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Tracking sex offenders with GPS

Strict new laws call for sex offenders to be electronically monitored for life. Critics say the technology won't stop crimes but is fueling hysteria -- and is even counterproductive.

By Katharine Mieszkowski

Dec. 19, 2006 | It's not every Election Day that voters can cast a ballot to banish thousands of people to the hinterlands, but Californians did just that last month, and eagerly so. Seventy percent voted to **ban** registered sex offenders from living within 2,000 feet of a school or park, effectively outlawing them from many residential areas in the state.

Known as "Jessica's Law," after a 9-year-old Florida girl who was kidnapped from her home, sexually abused and murdered by a registered sex offender, the California proposition swept in a myriad of punitive changes. The crackdown on residency applies to all registered sex offenders, including those convicted of a misdemeanor, such as indecent exposure. Most notably, felony sex offenders will now be tracked 24 hours a day, seven days a week, via GPS (global positioning system), even after they're out of prison and off parole. The state senator and advocates behind the proposition call the GPS devices a necessary and vital tool to control sexual criminals.

The California measure makes no distinction between habitual offenders at high risk of striking again, worth having their every move tracked electronically once they're out of prison, and the felons who have served their time and present no apparent threat to public safety in the eyes of the court. Just put a GPS device on all of them, voters said, forever. Now, the state's government and the courts are puzzling out how to bring the voters' sweeping mandate to life.

The broad California measure is symptomatic of a national tide of fear about sexual predators lurking in the bushes by the playground, at the mall, just on the other side of the elementary school fence, and skulking about on MySpace. A sort of boogeyman come to life, sex predators even have their own gotcha TV reality show masquerading as a news program, Dateline's "To Catch a Predator." Every state in the nation now has a sex offender registry, tracking where offenders live. But Virginia, for one, is

taking the fight to cyberspace, considering legislation to have offenders register their e-mail addresses and instant-messenger handles, so the Internet can be cleaned up, too.

But as states rush to impose harsher penalties on sex criminals, critics -- legal and criminal analysts, and even some victims of sex crimes themselves -- state that the punitive new laws violate civil liberties and are ineffective. And while a technological fix like fastening GPS devices to former felons may make the public feel safer, it will do little to protect the children who are the victims of most sex crimes.

Currently, 23 states use GPS to monitor some sex offenders while they're on parole. The devices, outfitted on an ankle bracelet, are typically placed on offenders considered at high risk of striking again. Because the conditions of parole often restrict where an offender can go, outlawing, say, schools or day-care centers, the device can behave like a 24-hour virtual parole officer, keeping tabs to see if the offender follows the rules. Nobody disputes the use of the technology for those on parole.

But now several states have decided: Why should 24-hour electronic monitoring end with parole? Even after offenders have legally paid their debt to society, the states still want to track their every move, regardless of their risk for recidivism. "We're finding ways to use technology to create what is a permanent deprivation of liberty," says Marc Rotenberg, executive director of the Electronic Privacy Information Center. "It raises some very important issues about what the state may do to an essentially free person."

Critics declare that sexual crimes committed by predators are a serious problem, and they don't mean to underplay them. But most sexual crimes, especially those committed against children, they point out, happen closer to home and involve somebody whom the victim knew and trusted, like a family member or a neighbor. The incessant emphasis on the boogeyman, the sexual predator in the schoolyard or on the Internet, can be counterproductive, as resources to fight sexual crimes, and public perception of them, are misplaced.

"The reality is the vast majority of registrants are not predatory, and don't pose danger to strangers, which is the only reason GPS would be useful," says Jeff Stein, a criminal defense attorney, and co-chair of the legislative committee for California Attorneys for Criminal Justice. The new GPS devices, he says, fuel "the hysteria that all registrants are predators."

The strict new California proposition was hatched by Los Angeles state Sen. George Runner. He explained the value of GPS in an October TV [interview](#): "Hey, if you are a felony sex offender, we're going to want to know where you are at all times." Once a GPS device is strapped to an offender's ankle, he said, "a law enforcement [officer] can type in their name and see where these individuals have been over a period of time -- that's necessary."

Ernie Allen, president of the National Center for Missing and Exploited Children, a nonprofit advocacy group, also believes that GPS devices are necessary. "It's a vital tool for knowing where sex offenders are, and using the full weight of the state to ensure that these offenders are going to their jobs and living where they're supposed to live and doing the things that they're supposed to do," he says. "And if they're not, it's important that authorities know about it."

Every state now has its own version of a sex offender registry, but California was the first to create one in 1947. In the state, those who have committed [such crimes](#) as possession of child pornography, sexual battery, child molestation, rape or indecent exposure are required to register their whereabouts with local law enforcement agencies, after their release from prison, jail, probation, parole or a mental hospital. Most offenders must tell law enforcement where they're living annually, but based on the severity of their crimes, some are required to do so every 90 days. Some 63,000 of the state's registrants are displayed on the [Megan's Law Web site](#), including the offenders' photo, address, offenses, scars, marks, tattoos and any known aliases.

Although it's a felony not to keep one's registration up to date, many do not. The National Center for Missing and Exploited Children estimates that of almost 600,000 registered sex offenders in the U.S., there are about 100,000 who legally are required to register their whereabouts but have not done so.

In his TV interview, Runner stressed that wearing a GPS bracelet would not just help law enforcement keep track of sex offenders, it would prevent repeat crimes. "We believe ... people will behave differently because they know that somebody can check out where they've been," he said. He suggested that wearing an electronic monitoring device for life is not only good for public society, it's good for the reformed offender, who will be able to prove his alibi every time a new sex crime is committed. "Right now, the normal operating procedure for law enforcement, when there's a sexual attack, is they start knocking on doors of all the people who are registered sex offenders, and they have to prove that they weren't there. The GPS will help them be able to do that."

The critics are not sold. They scoff at the notion that a criminal who will not register voluntarily with the state once a year will keep wearing a GPS ankle bracelet, much less diligently recharge the battery every night. "It's a felony for them not to register, so if they're going to commit a felony, why would they leave their GPS unit on?" says Robert Coombs, director of public affairs for the California Coalition Against Sexual Assault, a statewide coalition of 66 rape crisis centers. "It's really naive to think that this is going to solve the problems." Attorney Stein agrees. "GPS devices can be easily removed," he says. "They're not encased in kryptonite."

The ankle bracelets can be rigged to trigger an alarm with law enforcement if they are cut off. But an offender determined to evade the law could simply let the battery run down. A 2004 study of parolees in Washington state who wore the GPS bracelet found that 6 percent of the devices were lost or damaged by the offenders wearing them. Even the working devices sometimes failed. Satellite technology is not that effective in indoor places like a large mall, building or stadium, or outdoors in a canyonlike environment, like Manhattan. Then there's the question of how already-taxed law enforcement will be deployed to monitor all this data on thousands of people who aren't even on parole. In the Washington study, three of the 42 parolees who wore the device absconded. One homeless offender said his charging stand was stolen.

Will wearing a GPS device make a sex offender less likely to strike again? The research is spotty, simply because no one has been wearing the devices for the decades that the new laws propose. Current studies simply show that the devices may nudge offenders to follow the conditions of their parole. One Florida Department of Corrections study of sex offender parolees found that those who were on

electronic monitoring were less likely to have their parole revoked than those who were not being so monitored. Another study of those under house arrest found that they were less likely to violate the terms of their home confinement or abscond than those who were not.

"It looks like electronic monitoring works fine for sex offenders, but it doesn't work any better for them than for any other kind of offenders," says Kathy Padgett, professor in the College of Criminology and Criminal Justice at Florida State University, who conducted the latter study. "It may not have as big an effect because they're less likely to reoffend." Indeed, contrary to popular belief, sex offenders are significantly less likely than other criminals to be rearrested, according to the U.S. Department of Justice's [Bureau of Justice Statistics](#).

Robert Jacob Goldenflame, who goes by Jake Goldenflame, is one of California's registered sex offenders, a convicted child molester, who has now been out of prison for almost 16 years. Goldenflame, who describes himself as in "recovery," is a proponent of the sex offender registry because he believes it helps provide community oversight that makes offenders like himself less likely to strike again. "There is no recovery without registration," he is fond of saying. While making media appearances from Oprah to MSNBC, Goldenflame, who runs a [Web site](#) that provides a forum for registered sex offenders and their friends and family, argues that there is no cure for sex offenders like him, but he believes that their risk of committing another crime can be greatly reduced, as it has in his own case. Yet he doesn't think that broadly applying GPS will help the cause.

When he was first out of prison on parole, Goldenflame says, by way of example -- a shocking one -- he was living in a rooming house run by a Buddhist organization. One of his chores was to take care of two watchdogs in the backyard. Neighborhood kids would walk by and see him with the dogs. One day, one of them, a 12-year-old boy, knocked on the door of his room, and Goldenflame, not knowing who was there, told him to come in. Nothing happened, but Goldenflame points out that if something had, the GPS wouldn't have sounded the alarm that he'd violated the conditions of his parole by being alone with the boy. The device would have shown him where he was supposed to be, in his own room in the rooming house.

"If I raped the child, it wouldn't have told you that. It just tells where I am, but not what I am doing," he says. "I think that this use of GPS promotes a false sense of security. I think that many people may not be thinking it through. They may be thinking it's some kind of camera or Big Brother eye. It does nothing of the sort."

In "passive" mode, the GPS receiver logs its position relative to satellites at set intervals, storing that information in memory on the device for later retrieval. For instance, an offender could use a land-line phone to download the information once a day to authorities. In "active" mode, which is naturally more expensive to operate, that same info would be sent through a cellphone to law enforcement for real-time monitoring of higher-risk offenders. The state of Florida currently spends \$10 per day per offender, or about \$3,650 a year, for active monitoring. If California outfits felony sex offenders with GPS monitors, costs would run in the tens of millions, growing to \$100 million annually in as little as 10 years, reports the state's Legislative Analyst's Office.

The California law, however, is not set in stone. A San Francisco judge has already imposed a

preliminarily injunction on the residency portions of the law, pending a lawsuit by a sex offender. The GPS portion of the law is currently facing two court challenges. In federal court for the central district of California, a suit charges that such lifetime monitoring is excessive. In federal district court in Sacramento, a sex offender who is currently on parole is suing, arguing that he should not have to wear a GPS monitor for life because it amounts to a new punishment, meted out after the fact.

Jerry Brown, the state's newly elected attorney general, who supported Proposition 83, has said he will not comment on how his office will interpret the law until he takes office early next year. So it's unclear if the state will attempt to apply the new restrictions to currently registered sex offenders, or merely impose them going forward on offenders who commit crimes after Nov. 7, 2006. But one thing is clear: Jerry Brown is a fan of GPS. As mayor of Oakland, which is plagued by gang violence, Brown launched a pilot program to track the city's most violent repeat offenders, outfitting 17 of them so far with GPS devices. He's lauded it as a way to provide backup for overtaxed police departments.

If the state should decide to impose the device on all felony sex offenders, whose crimes were committed before the proposition passed, it could run into serious constitutional problems, according to Michael Risher, an attorney with the American Civil Liberties Union of Northern California. The *ex post facto* clause in both the U.S. and state constitutions means that the government cannot impose a greater punishment for a crime than was allowed when that crime was committed. "You cannot pass a law that increases the punishment for past acts," Risher explains.

To impose GPS retroactively, the state would have to argue that the device is not a form of punishment. Which is the argument made by Allen of the National Center for Missing and Exploited Children. "It's not a penalty," he says. "It's regulation. If people are already obligated to register, this is just improving the means of ensuring compliance with registration."

Offenders may also be able to argue that being constantly monitored on GPS also violates their Fourth Amendment right, not to be subject to unreasonable search and seizure. Slapping a GPS bracelet on someone who is not on probation or parole could be considered seizure. "The government simply has no authority to take somebody off the street, who has already paid his debt to society, served his time, and force him to wear a tracking bracelet," says Risher. "It's giving them a life sentence." Being forced to wear the device while in the privacy of one's home could also be considered a search.

Critics say that beyond the legal issues, the draconian new laws, and in particular the GPS ankle bracelets, will have little impact on preventing crimes against children, who are the victims of most sex crimes. Two-thirds of the victims of sex crimes are [under age 18](#), and 58 percent of those underage victims were under age 12, according to the Department of Justice. Yet the majority of those victims aren't preyed on by strangers but know their attacker.

Pamela D. Schultz, a survivor of childhood sexual abuse, is skeptical that broad application of GPS technology will do anything to prevent crimes like the one she suffered as a girl, which was committed by a neighbor. Now an associate professor of communications at Alfred University, a private school in western New York, she is the author of "Not Monsters: Analyzing the Stories of Child Molesters." Schultz is also a mother of two, who has a daughter in the second grade and a 21-month-old son. Regarding the new California laws, she says, "I think it's another example of feel-good legislation to get

communities to feel that actual action is being taken to stem the problem. GPS monitoring and residency requirements are not going to do anything with the vast majority of offenders. They're just not."

As the state of California's own sex offender registry [Web site](#) attests, 90 percent of child victims know their attacker. And almost half the time that person is a family member. "The vast majority of offenders abuse kids who they know," says Schultz. "They have close relationships with the children and the children's families."

Niki Delson, a social worker who is the spokesperson for the [California Coalition on Sexual Offending](#), which opposed the California proposition, says that GPS monitoring will serve no purpose in most of these cases. "The problem with using GPS for people who committed incest is you can't establish a zone which would make a child safe," says Delson. In fact, many sex offenders continue to be acquainted with their actual victims after the crimes occurred, according to Coombs of the California Coalition Against Sexual Assault. "That person doesn't stop being a father or a brother, and in many cases, is brought back to the family. GPS doesn't fix that," he says.

In fact, many sex crimes, notably those committed by family members or acquaintances, go unreported. Schultz fears that residency requirements and GPS tracking will have the unintended consequence of making victims of these crimes less likely to turn an attacker over to authorities. "When the bulk of abuse happens within families and close relationships, there is going to be less of a tendency to report those crimes," she says. "If something happens inside your family, and you report that, it's going to be plastered all over the place. Not only is the offender under public scrutiny, so are the families of the victims." For these types of offenses, adding GPS monitoring and strict residency requirements into the mix adds "another level of pressure into silence."

Schultz would rather see the tens of millions of dollars California is about to spend monitoring felony sex offenders be poured into counseling for victims of sex crimes and into programs for offenders that aim to prevent recidivism. "As a society we need to become less hysterical and more informed about sexual abuse," she says in an e-mail. "When we demonize the offenders, we're pretty much feeding the crime. We further isolate and alienate the offenders, which is a precipitating factor in many offenders' impulses to act out. We're so focused on the minority of offenders who seem to fit our skewed perceptions of what sexual abuse and sexual abusers should be, we fail to recognize that the crime actually occurs closer to home."

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