in the process of outfitting 500 of its high-risk sex offender parolees with GPS monitoring bracelets; as of late January, more than 200 offenders had received the one-piece ankle bracelet. Forty-eight of these offenders had been returned to custody for parole violations, although only a “small percentage” of these violations were related to GPS.⁹³ A handful of offenders were returned for tampering with their GPS bracelets or refusing to wear them. GPS technology also helped agents apprehend a “high risk” sex offender in Orange County who visited the parking lot of an elementary school, a violation of his parole conditions.⁹⁴

In the next section, I will examine the experience of other states that have used electronic monitoring on paroled sex offenders and new research on the effectiveness of this technology in preventing recidivism.

Electronic Monitoring: Research and Lessons from other states

While electronic monitoring has been used on offenders in prison diversion programs since the 1980’s, its use in supervising paroled sex offenders is a more recent phenomenon. Since 2004, eight states have passed laws requiring certain sex offenders to be electronically monitored after their release from prison.⁹⁵ This year, at least 10 more states – including California – are considering similar legislation.⁹⁶

Legislators have turned to electronic monitoring in part because recent technology has made it a better fit for supervising sex offenders. The oldest monitoring technology, radio frequency monitoring, is largely used to enforce curfews and house arrest. In radio frequency monitoring, an offender wears a transmitter that sends signals to a receiver unit connected to the offender’s landline telephone.⁹⁷ If the offender moves out of range of the receiver unit, the receiver will report this to a monitoring center.⁹⁸ While radio frequency technology can tell

⁹² Telephone Interview with Tom Tobin, *supra* note 82.

⁹³ Telephone Interview with Dan Stone, California Department of Corrections and Rehabilitation, GPS Project Director (Jan. 23, 2006).

⁹⁴ Press Release, California Department of Corrections and Rehabilitation, New GPS Technology Results in Arrest of Sexually Violent Predator in Orange County (Nov. 17, 2005) (on file with author).

⁹⁵ The eight states are Oklahoma, Florida, Ohio, Missouri, Iowa, Alabama, New Jersey, and Montana. KAREN HERALD, WASHINGTON ASS’N OF SHERIFFS AND POLICE CHIEFS, ELECTRONIC MONITORING STUDY: REPORT TO THE LEGISLATURE 1-2 (2005).

⁹⁶ The ten states are California, Connecticut, Idaho, Kansas, Mississippi, New Hampshire, New York, Virginia, Washington, and Wisconsin. *Id.*; author’s count.

⁹⁷ Florida Office of Public Policy Analysis & Government Accountability, *Electronic Monitoring Should be Better Targeted to the Most Serious Offenders*, (Apr. 2005), p. 2, available at <http://www.oppaga.state.fl.us/reports/pdf/0519rpt.pdf>.

⁹⁸ HERALD, *supra* note 95, at 8.

parole agents whether an offender is at a given location, it provides no information on the offender's whereabouts once he is out of range of the receiver.

Two types of newer GPS technology can fill this gap. Offenders under GPS monitoring wear a transmitter and receiver that catalog their location throughout the day. In the "passive" GPS system, offenders connect the receiver to their landline telephone at the end of the day, which transmits data on their whereabouts that day to the monitoring center. In essence, "passive" GPS gives parole agents an after-the-fact report on where an offender has been. "Active" GPS systems have cellular capability, which means the GPS receiver transmits the offender's real-time location to monitors.⁹⁹

While both forms of GPS monitoring allow parole agents to enforce geographic restrictions on parolees' movements, CDCR officials consider active-GPS to be a more useful tool for monitoring high risk offenders because it provides up-to-the-minute reports on offenders' location. For example, in Orange County, CDCR is sharing its GPS data with the local sheriff's department, enabling deputies to check crime reports against CDCR's GPS data to see if parolees are in the vicinity of reported crime.¹⁰⁰ In Florida, parole agents have used active-GPS data to enforce exclusion zones where sex offenders cannot enter and notify victims of offenders' whereabouts.

GPS technology is not perfect. To work, GPS receivers must be able to contact GPS satellites; if something blocks the signal, the units lose communication with the monitoring center. In Pennsylvania, where parole officials are running a handful of small GPS pilot tests, parole agents have lost contact with parolees who work in warehouses and other buildings that block GPS signals.¹⁰¹ In New York City, officials found that GPS bracelets lose their signal in the subway system and in areas between tall buildings. Rural states have a different problem with active-GPS systems: Since the technology depends on cell phone transmissions, it can't be used in rural or mountainous areas that lack cell phone coverage.¹⁰²

Setting up a GPS monitoring program presents cultural and administrative challenges for correctional agencies. For parole agents used to making home calls and checking in with a parolee's employer, GPS monitoring entails lots of hours in front of a computer, mining data. "We are finding our agents have a significant learning curve to pull out the data they need from

⁹⁹ *Id.*

¹⁰⁰ Telephone Interview with Dan Stone, *supra* note 93.

¹⁰¹ Telephone Interview with Leo Dunn, Pennsylvania Department of Probation and Parole, Assistant Director, Office of Legislative Affairs and Communications (Jan. 9, 2006).

¹⁰² HERALD, 26, 46. Kansas and Tennessee are two states that have reported this problem.

GPS,” said Dan Stone, project manager of CDCR’s GPS pilot.¹⁰³ Negotiating with the companies that sell GPS equipment can be difficult as well. Brenda Blackwell, a professor at Georgia State University who is evaluating a GPS pilot conducted by the Georgia Parole Board, said vendors were reluctant to share data on their systems before receiving a contract from the state. “The vendors are difficult to get data from,” she said.¹⁰⁴

Legal issues have prevented some correctional agencies from putting more parolees on electronic monitoring systems. In Florida, the Department of Corrections has been reluctant to place parolees on electronic monitoring without a court order because of case law that suggests the department can only revoke the parole of electronically-monitored offenders if their monitoring was court-ordered.¹⁰⁵ Active-GPS systems also present liability issues, since the units provide parole agents with real time data on parolees’ location.¹⁰⁶

Obstacles aside, some experts have suggested that for high-risk sex offenders, electronic monitoring is a more humane sanction than the alternatives, which include indefinite confinement to a civil commitment program or continued incarceration.¹⁰⁷ But researchers have questioned whether there is any empirical evidence that electronic monitoring reduces recidivism for sex offenders or broader offender populations. While some studies have found that electronic monitoring reduces recidivism, few of these evaluations are methodologically sound. In a 2005 meta-analysis of 119 studies that looked at the use of electronic monitoring on moderate to high-risk offenders, Renzema and Mayo-Wilson found just three studies that contained a control or comparison group and tracked outcome measures.¹⁰⁸ In their view, this scant literature shows there are “virtually no data” supporting electronic monitoring as a tool for reducing crime: “After 20 years, it is clear that [electronic monitoring] has been almost desperately applied without adequate vision, planning, program integration, staff training, and concurrent research.”¹⁰⁹

However, in one of the three evaluations that met Renzema and Mayo-Wilson’s criteria, high-risk sex offender parolees that received a combination of electronic monitoring and treatment did post lower recidivism rates than the control group. A 2002 study compared a group

¹⁰³ Telephone Interview with Dan Stone, *supra* note 93.

¹⁰⁴ Telephone Interview with Brenda Blackwell, Georgia State University, Associate Professor of Criminal Justice (Jan. 23, 2006).

¹⁰⁵ Florida Office of Public Policy Analysis & Government Accountability, *supra* note 97, at 4.

¹⁰⁶ HERALD, *supra* note 95, at 10.

¹⁰⁷ Kathy G. Padgett, William D. Bales, Thomas G. Blomberg, *Under Surveillance: An Empirical Test of the Effectiveness and Consequences of Electronic Monitoring*, CRIMINOLOGY AND PUBLIC POLICY (forthcoming Feb. 2006).

¹⁰⁸ Marc Renzema & Evan Mayo-Wilson, *Can Electronic Monitoring Reduce Crime for Moderate to High Risk Offenders?*, 1 J. OF EXPERIMENTAL CRIMINOLOGY 227 (2005).

¹⁰⁹ *Id.*, 230.

of violent offenders on electronic monitoring in Georgia with a historical control group.¹¹⁰ Offenders in the experimental group were electronically monitored for at least 90 days. Three years after their release from prison—after the monitoring had ceased—just two of 35 sex offenders that received electronic monitoring had been returned to custody, compared with 13 of 44 offenders in the control. As Renzema and Mayo-Wilson point out, the treatment received by the electronically monitored offenders could be a confounding factor, since it seemed to be more elaborate than that provided to the control. “Perhaps the non-[electronically monitored sex offenders . . . simply encountered a less-effective, less-organized treatment package.”¹¹¹

A forthcoming study finds electronic monitoring significantly reduces recidivism for new offenses and technical violations of supervision while offenders are being monitored. Padgett, Bales, & Blomberg, three criminologists at Florida State University, obtained Florida Department of Corrections data on 75,661 felony offenders in the department’s home confinement program from 1998 to 2002. Of this sample, 5,523 offenders were subject to electronic monitoring.¹¹² Florida’s program includes both probationers who have received sentences of home confinement and parolees under correctional supervision. Within the program, electronic monitoring is generally used on offenders that pose a greater risk to public safety, as measured by current and past criminal actions.¹¹³ Florida uses both radio frequency monitoring and GPS technology,¹¹⁴ allowing the authors to compare the effectiveness of different types of electronic monitoring technology by three outcome measures: new offenses, technical violations, and absconding from supervision. The authors grouped offenders into three offense categories – drug, property, and violent offenders, a category that includes 2,951 sex offenders – and controlled for demographic and prior record variables.

They found that both GPS and radio frequency monitoring have been almost startlingly effective at preventing offenders from committing new offenses while they are monitored. Violent offenders on GPS monitoring were 91.5 percent less likely to commit a new offense than

¹¹⁰ M.A. Finn & S. Muirhead-Steves, *The Effectiveness of Electronic Monitoring with violent male parolees*, 19(2) JUSTICE QUARTERLY 293 (2002).

¹¹¹ Renzema & Mayo-Wilson, *supra* note 108, at 228.

¹¹² Padgett, Bales & Blomberg, *supra* note 107, at 44. Because this study has a contemporaneous control and measures three specific outcomes, it would seem to fit the criteria used by Renzema in his meta-analysis, which is ongoing. However, Professor Renzema did not respond to an e-mail inquiry on this matter. I would like to thank Professor Blomberg for sharing this study with me in advance of its publication.

¹¹³ *Id.* (manuscript at 22, on file with author).

¹¹⁴ The study does not differentiate between offenders on active-GPS or passive-GPS monitoring. However, the vast majority of offenders were on active-GPS monitoring, the type of GPS technology used by the Florida Department of Corrections during the years in question. Telephone Interview with Kathy Padgett, Professor of Criminology, Florida State University (Jan. 25, 2006).

violent offenders that were not electronically monitored.¹¹⁵ Violent offenders on radio frequency monitoring had even lower recidivism rates: they were 98.1 percent less likely to commit a new offense than violent offenders not on monitoring. According to the authors, these findings have clear implications for public safety. "...Either form of electronic surveillance appears to significantly reduce the likelihood of re-offending for all three 'types' of offender."

Electronic monitoring had a more moderate effect on sex offenders in the study. Electronically monitored sex offenders were 44.8 percent less likely to commit a new offense than sex offenders that were not electronically monitored. "The effect is not as great for sex offenders as other offenders because they are already less likely to be revoked than any other kind of offender," said Kathy Padgett, one of the study's authors.¹¹⁶ The researchers did not track whether GPS outperformed radio frequency monitoring in deterring sex offenders from committing new offenses; the data reflect sex offenders subject to both forms of monitoring.

Padgett and her colleagues also found that electronically monitored offenders were significantly less likely to be revoked for a technical violation, a finding that is somewhat at odds with other studies that have found a "surveillance effect," in which offenders under more intensive forms of supervision are more likely to get caught violating their conditions of parole and probation.¹¹⁷ Overall, they found Florida offenders on radio frequency monitoring were 95.7 percent less likely to be revoked for technical violations than home confinement offenders that were not electronically monitored, while GPS-monitored offenders were 90.2 percent less likely to be revoked. The difference in revocation rates is statistically significant, meaning that GPS-monitored offenders were more likely to be revoked than offenders on the less intrusive radio frequency technology, which does suggest the presence of some "surveillance effect."¹¹⁸ These findings may not be generalizable to California, which has high rates of technical violations for parole.

For sex offenders, electronic monitoring had virtually no effect on the rate of revocation for technical violations; monitored sex offenders were only four-tenths of one percent (.004) less likely to have their supervision revoked for a technical violation than un-monitored sex offenders.

Finally, the authors report that electronically monitored offenders absconded at significantly lower rates than their counterparts who were not monitored. Violent offenders on radio frequency monitoring were 95.7 percent less likely to abscond than their un-monitored counterparts, while GPS-monitored violent offenders were 91.2 percent less likely to abscond

¹¹⁵ Padgett, Bales & Blomberg, *supra* note 107 at 25.

¹¹⁶ Telephone Interview with Kathy Padgett, Jan. 25, 2006.

¹¹⁷ Padgett, Bales & Blomberg, *supra* note 107 at 25 (manuscript at 25); *see also* TRAVIS at 109-110.

¹¹⁸ *Id.* (manuscript at 24, on file with author).

from supervision. Here again, electronic monitoring had a smaller effect on sex offenders in the sample—monitored sex offenders were 41.6 percent less likely to abscond. However, given the public safety consequences presented by sex offenders who abscond from supervision, this finding is still noteworthy.

Summarizing their findings, the authors' state that electronic monitoring "significantly reduced the likelihood of revocation for a new offense and absconding from supervision, even when controlling for socio-demographic characteristics of the offender, current offense, prior record, and term of supervision factors and conditions."

It is important not to overstate the researchers' findings involving sex offenders. From the data provided, it is not clear if the population studied was disproportionately made up of higher-risk or lower-risk sex offenders, or if any of the monitored offenders also were receiving treatment. The researchers' data source also does not indicate how many—if any—electronically monitored sex offenders committed offenses upon members of their own family. "I am not aware of any studies that have reported upon this question," said Thomas Blomberg, one of the study's authors.¹¹⁹ Perhaps most importantly, their data set does not show the effects of monitoring sex offenders over an extended period of time.

The Florida State study does provide empirical support for a finding noted by other researchers: Electronic monitoring reduces recidivism while offenders are subject to monitoring. But when the bracelets come off, other studies have found that monitored offenders perform no better than offenders that were never subject to monitoring.¹²⁰ As Peggy Conway, editor of *The Journal of Offender Monitoring*, put it, "the research suggests that electronic monitoring will create compliance while the person is being monitored. If you are looking to postpone recidivism, there is value there."¹²¹

As mentioned, some states' solution to this issue is to keep the bracelets on—for life, or at least long-term periods. But GPS can only help parole agents detect criminal behavior that is revealed by an offender's location. For offenders who victimize children they are related to, or offenders convicted of computer sex crime, GPS is likely to be of little use. "Their pattern of behavior may not be something that GPS can help with," said Tony Streveler, a policy analyst

¹¹⁹ E-mail from Thomas Blomberg, Professor of Criminology, Florida State University, to author (Jan. 13, 2006, 08:43:12 PST) (on file with author).

¹²⁰ Renzema and Mayo-Wilson, *supra* note 108, at 228. Padgett, Bales, and Blomberg are now studying what happened to monitored offenders in the sample after their monitoring ceased. Telephone Interview with Thomas Blomberg, Professor of Criminology, Florida State University (Jan. 25, 2006).

¹²¹ Telephone Interview with Peggy Conway, Editor of THE J. OF OFFENDER MONITORING (Dec. 27, 2005).

with the Wisconsin Department of Corrections.¹²² Monitoring such offenders by GPS may not make sense from a cost-benefit perspective.

While there is little, if any, cost-benefit research comparing electronic monitoring to other sanctions—a Maryland task force studying GPS monitoring found no studies on the cost effectiveness of GPS have been performed¹²³—it is clear that monitoring systems come with a considerable price tag. Each of the active-GPS units used by CDCR costs approximately \$7 per day, not counting staff costs. When personnel costs are factored in, the technology becomes much more expensive. The Maryland task force observed that “personnel costs may well turn out to be the most expensive element of the system.”¹²⁴ Because combing through the GPS data is labor-intensive, parole agents that supervise offenders on electronic monitoring have smaller caseloads than regular agents. CDCR has given its active-GPS agents caseloads of 20 offenders, half the normal caseload of parole agents that supervise “high-risk” sex offenders. In Florida, where parole agents that conduct active-GPS monitoring have caseloads of 17 offenders, the personnel costs of active-GPS monitoring are \$11.13 per offender each day.¹²⁵ Adding in the cost of the technology, it costs \$20.01 per day to monitor a Florida offender with active-GPS technology.¹²⁶ Operating a mature electronic monitoring system entails additional costs, ranging from training to storage and repair. If correctional departments fail to act in response to active-GPS information, state governments may end up spending more to defend them in lawsuits.¹²⁷

If electronic monitoring could effectively incapacitate the most dangerous sex offenders and allow them to live safely in society, long-term monitoring could be more cost effective than prolonged incarceration or civil commitment. In 2003, California spent \$41.6 million to run an in-patient civil commitment program for 483 “sexually violent predators”—a price of \$59,500 per offender.¹²⁸ In Texas, the state Council on Sex Offender Treatment manages sexually violent predators on an outpatient basis, using a combination of clinical treatment, polygraph and penile plethysmograph tests, and GPS monitoring. Since the program’s inception in 2001, 21 of 59

¹²² Telephone Interview with Tony Streveler, Policy Analyst, Wisconsin Department of Corrections (Jan. 26, 2006).

¹²³ TASK FORCE TO STUDY CRIMINAL OFFENDER MONITORING BY GLOBAL POSITIONING SYSTEMS: FINAL REPORT TO THE GOVERNOR AND THE GENERAL ASSEMBLY 21 (2005), http://www.dpscs.state.md.us/publicinfo/publications/pdfs/GPS_Task_Force_Final_Report.pdf.

¹²⁴ TASK FORCE TO STUDY CRIMINAL OFFENDER MONITORING, *supra* note 123 at 20.

¹²⁵ Florida Office of Public Policy Analysis & Government Accountability, *supra* note 93, at 5. The same analysis found that monitoring an offender with radio frequency technology costs \$11.00 per day (technology represents \$2.34 of this cost). *Id.*

¹²⁶ *Id.*

¹²⁷ TASK FORCE TO STUDY CRIMINAL OFFENDER MONITORING, *supra* note 123, at 21.

¹²⁸ Nieto, *supra* note 85, at 38.

participants have been returned to custody for technical violations of their commitment, but only one offender has recidivated with a new offense, and this was not a sex crime.¹²⁹

To offset the costs of electronic monitoring, some states require offenders to pay the costs of their monitoring. The four states that have approved lifetime GPS monitoring legislation for certain sex offenders – Oklahoma, Missouri, Ohio, and Florida – each require offenders to pay fees that finance at least a portion of their monitoring, with exceptions for offenders who are unable to pay.¹³⁰

In California, the Runners’ bill also would require sex offenders to pay for their own monitoring, providing they are able to pay.¹³¹ It is unclear if CDCR would charge offenders the full cost of their monitoring—which would be added to the fees, assessments, and restitution payments some offenders already must pay—or how many California sex offenders would be unable to pay. In an analysis of the Runners’ proposed ballot initiative, which is virtually identical to their bill, the California Legislative Analyst’s Office estimates the overall initiative would cost in the “low hundreds of millions of dollars annually,” in the short term.¹³² The Runners’ have no cost estimate for the GPS provision in their bill, or for their overall proposal.¹³³

If financially solvent offenders on parole simply refused to pay for GPS monitoring, CDCR could revoke their parole. For offenders that are no longer under state supervision, the consequences of a refusal to pay – or a refusal to submit to GPS-monitoring – are unclear. The Runners’ bill provides no penalties for offenders in the community who refuse to pay. The bill also does not specify what administrative entity – CDCR or county probation departments – would be responsible for monitoring offenders released back to the community.¹³⁴

As a policy matter, the Runners’ lifetime GPS proposal is broader in scope than the electronic monitoring provisions in “Jessica’s Law” bills that passed last year. In Florida, legislators mandated lifetime GPS monitoring for the following offenses: kidnapping a child under 13 (when it includes sexual activity with the child), false imprisonment of a child under 13 (when it includes sexual activity with the child), luring or enticing a child under 12 into a

¹²⁹ E-mail from Allison Taylor, Executive Director, Texas Council on Sex Offender Treatment, to author (Jan. 9, 2006, 09:53:08 PST) (on file with author).

¹³⁰ HERALD, *supra* note ??, at 32, 42, 43.

¹³¹ S.B. 588, 2005-2006 Leg. Sess., 28 (Cal. 2005). http://www.leginfo.ca.gov/pub/bill/sen/sb_0551-0600/sb_588_bill_20050818_amended_sen.pdf. The bill states that no sex offender would be denied parole because of an inability to pay for GPS monitoring.

¹³² CALIFORNIA LEGISLATIVE ANALYST’S OFFICE, SEXUAL PREDATOR PUNISHMENT AND CONTROL ACT: JESSICA’S LAW 6 (2005), <http://www.lao.ca.gov/ballot/2005/050731.pdf>. The Legislative Analyst also estimates the bill could result in one-time capital outlay costs in the low hundreds of millions of dollars to increase prison capacity and add beds at the state mental hospital.

¹³³ Telephone Interview with Kyle Packham, *supra* note 17.

¹³⁴ CALIFORNIA LEGISLATIVE ANALYST’S OFFICE, *supra* Note 132 at 3.

dwelling, sexual battery (sex with a child under 12, and sex with a child under 18 when the offender has familial or custodial authority over the child), and lewd and lascivious battery (sex with a child aged 12 to 16).¹³⁵ The GPS monitoring requirement applies to offenders that commit these crimes after July 1, 2005. However, Florida sex offenders that previously have been convicted of any of these crimes also must be monitored by GPS for life if they are convicted of one of four additional sex crimes.¹³⁶ According to estimates from the Florida Department of Corrections, the law will result in 328 sex offenders being placed under GPS monitoring this year; within three years, 1,783 additional sex offenders will be affected.¹³⁷

While the Florida law requires lifetime GPS monitoring for several types of criminals that target children, it does not mandate GPS bracelets for other sex criminals, including some who commit crimes against children, such as lewd and lascivious exhibitionism.¹³⁸ In contrast, the Runners' bill would require lifetime GPS monitoring for all registered felon sex offenders sentenced to prison. According to the California Department of Justice's website, there are 159 registerable sex offenses in California, ranging from rape to pimping where a prostitute is younger than 16.¹³⁹

By basing their GPS proposal on the roster of offenses covered by California's sex offender registration law, the Runners' bill almost certainly would apply GPS to offenders who do not require lifetime GPS monitoring to prevent recidivism, and whose criminal behavior is not revealed by their location. As the California offense data show, it is very difficult to determine underlying criminal behavior by looking at commitment offenses—a conviction for "Lewd or Lascivious Act against a Child under 14," could reflect rape of a child, a molestation crime, or exhibitionism. In addition, because plea bargains are widely used in sex offender prosecutions, an offender's commitment offense may not be a reliable indication of his actual crime.

Experts warn that widespread application of GPS monitoring could have collateral consequences. "If we thought we had problems with plea agreements in the past, plea agreements

¹³⁵ FLORIDA HOUSE OF REPRESENTATIVES STAFF ANALYSIS, H.B. 1877, 2005 REG. SESS., AT 6 (2005) <http://www.flsenate.gov/data/session/2005/House/bills/analysis/pdf/h1877c.JC.pdf>. The specific Florida statutes outlining these crimes are 787.01(3), 787.02(3), 787.025, 794.011(2),(3),(4) or (8), 800.04(4).

¹³⁶ *Id.* at 7. These crimes are lewd or lascivious molestation, (800.04(5)), kidnapping a child under 13 (787.01(3)), sexual battery (non-consensual sex with a child under age 12 that does not cause the child injuries) (794.011(5)), lewd or lascivious battery on an elderly person (825.1025(2)).

¹³⁷ *Id.* at 10.

¹³⁸ This crime is defined at F.S. 800.04(7).

¹³⁹ California Department of Justice, Registerable Sex Offenses, <http://www.meganslaw.ca.gov/registration/offenses.aspx?lang=ENGLISH> (last visited Jan. 26, 2004). While most of the registerable sex offenses can be punished as felonies, the California Department of Justice could not say if all of the 159 offenses could be punished as felonies. Telephone Interview with Art Rodriguez, Spokesman, Megan's Law Database, (Jan. 13, 2006).

are going to skyrocket with widespread monitoring,” said Allison Taylor, executive director of the Texas Council on Sex Offender Treatment.¹⁴⁰ Taylor predicts offenders will plead guilty to lesser offenses that don’t trigger the lifetime GPS monitoring sanction. Fear of GPS sanctions could also cause more sex offenses that victimize family members to go unreported.¹⁴¹

Taylor advocates the application of a risk needs principle: Because correctional funds are limited, treatment and supervision methods should match the risk level of the offender.¹⁴² At present, CDCR lacks a validated instrument to assess the risk posed by sex offenders under its control. However, proposals circulating inside the department would adopt risk assessment tools, allowing CDCR to strategically apply GPS monitoring. Dan Stone, the project manager of CDCR’s GPS pilot, said the department has considered using GPS on other types of offenders for whom location is relevant to their criminal behavior, such as offenders with domestic violence convictions or high-risk gang members.¹⁴³ Given CDCR’s limited resources, this approach would be a better way to use GPS monitoring technology.

Residential Restrictions: Research and Lessons from Other States

On October 4, 2005, Governor Schwarzenegger signed AB 113, a bill that barred certain high-risk sex offenders from living within a half mile – 2,640 feet – of K-12 schools while on parole. The prohibition affects roughly 925 “high-risk” sex offenders convicted of “Continuous Sexual Abuse of a Child,” and “Lewd and Lascivious Acts with a Child under 14,” for the duration of their parole.¹⁴⁴ Since the law took effect on January 1, 2006, about 350 of these offenders have relocated.¹⁴⁵

The Runners’ have proposed a smaller residency ban – 2,000 feet – but it would affect many more offenders and it would apply for life. Specifically, their bill would make it unlawful for any registered sex offender to “reside within 2,000 feet of any public or private school, or any park where children regularly gather.”¹⁴⁶ Additionally, their proposal would open the door for municipalities to enact ordinances that further restrict where registered sex offenders can live.¹⁴⁷

¹⁴⁰ Telephone Interview with Allison Taylor, *supra* note 14.

¹⁴¹ *Id.*

¹⁴² Allison Taylor, Sex Offenders Are Not Created Equal, presentation at the American Legislative Exchange Counsel 5 (2005) (transcript on file with author).

¹⁴³ Telephone Interview with Dan Stone, *supra* note ??

¹⁴⁴ These two offenses are PC 288.5, PC 288; they are defined on page ?? of this paper.

¹⁴⁵ E-mail from California Department of Corrections and Rehabilitation official, to author (Jan. 23, 2006) (on file with author).

¹⁴⁶ S.B. 588, *supra* note 15, at 33. The plain text of the bill’s 2,000-foot residency restriction would apply it to all registered sex offenders, including misdemeanants.

¹⁴⁷ *Id.* “Nothing in this section shall prohibit municipal jurisdictions from enacting local ordinances that further restrict the residency of any person for whom registration is required pursuant to Section 290.”

Modeled after drug-free zones created around schools, residency bans emerged as a tool to prevent sex offenders from recidivating in the mid-1990's.¹⁴⁸ At least 16 states have enacted laws that prohibit certain sex offenders from living in close proximity to schools, parks, day care centers, and bus stops, although some states' provisions only affect offenders on probation and parole.¹⁴⁹ While other states, including Alabama and Iowa, have prohibited sex offenders that victimized children from living within 2,000 feet of schools and day care centers, no state has extended this bar to all registered sex offenders, as the Runners' have proposed.

As a general matter, researchers have found that for certain offenders that target children, access to victims is associated with recidivism.¹⁵⁰ Although the specific relationship between housing and sex offending has received even less study than electronic monitoring, there is some research on the issue, including reports by two states, Colorado and Minnesota, that decided against residency bans.

In a 2001 study, three Arkansas researchers attempted to apply routine activity theory to explain how child sex offenders find their victims. Routine activity theory holds that criminal events result from the union of three elements: the presence of motivated offenders, suitable targets, and a lack of capable guardianship to prevent offenses.¹⁵¹ The researchers' operated from the premise that "if there was a predominance of child sex offenders living close to potential victims, at least part of the reason was to take advantage of these potential targets."¹⁵²

Their study compared the home addresses of 170 convicted child sex offenders to "potential target areas" where children congregate, including schools, day care centers, and parks.¹⁵³ All of the offenders lived in a single metropolitan county in Arkansas. The study did not attempt to differentiate child sex offenders by offense type, and examined no data on whether any of the offenders recidivated.

The authors' found 48 percent (82 of 170) of child sex offenders lived within 1,000 feet of a "target area," compared to 26 percent (19 of 73) of sex criminals that had victimized adults.

¹⁴⁸ Tim Higgins, *Iowa joins other states with tough molester laws*, DES MOINES REGISTER, Dec. 26, 2005, <http://desmoinesregister.com/apps/pbcs.dll/article?AID=/20051226/NEWS01/512260318>.

¹⁴⁹ In their 2005 article, Levenson and Cotter found 14 states that have passed residency bans: Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Ohio, Oklahoma, Oregon, and Tennessee. Michigan approved a residency ban after their article was published. Texas also has a 1,000-foot residency ban for sexually violent predators and sex offenders on parole and probation. E-mail from Allison Taylor, Executive Director, Council for Sex Offender Treatment, to author (Jan. 9, 2006, 09:00:34 PST) (on file with author).

¹⁵⁰ Levenson and Cotter, *supra* note 13 at 175.

¹⁵¹ Jeffrey T. Walker, James W. Golden, & Amy C. VanHouten, *The Geographic Link Between Sex Offenders and Potential Victims: A Routine Activities Approach*, 3 JUST. RES. & POL'Y, (2001) 19.

¹⁵² *Id.* at 22.

¹⁵³ *Id.* at 20.

The researchers concluded that part of this variance is attributable to offenders' desire to live near potential targets, "perhaps in hopes that their routine activities will overlap with the routine activities of potential victims."¹⁵⁴

The authors' argument depends on several assumptions, including that child sex offenders are largely the same, highly likely to recidivate,¹⁵⁵ and likely to victimize children that live in close proximity. But other researchers have found no link between re-offending and proximity to "target areas." In a 2003 report, the Minnesota Department of Corrections examined the cases of 13 level three (high risk) sex offenders released from 1997 to 1999 who had been re-arrested for commission of another sex crime. Of these cases, two crimes took place in parks "several miles away" from where the offenders lived.¹⁵⁶ The department found that residential proximity to schools or parks had played no role in these crimes: "Enhanced safety due to proximity restrictions may be a comfort factor for the general public, but it does not have any basis in fact."¹⁵⁷

In a 2004 report, the Colorado Department of Public Safety was unable to document a relationship between re-offending and proximity to schools and daycare centers.¹⁵⁸ The Colorado study looked at the re-offense patterns of a random sample of 113 sex offenders sentenced to probation in the Denver metropolitan area between January 2001 and June 2002. Part of the study's objective was to evaluate whether living arrangements had an effect on sexual recidivism, so researchers tracked the living arrangements of each of these offenders. The Colorado researchers also followed a non-random group of 17 sex offenders in shared-living arrangements, a form of treatment in which two or three sex offenders on probation live together and hold each other responsible for their actions.¹⁵⁹ Of the combined sample of 130 offenders, 54 percent were assessed as "high risk" offenders by probation officers. Over three-quarters of the sex offenders residing in shared-living arrangements were classified as "high-risk."

¹⁵⁴ *Id.* at 30.

¹⁵⁵ As the authors state, "our argument is that child sex offenders are largely incorrigible and they may attempt to live in areas with high concentrations of children." *Id.* at 16. The authors also had no data on how many offenders in the study had children of their own, a possible confounding factor.

¹⁵⁶ MINNESOTA DEPARTMENT OF CORRECTIONS, LEVEL THREE SEX OFFENDERS: RESIDENTIAL PLACEMENT ISSUES, 2003 REPORT TO THE LEGISLATURE, 9 (2003).

¹⁵⁷ *Id.*

¹⁵⁸ COLORADO DEPARTMENT OF PUBLIC SAFETY, REPORT ON SAFETY ISSUES RAISED BY LIVING ARRANGEMENTS FOR AND LOCATION OF SEX OFFENDERS OF THE COMMUNITY 17 (2004), http://dcj.state.co.us/odvsom/Sex_Offender/SO_Pdfs/FullSLAFinal01.pdf.

¹⁵⁹ Offenders in shared living arrangements "hold each other accountable for their actions and responsibilities and notify the appropriate authorities when a roommate commits certain behaviors, such as returning home late or having contact with children." *Id.* at 14.

After 15 months, 13 of the 130 offenders had committed 15 new sex offenses, all of which were “hands off” offenses such as voyeurism, peeping or exposure.¹⁶⁰ The offenders also committed 52 non-sexual criminal offenses and 443 technical violations of probation during this period. After mapping the residences of sex offenders who committed new crimes, researchers found that “offenders seemed to be randomly located, and were, in fact, not usually within 1,000 feet of a school or child care center.”¹⁶¹ The Colorado researchers were not able to get exact measurements of the proximity of offenders to schools and child care centers. Noting that the offenders who lived in shared-living arrangements had the second lowest number of violations of any group followed, the researchers observed that treatment and surveillance seemed to play a greater role in preventing recidivism than residential location. “A tight web of supervision, treatment and surveillance may be more important in maintaining community safety than where a sex offender resides.”¹⁶²

Other researchers have found that residential restrictions can increase the types of stressors that are associated with sexual recidivism. In a 2005 report, Levenson and Cotter conducted a non-random survey of 135 Florida sex offenders – 97 percent of whom had victimized minors – subject to residency restrictions.¹⁶³ As a condition of their probation, these offenders were barred from living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate. All offenders who completed the survey were receiving outpatient treatment at centers in Fort Lauderdale and Tampa, Florida.

Levenson and Cotter found that 44 percent of respondents said they were unable to live with supportive family members as a result of the 1,000-foot ban, while half indicated the ban forced them to move.¹⁶⁴ The researchers concluded that while residential restrictions might be appropriate for some child sex offenders, “blanket restrictions may fail to address individualized risk factors that are related to potential offending patterns.”¹⁶⁵

As Levenson notes, Colorado and Minnesota both decided against adopting residential restrictions after their studies found no connection between housing and sexual recidivism. In their report, Colorado researchers surveyed seven states with residency restrictions to see if they had examined the link between offenders’ proximity to schools and day care centers before

¹⁶⁰ *Id.* at 22.

¹⁶¹ *Id.* at 30.

¹⁶² *Id.* at 31.

¹⁶³ Levenson & Cotter, *supra* note 13 at 171.

¹⁶⁴ *Id.* at 172.

¹⁶⁵ *Id.* at 175.

adopting their laws. The four states that responded – Illinois, Florida, Oregon, and Alabama – all reported that their laws were not based on specific research.¹⁶⁶

In my research, I was unable to find any studies that evaluate whether 2,000-foot residential restrictions are more effective than 1,000-foot buffer zones in preventing recidivism. This is highly significant, because in urban areas, laws that bar offenders from living within a 2,000-foot radius of schools and parks will make cities largely off-limits to sex offenders.

“With a 2,000-foot limit, in most urban areas the whole city will be covered by the ban, because cities have so many parks and schools,” said Michael Shin, a professor of urban geography at UCLA.¹⁶⁷ Shin evaluated buffer zones in three maps produced by the Senate Demographic Office that show how a 2,000-foot barrier would be applied in San Francisco, the Los Angeles area, and statewide (see enclosed maps). The maps, which were produced at the request of Senate Democrats, indicate that if a 2,000-foot barrier is approved and enforced, many registered sex offenders in the San Francisco and Los Angeles areas would have to move to less populated rural areas, such as those in the Central Valley.

Recent events in Iowa suggest how enactment of 2,000-foot residential restrictions could play out in California if the Runners’ proposal is adopted. In 2002, the Iowa legislature passed a law barring sex offenders that had victimized minors from living within 2,000 feet of schools or daycare centers. Iowa legislators included a grandfather provision to the law that exempted offenders who had established a residence prior to the law’s enactment. While a federal district court initially an injunction against the law, in April 2005, the U.S. Court of Appeals for the Eighth Circuit upheld the law.¹⁶⁸ Following this decision, a number of Iowa communities passed even more restrictive ordinances that effectively bar most sex offenders from living in their towns.

Across the state, sheriffs report that the ban has been extremely difficult to enforce. “It’s put a lot of extra burden on us to oversee this,” said Jeff Danker, sheriff of Pottawattamie County, Iowa, a western Iowa county that includes one of the state’s largest cities, Council Bluffs.¹⁶⁹ According to Danker, about 20 registered sex offenders have already left Council Bluffs for Nebraska, which currently does not have a residency ban. In Dallas County, located just to the west of Des Moines, a handful of sex offenders are living out of their cars at highway rest stops. “It’s a lot harder to track these people now,” said Rochelle Wells, who maintains the Dallas

¹⁶⁶ COLORADO DEPARTMENT OF PUBLIC SAFETY, *supra* note 158 at 12.

¹⁶⁷ Telephone Interview with Michael Shin, Professor of Geography, UCLA (Jan. 17, 2006).

¹⁶⁸ *Doe v. Miller*, 405 F.3d 700, (8th Cir. 2005). <http://www.ca8.uscourts.gov/opndir/05/04/041568P.pdf>

¹⁶⁹ Telephone Interview with Jeff Danker, Sheriff, Pottawattamie County, Iowa (Jan. 15 2006).

County sex offender registry.¹⁷⁰ The law seems to have prompted some sex offenders to conceal their whereabouts: As of mid-January, 298 of the more than 6,000 sex offenders on Iowa's sex offender registry were unaccounted for, up from 142 on June 1, 2005, before the law went into effect.¹⁷¹ Some county attorneys now believe the law should be repealed.¹⁷²

In Iowa, legislators embraced residency bans with little empirical data on whether they would actually reduce recidivism. To date, the law has had a raft of unintended consequences.

Conclusion: Looking Ahead

On January 24, the Runners' announced they had gathered more than 400,000 signatures for their "Jessica's Law," initiative, more than the 373,816 valid signatures needed to put the initiative on the November ballot. If their initiative is placed on the ballot, and approved by California voters in November, CDCR would have to implement a huge GPS-monitoring program. If CDCR continued to give parole agents monitoring GPS caseloads of 20 offenders, it would take roughly 470 agents – roughly a quarter of CDCR's 2,000 parole agents -- to monitor the 9,411 registered sex offenders now on CDCR parole. While the 2,000-foot residency ban likely would be applied prospectively, in the longer term, registered sex offenders would have to move out of urban areas that chose to enforce the 2,000-foot barrier.

While well-intentioned,¹⁷³ the Runners' proposal could handcuff CDCR's ability to improve its policies for managing sex offenders on parole. California and CDCR would be better off if GPS-monitoring and residency bans were used on a case-by-case basis, using validated risk assessment tools, and not tied to commission of the offenses covered by the state's sex offender registry law. Tethering these tools to all the offenses covered by the registration law is an over-inclusive remedy that would be exceedingly expensive and could have unforeseen consequences, as Iowa has experienced.

Besides requiring CDCR to evaluate sex offenders released to parole with validated risk assessment tools, legislators could take other actions to reduce sex offenses in California. In Texas, officials are launching an educational program called Kids Protecting Other Kids, designed to increase reporting of sex crimes, and help facilitate treatment for children who are victimized.¹⁷³ If legislators and CDCR look at the research on sex offending, they can avoid one-size-fits all policies and adopt programs that ultimately would result in fewer victims.

¹⁷⁰ Telephone Interview with Rochelle Wells, Registry Manager, Dallas County, Iowa (Jan. 14, 2006).

¹⁷¹ Lee Rood, *New Data Shows Twice As Many Sex Offenders Missing*, DES MOINES REGISTER, Jan. 23, 2006, at A1.

¹⁷² *Id.*

¹⁷³ Telephone Interview with Allison Taylor, Executive Director, Texas Council on Sex Offender Treatment (Jan. 4, 2006).

CALIFORNIA DEPARTMENT OF CORRECTIONS
PAROLE AND COMMUNITY SERVICES DIVISION
Statewide Locations of High Risk Sex Offender (HRSO) Caseloads



Last updated 4-04-2005

(Figure 2)
INITIAL SEX OFFENDER RISK EVALUATION

This evaluation is to be completed by a High Risk Sex Offender Caseload parole agent to assess the risk of a 290 PC registerable parolee to re-offend sexually. This evaluation is to be completed prior to the parolee's release to facilitate immediate placement on the appropriate caseload. An evaluation as a "High Risk Offender," indicates a need for placement on a High Risk Sex Offender caseload where available.

PAROLEE NAME _____

CDC NO. _____

LOW RISK OFFENDER

Commitment offense is non-sexual

There may be additional sex offenses in the parolee's criminal record, which may or be adjudicated and/or non-adjudicated.

Offending sexually is more opportunistic or situational than a primary deviant sexual orientation.

Comments:

MODERATE RISK OFFENDER

Commitment offense is sexual.

There may be additional sex offenses in the parolee's criminal record, which may be adjudicated and/or non-adjudicated.

Offending sexually is more opportunistic or situational than a primary deviant sexual orientation.

Comments:

HIGH RISK OFFENDER

Commitment offense is sexual or is related to an established pattern of deviant sexual behavior.

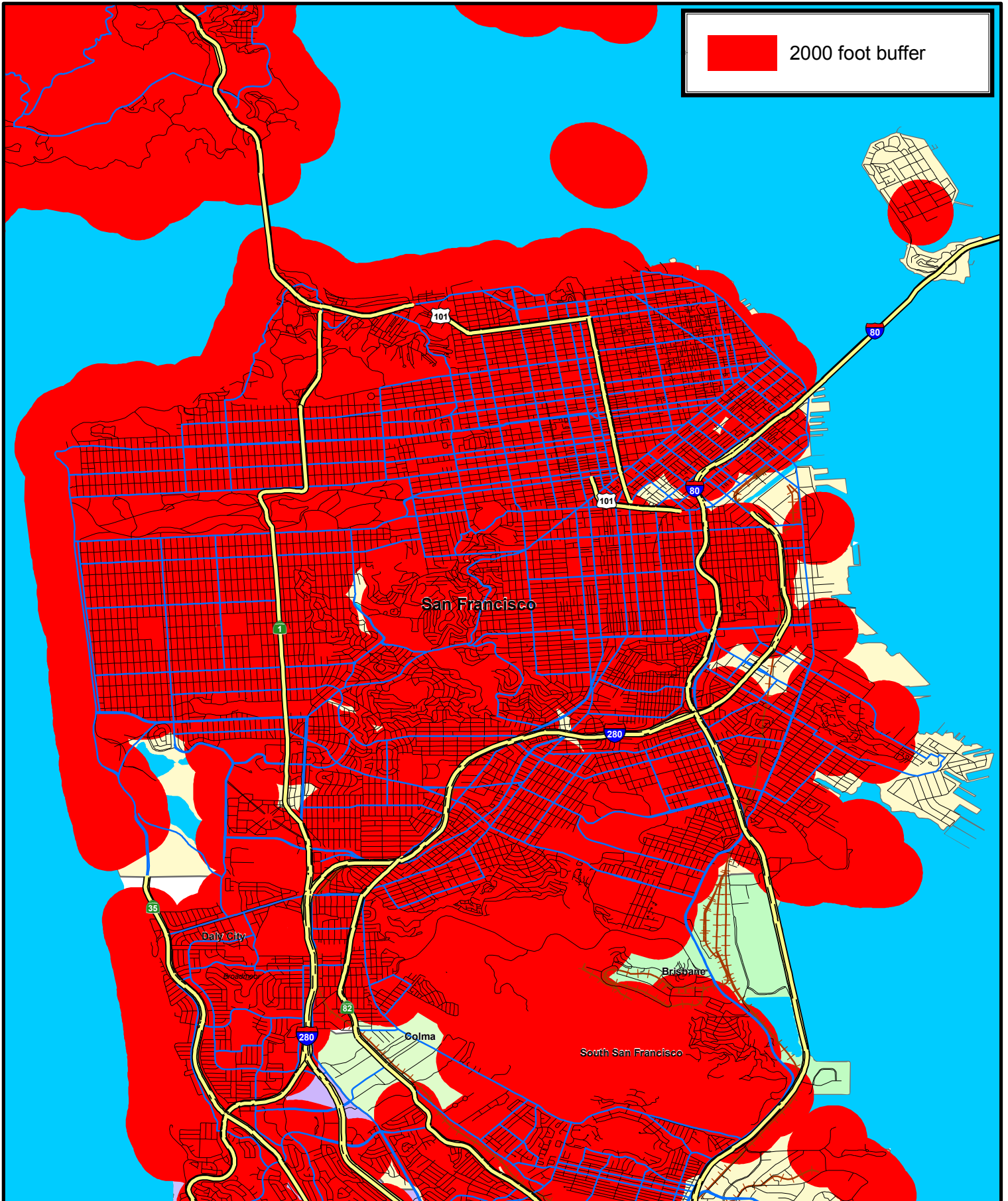
One victim over long period of time (multiple counts)

The parolee's criminal record may contain other sexual offenses and minimal or no history of non-sex offenses.

- The offense is deviant sexually oriented.
- The sex crime involved multiple victims or numerous crimes involving a single victim perpetrated over an extended time period.
- Same Sex Pedophilia.

San Francisco

2000 foot proposed buffer



Statewide

2000 foot proposed buffer

