DRAFT 4-6-10

Introduction

Governor Arnold Schwarzenegger has asked the California Sex Offender Management Board (SOMB) to review sex offender laws and practices relating to the parole and post-parole management of convicted sex offender John Gardner. Gardner was charged in San Diego County with the rape and murder of Chelsea King on February 25, 2010.[1] Note that certain information, including summary criminal history information and psychiatric and health records, is not public information and there are legal limitations on disclosure.[2] This report reviews the parole and post-supervision tools for managing sex offenders that were in place since Gardner was paroled in 2005, as well as looking at the Mentally Disordered Offender (MDO) and Sexually Violent Predator (SVP) laws, concluding that a change to the MDO law might have helped prevent the murder of Chelsea King. It also examines California laws and practices used to monitor convicted sex offenders to suggest other changes that can help prevent such horrific crimes from occurring. Specific recommendations for change based on the lessons learned from this case are found at the end of this report.

The media and others have concentrated on that period of time when John Gardner was involved with the criminal justice system after his first sex offenses (lewd or lascivious acts with a child under 14). While the functioning of the current sex offender supervision system is certainly critical to the review of this case, it cannot be forgotten that the offenses occurred later, when Gardner was under no formal supervision. Accordingly, our review focuses on potential changes to the management of sex offenders both while offenders are involved with the criminal justice system and once they are no longer on parole or probation.[3]

Parole Violations

A. The Fact That Gardner Was Living Near a School Should Have Resulted in A Requirement That He Move Or Face Potential Revocation at the Board of Parole Hearings

There is evidence in Gardner's file that his parole agent imposed a condition of parole that prohibited him from living within one-half mile of a school that included grades K- 6. After he was paroled, on January 1, 2006, a new law prohibited a high risk sex offender from living within a half mile of a school K-12.[4] Parole records indicate that Gardner was allowed to live in a location within a half mile of a school until August 2007. After the law changed, Parole

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[1] Gardner has not yet been tried or convicted and nothing in this report should be construed as a judgment as to his guilt or innocence.

[2] It is important to understand the role of the SOMB with respect to this report. The SOMB does not have the power to compel others to provide testimony or deliver records upon request. Our information is dependent upon others to work cooperatively with us in an effort to learn from any mistakes, and provide insightful recommendations in an effort to increase public safety.

[3] The Office of the Inspector General has also been asked to investigate the events leading to the murder of Chelsea King. The OIG investigation may be more limited in scope then this report, due to the nature of its mandate to investigate wrongdoing. A major reason for the SOMB to look into this tragedy is that our focus has always been on recommending policy that provides for increased public safety and decreased victimization. The role of the SOMB is to critically examine community participation, local justice efforts, and the state's role in effective sex offender mangement, with an eye to recommending better state and local law and practices for managing sex offenders.

[4] Penal Code section 3003, subd. (g).

should have reviewed the case to determine if Gardner was a high risk sex offender subject to the new law. However, at that time there was no statutory definition of a high risk sex offender—the Static-99, which defines a high risk sex offender, was not adopted until a new law went into effect in the fall of 2006.[5] In any event, Parole should have required Gardner to move sooner because he was in violation of the parole condition.[6] If he refused, Parole should have referred the matter to the Board of Parole Hearings.

However, even if he had been referred to the Board of Parole hearings when he first began living at that location, after refusing to move, it would not have resulted in screening for sexually violent predator status, because Gardner first started living at the location in 2005, a year prior to the enactment of the Jessica's Law Initiative. Jessica's Law now mandates that sex offenders with only one sex offense conviction be screened to determine if they meet criteria for civil mental commitment as sexually violent predators. We discuss, below, why Gardner would not have met the criteria for SVP commitment even if his parole had been revoked and he had been returned to prison after November 7, 2006, the date Jessica's Law was enacted.

The record shows that John Gardner was residing in a location between October 2005 and September 2007 that was within 1/2 mile of a school. (Neither the law nor Gardner's conditions of parole prohibited him from living any particular distance from day care facilities.) When Parole determined in August 2007 that Gardner was living in a location prohibited by his conditions of parole (near a school), he was required to move and was scheduled for a parole revocation hearing by his newly assigned parole agent. An officer of the Board of Parole Hearings heard Gardner's parole revocation case, and decided that he would not be revoked but rather be continued on parole. The decision was based on the fact that a parole agent had allowed him to reside at the prohibited location earlier, and that Gardner had been cooperating with all other conditions of parole. Parole should have reviewed the case sooner once the new law was effective in January 2006, to determine if the law applied to Gardner. However, the belated review in 2007 resulted in a referral for revocation that ended in Gardner's placement back in the community.

Parole should have followed through earlier with a review of whether Gardner met the criteria for a high risk sex offender, in which case the new law would have applied to prevent him from living near a school at that time. However, it is unlikely that a revocation would have changed anything with respect to the crimes that Gardner is now charged with committing. Residing close to a school has not been found by studies to be related to where sexual re-offense occurs. (SOMB January 2010 report to the Legislature, at www.casomb.org.) At the time of

[5] The SARATSO risk assessment tools each define high risk sex offender for purposes of that tool; on the Static-99, a score of 6 and higher is high risk for that instrument. (See Penal Code section 290.04; www.static99.org.) Parole places offenders with scores of 4 and above (moderate to high risk) on intensive sex offender supervision case loads.

[6] The law that applied to Gardner was California Penal Code Section 3003, subdivision (g), which at the time of his release prevented Gardner from residing within one-quarter mile of an elementary school (grades K-6). The law was later amended while Gardner was on parole to include grades K – 8. The law was further amended in 2006 to expand the residence restriction to one-half mile and include grades K – 12. This amendment, however, also included the stipulation that the residence restrictions only apply to those sex offenders who were considered high risk. There is no indication in Gardner's file that he was ever classified as a high risk sex offender (HRSO) and therefore would not have been precluded by this law from living near a school once the last change in the law was made by the Legislature.

Chelsea King's rape and murder, Gardner was living in Riverside County, but the crimes occurred in San Diego County.

B. In Future, All Parole Violations for Marijuana Possession Should be Referred for Possible Parole Revocation Because Lack of Cooperation on Supervision Can Indicate Increased Risk of Sexual Reoffense

Gardner's citation for possession of less then one ounce of marijuana in 2008 was an infraction and not a mandatory referral for parole violation.[7] However, the SOMB recommends mandatory referral for such cases in the future. While there is no evidence in the scientific literature that there is any correlation between use of marijuana and either violent or sexual recidivist behaviors,[8] it was still a clear violation of his conditions of parole. It seems prudent that this type of violation should be one that is referred to the Board of Parole Hearings to determine if parole should be revoked. While there is no indication in the presentencing report on Gardner's 2000 sex offense that Gardner used drugs during that offense, use of drugs while on supervision demonstrates that the offender is noncompliant with important parole conditions. Since noncompliance while on supervision can be an indication of increased risk of re-offense, the Board should have carefully reviewed Gardner's marijuana citation for possible parole revocation.

C. GPS Low Battery Alerts Should Not Trigger Parole Revocations

Five of the "opportunities" to revoke parole, discussed in news accounts, occurred when Gardner's GPS monitor alerted his Parole Agent that the battery on the GPS unit was low. In checking with a technician from the manufacturer of the GPS units, Satellite Tracking of People (STOP), the alert for low battery occurs approximately four (4) hours prior to the battery no longer being operable.[9] At the same time as the parole agent receives an alert, the GPS monitor vibrates on the ankle of the offender, alerting him that he needs to begin making preparations to recharge his GPS unit.

Typically, parolees are requested to charge their GPS units approximately every 12 hours. Parole Agents discuss this issue with their parolees and encourage them to set up a schedule where they can recharge their GPS units twice daily. While in theory this appears to be a very workable arrangement, there are sometimes uncontrollable variables within the GPS technology that make this system far from perfect. GPS technology depends on both global satellite transmission and cell phone tower transmission in order to work properly. The satellite transmission tracks the offender while the cell phone signal transmits the information to the monitors of the signal. If for some reason the GPS monitor is in a location that is blocked from access to cell phone towers or the satellite tracking the device, (a building or a mountainous

[7] Parole policy was based on a regulation that states, in part, that criminal behavior is defined as committing a misdemeanor or felony. (15 Calif. Code of Regulations, section 2616.)

[8] Boles & Miotto (2003) Aggression and Violent Behavior, 8, 155-174: There is very little evidence to link marijuana use with violent crime. In one study, cocaine and alcohol use were linked to violent behavior but cannabis use was not. (S. MacDonald, et al., 33 Addictive Behavior (Jan. 2008) at 201-205.) However, there is an association between drug use in general and criminal behavior, and specific treatment is of value in reducing this risk. (Lurigio (Aug. 2000) 27 Criminal Justice and Behavior 27, at 495-528.)

[9] Telephone conversation with Brian Moran on April 5, 2010.

area), the GPS unit will continually try to make contact until such time as it is successful. This will affect the battery life of the GPS unit.

These transmission problems can occur without the knowledge of the person wearing the monitor and therefore the manufacturer utilizes rely on the low battery alert to warn all involved that the GPS unit must soon be recharged. It is a condition of parole that an offender keep his GPS unit charged and operable. In this case, the battery for Gardner's GPS unit never completely discharged or became inoperable. SOMB recently spoke with a representative of STOP,[10] who said he was not aware of any of the over 90 agencies throughout the United States utilizing STOP GPS equipment that was revoking parole or probation based on low battery alerts. He was aware of revocations occurring for several instances in which the GPS unit became inoperable.

D. Gardner's Parole Conditions Should Have Been More Narrowly Drawn and Related to The Conviction Offense or Related to Deterring Future Criminality; Parole Needs to ~~Develop Guidelines For Checking~~ On Parolees Banned from Internet Use

After Gardner's arrest, it was reported that he had a page on a social networking web site, MySpace, which was established in 2007, prior to his discharge from parole. One of the parole conditions in Gardner's case provided that he could not possess computer equiment that was attached to a modem or telephonic device. This raises several issues, including whether Parole could have reasonably been expected to discover he was in violation of his parole condition, and whether such a parole condition was legal. We conclude that Parole needs to more narrowly draw parole conditions so that they can be legally defended when challenged. We also conclude that in this case, the ban on computer use and even belonging to a social networking site might not have been upheld, if challenged. Finally, we recommend that Parole establish guidelines for parole agents who should check on compliance with computer-related parole restrictions.

Under California law, a condition of parole that completely bans a sex offender from Internet computer use is overbroad, even when that offender was convicted of child molestation, unless the crime involved computer use.[11] Gardner's 2000 child molest offense did not involve Internet use to solicit victims, or to view child pornography. Thus, a complete ban on Internet use in Gardner's case would probably have been struck down by a court.[12] The parole restriction

[10] Telephone conversation with Brian Moran on April 5, 2010.

[11] *In re Stevens* (2004) 119 Cal.App.4th 1228: held that a condition of parole which completely prohibited a paroled child molester from possessing or having access to computer hardware or software including the Internet was overbroad because the defendant's crime did not involve use of the Internet, and the condition of parole involved a greater deprivation of liberty than was required to achieve the goals of parole supervision. (*Id.* at pp. 1231, 1239; see also *U.S. v. Riley* (9th Cir. 2009) 576 F.3d 1046, 1048–1050 [although defendant's crime involved child pornography, condition of supervised release prohibiting him from using a computer to access any material that relates to minors was overbroad under federal statute]; *U.S. v. Perazza-Mercado* (1st Cir. 2009) 553 F.3d 65, 69–74 [complete ban on Internet use at home was not narrowly tailored for offender whose crime did not involve use of computers].)

[12] Cf. *People v. Harrisson* (2005) 134 Cal.App.4th 637: complete ban on Internet use upheld because parolee not only accessed the Internet to view child pornograph, but had solicited a 12-year-old for sex over the Internet.

must either have a relationship to the crime of which the offender was convicted, or be related to that offender to deter future criminality.[13]

In order to ban belonging to a social networking site as a condition of parole, there may need to be a factual nexus to the offense or offender, such as a record of seeking victims through newspaper or Internet ads, or through social networking or dating web sites. Since Gardner's 2000 offense was against a neighbor whom he had known for a year, such a ban would have been problematic. A more narrowly drawn ban on communicating with underage children via the Internet or a social networking site, on the other hand, would probably have been upheld against legal challenge. Parole policy needs to define the appropriate boundaries for parole conditions. A complete ban on computer use was not appropriate in this case, but a ban on contact with minors over the Internet would have been appropriate as a parole condition.

When a ban on Internet use is properly imposed as a parole condition, such as communicating with minors over social networking or other Internet web sites, the issue becomes how to enforce the condition. Parole officers need time to be in the field talking to parolees and others to check on compliance with parole conditions and to assess increased risk of reoffense. They must also spend time in the office doing paperwork checking GPS tracks or Internet compliance, so a balance is necessary. SOMB recommends that Parole implement a policy requiring parole agents to check on compliance with Internet parole conditions on a regular basis, at least once a **. Guidance should be provided to parole officers about the software or Internet means that can be used to make such checks. Parolees with Internet parole conditions should be required to provide parole officers, on a regular basis, with all e-mail addresses and internet service provider information, when appropriate. However, it should be understood that there are so many social networking sites of various types that it may be virtually impossible to enforce such conditions, especially when the parolee uses a computer not at his or her own home.

Use of the Containment Model While Sex Offenders Are on Parole or Probation Can Help Prevent Sexual Re-offense Later—This Model Was Only Partially Used While Gardner Was on Parole

Sex offenders on parole make up less than ten percent of the registered sex offender population in California.[14] Seventy-five percent are under no supervision and restrictions on residency may not apply to many of them, according to the California Supreme Court.[15] Of the 68,000 sex offenders who reside in California communities, only 6,700 are on parole. Some are on probation (10,000) while the remaining 51,000 are under no supervision. The typical parole or probation term in California is three to 3-5 years.

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[13] The courts seem most willing to condone a complete ban on Internet access if the defendant's conduct went beyond merely accessing child pornography, e.g., use of the Internet to lure a minor into a sex act (*U.S. v. Crandon* (3d Cir. 1999) 173 F.3d 122, 125), advocating or instructing others on how to access children for sex (*U.S. v. Paul* (5th Cir. 2001) 274 F.3d 155, 168), or using the Internet to plan predatory or violent acts (*U.S. v. Rearden* (9th Cir. 2003) 349 F.3d at 608, 611–612).

[14] SOMB January 2010 report to the Legislature, at p. 45, found at www.casomb.org.

[15] *In re E.J.* (2010) 47 Cal.4th 1258.

The SOMB reviewed the residency of sex offenders residing in the city of Escondido to compare those who were on parole versus those that were not. When looking at a geographical area of the city (2.57 miles) of Escondido, paroled sex offenders made up less than one half of one percent of the population. There were 141 sex offenders who were not on parole compared to only 7 who were.[16] The state residency restriction was enforced as to these 7 paroled sex offenders, but as discussed below, it may be held not to apply to offenders who are no longer on parole. Because it is unclear when and if the law applies to other sex offenders who are not on parole, the law has not been enforced.[17]

Some states have implemented a form of supervision called the "Containment Model." This requires frequent communication and coordination between local law enforcement, community supervision officers, treatment providers, polygraphers and members of the victim community. Through the communication and cooperation of these entities, it has been found that recidivism rates for sex offenders have decreased. Communication between the members of the "containment team" may provide additional information concerning risk that otherwise might not be available to local law enforcement.

One of the major components of the Containment Model is sex offender-specific treatment. Presently, California is one of the few states in the country that does not provide sex offender-specific treatment for sex offenders in institutions and/or on parole or probation. Most paroled sex offenders are referred to a Parole Outpatient Clinic for treatment. This treatment was primarily designed to deal with traditional mental health clients and the clinicians are generally trained in that type of therapy. Sex offenders are referred because there is no sex offender-specific treatment available at this time. CDCR is presently engaged in a bid/contract process to make such treatment available to a limited number of high risk sex offender parolees.

One of the important aspects of the Containment Model, missing in the Gardner case, is the use of the polygraph. In many states, parolees are required to undergo a polygraph examination every six months. They are questioned regarding adherence to their conditions of parole as well as their truthfulness in treatment. In both the cases of Phillip Garrido and John Gardner, significant information might have been uncovered had they been given polygraph examinations. While polygraph results are not generally admissible in court, they can be used as the basis to begin an investigation to develop independent evidence of violations. Polygraph results can also provide a better picture of the actual risk of re-offense.

Communication about past and ongoing issues is the heart of the Containment Model. At the time of these crimes, the law did not require CDCR or local law enforcement agencies, which register sex offenders, to retain records on sex offenders for any specified time period. In order to have all the facts about a registered sex offender, it is essential that all agencies involved in investigating, supervising, monitoring and registering such offenders retain records for at least 75 years, or until the death of the registrant. Current law requires that the courts, the California Department of Justice, and district attorneys' offices retain these records for 75 years.[18] CDCR

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[16] Review of Megan's Law website residency information for offenders not on parole compared to CDCR data on parolee residences in Escondido.

[17] Although some cities and counties have enacted local ordinances restricting where sex offenders can live, many of these laws are prospectively applied only, to preclude constitutional challenges, and few are being enforced , probably due to doubts about their legality once offenders are no longer on parole or probation.

[18] Penal Code section 290.08; Govt. Code section 68152.

has since promulgated a policy requiring that parole notes on sex offenders be retained indefinitely. Registering agencies (sheriffs and police departments), county probation departments, and CDCR should be added to the law requiring that these records be retained for 75 years.

Expanded Risk Assessment Could Have Provided More Information To Local Law Enforcement Agencies About Gardner's Risk Of Sexual Re-Offense and Dangerousness

California's use of the Static-99 to assess risk of sexual reoffense was mandated in 2006 and was an important first step in determining future risk posed by sex offenders. As this case illustrates, California needs to take the next step, which is providing funding for parole and probation to do dynamic risk assessment, and for treatment providers to score sex offenders on danger assessments. (A danger assessment must be done by a sex offender treatment provider--it cannot be scored by a parole of probation officer.) The state's risk assessment committee (the SARATSO Committee) has the authority to adopt a dynamic risk assessment instrument,[19] but currently parole and probation have no funding to implement use of such an instrument when it is adopted. A combination of these assessments would provide a fuller picture of risk of future reoffense and dangerousness.

A scientific system for risk assessment was enacted in the fall of 2006 in California, after Gardner was already on a parole caseload.[20] Parole was required to assess every eligible sex offender on a parole caseload prior to termination of parole.[21] Gardner was assessed by Parole on August 15, 2007, as having a score of 2 on the Static-99, the state risk assessment instrument for adult males. This made him a moderate-low risk offender, meaning he had a 12.8 % chance of re-offending sexually over a 5-year period, and a 19.1% chance of re-offending sexually over a 10-year period. This score did not mean Gardner was only low to moderate risk for future violence, however, which is measured differently (see below). The Static-99 is used in at least 40 other states to measure sexual recidivism risk.[22] While not infallible, it is much more accurate than utilizing other methods of prediction, such as clinical judgment. The Static-99 is based on 65 scientific studies of sex offenders who reoffended, which identified the factors that most closely predict risk of sexual re-offense.[23]

The information about the static risk level by itself, while helpful, only gives part of the picture about an offender's potential for re-offending and level of dangerousness. A static risk assessment score, which is based on evidence about reoffending by other sex offenders in studies done by experts, reflects unchanging facts about the offender's criminal history, such as the number of arrests and convictions for sex crimes and violent crimes, and relationship to the prior victim(s). Another part of the picture, currently missing or unavailable to registering law enforcement agencies, is dynamic risk assessment.

A dynamic risk assessment instrument measures risk based on current *changing* facts about an offender. For example, is he currently under unusual stress due to emotional collapse, mental problems, or homelessness? Is he abusing alcohol or drugs? Is he in the middle of a divorce or other significant relationship breakdown (e.g., mom kicked him out)? These factors

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[19] Penal Code section 290.04.
[20] Added by Stats. 2006, c. 337 (S.B. 1128), § 15, eff. Sept. 20, 2006.
[21] Penal Code section 290.06(a)(2).
[22] Interstate Commission for Adult Offender Supervision survey, April 2007.
[23] Cross-Validation Studies of the Static-99, at www.amyphenix.com.

can be empirically measured at any point in time while an offender is on parole or probation by the supervising officer. Currently, the law permits the state's risk assessment committee to adopt a dynamic risk assessment instrument, but there is no funding for parole or probation to perform such assessments if a dynamic risk assessment tool is adopted.[24] Probation already performs the static risk assessments under an unfunded state mandate, at a time when resources are not readily available.

For an offender recently released from parole or probation supervision, like Gardner, the dynamic risk assessment findings could have helped a registering law enforcement agency form a more accurate idea of risk, if the results of the dynamic assessments were posted in the DOJ sex offender registry accessed by law enforcement. Parole notes about an offender's performance while on parole could similarly be made accessible through a database made available to all law enforcement. Starting in summer 2010, with the roll-out of the new sex offender registry[25] at the California Department of Justice, registering law enforcement agencies will be able to check online for the static risk assessment scores of registrants on their caseloads if they were scored after 2006.

Neither the Static-99 nor dynamic risk assessment tools measure psychopathy, or risk of future potential dangerousness or violence. Tests to determine whether an offender is a psychopath or more dangerous than other offenders should be done by a sex offender treatment provider as part of mandatory sex offender treatment. Such results would further round out the risk picture available to registering law enforcement agencies.[26] However, California law does not currently require sex offender treatment either on parole or probation. When treatment is available, it is usually provided to groups of offenders, as a condition of parole or probation, and does not normally include an empirical danger assessment.

In this case, no state-mandated treatment provider's report on future dangerousness was available to give law enforcement a better picture of Gardner's complete risk of re-offense. While Gardner did receive treatment (not sex offender-specific treatment) as a condition of parole in San Diego, it is unlikely that an empirical assessment of his risk of future dangerousness was done as part of that treatment process.[27] While a psychiatrist did report his concerns regarding Gardner during the pre-sentencing evaluation, his opinions were not based on empirical data, but apparently on clinical judgment, the least reliable way of assessing future risk. Nor was there any follow-up to see if those original impressions might have changed in either a negative or positive direction.

Tiering Sex Offenders To Target Higher Risk Offenders, and More Funding for Law Enforcement and SAFE Teams to Monitor Sex Offenders, Could Have Helped In This Case

A significant impediment in California to more closely monitoring registered sex offenders is the large number of registrants on local agency caseloads. California has about 68,000 registered sex offenders living in the community. Another 22,000 are currently

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[24] Penal Code section 290.04(b)(2).

[25] The California Sex and Arson Registry (CSAR).

[26] As noted above, empirical risk assessment tools that measure psychopathy and future dangerousness must be scored by a trained sex offender treatment provider . California law should require certification standards for such treatment providers, like those currently in law regulating batterer treatment programs for domestic violence.

[27] Gardner's mental health records are not public records and were not available to the Board for review. Also, not all group sex offender treatment is done by sex offender treatment providers—some groups are led by parole officers, who may not have the training to score the risk assessment tools assessing future dangerousness.

incarcerated in California prisons. California has by far the largest number of registrants of any state. California's large number of registrants is due to the very early (1947) enactment of registration laws, plus the fact that registration is lifetime for all offenders, from the most serious offenders to the lowest risk.

The January 2010 report of the California Sex Offender Management Board[28] recommended tiering sex offenders into three tiers, according to criteria that measure both the level of risk of re-offense and dangerousness. California is one of only four states that register all sex offenders for life, without tiering that takes into account risk level and offense committed. Since current California law treats all offenders the same for registration purposes, a law enforcement agency can't easily distinguish the most serious.

Resources of registering agencies are stretched thin and officers may not have time to request court information, old police reports, or check the DOJ database on the hundreds or thousands of registrants in their registering agency's jurisdiction. There are over 5,000 registered sex offenders within the jurisdiction of Los Angeles Police Department, the state's largest registering agency. Gardner was registered in Lake Elsinore, Riverside County, at the time of the charged rape and homicide on which he faces trial. Lake Elsinore does not have a registering police department; the Riverside Sheriff's Department registers the offenders who live there. There are about 3,400 registered sex offenders within the jurisdiction of the sheriff of Riverside County.

As the police chief in Antioch said after Jaycee Dugard was found in his jurisdiction many years after her kidnap by a registered sex offender currently charged in that case, Antioch had just one police officer in charge of registering and monitoring hundreds of registered sex offenders. The Riverside Sheriff's department is similarly challenged in that state and local funding does not support the number of officers required to do local compliance and monitoring of over 3,400 registered sex offenders. While many of those offenders completed probation or parole years ago, and have not committed another sexual crime in many years, others like Gardner have far more recent offenses and thus a greater likelihood of re-offending.

The Gardner case illustrates that sex offender monitoring must be regional, because offenders often relocate to new jurisdictions. The offender may have been assessed by one registering agency before he moved, but the new police department where he re-registered may not have time or resources to review his case file. In Gardner's case, he had registered in Riverside County prior to the rape and murder he is charged with committing in San Diego County. A San Diego registering agency was therefore not monitoring him at the time of the charged offenses. If he regularly spent time at a residence in San Diego County, he should have registered at that address too, which would have alerted the San Diego jurisdiction that he was in their area part of the time.

When the new DOJ sex offender registry (CSAR) goes online in 2010, the public will be able to see all of the offender's registered addresses. While wide public notification may not have prevented this offense, it's possible that the victim might have recognized Gardner if she could have seen his photo online because he had registered at a local address where he regularly stayed. Registering every address at which an offender regularly stays also helps local law

[28] Available at www.casomb.org; check under Reports.

enforcement in solving new crimes. It enables the agency to identify the registered sex offenders in the area whose prior crimes are similar to the unsolved sex offense.

Although Gardner was charged with a violent sex offense against a child under 14, he pled to an offense that did not involve violence.[29] Almost half[30] of registered sex offenders in California register due to this same offense. Someone who committed a fondling offense against their own child 35 years ago, who was convicted, successfully completed treatment, and was eventually reunified with the family, and who now has a relationship with the adult victim, is posted on the public Megan's Law web site with this same offense.[31] Someone who had consensual sex when they were 18 with a peer who was five years younger (13) may also be convicted of this same offense and posted on the public web site, even though that person has never offended again over many years and is clearly not a pedophile. The risk of re-offense for each of these offenders is very different, but to an agency which does not have all the facts about the registrable offenses, or time and resources to review them, the offenders can look the same.

Tiering offenders to reflect risk of re-offense and future dangerousness would enable registering law enforcement agencies to concentrate scarce resources on identifying and monitoring higher risk offenders. Tiering would also give law enforcement agencies more time to check the records of offenders on their registration caseloads. At the time of Gardner's offense, about 38,000 registered sex offenders were listed in the state's registry as having committed the same offense. Since risk levels vary widely from one such offender to the next, it would have been difficult for a registering agency to know Gardner needed a closer look.

Also, Gardner was convicted before new law mandated that probation officers submit all offense information gathered pre-sentencing about every registrable sex offender to DOJ's sex offender registry starting June 2010.[32] The fact that Gardner's conviction in 2000 actually involved violence would have been available to law enforcement in the new DOJ registry, CSAR, if he had been convicted under the new law. To solve the fact that detailed offense information is not readily available about sex offenders convicted prior to 2010, the Legislature could fund an effort by DOJ to collect similar information on offenders convicted before the new law took effect.[33]

Regional SAFE (Sexual Assault Felony Enforcement) teams, local and state agencies that come together to pool resources to monitor registrants and arrest those in violation of the registration law, also need to know how to best concentrate their efforts, and need to receive adequate funding to carry out their mission. If SAFE had discovered that Gardner was regularly staying at an address in San Diego County but had not registered at that address, it could have arrested him for violation of the sex offender registration laws.

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[29] Charged with Penal Code section 288(b), Gardner pled to 2 violations of Penal Code section 288(a).

[30] As of March 2010, 43% of registered sex offenders in California had been convicted of a lewd act against a child under Penal Code section 288; most of these were felony offenses.

[31] Penal Code section 290.46(b).

[32] Penal Code section 1203e, operative June 1, 2010.

[33] Any such effort should focus on registrants who have been released from custody on the registrable sex offense for 10 years or less, or repeat serious or violent sex offenders with offenses committed in the last 20 years, because this group is the most likely to commit another sex offense. This would involve a labor intensive effort to identify all qualifying registrants and obtain local police reports or probation reports from the jurisdictions where their sex offenses were committed; then offense information would have to be culled from these reports and displayed in the DOJ sex offender database.

However, SAFE teams are not all funded by the state. The San Diego SAFE team, for example, received a federal grant, which runs out in 2010, but no state money. Other SAFE teams also receive federal funding only for specific projects, such as Internet stings. A few SAFE teams currently receive some funding through the state but that will end in 2010. Whether they receive anything in 2010 depends on whether enough vehicle license fees are collected. Funding is nowhere near the levels that would be required to pay for any in-depth monitoring—especially given the number of current registrants, whose registrations date back to the 1940's. SAFE teams have to go out to registrants' homes to check on compliance with the registration laws, rather than simply registering them at the station once a year or when they move.

It is an impossible task for law enforcement to review individual cases to determine the risk posed by hundreds or thousands of registrants in a jurisdiction or region, which is why a tiered approach to registering offenders is necessary.[34]

Child Safe Zones Should Be Combined With Residency Restrictions That Target Child Predators: Such a Law Would Have Prohibited Gardner Being In a Park

The King case is a good example of the myth that restricting where sex offenders live will prevent repeat sexual offending against children. Even if the state residency restriction that prohibits registered sex offenders from living within 2000 feet of a school or park had applied to Gardner,[35] it could not have prevented the murder of Chelsea King. Chelsea was killed in a San Diego park far away from Gardner's registered home in Riverside County. Since Gardner was released onto parole before Jessica's Law was enacted, the law would most likely not have applied to him in any event.

The unintended effect of the residency restriction has been to hugely increase the number of parolee sex offenders registered as transients. California communities are less safe when offenders are homeless. See *Homelessness among Registered Sex Offenders in California: The Numbers, the Risks and the Response*, November 2008.[36] Further, the SOMB has previously reported that the hypothesis that sex offenders who live in close proximity to schools, parks and other places children congregate have an increased likelihood of reoffending remains unsupported by research.[37]

To deal with the problem of sex offender recidivism, and the fact that where offenders live is usually unrelated to where they reoffend, especially against stranger victims, California should target child sex offenders by enacting child safe zones, which would prohibit child sexual predators from being in these zones without a legitimate purpose. (See January 2010 report of

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[34] According to a news report, an Ohio county sheriff's department, which by law must go out to verify the whereabouts of registered sex offenders once a year or when the offender moves, has 5 detectives who spend all their time, plus overtime, simply verifying addresses for 850 offenders in their county.

[35] Since Gardner was no longer on parole in 2010, and since he was released on parole before the enactment of the residency restriction in Proposition 83 (Jessica's Law) on 11-7-06, it is doubtful that the law could be applied to him. See *In re E.J.* (2010) 47 Cal.4th 1258; *People v. Picklesimer*, case no. S165680 (3-15-10) _ Cal.4th _. The residence restriction applies prospectively only.

[36] Available at www.casomb.org; check under Reports.

[37] Minnesota Dept. of Corrections study of 329 high risk sex offenders revealed that recidivism occurred in only 13 cases, while none of the offenses occurred in school grounds, two of those occurred in parks. In both of those cases, however, the perpetrators lived miles from the crime scene and drove a vehicle to commit the offense. (Minnesota Dept. of Corrections 2003).

the California Sex Offender Management Board to the Legislature, available at www.casomb.org.) The child safe zone restrictions should be combined with residence restrictions that apply to offenders who have committed violent sex offenses against children, sexually violent offenders, and repeat sex offenders.

In the Gardner case, there was no state law restricting Gardner, or any other convicted child molester no longer on parole or probation, from being in a park.[38] Yet the victim of his alleged crime was a teen who was running in a park. There was no state law permitting a park ranger or other officer who might have been there on the day Chelsea King was jogging to either detain Gardner or to order him out of the park.

Uniform state laws that give law enforcement the tools to protect the public are needed. The state's current residence restriction does not protect the public because it forces many offenders into a transient lifestyle. If the residence restriction was enforceable against all registered sex offenders, they might just stop registering. This happened in Iowa when a 2000-foot residence restriction was enforced against all registered child molesters—they quit registering. The Iowa Legislature eventually repealed the law, replacing it with a loitering restriction combined with residence restrictions targeting high risk child molesters. When no one knows where convicted sex offenders live, because they are transient or fail to register, investigations into new crimes are stymied and the public may not know about the sex offender status of neighbors and acquaintances.

The laws need to be changed. A residence restriction focused on specified predatory child molesters, combined with a child safe zone law that applies to all child molesters, and tiering registered sex offenders according to risk and dangerousness, would give law enforcement agencies the ability to focus their resources on these higher risk offenders, and the tools to deal with situations where child predators are found frequenting parks where children gather.

Changes to the Mentally Disordered Offender (MDO) Commitment Law Might Have Permitted Gardner to Be Committed to a Mental Hospital And Prevented Further Crimes

There have been allegations that Gardner was evaluated for commitment as a mentally disordered offender prior to release from prison, and that conflicting psychological evaluations led to his release from prison without commitment.[39] The Board has been unable to either confirm or deny these reports, since the two state agencies which would be involved in an MDO commitment assessment, CDCR and DMH, both were unable to respond to the Board's request for information because state and federal laws provide that such information is confidential.[40] However, the record shows that no hearing on MDO status was ever held because Gardner was not referred for MDO proceedings. Such a hearing may be requested by the offender after three evaluators agree to refer him for MDO commitment.[41]

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[38] Although Penal Code section 653b persons (not just sex offenders) from loitering in public places where "children attend or normally congregate," the statute does not specifically address parks or other places where children can be expected to be present on a regular basis, other than schools.

[39] Penal Code section 2960, et seq.

[40] Civil Code section 56.10; 45 Code of Federal Regulations section 164.508 (HIPA).

[41] Penal Code section 2964.

In order for a person to be committed either to a mental hospital, or for outpatient treatment as an MDO, he is evaluated prior to release from prison. All six of the following factors must be met: (1) the prisoner has a severe mental disorder; (2) the prisoner used force or violence in committing the underlying offense; (3) the prisoner had a disorder which caused or was an aggravating factor in committing the offense; (4) the disorder is not in remission or capable of being kept in remission in the absence of treatment; (5) the prisoner was treated for the disorder for at least 90 days in the year before being paroled; and (6) because of the disorder, the prisoner poses a serious threat of physical harm to other people.[42] CDCR mental health staff must first refer the case to a DMH evaluator (psychologist or psychiatrist). Whether or not the DMH evaluator agrees that the person meets MDO criteria, the chief psychiatrist for CDCR decides whether to certify that the offender meets MDO criteria to the Board of Prison Terms. If that certification is made, the Board appoints two more evaluators.[43] If those evaluators agree with the CDCR psychiatrist that the person is a mentally disordered offender, MDO proceedings proceed. If one of those evaluators disagrees that the offender meets MDO criteria, MDO proceedings do not go forward.[44]

The SOMB could not verify news reports that Gardner's evaluators were split over his commitment as an MDO. If true, the one thing that might have prevented the murder of Chelsea King was a mental commitment, but California currently has a system which favors the offender when psychological evaluators are evenly split regarding commitment. Such a system does not protect community safety. The statute should be amended to provide for commitment, not release, when evaluators are split two to two over commitment. Even though Gardner's assessed sexual recidivism risk was low to moderate (Static-99), the potential for future violence or dangerousness is measured through other types of violence assessment instruments, which must be administered by a treatment provider. As noted above, danger assessments could be done on sex offenders in California while on parole or probation, if treatment was mandated. Since treatment is currently not mandatory in California, the only chance to assess violence potential under existing law is through the MDO process while a sex offender is still in prison. That chance was missed here if the opinions of two out of four evaluators were not enough to require that Gardner be committed to a mental hospital at the end of his prison term.

One obstacle to committing someone under the MDO law is proving that the mental disorder either caused or was an aggravating factor in committing the offense. In Gardner's case, the psychologist who examined him presentencing in 2000 did not find he suffered from a mental disorder, which could have created doubts by evaluators reviewing the case about whether a mental disorder played a role in the conviction offense. Another obstacle is proving that the prisoner was treated for the disorder at least 90 days in the year before being paroled. If the prisoner is treated for one disorder but the diagnosis is that another mental disorder, such as pedophilia, was the disorder that caused or aggravated the prior offense, he will not qualify for commitment.[45] For example, someone treated for depression in prison, but who molested

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[42] Penal Code section 2962; *People v. Sheek* (2004) 122 Cal.App. 4th 1606.
[43] Penal Code section 2960.
[44] Penal Code section 2962(d)(3).
[45] We are not implying that there was any diagnosis of pedophilia in this case. To the contrary, a diagnosis of pedophilia requires recurrent intense sexually arousing fantasies, urges or behaviors about a **pre-pubescent child**. (American Psychiatric Association, DSM-IV-TR 302.2.) Research shows the average age of pubescence is declining in the U.S. (See, e.g., Herman-Giddens, et al., Pediatrics Vol. 99, No. 4, April 1997: Secondary *Sexual Characteristics and Menses in Young Girls Seen in Office Practice*,

children, might not qualify for MDO commitment because they had not been treated for pedophilia.[46]

Since CDCR does not currently provide sex offender-specific treatment either in prison or during parole, someone treated for another mental illness in prison, but whose crime was found to have been caused by a sex offender-specific paraphilia, might not qualify for commitment as an MDO under current law.[47] CDCR recently initiated a project for in-prison treatment for high risk sex offenders, which is expected to be operational for about 800 sex offenders in state prisons in 2010. The SOMB recommends sex offender-specific treatment be provided for both sex offenders in prison and on probation and parole. Such a system would give a more thorough evaluation of the offender's stable and acute dynamic risk factors, as well as an evaluation of potential dangerousness. Under the Containment Model, the additional risk and violence evaluations would be shared with the supervising officer, and could be made accessible in the DOJ registry to provide more complete information to registering law enforcement agencies.

The MDO commitment system should mirror the system which now commits SVPs for an indeterminate term. MDO commitments have to be reviewed by a court every year, burdening the courts and prosecutors with a rehearing every year whether or not the person has shown any progress in treatment. Further, prosecutors have no say if the director of a mental hospital decides to release an MDO; even if a prosecution expert disagrees that the mental disease is in remission, the decision of the hospital director is final. Imposing an indeterminate term should be in conjunction with permitting the MDO to petition the court once a year and, like SVPs, require a prima facie case that there has been a substantial change in mental condition warranting a new trial.

Risk and danger assessments on sex offenders rely on accurate and complete information about the offender's history. School discipline records and a history of abuse (by or of the offender) can be important both for a juvenile sexual recidivism risk assessment and for an MDO assessment. Juvenile and family courts and schools should provide such records to evaluators when a sex offender is assessed.[48] Similarly, the Board of Prison Hearings should retain MDO evaluations on an offender, even when MDO commitment does not occur, for future reference in case the offender is re-incarcerated and re-evaluated.[49]

SVP Commitment Laws Target the Highest Risk Sex Offenders and Could Not Have Made a Difference in This Case

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http://pediatrics.aappublications.org/cgi/content/abstract/99/4/505, which found that the mean age of breast development was ages 8.87 and 9.96 in a sample of 17,077 African-American and European-American girls, respectively.) An abnormal or unnatural interest in children would necessarily be an interest in children without secondary sexual characteristics, e.g., without breasts and pubic hair in girls. (See DSM-IV-TR 302.2.) The American Psychiatric Association has never sanctioned diagnosing adult-adolescent sex as a mental disorder; thus, pedophilia is specifically limited under the current DSM to adult sexual activity with pre-pubescent children. The victim in Gardner's 2000 case was age 13.

[46] *People v. Sheek* (2004) 122 Cal.App. 4th 1606

[47] *People v. Sheek, supra,* at pp. 1610-1612.

[48] Penal Code section 290.07 requires these records to be provided to risk assessment professionals. However, juvenile courts and schools are often unaware of their legal obligation to do so.

[49] Current policy is to retain records after an MDO hearing is held for five years, according to the Board of Parole Hearings.

News outlets have erroneously reported that if Gardner had been sent back to prison for a parole violation, he probably would have been committed as a sexually violent predator (SVP). Although a return to prison after November 7, 2006 would have triggered an initial screening of Gardner based on his one sex offense conviction in 2000, it is unlikely that he would have been referred to the Department of Mental Health (DMH) for a full sexually violent predator (SVP) evaluation. In order for the second level of screening by DMH psychologist or psychiatrist evaluators to happen, there must be an initial determination that the sex offense was predatory and the person is likely to be an SVP.[50] Civil commitment as an SVP requires a diagnosis that the offender has a diagnosed mental disorder "affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others."[51] A jury has to find that these criteria are met before an SVP can be tried and committed to a mental hospital. There is no indication in the records available to this Board that, prior to the murder of Chelsea King, Gardner would have met either of these criteria.

The law defines predatory as meaning an act directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.[52] Gardner's first sex offense did not meet the definition in the law of "predatory." The probation report on Gardner's offense in 2000 states that the victim told officers that she had known Gardner for over a year and had a friendly relationship with him. The victim and Gardner had gone on several social outings with groups of friends in the past. Further, the victim had been to Gardner's home twice in the past, and she trusted him before the offense occurred. The facts of the first offense gave little indication that Gardner would later become (if he is convicted of the charged offenses) a predatory sex offender. Because of the requirement that the crime be predatory, Gardner would probably not have been referred for a full screening for SVP commitment, based on the facts of the 2000 offense.

There was no indication that Gardner had any mental problems in the forensic report done at the time of his trial in 2000, and mental health records while he was in prison/on parole were not released to SOMB. The expert who provided the 2000 psychological report to the court said that Gardner had no psychotic or clinical mental disorder. Instead, the report said, "He is simply a bad guy who is inordinately interested in young girls." The minor parole violations that Gardner committed on parole did not give any indication that he had a diagnosable mental condition that would predispose him to commit criminal sexual acts. Even if he had been returned to custody on a parole violation and gone through the initial SVP screening by CDCR and the Board of Parole Hearings, there is little indication in his record that Gardner would have been referred to the DMH for evaluation or found by two SVP evaluators to have had a diagnosable mental disorder disposing him to commit criminal sexual acts.

Cases that are referred to district attorneys for SVP trials involve clear predatory acts and usually involve multiple sex offenses, even if they did not all result in convictions. Several recent examples follow:

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[50] Penal Code section 6601, subdivision (b).
[51] Penal Code section 6600, subdivision (c).
[52] Penal Code section 6600, subdivision (c).

- An Alameda SVP commitment involved an offender who had been committing rapes and violent sexual assaults since 1974. He would reoffend each time in less than a year after release from prison. He reoffended each and every time he was released. His final committing offense was a vicious attack on a prostitute whom he kidnapped, sexually assaulted, and finally struck twice with a hatchet.[53]

- A Sacramento SVP commitment involved an offender who committed his first attempted rape at age 13, went to the California Youth Authority, escaped and later committed three nighttime burglaries in which he tied up the husbands of two women whom he raped. He was sent back to prison for these crimes and when released, committed another similar rape. Later on parole for the last rape, he was found to possess binding paraphernalia and went to trial as an SVP but a jury did not find he met the legal SVP criteria and he was released. In 2006, he was on parole and found in possession of knives, tying materials, condoms, and was tried a second time; this time, he was committed as an SVP.[54]

- Two Santa Clara County SVP commitments involved offenders with clear mental issues. One was a repeat rapist who was diagnosed with schizo-affective disorder. He raped women who were themselves mentally disordered and who lived in psychiatric facilities where the offender also resided. Several uncharged rape cases supported the case against this offender, whose defense in the SVP trial was that he was not mentally ill, the rape victims lied, and that the victims were really attracted to him. The other was a developmentally delayed pedophile who committed sexual crimes while he was drinking against children over a 20-year period, and whose SVP commitment occurred after he violated parole by being around children and drinking.[55] Both offenders sexually assaulted either strangers or victims with whom relationships were formed solely to sexually exploit them.

- San Diego County committed an SVP who was diagnosed with paraphilia and personality disorder, including traits of sexual sadism and paranoia. He was convicted of a kidnapping involving a sexual assault in 1979; convicted of assault with a deadly weapon that was sexually motivated in 1980; and convicted of two counts of assault with intent to rape in 1984. He was released from prison on other offenses in 2002 and after he failed to register as a sex offender in 2007, was found to qualify for SVP commitment. He testified at the SVP trial and appeared highly delusional and combative in court. The jury told the prosecutor after the trial that they would not have committed him if he had admitted the sexual assaults and been contrite in the courtroom, but since he could not control himself in court they believed he could not act appropriately in the community.[56]

In contrast, before the murder of Chelsea King, the only known sex offense that Gardner had committed was the 2000 offense against a 13-year-old neighbor whom he had known for

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[53] Facts in case against Victor Woodward, whose case was prosecuted by the Alameda County District Attorney's office.

[54] Facts in case against Richard Kisling, whose case was prosecuted by the Sacramento County District Attorney's office.

[55] Facts in cases against Brian Schuler and Ramiro Gonzales, whose cases were prosecuted by the Santa Clara County District Attorney's office.

[56] Facts in cases against Charles Joiner, whose case was prosecuted by the San Diego County District Attorney's office.

over a year. Even though the offense involved violence, that one offense did not rise to the level of cases that generally result in an indeterminate term for civil commitment of a sexually violent predator.

GPS Tracking Would Probably Not Have Prevented This Crime; GPS Tracking Should Be Used Only in Conjunction with Extended Parole Supervision Periods for Higher Risk Offenders

The Jessica's Law Initiative called for lifetime monitoring by GPS for all registered sex offenders who are paroled from state prisons. The lifetime GPS provision does not apply to sex offenders who were put on probation and never sent to state prison for the sex offense conviction.[57] Since voters overwhelmingly voted this initiative into law, many are under the mistaken belief that GPS supervision of all registered sex offenders actually occurs. The reality is that only about 10% of registered sex offenders are being monitored by GPS. Many of the registered sex offenders in California were released from prison prior to the passage of Jessica's Law, and therefore are probably not subject to its provisions since the law was not retroactive. Further, at least half of registered sex offenders did not receive prison sentences and are not subject to Jessica's Law's lifetime GPS provision, which only applies to offenders who were paroled from state prisons.

The 2006 initiative also did not stipulate whether local law enforcement agencies would be responsible for GPS monitoring and tracking once the sex offenders were no longer under parole jurisdiction. The SOMB received testimony from both the California Police Chiefs Association and the California Sheriffs Association, stating that the initiative was vague and that local agencies were not mandated to fulfill this responsibility. Further, there was no funding for GPS tracking that would help support the costs associated with this extra responsibility. Finally, as discussed below, there is little evidence GPS tracking prevents sexual crimes from occurring.

An issue that makes the lifetime GPS tracking of paroled sex offenders even more difficult is that there was no penalty in the initiative for a refusal by an offender to wear a GPS after parole ends. For instance, the initiative did not provide that it would be either a felony, misdemeanor, or even an infraction of law if a sex offender off parole supervision chose not to wear or charge his GPS unit. Probation and parole authorities have discretion in this area because they can make it a violation of conditions of probation/parole for noncompliance with the necessary provisions that make monitoring possible. This authority ends, however, when the person is discharged from probation or parole.

Lifetime tracking of all sex offenders would be possible only if the Legislature enacted further legislation penalizing failure to wear the GPS device, and providing who would be responsible for monitoring offenders on GPS after parole/probation ends. But even the enactment of such a law would probably not have prevented this devastating murder of an innocent girl. Although there are some who believe that the simple wearing of a GPS monitor is a deterrent, there is little scientific evidence to support that belief. Also, the costs associated with attempting to monitor GPS records on more than 30,000 registered sex offenders discharged from parole throughout the state should be carefully studied. Studies typically show that while

[57] However, registered sex offenders on probation are required to wear a GPS during the probationary period if they are high risk offenders, as determined by their score on the Static-99. (Penal Code section 1202.8.)

GPS monitoring can help identify a suspect once a crime is committed, it does not effectively deter sexual reoffending.

The SOMB has recommended that GPS tracking be used in conjunction with parole or probation supervision, and that high risk sex offenders should be on GPS and given extended parole periods. Lifetime parole supervision may be appropriate for some offenders. Targeting resources toward violent and recidivistic offenders, combined with tiering that focuses local law enforcement resources on those offenders, must be combined with more judicious use of GPS monitoring. Law enforcement officers who must spend time in the office reviewing GPS charts cannot be out in the field learning more about the compliance level of offenders—thus a balance is required. More information about risk of re-offense and future danger potential of sex offenders obtained while they are on supervision would aid in deciding whether to extend parole supervision periods for higher risk offenders, as discussed above. (See SOMB's January 2010 Recommendations Report, www. casomb.org.)

Future Solutions

- **Amend the Mentally Disordered Offender laws** to commit offenders when at least two evaluators agree that the person should be committed.
- **Tier sex offenders according to risk of re-offense and dangerousness**, to distinguish offenders at higher risk of re-offending and who are more dangerous.
- **Create specific child safe zones** and prohibit sex offenders with crimes against children from being in those zones, and prohibit high risk child molesters from living near specified places children gather.
- **Provide state funding to enable parole and probation to use a dynamic risk assessment instrument**, to be designated by the state risk assessment committee (SARATSO Committee).
- **Mandate treatment for designated sex offenders on parole or probation that would include an empirical assessment of future dangerousness** by the treatment provider. There are research-supported tests for psychopathy and sexual violence potential that are both reliable and available at a reasonable cost. These tests could identify individuals with these characteristics prior to release from custody.
- **Provide more resources to local registering law enforcement agencies and SAFE teams** for monitoring registered sex offenders.
- **Give law enforcement agencies access to more information about offenders** on their registrant case loads, and the personnel to review the information provided.
- **Refer all mandatory reportable offenses to the Board of Parole for sex offenders.** There has been much speculation regarding CDCR's handling of some of the incidents that occurred during the parole of John Gardner. Parole should conduct a thorough review to determine which types of behaviors should result in mandatory referrals to the Board of Parole Hearings for an independent review of whether parole should be revoked.

- **Post all types of risk assessment** results in the DOJ law enforcement online sex offender database.
- **Require registering law enforcement agencies (sheriffs and police departments), probation departments, and CDCR to retain records on registered sex offenders** for 75 years.
- **Utilize evidence-based and research supported policies.**
  Many other states spend a portion of their resources on research studies to determine what will work and what is currently working in the area of sex offender management. California has not effectively prioritized when making policy decisions about the management of convicted sex offenders. Many decisions seem to have been made for political reasons or what feels good at the time. As a result, money and time have been wasted on policies and programs that do not make our communities safer, but are politically popular.
- **Display all addresses where a registered sex offender regularly resides.** These are mandated by law to be displayed summer 2010 on the public Megan's Law web site.
- **Provide resources for compiling additional information in the state's sex offender registry** about offenders convicted prior to June 1, 2010.