CALIFORNIA

SEX OFFENDER MANAGEMENT BOARD

Decrease victimization

Increase community safety

Response to Governor Arnold Schwarzenegger's
Request for Review of the John Gardner Case

April 2010

RESPONSE TO GOVERNOR ARNOLD SCHWARZENEGGER'S REQUEST FOR REVIEW OF THE JOHN GARDNER CASE

California Sex Offender Management Board

May 1, 2010

Table of Contents

I: INTRODUCTION **3**

II: FINDINGS RELATED TO PAROLE SUPERVISION OF GARDNER **6**

FINDING 1: Research Shows that Living Near A School Has No Relationship to Where Sexual Re-Offense Occurs 6
FINDING 2: Violations of Parole Conditions Should Be Reviewed for Possible Parole Revocation Because Lack of Cooperation on Supervision Can Indicate Increased Risk of Sexual Re-Offense 8
FINDING 3: GPS Is Only One Tool In Managing Sex Offenders And Must Be Used In Conjunction With Other Tools That Are Effective In Preventing Recidivism 9
FINDING 4: Parole Conditions Should Be Narrowly Drawn and Relate to the Conviction Offense or Relate to Deterring Future Criminality 10
FINDING 5: Parole Needs to Develop Guidelines For Checking On Parolees Banned from Internet Use And Provide Appropriate Tools For Use in Parole Searches of Computers 11

III. DISCUSSION OF SYSTEM ISSUES RELATED TO THE GARDNER CASE **13**

Issue 1: 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 13
Issue 2: Expanding Risk Assessment Could Provide More Information To Local Law Enforcement Agencies About Risk Of Sexual Re-Offense and Dangerousness 15
Issue 3: Dynamic Risk Assessment Gives A Better Idea of Risk of Re-Offense When Combined with Static Risk Assessment 16
Issue 4: Assessments of Dangerousness Should Be Required 17
Issue 5: 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 18
Issue 6: Exclusion Zones That Prohibit Sex Offenders From Being In Certain Locations Should Be Considered Instead of Broad Residence Restrictions 21
Issue 7: Changes to the Mentally Disordered Offender (MDO) Commitment Law Might Have Permitted Gardner to Be Committed to a Mental Hospital And Prevented Further Crimes 22
Issue 8: SVP Commitment Laws Target the Highest Risk Sex Offenders and Would Probably Not Have Made a Difference in This Case 25
Issue 9: GPS Tracking Does Not Prevent Crimes And Should Be Used Only in Conjunction with Extended Parole Supervision Periods for Higher Risk Offenders 28

IV: SUMMARY OF FINDINGS AND RECOMMENDATIONS **30**

V: ATTACHMENTS **32**
Timeline: 33
Map of Non-Parolees: 34
Map of Parolees: 35
Complete Containment Model: 36
Incomplete Containment Model: 37

I: Introduction

Governor Arnold Schwarzenegger has asked the California Sex Offender Management Board (CASOMB) to review sex offender laws and practices relating to the parole and post-parole management of convicted sex offender John Gardner. Gardner pled guilty on April 16, 2010, to the murders of two teenage girls, Chelsea King and Amber Dubois, with the special circumstance of murder during the course of rape in each case.[1] He also pled guilty to assault with intent to rape a third victim. The parties stipulated that the maximum punishment allowed by law, other than death, will be imposed for these crimes.[2] 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.[3]

This report examines California laws and practices used to monitor convicted sex offenders to suggest 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. Sex offenders on parole make up less than ten percent of the registered sex offender population in California.[4] Seventy-five percent are under no supervision and restrictions on residence may not apply to many of them, according to the California Supreme Court.[5] 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 formal supervision. The typical parole or probation term for a sex offense in California is three to five years.

On May 31, 2000, Gardner was convicted of two counts of lewd and lascivious acts against a child under 14 (Pen. Code, § 288(a)) and one count of false imprisonment (Pen. Code, § 236.) Additional charges of a forcible lewd act against a child under 14 (Pen. Code, § 288(b)), and a misdemeanor count of annoying or molesting a child under 18 (Pen. Code, § 647.6) were dismissed as part of a plea bargain. CASOMB takes no position on whether the plea was appropriate since we are not aware of the factors considered by the district attorney and court in entering into and accepting this plea. There are many factors which enter into consideration when accepting a plea to

---

[1] As a factual basis for the plea, Gardner admitted that he raped and strangled Chelsea King on February 25, 2010; he raped and stabbed Amber Dubois on February 13, 2009; and he assaulted the third victim with intent to rape her on December 27, 2009. This report was considered at the meeting of the CASOMB on April 15, 2010, prior to Gardner's guilty plea the next day, and could not be reviewed again by the full CASOMB before it was issued, due to open meeting laws precluding consideration of an issue by more than two Board members outside of an open meeting of a public body.

[2] The sentence is likely to be two consecutive life terms in state prison without possibility of parole. The plea to less than a death penalty term was, according to the prosecutor's office, entered into in order to force Gardner to disclose the location of the body of Amber Dubois, and admit to her murder.

[3] It is important to understand the role of the CASOMB with respect to this report. The CASOMB 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. The recommendations in this report were made by consensus, or by majority vote of the CASOMB members.

[4] CASOMB January 2010 report to the Legislature, at p. 45, found at www.CASOMB.org.

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

something lesser than the original charges. CASOMB could not discuss the reasons for the plea in 2000 with the prosecuting attorney due to a gag order in the current case.

The victim of the offenses in 2000 was a 13-year-old girl who had known Gardner for over a year and who said she had a friendly relationship with him, which was why she agreed to watch a movie with him at his house. When she refused his sexual advances, according to the presentencing report, Gardner beat the victim. There were two aggravating factors and one mitigating factor in the 2000 offense. The aggravating factors were: (1) the offense involved great violence and a high degree of cruelty, and (2) the fact that other counts which were dismissed as part of the plea could have added substantially to the potential prison term. The mitigating factor was that Gardner had no apparent record of criminal conduct.[6] The potential sentencing range was probation or three, six, or eight years in state prison.[7] The presentencing report by the probation department recommended six years state prison, which was the final sentence imposed by the court. Gardner was paroled in 2005 after serving the maximum term permitted by state law at that time for his convictions. The notes in his file while in prison disclose that he committed no serious violations while imprisoned. (See timeline of events in the Gardner case, Attachment 1.)

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 conviction. 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.

The Office of the Inspector General (OIG) has also been asked to investigate the events leading to the murder of Chelsea King. The OIG investigation may be more limited in scope than this report, due to the nature of its mandate to investigate wrongdoing. A major reason for CASOMB 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 CASOMB is to critically examine community participation, local justice efforts, and the state's role in effective sex offender management, with an eye to recommending better state and local law and practices for managing sex offenders.

The focus is not just what could have been done, if anything, to prevent these crimes, but what can be done to prevent any future crimes of sexual assault, with this case being used as a lens through which we can examine that goal. For the victims of crimes which have

[6] The presentencing report in the 2000 case stated Gardner reported having used various prescription medications for ADHD, and also reported having been physically abused by his father when he was young. He reported that his natural father was an alcoholic. Gardner had held jobs at a burger place and a sporting goods store, as well as worked part time while a student in construction, as a lifeguard, and at an amusement park. Prior to the 2000 offenses, Gardner had graduated from high school with a GPA of 3.2.

[7] If Gardner had been convicted on all the original charges, under the sentencing law in 2000, the court could have sentenced him consecutively on the charges of Penal Code sections 288(b) and 236, which would have lengthened his sentence, although not significantly. (Pen. Code, § 667.6(c).)

already occurred, California also needs to invest in victim services, to ensure that victims' needs are met and that they can fully participate in the criminal justice system.

Unfortunately, there will always be some risk of re-offense by sex offenders, even if California implements the best possible system for dealing with such offenders. However, it is CASOMB's belief that implementation of the recommendations in this report will contribute significantly to reduce reoffending and prevent future victimization.

II: Findings Related to Parole Supervision of Gardner

CASOMB has examined the record available concerning the Gardner case, and makes the following findings based on that record, as well as recommendations which are summarized at the end of this report.

FINDING 1: ***Research Shows that Living Near A School Has No Relationship to Where Sexual Re-Offense Occurs***

In the opinion of the CASOMB, it is very unlikely that a parole revocation for living near a school 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.[8] At the time of Chelsea King's rape and murder, for example, Gardner was living in Riverside County, but the crimes occurred in San Diego County, nowhere near his home. That said, since a parole condition was imposed prohibiting living near a school, parole should have immediately required Gardner to relocate or face potential parole revocation.

Colorado researchers found that molesters who re-offended while under supervision did not live closer than non-recidivists to schools or day care centers. They also found that placing restrictions on the location of supervised sex offender's residences did not deter the sex offender from re-offending and was not effective in controlling sexual offending recidivism. Most importantly, the research found that sex offenders who had a positive support system in their lives had significantly lower recidivism rates and fewer rule violations than offenders who had negative or no support. Similarly, the Minnesota Department of Corrections found that residency restrictions create a shortage of housing options for sex offenders and force them to move to rural areas where they are likely to become increasingly isolated with few employment opportunities, a lack of social support, and limited availability of social services and mental health treatment. Such restrictions can lead to homelessness and transience, which interfere with effective tracking, monitoring, and close probationary supervision.[9]

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.) There is evidence in Gardner's file that his parole agent imposed a condition

[8] Calif. Research Bureau report, Nieto & Jung (Aug. 2006) *The Impact of Residency Restrictions on Sex Offenders and Correctional Management Practices: A Literature Review*; Colorado Department of Public Safety, Sex Offender Management Board, *Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community,* (Denver: the Board, March 15, 2004); Minnesota Department of Corrections, *Level Three Sex Offenders Residential Placement Issues*, 2003 Report to the Legislature (St. Paul: the Department 2003). Levenson, J., et al., (December 2008), *Residential Proximity to Schools and Daycare Centers: Influence on Sex Offender Recidivism, an Empirical Analysis*; and see CASOMB January 2010 report to the Legislature, at www.CASOMB.org.

[9] Minn. Dept. of Corrections, *supra,* at fn 8; Colorado Dept. of Pub. Saf., *supra,* at fn. 8.

of parole that prohibited him from living within one-half mile of a school that included grades K- 6.

At the time Gardner was first released from prison, 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.[10] 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, and was further amended in 2006 to expand the residence restriction to one-half mile and include grades K – 12. This amendment, however, applied the residence restrictions only to high risk sex offenders. Gardner was never classified by the Static-99 as a high risk sex offender 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.

Prior to the enactment in the fall of 2006 of the state's current risk assessment law, which states that a high risk sex offender is someone with a score of 6 and above on the Static-99 (the current static risk assessment instrument used in California), Parole followed an internal policy to determine high risk sex offender status. Gardner was later assessed in 2007 by Parole as having a score of 2 on the Static-99 (low to moderate risk), so he was not classified as a high risk sex offender under either the prior parole policy[11] or the new evidence-based risk assessment tool. As explained later, a more complete risk assessment utilizing dynamic and danger assessment tools might well have changed that risk assessment to one of a higher risk offender. CASOMB believes Parole should have required Gardner to move sooner because he was in violation of the parole condition. If he had 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, 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 might 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.

When a newly assigned parole agent 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. An officer of the Board of

[10] The state's risk assessment tools (State Authorized Risk Assessment Tool,. i.e., SARATSO) 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.

[11] Gardner was on a "high control" parole caseload, however, meaning he received a higher level of supervision than some offenders, because he had committed two felony offenses.

Parole Hearings (BPH) 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. CASOMB recommends that BPH not base a decision not to revoke a parolee on the fact that Parole allowed the parolee to continue in violation of his parole conditions longer than it should have. Such an outcome will likely result in continued rule breaking by the parolee.

***<u>FINDING 2:</u>* Violations of Parole Conditions Should Be Reviewed for Possible Parole Revocation Because Lack of Cooperation on Supervision Can Indicate Increased Risk of Sexual Re-Offense**

In June 2008 Gardner was cited for possession of less then one ounce of marijuana. This information was not reported to the Board of Parole Hearings (BPH) [12], probably because it was unclear in this case whether the offense was an infraction or misdemeanor. In some cases, possession of small amounts of marijuana have been treated as infractions by the courts.[13] If the offense was prosecuted as a misdemeanor, referral to BPH was mandatory. If it was only an infraction, Parole properly used its discretion in determining whether to refer it to BPH for possible revocation. However, since noncompliance while on supervision can be an indication of increased risk of re-offense, the parole agent must carefully review such infractions to determine whether referral to BPH is warranted. 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,[14] it was still a violation of his conditions of parole. Although 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. Parole conditions should include requirement that the parolee report any law enforcement contact to his parole officer, including citations. There should be a regular review by Parole of local law enforcement databases to determine whether such

---

[12] 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.) Even possession of a small amount of marijuana is a misdemeanor. (Pen. Code, §11357(b); even though punishable by only a fine, it is not listed as an infraction in Penal Code section 19.8.)

[13] A bill pending in the 2010 session of the California Legislature, SB 1449, would clarify that possession of a certain amount of marijuana is an infraction, not a misdemeanor. The California Judicial Council is on record as stating, "Though classified as a misdemeanor, conviction of marijuana possession subjects a defendant to no greater punishment than that associated with being found guilty of an infraction. Jail time cannot be imposed, nor can the penalty exceed $100. Normally, the Judicial Council does not take a position on questions of punishment. In this case, however, the offense is an infraction in everything but name. This mischaracterization comes at too great a cost for the courts at a time when resources are shrinking and caseload is growing. Given the comparatively light consequences of the punishment and the courts' limited resources, the council believes that appointment of counsel and jury trial should be reserved for defendants who are facing loss of life, liberty, or property greater than $100." (Sen. Pub. Saf. Analysis, S.B. 1449 (2010 leg. sess.)

[14] 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.)

contacts have occurred. When they do occur, Parole must by law refer such cases to BPH if they are misdemeanors, and should look carefully at infractions to determine whether referral is warranted. In any case, rule breaking by a parolee should lead to a graduated system of sanctions. In the case of marijuana use, revocation might be appropriate for some offenders, but a lesser sanction used with others, depending on risk assessment instruments used by Parole in determining relevant risk factors pertaining to each individual's case.[15]

FINDING 3: ***GPS Is Only One Tool In Managing Sex Offenders And Must Be Used In Conjunction With Other Tools That Are Effective In Preventing Recidivism***

Gardner was not being monitored by GPS (Global Position Systems) after he was discharged from parole in 2008.[16] While on parole, Gardner was monitored by passive GPS monitoring from September 26, 2007 until September 26, 2008, the day of his discharge from parole supervision. The difference between passive and active monitoring is that active GPS was used for high risk sex offenders (HRSO) and required a daily review of GPS tracks and immediate alert for specific notifications. Passive was used for non-high risk sex offenders and required parole agents to review GPS tracks for investigative purposes only; all alert notifications were reviewed the next day. In neither case is someone sitting reviewing GPS reports 24 hours a day. Parole officers check the GPS tracks periodically, depending on the risk status of the offender.

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. However, these were not violations of a parole condition. In checking with a technician from the manufacturer of the GPS units, Satellite Tracking of People LLC (STOP), the alert for low battery occurs approximately four (4) hours prior to the battery no longer being operable.[17] 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

[15] Parole is mandated to use a parole violation decision-making instrument in determining which parolees are referred for revocation. (Penal Code section 3015.)

[16] Current law requiring paroled sex offenders to wear a GPS for life is widely viewed as unenforceable due to a failure by the Jessica's Law Initiative to provide a criminal penalty for persons who refuse to wear a GPS unit after parole or probation ends.

[17] CASOMB telephone conversation with Brian Moran on April 5, 2010.

tracking the device, (a building or a mountainous area), the GPS unit will continually try to make contact until such time as it is successful. This may shorten 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 relies on the low battery alert to warn all involved that the GPS unit must soon be recharged. It is a condition of parole that offenders keep his GPS unit charged and operable. In this case, the battery for Gardner's GPS unit never completely discharged or became inoperable. CASOMB recently spoke with a representative of STOP,[18] 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.

The CASOMB found that GPS monitoring is most effective when utilized only in conjunction with supervision on probation or parole. Some high risk sex offenders should be subject to extended supervision, including lifetime supervision for exceptionally high risk offenders. In order to effectively allocate our resources, GPS monitoring should be individually tailored to the risk level posed, and primarily used for moderate to high risk offenders. The CASOMB has also recommended that GPS monitoring be minimized or eliminated after a defined period of time for most offenders if there have been no new offenses and there has been satisfactory compliance with all terms of registration and parole conditions.[19]

<u>FINDING 4:</u> Parole Conditions Should Be Narrowly Drawn and Relate to the Conviction Offense or Relate to Deterring Future Criminality

After Gardner's arrest, it was reported by news outlets 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 Gardner's parole conditions provided that he could not possess computer equipment that was attached to a modem or telephonic device. If Gardner violated this parole condition (a fact not proven at this time), it 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. 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.[20] Gardner's 2000 child molest offense did not

[18] CASOMB telephone conversation with Brian Moran on April 5, 2010.
[19] CASOMB January 2010 report to the Legislature, at p. 47 (www.CASOMB.org/Reports).

[20] *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];

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.[21] The parole restriction must either have a relationship to the crime of which the offender was convicted, or be related to that offender to deter future criminality.[22]

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.

CASOMB recommends conclude that Parole 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 regarding checking on compliance with computer-related parole restrictions.

__FINDING 5:__ Parole Needs to Develop Guidelines For Checking On Parolees Banned from Internet Use And Provide Appropriate Tools For Use in Parole Searches of Computers

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 re-offense. They must also spend time in the office doing paperwork checking GPS tracks or Internet compliance, so a balance is necessary. CASOMB recommends that Parole implement a policy requiring parole agents to check on compliance with Internet parole conditions on a regular basis. Guidance and training should be provided to parole officers about the software or Internet means that can be used to make such checks. Checking a parolee's computer during a parole search is an effective tool to determine whether a parolee is complying with the parole condition to

---

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].)

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

[22] 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).

obey all laws. 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, or has a common name which makes searching other databases impractical.

III. Discussion of System Issues Related to the Gardner Case

Issue 1: *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*

The CASOMB reviewed the residency of sex offenders residing in the city of Escondido (Gardner's residence in San Diego County prior to his move to Riverside County), 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 seven (7) who were.[23] The state residency restriction was enforced as to these seven 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.[24] (Attachments 2 and 3 are maps of Escondido showing placement of parolee sex offender registrants versus non-parolee registrants.)

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. A victim-centered approach means that victims and victim advocates are involved in this process.

One of the major components of the Containment Model is sex offender-specific treatment by approved treatment providers. 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 to Parole Outpatient Clinics because there is no sex offender-specific treatment available at this time. CASOMB recommends sex offender-specific treatment. (See CASOMB January 2010 report, at www. casomb.org.) The California Department of Corrections and Rehabilitation (CDCR) is presently engaged in a bid/contract process to make such treatment available to a limited number of high-risk sex offender parolees. The CASOMB should provide recommendations

---

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

[24] 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 local ordinances have been enforced, probably due to doubts about their legality once offenders are no longer on parole or probation.

regarding certification standards for treatment providers and criteria for approving treatment programs.

One of the important aspects of the Containment Model, missing in the Gardner case, is the use of the polygraph. The polygraph is not utilized by Parole in California and is under-utilized by probation departments, yet its use is a critical element in effective supervision of sex offenders. In many states, parolees are required to undergo a polygraph examination every six months. They are questioned regarding adherence to their conditions of supervision, as well as their truthfulness in treatment. In both the cases of Phillip Garrido[25] 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. Re-allocation of funds by the Legislature could provide the resources needed by Parole and probation to utilize this critical tool, by re-focusing on priorities. Some of the money currently being spent on GPS monitoring for all offenders, which is mainly a tool for use once a crime has occurred, could be re-allocated, so that only appropriate offenders at higher risk of reoffending are tracked by GPS, and the funds used to permit polygraph examinations during supervision of all sex offenders. Use of polygraph examinations is more likely to prevent a crime than GPS use, because it flags current risky behavior—not just past behavior.

It would be helpful to require that reports mandated by Penal Code section 288.1 be prepared by approved providers who utilize research-based risk assessment tools. Sex offenders placed on probation should agree to a condition of probation that would include participation in a sex offender-specific approved treatment program and polygraph examinations.[26] Like batterer's treatment programs, probation would ensure that the state certification standards were met, in conjunction with the district attorney's office. CASOMB recommends that certification standards for treatment providers and evaluators be enacted.

Communication about past and ongoing issues is the heart of the Containment Model. Approved treatment providers must be able to communicate what they learn to supervision officers, so the supervision officer should be mandated to spend time each month talking to the treatment provider. Conditions of supervision should specify that the offender waives any right to a psychotherapist-patient privilege and will participate in an approved treatment program requiring such communication. Sharing of information by multidisciplinary teams is crucial. Similarly, input by victim advocacy organizations is crucial to the success of councils which determine policy to encourage reduced victimization, such as the San Diego Sex Offender Management Council. Multidisciplinary councils that help determine evidence-based local policy on sex offender management could look to San Diego as a model. CASOMB recommends enactment of a law that allows confidential information to be shared by multidisciplinary

---

[25] Phillip Garrido is charged in El Dorado County with kidnapping and molesting a young girl over a period of 17 years.

[26] Penal Code section 1203.066(d)(4) and (e)(2) should be amended to require the treatment to be sex offender-specific and include polygraph examinations.

teams monitoring sex offenders, but requiring that such information be kept confidential among the team. (For description of the full Containment model and California's incomplete implementation of model, see attachments 4 and 5)

The law does not currently 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.[27] CDCR 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.

Issue 2: Expanding Risk Assessment Could Provide More Information To Local Law Enforcement Agencies About Risk Of Sexual Re-Offense and Dangerousness

California's use of the Static-99 to assess risk of sexual re-offense was mandated in 2006 and was an important first step in determining future risk posed by sex offenders.[28] CASOMB recommends that California 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 an approved sex offender treatment provider--it cannot be scored by a parole or probation officer.) Currently parole and probation have no funding to implement use of such an instrument when it is adopted. [29] A combination of these assessments would provide a fuller picture of risk of future re-offense and dangerousness.

An evidence-based system for risk assessment was enacted in the fall of 2006 in California, after Gardner was already on a parole caseload.[30] Parole was required to assess every eligible sex offender on a parole caseload prior to termination of parole.[31] 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 placed him in the moderate-low risk offense group. Offenders in the moderate risk group statistically have 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. Since the prediction is based on a statistical model, it means that some offenders will reoffend and others in this group will not. Statistical models are similarly used to determine premiums for life insurance and car insurance. The individual obtaining insurance is placed in a category based on factors

---

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

[28] Under existing law, probation scores a Static-99 or juvenile risk assessment prior to sentencing for offenders who will be required to register and the score is provided to the court. (Pen. Code, § 1203.) Parole scores the offender again prior to release from prison. (Pen. Code, § 290.06.) Starting in 2010, local registering law enforcement agencies can obtain training from the SARATSO Committee and score eligible sex offenders on their case loads who have not been scored previously. (Pen. Code, § 290.06(c).)

[29] Penal Code section 290.04.

[30] Added by Stats. 2006, c. 337 (S.B. 1128), § 15, eff. Sept. 20, 2006.

[31] Penal Code section 290.06(a)(2).

(such as prior heart attack or prior vehicle accident) shared by others in that group, and the percentage risk of death or accident are based on a prediction of risk for that group. Factors pertinent to sex offender risk of re-offense on the Static-99 include prior arrests and convictions for sex offenses, prior violent offenses, age of the offender, and victim factors (gender, and whether the victim was a stranger versus a relative of the offender) on prior sex offenses.

Current law requires a new Static-99 assessment prior to release from prison. (Pen. Code, § 290.06.) CASOMB recommends that the law be changed to require that an offender only be re-scored on release from prison if an event occurred after the risk assessment at sentencing that could have changed the score. CASOMB further recommends that instead, probation and parole should do both a static risk assessment when an offender is released from custody, if the score could have changed after sentencing, and that a dynamic risk assessment be done 90 days prior to discharge from parole or probation. The results should be posted in the DOJ sex offender registry (CSAR) for registering law enforcement agencies to view.

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.[32] While not infallible, it is much more accurate than utilizing other methods of prediction, such as clinical judgment (the opinion of a psychologist or psychiatrist, unsupported by evidence-based risk tools). The Static-99 is based on 65 research studies of sex offenders who reoffended, which identified the factors that most closely predict risk of sexual re-offense.[33]

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.

Issue 3: ***Dynamic Risk Assessment Gives A Better Idea of Risk of Re-Offense When Combined with Static 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., forced out of an established home)? These factors 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 (SARATSO Committee) to adopt a dynamic risk assessment instrument, but there is no funding for parole, probation, or approved treatment providers to perform such assessments if a dynamic risk assessment

[32] Interstate Commission for Adult Offender Supervision survey, April 2007.
[33] Cross-Validation Studies of the Static-99, at www.amyphenix.com.

tool is adopted.[34] 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, such as Gardner, the dynamic risk assessment findings might have helped a registering law enforcement agency form a more accurate idea of risk. For example, marijuana use by a parolee might be flagged on a dynamic risk assessment instrument as raising risk because it indicates associating with antisocial persons (drug dealers), access to drugs, and noncompliance with supervision. The results of dynamic risk assessments, like static assessments, could be posted in the DOJ sex offender registry accessed by law enforcement. However, these are only valid for a short time, since they assess changing factors in the offender's life, so only recent scores should be used in evaluating current risk.

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[35] 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.

***<u>Issue 4:</u>* Assessments of Dangerousness Should Be Required**

Neither the Static-99 nor dynamic risk assessment tools measure psychopathy or assess dangerousness or risk of violence. Instruments[36]to determine whether an offender is a psychopath or more dangerous than other offenders, should be completed by an approved sex offender treatment provider or evaluator as part of mandatory sex offender-specific treatment. Such results would further round out the risk picture available to registering law enforcement agencies.[37] However, California law does not currently require sex offender-specific 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 may have received treatment (not sex offender-specific treatment) as a condition of parole in San Diego, it is very unlikely that an empirical assessment of his risk of future dangerousness was done as part of that treatment process.[38] 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

[34] Penal Code section 290.04(b)(2).
[35] The California Sex and Arson Registry (CSAR).
[36] Such instruments include the Psychopathy Checklist – Revised (PCL-R), and the Violence Risk Assessment Guide (VRAG).
[37] As noted above, empirical risk assessment tools that measure psychopathy and future dangerousness must be scored by an approved sex offender treatment provider. California law should require certification standards for approval of sex offender treatment providers and evaluators, like those currently in law regulating batterer treatment programs for domestic violence.
[38] 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.

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.

Dynamic and danger risk assessments can be done by an approved treatment provider. Since this is a critical component of the Containment Model, funding for sex offender management needs to be re-allocated in California to focus on where it can do the most good.

***<u>Issue 5:</u>* 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 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.[39] Once a registered sex offender is discharged from parole or probation, the main thing law enforcement can do to ensure that they really are living at a certain address is to do a compliance check. Registering agencies cannot monitor registered offenders in the same way that parole or probation does. For example, no search of a registrant's home can be made, absent consent or probable cause, once the offender is no longer on probation or parole. Unless there is probable cause to believe a crime has been committed, the compliance check is restricted to a knock on the door to determine if the registrant lives at a certain address.

The January 2010 report of the California Sex Offender Management Board[40] 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[41] 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. Tiering would free resources that could be used to accomplish the sex offender management tools recommended in this report.[42]

Each registering agency should make compliance with the state's registration laws a priority, regardless of budgetary concerns. In the continued interest of public safety, law enforcement agencies must commit resources to monitoring registrants in their

---

[39] Annual comparison of local law enforcement caseloads of registered sex offenders with databases showing deaths in California should be required to ensure the sex offender registry is as up-to-date as possible.

[40] Available at www.CASOMB.org; check under Reports.

[41] The other three are Alabama, Florida, and South Carolina.

[42] For example, local law enforcement has to make a trip to a local nursing home to register an offender who has dementia or is so elderly they cannot come into the agency to register—even if that registrant's sex offense was 35 years ago and he has not committed another crime since then. Those resources would be better focused on a registrant released from custody on his sex offense in the past 10 years.

jurisdictions, including compliance checks and investigations that lead to the filing of criminal charges. Moreover, prosecuting agencies must vigorously pursue prosecutions of noncompliance and hold registrants responsible for their failure to register. Sentencing of violators who fail to register or who lie to registering agencies about their whereabouts must reflect the seriousness of the crime.[43]

Some agencies do a much better job of prioritizing compliance checks than others. However, the reality is that resources of registering agencies are stretched thin. 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. For example, 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 the victim in the Garrido case 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, involving communication between law enforcement agencies, 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 rapes and murders he committed in San Diego County. A San Diego registering agency was therefore not monitoring him at the time of the charged offenses, because it was not their job—he was registered in another jurisdiction. 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. The offender will appear in each ZIP code where he has a registered address. Registering every address at which an offender regularly stays helps local law 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. If Gardner regularly stayed at an address in San

[43] The penalty for a felony violation of the registration laws is 16 months, 2 or 3 years in prison, which can be doubled if the offense is a second strike. (Pen. Code, § 290.018(b).)

Diego County, his registration in that jurisdiction would have meant that in an investigation such as the one in the King case, he would have come to the attention of local law enforcement sooner.

Although Gardner was charged in 2000 with a violent sex offense against a child under 14, he pled to an offense that did not involve violence.[44] Almost half[45] 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.[46] 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 that 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 (lewd and lascivious acts with a child under 14). Since risk levels vary widely from one such offender to the next, it would have been difficult for a registering agency to know if Gardner needed a closer look.

Also, Gardner was convicted before a 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.[47] 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.[48]

SAFE (Sexual Assault Felony Enforcement) multi-jurisdictional teams and local and state agencies that come together to pool resources to monitor registrants and arrest those in violation of the registration laws, also need to know how to best concentrate their efforts,

---

[44] Charged with Penal Code section 288(b), Gardner pled to two violations of Penal Code section 288(a) against one victim.

[45] 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.

[46] Penal Code section 290.46(b).

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

[48] 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.

and need to receive adequate funding to carry out their mission. For smaller jurisdictions, teams that work across jurisdictional lines are most effective in tracking sex offender compliance with registration laws. 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.

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. In order to accurately verify residence, law enforcement must 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. CASOMB recommends continued and expanded funding for SAFE teams.

Many local law enforcement agencies have their own in-house monitoring units. Their ability to effectively monitor registrants depends on the number of registrants and officers available to investigate and present for criminal filing cases of noncompliance with registration. Funding for compliance efforts must be carved from existing resources. 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.[49]

Issue 6: *Exclusion Zones That Prohibit Sex Offenders From Being In Certain Locations Should Be Considered Instead of Broad Residence Restrictions*

There is no evidence that restricting where sex offenders live will prevent repeat sexual offending against children. In fact, residence restrictions could not have prevented the murder of Chelsea King.[50] Gardner lived in Riverside County, far away from the park in San Diego County where Chelsea was assaulted and killed. Since Gardner was released onto parole before Jessica's Law was enacted, the residence restriction 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.[51] Further,

[49] 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.

[50] 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* (2010) 48 Cal.4th 330. The residence restriction applies prospectively only.

[51] Available at www.CASOMB.org; check under Reports.

CASOMB 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. [52]

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 exclusion zones which would prohibit specified sex offenders from being in these zones without a legitimate purpose. (See January 2010 report of the California Sex Offender Management Board to the Legislature, available at www.CASOMB.org.) The exclusion 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 sex offender no longer on parole or probation, from being in a park.[53] Uniform state laws that give law enforcement the tools to protect the public are needed. Local and state residence restrictions that apply to all offenders defeat the goal of making the community safer. 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 sex offenders, combined with an exclusion zone law that applies to where designated sex offenders can be, 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 sex offenders are found frequenting parks or other places where children gather.

Issue 7: ***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

---

[52] 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)—see fn. 6, above.

[53] Although Penal Code section 653b prohibits 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.

evaluations led to his release from prison without commitment.[54] CASOMB has been unable to either confirm or refute these reports, since the two state agencies which would be involved in an MDO commitment assessment, CDCR and the Department of Mental Health (DMH), both were unable to respond to CASOMB's request for information because state and federal laws provide that such information is confidential.[55] Gardner was released into the community for parole; he was not committed to DMH for treatment, because current law requires that three evaluators agree to refer him for MDO proceedings, and reportedly only two evaluators agreed to refer Gardner.[56]

In order for a person to be committed to DMH as an MDO for treatment at a mental hospital, 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 cannot be kept in remission without 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 represents a substantial danger of physical harm to others.[57] The CDCR treating psychologist and a DMH evaluator must evaluate the prisoner. Based thereon, the chief psychiatrist for CDCR decides whether to certify that the prisoner meets the MDO criteria to the Board of Parole Hearings. If the CDCR evaluator and the DMH evaluator disagree with each other that the prisoner meets the criteria, the Board of Parole Hearings appoints two independent professionals to evaluate the prisoner.[58] If those independent evaluators agree with the CDCR psychiatrist that the person is a mentally disordered offender, MDO proceedings proceed. If one of those independent evaluators disagrees that the offender meets MDO criteria, MDO proceedings do not go forward.[59]

The CASOMB could not verify news reports that Gardner's evaluators were split over his commitment as an MDO. 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 as a MDO to DMH for treatment, not release to parole in the community, when evaluators are split two to two over whether an offender is an MDO. Even though Gardner's assessed sexual recidivism risk was low to moderate on the Static-99, the potential for future violence or dangerousness is measured through other types of violence assessment instruments, which must be administered by an approved treatment provider. As noted above, danger assessments could be done on sex offenders in California while on parole or probation, if sex offender-specific 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 as a term and condition of parole

---

[54] Penal Code section 2960, et seq.
[55] Civil Code section 56.10; 45 Code of Federal Regulations section 164.508 (HIPA).
[56] Penal Code section 2964.
[57] Penal Code section 2962; *People v. Sheek* (2004) 122 Cal.App. 4th 1606.
[58] Penal Code sections 2962 & 2978.
[59] Penal Code section 2962(d)(3).

to a mental hospital at the end of his prison term. CASOMB recommends that the law be amended to provide that the opinions of two evaluators are enough for such a commitment.[60]

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 psychiatrist 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.[61] For example, someone treated for depression in prison, but who molested children, might not qualify for MDO commitment because they had not been treated for pedophilia.[62]

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.[63] CDCR recently initiated a project for in-prison treatment for high risk sex offenders, but at present there is no such treatment while sex offenders are in prison. Additionally, CDCR is currently bidding for contracts with sex offender treatment providers to provide sex offender-specific treatment for high risk sex offenders while on parole. However, since there are no standards for approval of such providers, low bidding rules apply. To ensure that providers meet minimum standards, as discussed above, a law should be enacted creating standards for approved providers and programs. Gardner would not have received such treatment as a low to moderate risk offender, unless resources were allocated for a program that included all sex offenders on parole, or unless dynamic risk assessment on parole (which can be done by an approved treatment provider) indicated he was higher risk than was thought based solely on his Static-99 score.

CASOMB 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

---

[60] The CASOMB member representing the defense bar in California was not in agreement with this recommendation.

[61] 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*, 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.

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

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

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 sexually violent predators (SVP's) for an indeterminate term.[64] MDO commitments are subject to review by a court every year, burdening the courts, prosecutors, and defense attorneys with a rehearing and/or trial 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 patient no longer meets the commitment criteria, 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 SVP's, require a prima facie case that there has been a 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.[65] 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.[66]

***<u>Issue 8:</u>* SVP Commitment Laws Target the Highest Risk Sex Offenders and Would Probably Not Have Made a Difference in This Case**

Individuals and news outlets have speculated that if Gardner had been sent back to prison for a parole violation, he probably would have been civilly 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.[67] 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

---

[64] Sexually violent predators are sex offenders who are civilly committed to mental hospitals for an indeterminate term following completion of a prison sentence, after being found to meet the criteria for SVP commitment, first by professional evaluators and then by a jury. (Welf. & Inst. Code, § 6600, et seq.)

[65] 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.

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

[67] Welfare & Institutions Code section 6601, subdivision (b).

menace to the health and safety of others."[68] A jury has to find that these criteria are met before an SVP can be tried and committed to a mental hospital. There is little indication in the records available to this Board that 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.[69] 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. He would have had to initiate the relationship with future victimization as a goal in order for it to have been considered predatory under the SVP law. Unless there was other information not available to CASOMB indicating that Gardner might commit predatory acts in future, Gardner would probably not have been referred for full screening for SVP commitment, based on his known record in 2000.

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 CASOMB. The expert who provided the 2000 forensic 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 the publicly available 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:

- 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.[70]
- A Sacramento SVP commitment involved an offender who committed his first attempted rape at age 13, went to the California Youth Authority, escaped and

[68] Welfare & Institutions Code section 6600, subdivision (c).
[69] Welfare & Institutions Code section 6600, subdivision (e).
[70] Facts in case against Victor Woodward, whose case was prosecuted by the Alameda County District Attorney's office.

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.[71]

- 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 against children while he was drinking over a 20-year period, and whose SVP commitment occurred after he violated parole by being around children and drinking.[72] 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.[73]

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

[71] Facts in case against Richard Kisling, whose case was prosecuted by the Sacramento County District Attorney's office.
[72] Facts in cases against Brian Schuler and Ramiro Gonzales, whose cases were prosecuted by the Santa Clara County District Attorney's office.
[73] Facts in case against Charles Joiner, whose case was prosecuted by the San Diego County District Attorney's office.

Issue 9: *GPS Tracking Does Not Prevent Crimes And Should Be Used Only in Conjunction with Extended Parole Supervision Periods for Higher Risk Offenders*

Effective use of state resources requires reallocation of funding now being used for sex offender management in California. Since it is impossible to fund both lifetime GPS and lifetime supervision for all sex offenders, resources should be reallocated to use GPS only for appropriate offenders at higher risk of reoffending. The funding now being used on GPS monitoring for lower risk offenders should be used for the other critical components of sex offender management, discussed herein, many of which are now missing under California law.[74] CASOMB believes that GPS tracking is an effective crime-solving tool that should be used in appropriate cases.

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.[75] 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 (those on parole or who are high risk sex offenders on probation). 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. CASOMB 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 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

---

[74] Other reallocations that could fund these recommendations include refining the laws for screening sex offenders for SVP status; under current law enacted pursuant to the Jessica's Law Initiative, every time a sex offender is returned to prison, he must be re-screened, at high cost to the state and resulting in few additional SVP determinations.

[75] 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.)

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 most likely not prevent sexual reoffending. As noted above, even when GPS monitoring occurs, it is not real time—no one is watching the GPS tracks 24 hours a day to see if a sex offender is not in a place he is allowed to be. Therefore, GPS is mostly useful as a means of solving, not preventing, crimes. 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 tracks on more than 30,000 registered sex offenders discharged from parole throughout the state should be carefully studied. Studies typically show that while GPS monitoring can help identify a suspect once a crime is committed, it does not effectively deter sexual reoffending. CASOMB does not intend in any way to minimize the significance of GPS monitoring to solve crimes and hold sexual offenders accountable to their victims and society. However, in this current budgetary crisis, CASOMB urges focusing limited financial resources towards GPS tracking of high risk sex offenders.

CASOMB 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 CASOMB's January 2010 Recommendations Report, www. CASOMB.org.)

The most important thing California can do to reduce sexual recidivism is to implement the full Containment Model, requiring communication between an approved treatment provider (who can do more in-depth empirical risk assessments, including dynamic and danger assessments), a supervising parole or probation officer, and a polygraph examiner. This approach would be victim-centered, guided by policy that protects victims and prevents future victimization. Tiering the state's 90,000 registered sex offenders in a way that allows law enforcement to identify and monitor the most dangerous and those at highest risk of re-offense is also of vital importance. Because state resources are finite, CASOMB recommends re-prioritizing and re-deploying our available resources to accomplish the goals discussed.

IV: Summary of Findings and Recommendations

Findings

- **Violations of Parole Conditions Should be Reviewed for Possible Parole Revocation Because Lack of Cooperation on Supervision Can Indicate Increased Risk of Sexual Re-offense**
- **GPS Is Only One Tool In Managing Sex Offenders And Must Be Used In Conjunction With Other Tools That Are Effective In Preventing Recidivism**
- **Parole Conditions Should Be Narrowly Drawn and Relate to the Conviction Offense or Relate to Deterring Future Criminality**
- **Parole Needs to Develop Guidelines For Checking On Parolees Banned from Internet Use And Provide Appropriate Tools For Use in Parole Searches of Computers**

Recommendations

- **Parole should review all violations of parole conditions for possible referral to the Board of Prison Hearings, since rule breaking by sex offenders can indicate increased risk of sexual re-offense.** 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 referrals to the Board of Parole Hearings for an independent review of whether parole should be revoked.
- **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 approved 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 and/or supervision.
- **Mandate and provide state funding for use of all parts of the Containment Model** in sex offender supervision.
- **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.

- **Post all types of risk assessment** results in the DOJ law enforcement online sex offender database.
- **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.
- **Provide resources for compiling additional information in the state's sex offender registry** about offenders convicted prior to June 1, 2010, when the Facts of Offense Sheet will be sent to DOJ on every newly convicted sex offender.
- **Pass a law designating exclusion zones where specified sex offenders cannot be,** and prohibit certain high risk sex offenders from living near schools and parks.
- **Require registering law enforcement agencies (sheriffs and police departments), probation departments, and CDCR to retain records on registered sex offenders** for 75 years.
- **Amend the Mentally Disordered Offender laws** to refer offenders for commitment when at least two evaluators agree that the person should be committed.
- **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.

V. Attachments

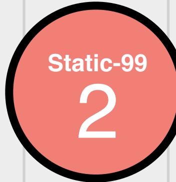
Gardner's Time on Parole

September 2005

September 2008

GPS

Gardner in Jail

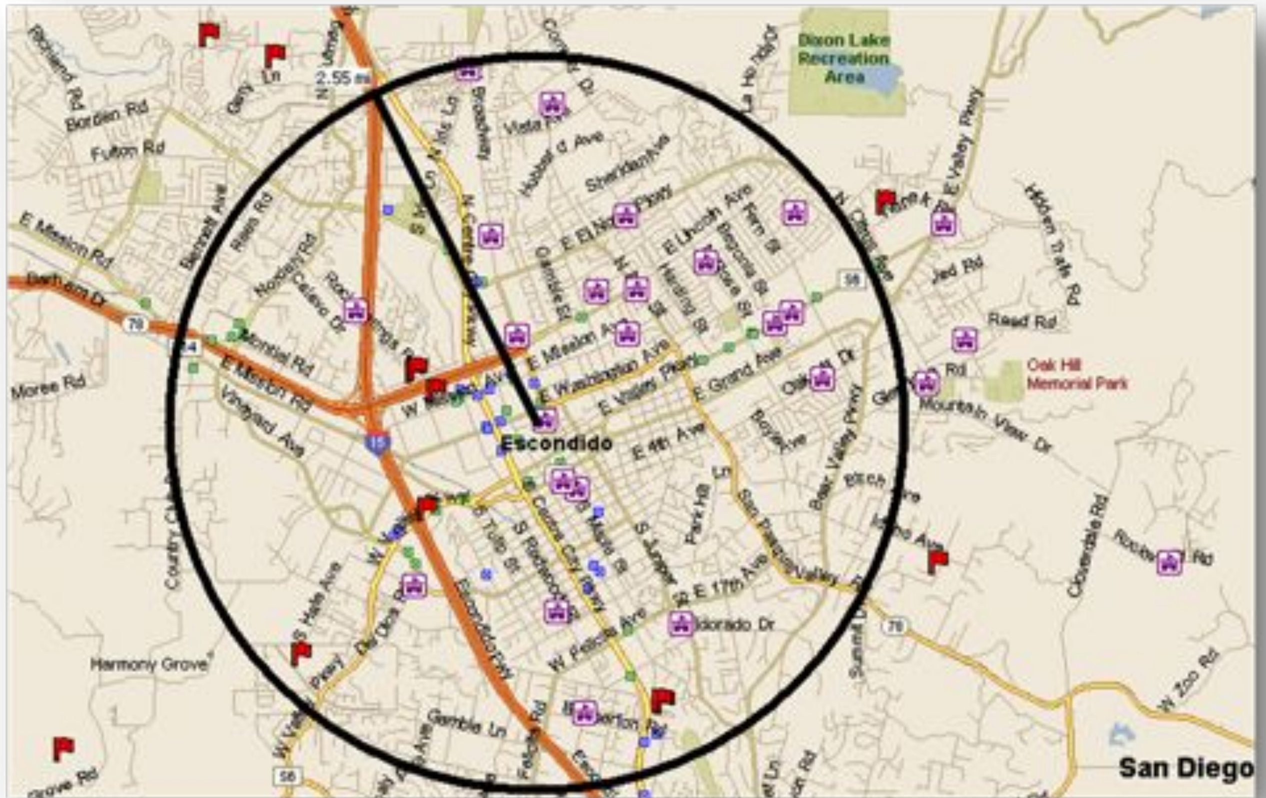


Marijuana Citation

2000 2005 2006 2007 2008 2009 2010

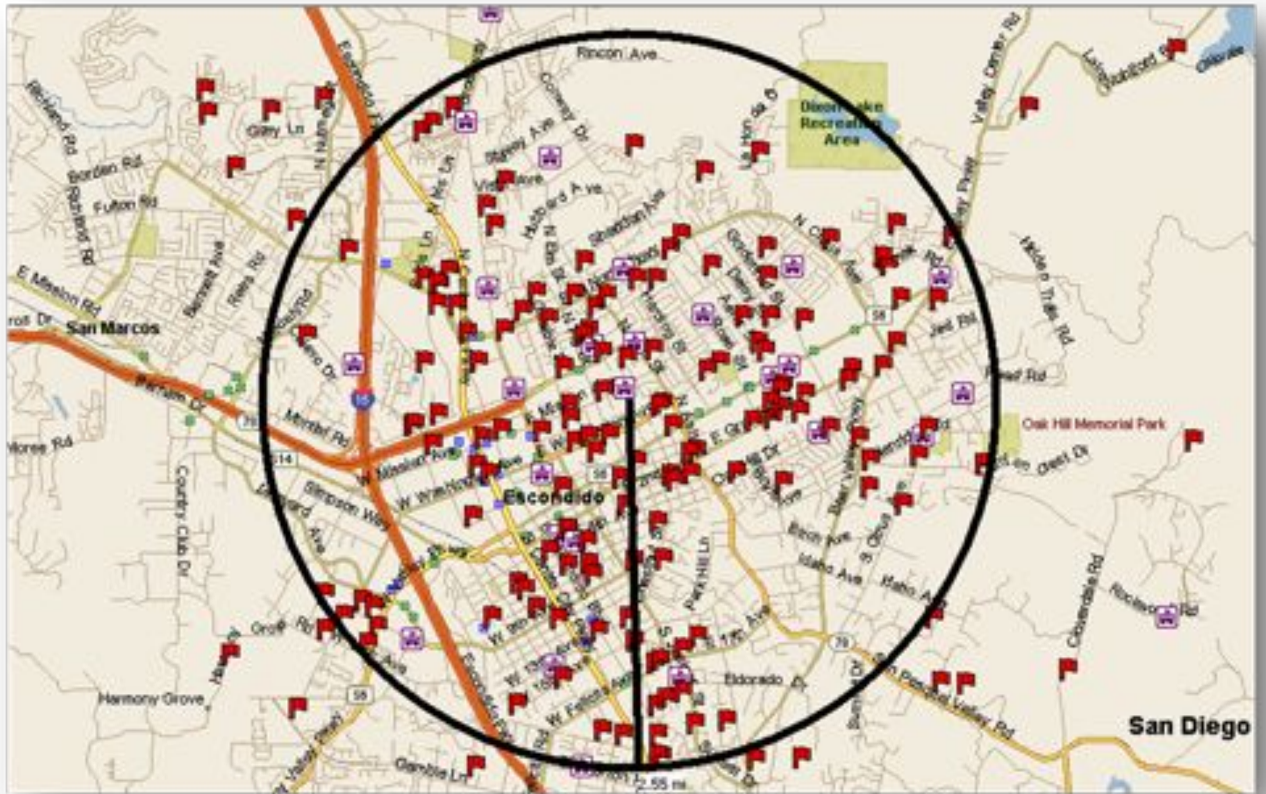
Jessica's Law passed

Jessica's Law first implemented



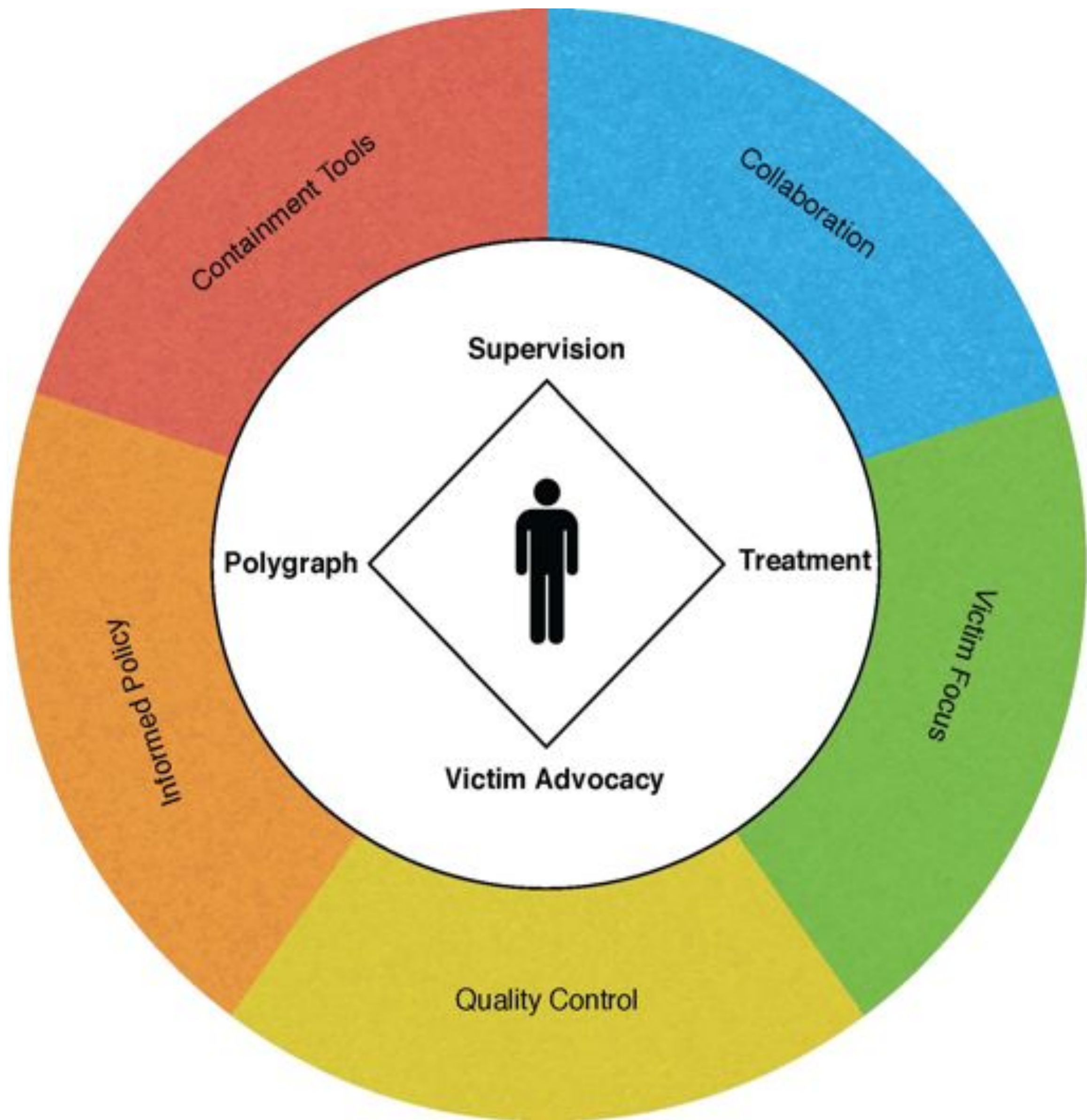
PAROLED SEX OFFENDERS LIVING IN ESCONDIDO CALIFORNIA

The total number of sex offenders on parole in a 2.5 mile area in relation to the schools within the City of Escondido, California in March of 2010 was 7. Those offenders were on Global Positioning Satellite and were compliant with the terms of Jessica's Law.



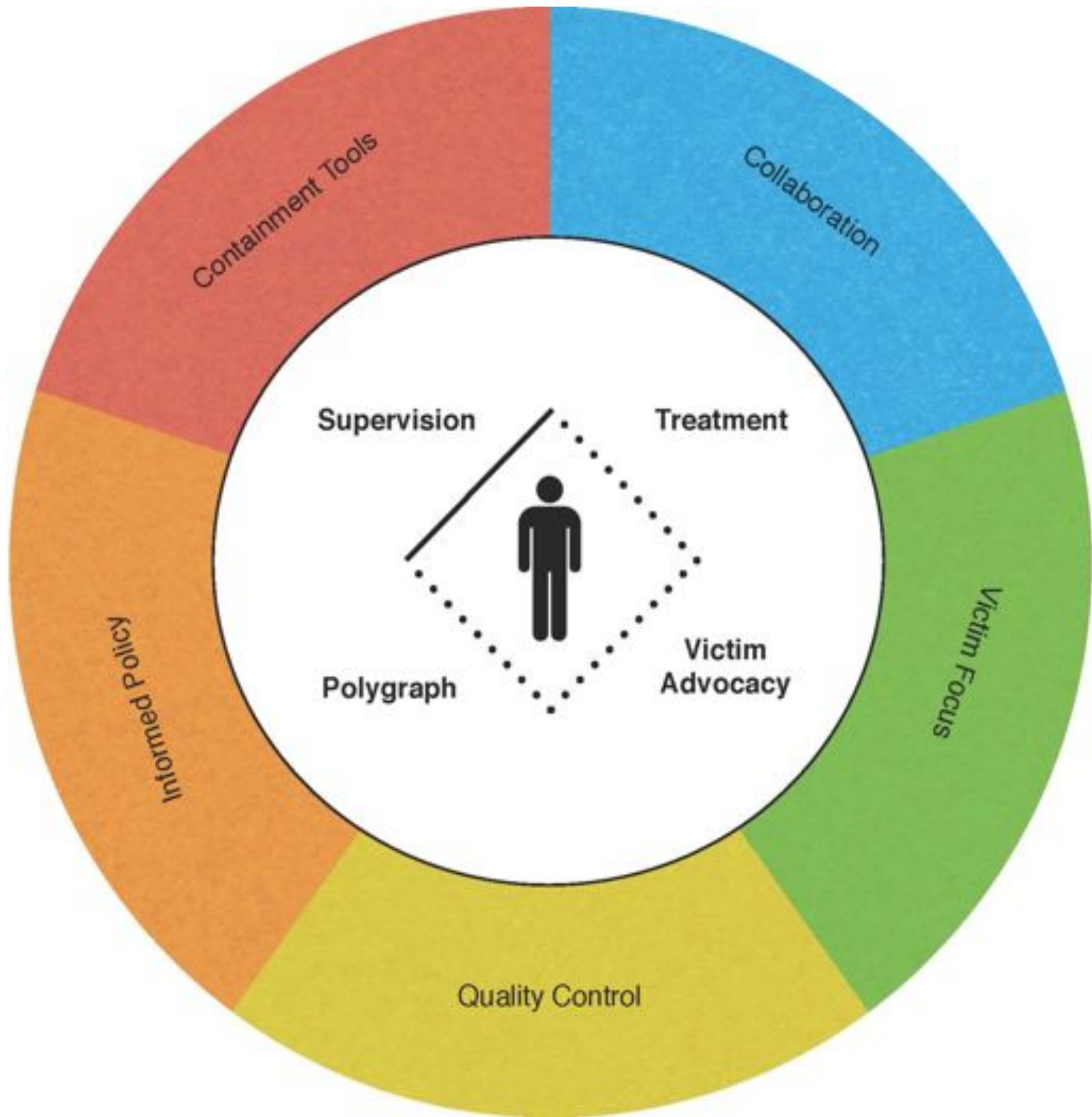
NON-PAROLEE SEX OFFENDERS LIVING IN ESCONDIDO CALIFORNIA

The total number of sex offenders **NOT** on parole in a 2.5 mile area in relation to the schools within the City of Escondido, California in March of 2010 was 141. Some of the offenders were living mere yards away from a school.



Adapted from: English, K., S. Pullen, and L. Jones (eds.), ManagingAdult Sex Offenders:A Containment Approach, 1996.

California's Incomplete Containment Model



Adapted from: English, K., S. Pullen, and L. Jones (eds.), ManagingAdult Sex Offenders:A Containment Approach, 1996.