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Applying the Lessons of GPS Monitoring of Batterers to Sex Offenders

Pamela Foohey*

GPS monitoring of batterers appears to be an ingenious solution to one of the major flaws of the current domestic violence protective order system.¹ Although GPS monitoring has been questioned as potentially unconstitutional as applied to sex offenders, when individually tailored, it may prove to be an effective solution to the problem of monitoring sex offenders. GPS monitoring of criminals with potentially high probabilities of recidivism is not a new idea.² California has monitored parolees and probationers who require a high level of supervision since 2005.³ As of mid-2006, seventeen states, including Massachusetts, have enacted some form of legislation requiring GPS monitoring for certain sex offenders.⁴ Just as in the case of GPS monitoring of batterers, in these instances, GPS monitoring has been hailed

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¹ Without similar monitoring, batterers are tempted to violate protective orders knowing that, in general, police are unaware of a batterer's whereabouts and rely on victims to report violations of protective orders. See PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T. OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 53 (2000) (finding that "[m]ore than two-thirds of restraining orders obtained by women against intimates who raped or stalked them were violated"), available at <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>; Edna Erez & Peter R. Ibarra, *Making Your Home a Shelter: Electronic Monitoring and Victim Re-entry in Domestic Violence Cases*, 47 BRIT. J. CRIMINOL. 101 (2007) (noting that both victims and police officers have described protective orders as "not worth the paper they are written on"). Moreover, large- and small-scale studies have confirmed its benefits. See Erez & Ibarra, *supra*; Michigan Domestic Violence Prevention & Treatment Board, Child & Family Services, Board Meeting Minutes (Oct. 11, 2000) (noting that none of the twelve batterers placed on GPS monitoring as part of a study conducted in Michigan violated their exclusion zones), available at http://www.michigan.gov/documents/dv10112000_10233_7.pdf; Maura Kelly, *Tracking Device: How About Using GPS Monitoring to Stop Batterers?*, SLATE, May 4, 2007, <http://www.slate.com/id/2165568> (noting that none of the seven batterers placed on GPS monitoring as part of Massachusetts' program have committed any serious infractions post-monitoring).

² See Matthew J. Kucharsen, Note, *GPS Monitoring: A Viable Alternative to the Incarceration of Nonviolent Criminals in the State of Ohio*, 54 CLEV. ST. L. REV. 637 (2006) (discussing Ohio legislation that includes "electronic monitoring" as an alternative to house arrest for convicted felons).

³ CAL. PENAL CODE §§ 1210.7(a)-(d), 3010(a)-(d) (West 2007).

⁴ See Listing of Statutory Provisions, National Conference of State Legislatures, June 28, 2006, http://www.npr.org/programs/morning/features/2006/oct/prop83/ncsl_gps.pdf (last visited Oct. 19, 2007) (collecting statutes).

as a valuable device to combat recidivism, with its benefits further augmented by its ability to be tailored to the individual offender.⁵

What makes GPS monitoring so attractive in the case of batterers and other criminals should make it equally attractive in the case of sex offenders. GPS monitoring legislation directed towards batterers is often introduced in the wake of brutal, and seemingly preventable, murders of previously-abused women and their children. Similarly, legislation aimed at preventing sex offenders from re-offending often comes about in response to public outcry after a convicted sex offender re-offends or merely moves to a particular neighborhood, town, or state. GPS monitoring of sex offenders, however, has not been the legislation of choice in recent years. Instead, many states and municipalities have turned to residency restrictions as a way to control sex offenders.⁶

Although the rules vary from state to state, in general, sex offender residency restrictions prescribe where sex offenders may live under the terms of their parole: "The most common form of these restrictions limits sex offenders from residing within specified distances from schools, day care centers, playgrounds, parks and other places where children congregate."⁷ Despite their popularity among citizens, legislatures, and the politicians proposing them, residency restrictions have been criticized on many fronts. Critics claim these residency restrictions are both overinclusive and underinclusive.⁸ They have been criticized as overinclusive because while they are designed to address "stranger danger," a majority of victims are assaulted by acquaintances or family members.⁹ Further, residency restrictions are underinclusive because they do not prevent sex offenders from coming into contact with likely victims. First, sex offenders tend to have a preference for specific victim characteristics not locations.¹⁰ Second, al-

⁵ See, e.g., Kucharson, *supra* note 2; Marisa L. Mortensen, Comment, *GPS Monitoring: An Ingenious Solution to the Threat Pedophiles Pose to California's Children*, 27 J. Juv. L. 17 (2006).

⁶ At least twenty-seven states and numerous municipalities have enacted some form of residency restrictions aimed at sex offenders. See Sarah Geraghty, *Challenging the Banishment of Registered Sex Offenders from the State of Georgia: A Practitioner's Perspective*, 42 HARV. C.R.-C.L. L. REV. 513 (2007).

⁷ Meghan Sile Towers, Note and Comment, *Protectionism, Punishment and Pariahs: Sex Offenders and Residency Restrictions*, 15 J.L. & POL'Y 291, 302 (2007).

⁸ See generally Lisa Henderson, Comment, *Sex Offenders: You Are Now Free to Move About the Country: An Analysis of Doe v. Miller's Effects on Sex Offender Residential Restrictions*, 73 UMKC L. REV. 797, 811-19 (2005); Bret R. Hobson, Note, *Banishing Acts: How Far May States Go to Keep Convicted Sex Offenders Away from Children?*, 40 GA. L. REV. 961, 962-67 (2006).

⁹ See Towers, *supra* note 7, at 318 ("[A]mongst juvenile female victims only 7.5% were assaulted by a stranger, while 58.7% were assaulted by an acquaintance and 33.9% were assaulted by a family member. . . . [O]nly 5% of young male victims were assaulted by strangers, while 59.2% were assaulted by acquaintances and 35.8% were assaulted by family members.").

¹⁰ Henderson, *supra* note 8, at 812-13 ("Contrary to popular belief, sex offenders vary in numerous aspects involving who, how and why they offend Some only victimize children, others only adults. Some molest only family members, while others prefer unknown

though residency restrictions “prevent sex offenders from living near areas where children congregate, [they] do not prevent an offender from living next door to minors. Nor do the laws account for the fact that sex offenders are more likely to travel outside of their neighborhood to avoid recognition if they attempt to re-offend.”¹¹ In short, according to critics, residency restrictions do nothing to deter sex offenders from re-offending.¹²

In addition to attacking their effectiveness, critics contend that residency restrictions have negative effects on property, decreasing the pool of potential buyers, and thereby diminishing the transferability of land.¹³ Residency restrictions push sex offenders to more rural areas at the outskirts of cities and towns. Not only does this remove sex offenders from the areas where they are likely to find work and treatment, but it also isolates them from society, aggravates their housing problems, and forces them to live near each other. Research and logic suggest that their levels of recidivism may fall if instead they are allowed to integrate into society and live near their families.¹⁴ Further, critics argue that residency restrictions make “pariahs” out of sex offenders, effectively banishing them from society and causing them mental anguish that is tantamount to additional punishment beyond serving their prison sentence.¹⁵

Accordingly, residency restrictions most likely do little to decrease recidivism of sex offenders or allow police to catch those vulnerable sex offenders who will relapse before they can do so. Indeed, these restrictions may force sex offenders into living situations unfavorable to their recovery and convey to them that the restrictions can be circumvented easily. It is plausible that in some instances states and municipalities, by enacting residency restrictions, may be unknowingly encouraging sex offenders to relapse.¹⁶

Fortunately, as with GPS monitoring of batterers, GPS monitoring of sex offenders may offer a solution to the flaws of residency restrictions highlighted by critics. It is the differences between GPS monitoring and residency restrictions that make GPS monitoring a compelling alternative to ineffective residency restrictions. First, preliminary studies have shown that

victims. Some are especially selective, preferring a certain gender, hair color, race, or financial background.”)

¹¹ Towers, *supra* note 7, at 319. See also Henderson, *supra* note 8, at 814–15.

¹² See, e.g., Geraghty, *supra* note 6, at 514 (“There is no evidence to suggest that residency restrictions prevent child molestation.”); Henderson, *supra* note 8, at 811–12.

¹³ Towers, *supra* note 7, at 321–22.

¹⁴ *Id.* at 331–32. See also Henderson, *supra* note 9, at 802–07; Richard Tewksbury, *Exile at Home: The Unintended Collateral Consequences of Sex Offender Residency Restrictions*, 42 HARV. C.R.-C.L. L. REV. 531 (2007) (discussing the impact of sex offender registries and residency restrictions on the ability of sex offenders to find housing).

¹⁵ See Henderson, *supra* note 8, at 804, 807–09. Critics also argue that GPS tracking of batterers is unconstitutional. They level the same critique against residency restrictions aimed at all sex offenders. See, e.g., Hobson, *supra* note 8, at 968–92.

¹⁶ See Henderson, *supra* note 8, at 804–07.

GPS monitoring of sex offenders decreases recidivism.¹⁷ GPS monitors remind offenders that they are being continuously monitored, thus deterring a relapse of violence. Second, GPS monitoring has the potential to allow police to catch sex offenders before they do harm. One of the most cited reasons for the success of GPS monitoring of batterers is that the monitoring is tailored to the individual batterer. GPS monitoring also can be tailored to individual sex offenders through consideration of their characteristics and circumstances. As noted above, sex offenders offend according to specific factors, which can be identified to adapt monitoring programs to individual offenders.¹⁸ With knowledge of individual sex offenders' perpetration patterns, GPS monitoring can be used to identify and monitor stalking behavior. Police can selectively track the movements of sex offenders, focusing on the frequency and amount of time they spend near schools, churches, the homes and workplaces of former victims, and other locations.¹⁹

Thus, GPS monitoring may accomplish what legislatures passing residency restrictions incorrectly think they will effectuate: ensuring that sex offenders stay away from the people, places, and communities that will likely cause them to relapse.²⁰ Further, GPS monitors are worn under clothing—a minimal intrusion into the lives of offenders as compared to residency restrictions.

The lessons of GPS monitoring of batterers teach that GPS monitoring can be a less-restrictive, less-burdensome, better tailored, and more effective alternative to residency restrictions for sex offenders. It may have been the ease of passing residency restrictions for sex offenders in the wake of a seemingly preventable tragedy, that led states and municipalities to pass such highly restrictive legislation with questionable effectiveness. Regardless, in the future, states and municipalities would do their citizens a service by reflecting on the lessons of GPS monitoring of batterers when considering alternatives to residency restrictions. In doing so, they may choose a solution that truly helps to combat sex offender recidivism.

¹⁷ See *supra* note 1; Mortensen, *supra* note 5, at 26–27 (noting that two years after requiring GPS monitoring of certain classes of sex offenders, “only 31 percent of those with GPS monitoring had their community release revoked, compared with 44 percent under traditional methods”). Such results are logical given that continuous monitoring should be expected to deter batterers and sex offenders who may otherwise disregard the law (and the terms of their protective orders or probation), gambling that they will not be caught.

¹⁸ See *supra* note 10 and accompanying text.

¹⁹ With knowledge of an individual sex offender's perpetration pattern, GPS monitoring of the sex offender, like GPS tracking of batterers, can be designed to communicate with authorities only when the sex offender enters off-limit zones, such as certain types of schools. Although likely less effective, such tracking similarly can be implemented by police even without knowledge of an individual sex offender's perpetration pattern. In such a case, the monitor can be designed to trigger when the sex offender exits private zones, such as the immediate vicinity around her home and workplace. It is acknowledged that this less-tailored tracking may invite ardent constitutional challenges.

²⁰ See Mortensen, *supra* note 5, at 18–19.