The Scarlet Letter Revisited

Is GPS Tracking Of Sex Offenders Protecting Our Children?

The world in which we live is rich with complicated issues that demand serious debate. Fixing the Social Security disaster is a tough problem. Replacing America’s current tax system will take tremendous effort and careful thought. Determining the right approach to conduct the war on terrorism and secure our borders is intricate. Indeed, our nation is facing some mind-numbing issues, ranging from social rights to crime management. Some of the most heinous acts are committed against the weakest amongst us; our children. Whether it is the unborn, or toddlers in homes across America, there are predators out there who wish them harm. Local and national media coverage of sex offender cases has brought the issue of sex offenses into the public spotlight.

The release of convicted sex offenders into communities has created a public outcry for increased prison sentences as well as demands for stricter levels of supervision of paroled offenders upon release. Is there a better way? Can we protect the rights of offenders without giving up the obligation to protect the most innocent amongst us? As important as any question facing our nation, this issue cries for an answer.

The Dilemma

Our nation has drifted so far in the direction of protection criminals’ civil rights, maintaining political correctness and upholding social tolerance that we tend to forget about our greatest asset: our children. Everyone who has a child in their life should be
aware their kids are in danger, and outraged that sex offenders are given opportunities to commit crimes against yet other children, even after being convicted of preying on the innocent.

Sixty-seven percent of all victims of sexual assault reported to law enforcement are juveniles under the age of eighteen. Thirty-four percent of all victims are under the age of twelve. In fact, one in seven victims of sexual assault reported to law enforcement were under the age of six. Currently there are nearly 550,000 registered sex offenders in the United States. At least 100,000 are non compliant and in most cases, literally “missing” from the criminal justice system

The numbers are staggering. How do we best protect our children? Prisons are already overcrowded, which means that longer sentences for predators are not necessarily the most viable answer. Each inmate added to our jails would cause us to either build additional facilities or grant other inmates early release to accommodate this swelling of the ranks of those in custody. Similarly, in order to increase the level of post release supervision on parole or probation, the number of officials assigned to sex offender supervision would have to increase or current officials would have to be burdened with larger caseloads in a setting where they already have more offenders to watch than are humanly possible.

Unfortunately, the funding required for additional parole and probation officers, or for the construction of new correctional facilities, is unavailable for the foreseeable future. The early release of other inmates could create new concerns for public safety, while adding

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to the caseloads of current officials would result in lowered levels of post release supervision. The fact remains that sexual predators are being released to our communities at an ever-increasing rate\(^1\) and the current state of their unsupervised freedom is not acceptable in terms of the risk it poses to our children.

Sex offender monitoring program are seem by some, as the answer to balancing the obligation to protect communities against the rights of an offender who has already been punished for his crimes. These programs are the responsibility of the State Department of Corrections and State and local probation offices and some of the more prevalent programs include:

- On going audits of sex offender cases under Department of Correction supervision. Audits to assure “best practices” are appropriately focused on risk.
- Regular face-to-face contacts.
- Supplemental visual surveillance program at specific sites to determine offender compliance/non compliance.
- Unannounced home visits.
- Close coordination with treatment and criminal justice agencies.
- Sex offender risk assessment tools tied to supervision plans that are designed to reduce the incidence of re-offending and the associated level of harm.

• Ongoing assessment of staff training needs is identified using emerging knowledge about effective practices in addressing sex offending behavior.
• Home and vehicle searches.
• Development of Sex Offender Risk Management Teams at specific sites.
• Screening of sex offenders requesting interstate transfer to another state.

Meanwhile, the problem remains. Many sex offenders released into communities are difficult, if not impossible, for agency personnel to locate at any given time. Offender attendance to post release treatment sessions is also difficult for officials to authentically verify. The monitoring of sex offenders, which includes interagency collaboration, community notification of the presence of certain offenders, the registration of those convicted of sex crimes and victim awareness programs are all avenues to enhance public safety. None of them however, can ensure that officials know where an offender might be at any given moment. That has given rise to the advent of using Global Positioning Satellite (GPS) devices worn by parolees and probationers as a means of tracking their movement and hopefully preventing further crimes.

**GPS Tracking of Sex Offenders As a Solution**

Except for the use of GPS technology all other programs fall short of real and effective monitoring and often place the burden of monitoring on the potential victims. Many of

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the community notification and awareness programs, rely on a pro-active community
effort to get the information under the provisions of Megan’s Law. Spurred by headlines
of released sex offenders accused of murder, some states are mandating the use of Global
Positioning Systems for tracking the movements of sex registrants once beyond the walls
of the jail cell. The Global Positioning System (GPS) is a group of 27 earth-orbiting
satellites (24 in operation and three extras in case one fails)\textsuperscript{4}. The U.S. military developed
and implemented this satellite network as a military navigation system and had now made
the signals available for public use.

Some states have already mandated the use of the Global Positioning system for tracking.
Many lawmakers see electronic monitoring as a natural evolution of statutes that already
require sex offenders to register their addresses with authorities. At least four states,
Florida, Missouri, Ohio and Oklahoma, passed laws this year requiring lifetime electronic
monitoring for some sex offenders, even if their sentences would normally have expired.
Similar bills have been proposed in Congress and other states, including North Dakota,
Alabama and California, where lawmakers approved legislation and sent the bills to the
governors.

Under existing and proposed laws, GPS monitoring systems can give corrections and law
enforcement agencies verifiable evidence when an offender has attempted to circumvent

\textsuperscript{3} St. Petersburg Times, “Girl’s Death Inspires Tracking Bill”, 23 march 2005 [report online] available from
http://www.sptimes.com/2005/03/23news_pf/State/Girl_s_death_inspires.shtml; Internet; accessed 17 July
2005. Page 1 of 3

Internet; accessed 25 April 2005. Page 1 of 11
his conditions for release. Officers can then better focus their efforts on persons they know are a greater risk for re-offense. GPS supplies law enforcement agencies with GPS monitoring solutions specifically designed to enhance an agency’s ability to track and monitor the location of sex offenders 24/7/365. More importantly, the system is designed to reduce the manual labor required by officers to visually observe the movement of sex offenders, and to assist officers in determining which offenders may be at the greatest risk of re-offense.

Supporters claim that Global Positioning System increases an offender’s compliance, enhances the authorities’ ability to monitor more offenders simultaneously, and have had the greatest impact on reducing recidivism rates\(^5\). GPS can monitor the location of enrolled sex offenders around the clock, within 15 feet of accuracy. Traditional “house arrest” systems can only verify an offender’s presence in a house/residence, but don’t have the ability to track offenders once outside the house. Authorities can create customized zones and schedules that streamline monitoring efforts. For example, an agency can mandate that no enrolled sex offender be within a 500 foot radius of any school in the community\(^6\). If an offender violates the mandate, authorities can be provided with near real time notification of the actual infraction and offer a verifiable court reference for the violation. Supporters feel that sex offenders who know they are being watched have much less inclination to re-offend, because there is a greater likelihood that they will be caught and prosecuted.


Additionally, supporters want to widely use GPS in conjunction with post release treatment to increase the chances of long-term rehabilitation. Under the premise, there would be a tax burden on the public associated with re-offense, and an increase in overall community safety. Advocates believe routine attendance at treatment sessions is one of the most important factors for successful rehabilitation. In this envisioned future, the police and parole officers can create zones and schedules that effectively verify an offender’s attendance to said treatment sessions as a means of ensuring they are progressing in their rehabilitation.

Many States’ Departments of Probation and Parole have established working groups to develop strategies to supervise sex offenders as a specific group of offenders in need of special management practices. New and creative strategies have been initiated that emphasize individualized case management, coordinating an implementation of a cluster of activities directed toward supervision, treatment and management of the behavior of an individual sex offender. The aim of this new approach is to improve the system-wide management of sex offenders in the community for the purpose of holding the offender consistently accountable for the damage caused by sexual abuse.

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It usually becomes the Department of Probation and Parole’s responsibility to ensure that the offender complies with court-mandated supervision conditions. Through treatment and behavior modification, sex offenders are taught to achieve personal control of their inappropriate impulses, feelings and behaviors. Often the managing agency develops a risk management program for sex offenders who are under the authority of the division of Probation and Parole in order to increase accountability. To the chagrin of many though, these plans have resulted in a revolving door at the gates of our prisons that continue to place dangerous sexual predators in communities across America.

**The Revolving Door**

By now we are numb to the folly of a system that keeps putting dangerous sexual offenders back on the streets. Richard Allen Davis, “a monstrous personality,” was released by the justice system again and again before he kidnapped and killed Polly Klaas in 1993. Warren Bland had a 26-year career of sexual attacks and torture, but the State of California let him go five times before finally convicting him and putting him on death row for mutilating and killing a 7 year old girl. A psychiatrist said that Bland would be

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assaulting and/or homicidal toward women if released\textsuperscript{12}, and a probation officer pointed early to Davis’ “accelerating potential for violence.” Yet, two more children were violated and killed. In both cases authorities were warned early that they were dealing with very dangerous predators. The revolving door works so fast that when a new wave of sex crimes occurs, police know to hunt suspects among the freshly paroled.

Testifying before Congress in March 2003, Linda Fairstein, head of the Sex Crimes Prosecution Unit in Manhattan, N.Y., spoke of recent series of rapes of young girls and said that she and her staff would be very surprised if the perpetrator didn’t turn out to be a known sex offender\textsuperscript{13}. That very day, New York police arrested and charged a convicted rapist in the crimes who had been released from prison just six months prior to the crimes. As widely agreed amongst psychiatric professionals, lawmakers, enforcement agencies, criminal advocates and even the sex offenders themselves, pedophiles are incurable in their depravity\textsuperscript{14}. Most will offend again and again until they are caught\textsuperscript{15}.

\textbf{The Non Curable Disease}


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Fred Berlin, founder of the Sexual Disorders Clinic at Johns Hopkins University, recognizes that “we can’t cure it anymore than we can cure alcoholism, but we can try to treat it.\textsuperscript{16} The major difference is that, unlike alcoholism, anytime a sex offender relapses, victim(s), most likely women and young children, will suffer unspeakable harm and may face death. The social cost of setting career predators free every few years is enormous. According to a recent study, rapists and child molesters are arrested once for every 30 offenses they commit\textsuperscript{17}. Considering the half million registered sex offenders in our neighborhoods, even if every arrest results in conviction, an average of 30 new victims will be created before each serial sex criminal goes back to jail.

The public’s revulsion over this sort of folly has been a long time coming. More and more, states are requiring released sex criminals to register with authorities when they are released or when they move into a new area. The New Yorker magazine has advocated for voluntary castration of sex offenders as an alternative to jail time\textsuperscript{18}. The Senate of the State of Florida recommended chemical castration, and regular drugs to suppress testosterone, for twice convicted rapists. The much publicized abduction, assault and murder of Jessica Lunsford have prompted the implementation of GPS tracking for life on released sex offenders through the Jessica Lunsford Act of Florida. Recently, Governor Arnold Schwarzenegger also sponsored a bill designed to mandate GPS


monitoring for life after a first offense. In June 2005, a Ca. Senate committee rejected a bill to track the location of child molesters in California for the rest of their lives using satellite technology, a day after similar legislation was signed into law in Florida19.

**Exactly How Does GPS Tracking Protect Our Children?**

While the tougher sentencing is a welcome change, there has been no critical media attention paid to the other part of the legislation, which has been highly and unquestioningly praised: electronic tracking of offenders. Exactly what does “monitored for life” mean? It sounds impressive, and no doubt it is designed to put communities at ease.

When electronic tracking of parolees is discussed in the media, the term “24/7” or “continuous” tracking is often used. In addition, the term “GPS” is often referenced. The public is often led by politicians and manufacturers alike to believe that offenders being electronically monitored have their movements scrutinized by law enforcement 24 hours a day. Currently, many probationers are monitored by “passive” GPS tracking devices20. In this scenario, an electronic anklet is worn in addition to a belt pack device. As with all electronic monitoring, separating the devices will cause an alarm to be sent to authorities.

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19 The Sacramento Bee, “Senate Shoots Down GPS Bill”, [online], available from [http://www.sacbee.com/content/politics/v-print/story/13428131p-14269432c.html](http://www.sacbee.com/content/politics/v-print/story/13428131p-14269432c.html); accessed 30 July 2005, Page 1 of 1

The belt pack does track the movements of the probationer “24/7”, but that information is not available to law enforcement until the end of the day\textsuperscript{21}, when the individual returns home and places the belt pack in a cradle to allow the download of tracking data via a phone line. In some cases, this data is not available until the next day. In other words, it is useful primarily as a prosecution tool. Even with “active” monitoring, which is designed to give authorities real-time monitoring of parolees, information is at best, 4-5 minutes behind. Couple that with the reality of a three to six minute response time and one can see the problem with GPS preventing crimes. Let’s remind ourselves whether our goal is to protect our children or to be able to prosecute after they have been violated and destroyed. Other electronic monitoring devices only monitor the individual within their home. Unfortunately, an offender can easily lure a child into their home to commit a crime, a scenario we have seen repeatedly over the years. Tracking therefore is a valuable tool, but falls well short in preventing the crime, not just determining the identity of the perpetrator.

The Washington Post noted several times that probationers would be tracked by GPS, however, the Florida legislation does not mention “GPS” technology, just “active tracking.” The reason for the omission of the term “GPS” is to allow for future tracking technology that might out perform GPS. An active tracking system would track the probationer, again, “24/7”. However, that may not mean what we think it does.

Regarding the monitoring of the tracking, a spokesman for State Representative Charlie

\textsuperscript{21} Connecticut Post, “GPS Gear Proposed To Monitor State’s Sex Offenders” [report online], available from \url{http://www.connpost.com/portlet/article/html/fragments/print_article.jsp?article=2965021.html}; accessed 23 August 2005, Page 1 of 2
Dean’s office said that there would be no group of persons sitting in front of a computer screen monitoring this tracking system. “If you think about it, it’s not feasible,” he said. The spokesman indicated it was probable that exclusion zones would be set up for the tracking systems so that an individual might not be allowed near schools, for example. If the tracked person were to breach an exclusion zone, an alarm would be sent to law enforcement authorities. Authorities then would be responding after the fact, and it only takes minutes to perpetrate a violent crime. Given the fact that sex offenders cannot resist their urges and will lose control under certain psychological conditions, it is foolish to hope that we can contain such behavior merely by the threat of having them prosecuted through tracking. Again, our goal should be the protection and safety of our children, not the ability to win a pedophile court case.

The inherent weaknesses in such a system are obvious. While GPS can relay a person’s location theoretically “24/7,” not only will there not be a human eye keeping a constant watch on this technology, but GPS doesn’t function well or at all, in certain conditions, such as in a basement, tunnel, subway or building. In addition, such technology can tell where a subject is and whether or not he has breached an exclusion zone, but it cannot tell

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whether the subject is carrying out a crime. A probationer could commit a crime outside of an exclusion zone, while the electronic monitoring indicates nothing is amiss.

The Miami Herald praised the Lunsford Act, saying in part, that electronic monitoring would make it more difficult for ex-convicts to repeat their offenses after they’ve served their time and been released from jail. Many of these offenders are hardened criminals, however, and not deterred by passive tracking of their actions. The first week of May 2005 saw a story break that illustrates this point. A convicted sex offender under supervised release, Patrick Wayne Bell, went missing after cutting off his electronic anklet (see figure 1) at his mother’s house, which is near a school. Bell had previously molested two children and is still missing as of this writing. Another offender, Jimmy James Felder, cut his anklet off and was located only when he turned himself in to authorities. These two cases underscore the great danger of putting any significant trust for community safety in electronic monitoring.

![Figure 1](image)

To make matters more complicated, the New York Daily News reported that thousands of convicted sex offenders will vanish from the Megan’s Law mandated registry beginning

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next January 2006\textsuperscript{26}. The law, which went into effect in January 1996, requires only the most dangerous offenders to register for life. All other predators have to stay registered for just 10 years. Of New York’s statewide total, only 5,551 have been branded lifetime registrants. The other 15,418 currently registered offenders will eventually be free of the registration requirement because court evaluators have deemed them low, or moderate, risk offenders\textsuperscript{27}. Assemblyman Felix Ortiz (D-Brooklyn) thinks he has got the answer by drafting a bill that would (you guessed it) require all sex offenders to wear ankle bracelets equipped with GPS to allow authorities to track their movements. He announced that “This technology will work, so let’s use it instead of playing Russian roulette with our families.”\textsuperscript{28} The fact is that relying on tracking technology is a form of playing Russian roulette with our families while only giving prosecutors more ammunition to prosecute after the crime has been committed. It is about time we raise the level of debate regarding the effectiveness of GPS as a crime prevention tool. Otherwise, politicians who lack technological savvy will easily lead ignorant communities into a false sense of security.

**Conclusion: Children Comes First**

\textsuperscript{26} Keith M. Woods, “Megan’s Law: A New Ethical Dilemma” [report online], available from http://poynteronline.org/content/content_view.asp?id=5606; accessed 19 July 2005, Page 1 of 2


While media coverage of the recent Florida tragedies is extensive, there has yet to be a newspaper explaining the limitations and details of the technologies that will be used for monitoring. This is a serious matter, since the safety of the communities across the country is at stake. We as a people have a tendency to deal with symptoms rather than solving the core problems. Any time we do go after the core problems, we make things better for decades at a time, e.g., labor laws, Social Security, etc. This is another instance of treating the symptom but ignoring the disease. We're too great of a country to make the same mistakes over and over again.

It might actually be fairer to just declare all child molestation crimes punishable by life in prison without parole since GPS tracking is nothing more than a permanent, electronic scarlet letter. In a perfect world, GPS monitoring of sexual offenders would be the answer. A real time tracking and monitoring system would give the parolee the feeling they will be monitored and caught if they re-offend. It would also give the community a feeling of safety by knowing the most dangerous amongst us are under the watchful eye of the authorities Truthfully however, these are sexual predators and this is not a perfect world.

Using GPS as a tool for early release of sex offenders is a knee-jerk, reactionary idea that obviously hasn't been thought through, the kind one might expect when laws are hastily written and enacted in a rush of passion. Of course the feeling of grief, anger, outrage, fear, and frustration provoked by heinous crimes are natural and understandable, but they should not drive an unchecked legislative process. Children come first and should be protected by all means. However, justice isn't furthered by laws compounded from an
urge to both reassure and appease an appalled and vengeful public. Fear will always prefer a bad law to the alternative of "doing nothing".

It's also easy to argue for the summary execution of pedophiles, and to enthusiastically support anything offered as a solution to eliminating their nefarious conduct, but the devil is always in the details. Various studies cite the re-conviction rate for child molesters to be between 13 and 20 percent and a 37 percent reconviction rate for new, non-sex offenses over a 5-year period. How many precious, innocent children will have to die before enough is enough? Are we really interested in seeing how many pedophile cases we can execute? Until we as a society can come up with a definite solution that will protect our children from these heinous offenders, mandatory life sentences at the very least accomplishes the task of keeping sex offenders away from potential victims. One harmed child is one child too many. Reduced sentences based on the concept of overcrowding or expenses are not the answer. It’s the nature of the crime, and its victims are our important consideration when it comes to sex offenses against our youth.

GPS tracking is the scarlet letter that mollifies the public while encouraging convicted sex offenders to sustain their behavior or accelerate the severity of their crimes. Yet, GPS tracking can only help prosecute the crime after the fact. Do we want law, order and safety for all or do we want to make sure vengeance is served? We are in pitiful danger when we can only wait impotently for crime to occur to take necessary action and seem to forget why we need a judiciary system in place to begin with.

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