

Finding a way to balance the interests of convicted sex offenders with the interests of public protection and financial practicalities has always been a difficult matter that is exacerbated by the strong emotions surrounding the issue. These interests, practical concerns, and emotional reactions can conflict and cause difficulties in finding appropriate responses to sex crimes and criminals. Sex offender laws have been steadily evolving due to the strong public responses and have come to include new ways of preventing reoffending, such as using GPS tracking upon release from imprisonment.

Concerns surrounding the potential of convicted sex offenders to commit additional crimes after being released from imprisonment are warranted due to the high rate of recidivism found in these offenders<sup>1</sup>. In the United States, over five percent of convicted sex offenders are caught reoffending<sup>2</sup> and it is estimated that these recidivism levels are as high as eighty percent for more dangerous sex offenders<sup>3</sup>. These rates of recidivism transcend national boundaries; Australia has also found that sex offenders are a public safety concern due to the similar rates of recidivism<sup>4</sup>. While any rate of recidivism is a valid concern, it is important to note that recidivism rates cannot be completely accurate due to the hesitancy of sex crime victims to report the crimes and due to variation of recidivism rates among the different kinds of offenders<sup>5</sup>.

Reducing rates of recidivism is not the only qualification that new policies must have; even the most effective policies cannot be implemented if they are unconstitutional. For example, a German study found that castration of serious sex offenders reduced the rate of recidivism in a twenty year study from eighty percent to just over two percent<sup>6</sup>. Despite such strong results, both voluntary and mandatory castrations have been avoided in the United States since 1942 due to Eighth and Fourteenth Amendment concerns<sup>7</sup>.

Constitution concerns may well be one of the reasons that the United States currently lacks cohesiveness between states on the uniformity of sex offender laws. While all fifty states have laws that provide for sex offender registries that combine into a publically accessible national registry<sup>8</sup>, complementary means of punishment and sentencing vary between the states. Currently, there are thirty-nine states that use GPS tracking of sex offenders, however, each state varies on the specifics<sup>9</sup>.

While the U.S. Supreme Court has upheld the constitutionality of sex offender registries<sup>10</sup>, the constitutionality of using GPS tracking on released sex offenders has only been in state courts thus far. One important procedural aspect to the implementation of GPS tracking is that of the need for availability of judicial discretion and judicial review, as well as the possibility of the GPS tracking ceasing after a certain period of time. The Supreme Court of South Carolina recently held in *South Carolina v. Dykes* that mandatory, lifetime, non-

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<sup>1</sup> See Report on New Jersey's GPS Monitoring of Sex Offenders, available at <https://emresourcecenter.nlectc.du.edu/emresdoc/Article-2.pdf> (citing Patrick A. Langan ET AL., Recidivism of Sex Offenders Released from Prison in 1994, (2007), available at

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* (citing R.K. Hanson & M. Bussiere, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66(2), Journal of Consulting and Clinical Psychology, 348, 348-362 (1998)).

<sup>4</sup> See Kelly Richards, *Misperceptions About Child Sex Offenders*, Australian Institution of Criminology, (2011), available at <http://www.aic.gov.au/publications/current%20series/tandi/421-440/tandi429.aspx>

<sup>5</sup> *Id.*

<sup>6</sup> See J.M.W. Bradford, *The Paraphilias, Obsessive Compulsive Spectrum Disorder, and the Treatment of Sexually Deviant Behaviors*, The University of Ottawa, available at [http://www.brainphysics.com/research/ocpara\\_bradford99.html](http://www.brainphysics.com/research/ocpara_bradford99.html)

<sup>7</sup> See *Skinner v. State of Oklahoma, ex. rel. Williamson*, 316 U.S. 535 (U.S. 1942)

<sup>8</sup> See Dru Sjodin National Sex Offender Public Website, <http://www.nsopw.gov/Core/Portal.aspx> (last visited May 29, 2012).

<sup>9</sup> See The National Conference of State Legislatures: The Forum for America's Ideas, available at [http://www.leg.state.vt.us/WorkGroups/sexoffenders/NCSLS\\_Jessicas\\_Law\\_Summary.pdf](http://www.leg.state.vt.us/WorkGroups/sexoffenders/NCSLS_Jessicas_Law_Summary.pdf)

<sup>10</sup> See *Smith v. Doe*, 538 U.S. 84 (U.S. 2003).

reviewable GPS tracking of sex offenders is unconstitutional under the Due Process Clause of the Fourteenth Amendment<sup>11</sup>.

GPS tracking of sex offenders in the United States has shown promising results where the statutes are sufficiently detailed and the state is sufficiently capable of effectuating the procedures laid out in the statute<sup>12</sup>. Offenders have been able to reestablish positive relationships with their communities and families and probation officers have also expressed satisfaction with the programs<sup>13</sup>. This also decreases the prison population since over one-third of the individuals currently under GPS supervision would be incarcerated if the program did not exist<sup>14</sup>. As with any policy, GPS tracking is not foolproof nor does the policy claim to be completely effective in preventing all recidivism. Concerns over removal of devices<sup>15</sup>, failures in the technology such as a system outage<sup>16</sup>, and issues with false alarms<sup>17</sup> have arisen.

In contrast to the United States, Australia has not yet created a sex offender registry to which the public has access<sup>18</sup>. While the police have access to a full registry, there is controversy surrounding an Amendment Bill that would allow public access to the sex offender registry and have a three-tier structure of disclosure<sup>19</sup>. The most inclusive disclosure would be similar to the United States' registry. However, this disclosure would only be for the first tier of dangerous sex offenders and would include information about the offender's name, birthdate, and address<sup>20</sup>. The two other disclosures are less intrusive; the second proposition would allow the online registry to post a photo and general locality of less serious offenders and the third proposition would allow parents and guardians to ask a Commissioner if a specific person had been convicted of a serious sex offense<sup>21</sup>. Opposition to the bill is based on the apprehension of vigilante actions that may follow as a result of making such information public; this concern is merited, since sex offenders on the registry in the United States have reported that they, and their families, are targeted by civilians<sup>22</sup>.

Australia has also considered utilizing GPS tracking of sex offenders as a way to reduce recidivism but has mimicked the concerns of the United States in regards to the problems with the technology. Civil Liberties Australia emphasizes the dangers of labeling the individuals and further excluding them from society<sup>23</sup>. Despite these concerns, Australia has set aside six million dollars to pay for GPS tracking of sex offenders over the next four years<sup>24</sup>. Although Australia's GPS devices and GPS statutes are similar to the ones used in the United States, the extent of use varies greatly between the two countries. Australia is charged with monitoring a grand total of

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<sup>11</sup> See *South Carolina v. Dykes*, No. 27124, 2012 WL 1609451, at \*1-14 (S.C. May 9, 2012).

<sup>12</sup> See *GPS Tracking of Criminal Offenders in Washington D.C.* (April 12, 2012), available at <http://media.csosa.gov/blog/2012/04/gps-tracking-of-criminal-offenders-in-washington-d-c/> (citing *A Quantitative and Qualitative Assessment of Electronic Monitoring*, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/230530.pdf>).

<sup>13</sup> *Id.* at 103-105

<sup>14</sup> *Id.*

<sup>15</sup> See John J. Vollmann, *Electronic Monitoring of Dangerous Sexual Offenders*, available at <http://www.corrections.com/news/article/21373>.

<sup>16</sup> See *GPS Sex Offender Tracking System Fails in Several States* (October 7, 2010), available at [http://www.cbsnews.com/8301-504083\\_162-20018843-504083.html](http://www.cbsnews.com/8301-504083_162-20018843-504083.html).

<sup>17</sup> See *Tracking Sex Offenders is No Easy Fix*, available at <http://berkeley.news21.com/behindbars/2010/07/20/tracking-sex-offenders-is-no-easy-fix/>.

<sup>18</sup> See *New Sex Offender Register for Western Australia* (2012), available at <http://www.altj.org/news-and-views/downunderallover/duao-vol-37-1/327-new-sex-offender-register-for-western-australia>

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See *How Sex Offender Registries Fail Us*, available at <http://reason.tv/video/show/how-sex-offender-registries-fa>.

<sup>23</sup> See *Warning Over GPS Tracking of Sex Offenders* (April 30, 2012), Australia Broadcasting Organization, available at <http://www.abc.net.au/news/2012-04-30/civil-liberties-warning-over-gps-tracking/3980234>

<sup>24</sup> See *GPS Tracking of Sex Offenders* (April 30, 2012), WAtoday, available at <http://www.watoday.com.au/wa-news/gps-tracking-of-sex-offenders-20120429-1xsod.html>

eighteen released sex offenders who have been deemed “dangerous”<sup>25</sup> while in California alone, there are over seven thousand sex offenders being tracked with GPS devices<sup>26</sup>.

Keeping these differences in mind, there is a possibility that GPS tracking of sex offenders could be a beneficial policy in both countries. The United States has been on the forefront of new forms of corrections for sex offenders and this has led to feeling the benefits of new policies earlier than other countries, like Australia, that have been slower to adopt these policies. Still, countries like Australia now have the benefit of the research conducted on policies in the U.S. and by noting the problems in these policies they have the unique opportunity to avoid some of the problems associated with the new technology.

Sex offenses and dealing with sex offenders post-conviction are problems that transcend national boundaries. By studying the effects that new policies, such as GPS tracking, have on recidivism levels and publishing these studies, countries are able to impact the way that other parts of the world deal with the same offenses and similar offending populations. There is, therefore, a great importance in assessing the constitutionality of new policies before blindly implementing them. Policies allowing GPS tracking of sex offenders that are feasible to implement on the ground, and that pass constitutional muster, have great potential in reducing the prison population as well as rates of recidivism in offenders. By noting the beneficial effects, as well as finding ways to reverse negative effects, of these policies, countries such as the United States and Australia are making headway on curbing the problems associated with sex offenses.

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<sup>25</sup> *Id.*

<sup>26</sup> *See* California Department of Corrections and Rehabilitation, [http://www.cdcr.ca.gov/parole/sex\\_offender\\_facts/jessicas\\_law.html](http://www.cdcr.ca.gov/parole/sex_offender_facts/jessicas_law.html) (last visited July 17, 2012).