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# Chapter 484: From Home Detention to GPS Monitoring

Patricia L. Eichar

## Code Sections Affected

Penal Code §§ 1210.7, 1210.8, 1210.9, 1210.10, 1210.11, 1210.12, 1210.13, 1210.14, 1210.15, 1210.16, 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 (new).

SB 619 (Speier, Denham, & Torlakson); 2005 STAT. Ch. 484 (*Effective October 4, 2005*).

## I. INTRODUCTION

Richard Davis, a convicted murderer in violation of his parole, kidnapped Polly Klaas at knifepoint from her California home in October of 1993.<sup>1</sup> In late 2004, Massachusetts authorities charged a registered sex offender<sup>2</sup> with the kidnapping and murder of mother and daughter Joanne and Alyssa Presti in Woburn.<sup>3</sup> Convicted, registered sex offenders abducted and murdered Jessica Lunsford and Sarah Lunde in Florida in 2005.<sup>4</sup> According to proponents of Chapter 484, parole officer monitoring and sex offender registration are not reducing recidivism.<sup>5</sup>

Proponents also contend incarceration is insufficient to protect the public from convicted criminals because of the sheer number of persons incarcerated and the costs associated with incarceration.<sup>6</sup> Every year, the California prison system houses up to 75,000 parole violators for an average of four months each, resulting in annual costs of about one billion dollars.<sup>7</sup> California's recidivism rate is twice the national average<sup>8</sup> and over forty-two percent of all United States parolees returned to prison reside in California.<sup>9</sup> Further exacerbating the

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1. Mary Curtius, *Davis Convicted of Murdering Polly Klaas*, L.A. TIMES, June 19, 1996, at A1.

2. Julie Mehegan, *GPS System to Track State Sex Offenders*, BERKSHIRE EAGLE (Pittsfield, Mass.), Feb. 25, 2005, available at <http://www.berkshireeagle.com> (on file with the *McGeorge Law Review*).

3. *Id.*

4. Lillian Thomas, *Legislature Looks for New Ways to Track Sex Offenders*, PITTSBURGH POST-GAZETTE, Apr. 26, 2005, available at <http://www.post-gazette.com/pg/pp/05116/494343.stm> (on file with the *McGeorge Law Review*).

5. See Monica Rodriguez, *Officials: Few Controls for Sex Offenders Due to Limited Resources*, INLAND VALLEY DAILY BULL. (Ontario, Cal.), Apr. 11, 2005 (critiquing current systems of parole, including random checks of last known addresses, which accomplish little to monitor offenders and ensure public safety); see also Joe Sciacca, *GPS Bill on the Right Track in Sex-Offender Battle*, BOSTON HERALD, Apr. 12, 2004, at 10 (arguing that the current sex offender registry system is "a joke, limited by the courts and underfunded by the state").

6. See *infra* notes 7-12 and accompanying text.

7. Frank Green, *Staffing Woes, Big Caseloads Hurt System*, RICHMOND TIMES DISPATCH, June 20, 2004, at A15.

8. Gary Delsohn, *State Budget Crisis Brings Shift in Parole Procedures*, ALAMEDA TIMES-STAR (Alameda, Cal.), Dec. 30, 2003 (on file with the *McGeorge Law Review*).

9. Green, *supra* note 7.

problem, since 2003, California has taken a softer approach to incarceration so that it may reduce prison system expenses.<sup>10</sup> Jails are overpopulated, reaching court-ordered population caps,<sup>11</sup> which results in the early release and parole of prisoners.<sup>12</sup>

In 2003, there were more than 744,000 parolees in the United States.<sup>13</sup> According to The Urban Institute's<sup>14</sup> research, sixty-two percent of prisoners unconditionally released were re-arrested within two years.<sup>15</sup> Sixty-one percent of prisoners released on mandatory, supervised parole were re-arrested within two years, a reduction of only one percent from those prisoners released unsupervised.<sup>16</sup> Contributing to the lack of oversight of these parolees, parole officers typically manage caseloads of seventy parolees and spend only about fifteen minutes with each parolee each month.<sup>17</sup> Senators Speier, Denham, and Torlakson introduced Senate Bill 619, enacted as Chapter 484, to allow officials to better supervise high-risk probationers and parolees.<sup>18</sup> The primary goals of Chapter 484 are to reduce recidivism and the number of crime victims.<sup>19</sup>

## II. BACKGROUND

### A. California Probation Law

Currently, trial courts may impose reasonable conditions on convicted felons placed on probation as an alternative to incarceration.<sup>20</sup> The California Supreme Court defined unreasonable conditions as those that have no relationship to the crime, relate to non-criminal conduct, and require or forbid conduct unrelated to future crimes.<sup>21</sup> Probation, as current California law defines it, is suspension of a sentence of incarceration in exchange for a conditional release and return to the community, with the case assigned to a probation officer for monitoring.<sup>22</sup>

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10. See Gerald L. Guy, *State Should Stop Investing in Corrections*, HERALD TIMES REP. (Manitowoc, Wis.), Aug. 12, 2003, at 4A (explaining that over a dozen states have taken measures to reduce corrections costs by granting early release, cutting sentences, and sending drug offenders to treatment).

11. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 10 (Mar. 29, 2005).

12. *Id.* at 21.

13. Al Swanson, *Analysis: Parole Not Reducing Re-Arrest*, WASH. TIMES, Mar. 31, 2005, available at <http://washingtontimes.com/upi-breaking/20050331-42238-4438r.htm> (on file with the *McGeorge Law Review*).

14. See *id.* (explaining that the Urban Institute is a non-profit, non-partisan research organization).

15. *Id.*

16. *Id.*

17. See *id.* (criticizing the current lack of resources for monitoring parolees).

18. See CAL. PENAL CODE § 1210.7(b)-(e) (enacted by Chapter 484) (finding that continuous electronic monitoring has been an "effective risk management tool" to supervise high-risk persons on probation and parole).

19. See *id.* (illustrating the legislative purpose of reducing crime and recidivism).

20. CAL. PENAL CODE § 1203 (West 2004).

21. *People v. Lent*, 15 Cal. 3d 481, 486, 451 P.2d 545, 548 (1975).

22. CAL. PENAL CODE § 1203(a).

Further, courts may impose a suspended sentence in the case of a misdemeanor without assigning the case to a probation officer.<sup>23</sup>

Previous California law also authorized county correctional departments to require electronic home detention as a condition of probation.<sup>24</sup> Electronic home detention uses an ankle bracelet to allow for periodic checks of an offender's location by telephone signal.<sup>25</sup> The device electronically alerts authorities if the parolee moves too far from the telephone or disables the device.<sup>26</sup> However, electronic monitoring cannot provide continuous tracking of the person monitored; law enforcement authorities cannot locate the offender once he leaves his home.<sup>27</sup>

### B. California Parole Law

Recognizing that inmates need a smooth transition from incarceration into the community,<sup>28</sup> California law currently requires that certain inmates be placed on parole once they are released from prison.<sup>29</sup> Accordingly, the Legislature found that surveillance and supervision during the period of parole was necessary for public safety.<sup>30</sup> Nevertheless, a typical period of parole does not exceed five years.<sup>31</sup>

Prior to Chapter 484, California law authorized the California Department of Corrections and Rehabilitation ("Department of Corrections") to require that inmates accept electronic monitoring as a condition of parole.<sup>32</sup> Parole authorities still could not use the electronic monitoring devices to eavesdrop or record the parolees' conversations.<sup>33</sup> While electronic monitoring was not limited to home detention, the author of Chapter 484 believes local authorities were reluctant to use continuous electronic monitoring due to a lack of explicit authorization.<sup>34</sup> Chapter 484 explicitly permits continuous monitoring of parolees through the use of a global positioning system (GPS), increasing the level of monitoring available to the Department of Corrections and the parole authority.<sup>35</sup>

23. *Id.* § 1203(d).

24. *Id.* § 1203.016.

25. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 17 (Mar. 29, 2005).

26. *Id.*

27. *Id.*; see also Penne Usher, *21st-Century Criminal Tracking Hits County*, AUBURN J. (Auburn, Cal.), May 16, 2005, available at [http://www.auburnjournal.com/articles/2005/05/12/news/top\\_stories/04monitoring.prt](http://www.auburnjournal.com/articles/2005/05/12/news/top_stories/04monitoring.prt) (on file with the *McGeorge Law Review*) (quoting a probation manager of Placer County on the effectiveness of previously used electronic monitoring: "[a]s soon as they left the house we knew they were gone but didn't know what they were doing while they were gone").

28. See CAL. PENAL CODE § 3000(a)(1) (West 2003) (declaring that the stage after incarceration is critical for "reintegration of the offender into society").

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* § 3004.

33. *Id.*

34. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 8 (Mar. 29, 2005).

35. *Id.* at 7-8.

### C. County Provisions

Prior to enactment of Chapter 484, several programs allowed for continuous electronic monitoring of offenders.<sup>36</sup> County boards of supervisors may have allowed sheriffs, probation officers, and the Department of Corrections to condition offenders' probations on participation in an electronic home detention program.<sup>37</sup> Counties also offered electronic home detention for nonviolent offenders as community-based alternative punishment programs.<sup>38</sup> Current pilot projects allow specified counties to use electronic home detention as punishment for persons convicted of driving without a license.<sup>39</sup>

### D. Pilot Program

In 1995, Assembly Member Goldsmith proposed a bill allowing a pilot program of continuous electronic monitoring in San Diego County and San Mateo County.<sup>40</sup> In response to a parolee's confessed murder of a young woman in 1993,<sup>41</sup> the Legislature enacted the program with the purpose of reducing crimes that persons on parole or probation commit.<sup>42</sup> The Legislature found that between fifty and seventy percent of parolees returned to prison within one year, either for violating parole or committing a new crime.<sup>43</sup> The Legislature believed that modern technology would reduce crime by allowing authorities to have continuous knowledge of the whereabouts of parolees and probationers.<sup>44</sup>

The pilot program permitted the probation department, the Department of Corrections, and the Department of the Youth Authority in both counties to use electronic monitoring through GPS to continuously track the locations of probationers and parolees.<sup>45</sup> This pilot program, enacted in 1995, expired by its own terms January 1, 2003.<sup>46</sup> Chapter 484 essentially revives this pilot program as permanent legislation for all California counties.

36. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 7 (June 21, 2005).

37. CAL. PENAL CODE § 1208 (West 2004).

38. *Id.* §§ 8050-52 (West 2000).

39. CAL. VEH. CODE § 14601.9 (West Supp. 2005).

40. CAL. PENAL CODE § 9000 (West 2004) (repealed by its own terms on Jan. 1, 2003).

41. 1995 Cal. Stat. ch. 867 § 1(g) (expressing horror at the abduction and murder in 1993 and stating that "[t]he people have been justifiably concerned by the revelation that the Department of Corrections does not know the whereabouts of thousands of parolees at any given time").

42. CAL. PENAL CODE § 9000(a) (West 2004) (repealed by its own terms on Jan. 1, 2003).

43. *Id.* § 1(b).

44. *Id.* § 1(g)-(i).

45. *Id.* § 9000(a) (repealed by its own terms on Jan. 1, 2003).

46. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 7 (June 21, 2005); see also CAL. PENAL CODE § 9009(a) (repealed on its own terms, Jan. 1, 2003) (requiring San Diego County and San Mateo County boards of supervisors to submit reports evaluating the pilot project to the legislature).

### E. Privacy Rights

Although the United States Constitution does not explicitly provide citizens with the right to privacy, the Supreme Court has found privacy rights implied within the First, Third, Fourth, and Fifth Amendments.<sup>47</sup> However, the specifics of privacy rights, or the “right to be let alone,” have been left to the states to decide.<sup>48</sup> The California Legislature codified a declaration that the right to privacy is a “personal and fundamental right,”<sup>49</sup> a right given by the California Constitution.<sup>50</sup> California explicitly included the right to privacy in the constitution to protect Californians from overbroad collection and improper use of private information.<sup>51</sup> Still, the right to privacy is not absolute; a compelling state interest may justify intrusions.<sup>52</sup>

### F. The Global Positioning System

GPS monitoring uses satellites to track offenders.<sup>53</sup> Each offender wears an ankle bracelet and carries a wireless positioning device that periodically transmits the location of the offender.<sup>54</sup> If the offender tampers with the positioning device, moves over 150 feet away from the positioning device, or enters a prohibited area, the device electronically alerts authorities.<sup>55</sup> The system may also be programmed to notify victims if the offender enters a set exclusion zone.<sup>56</sup> With GPS tracking, the monitoring system can identify the location of any given offender at any given moment.<sup>57</sup>

The companies that provide GPS monitoring services can provide either daily or hourly printouts of an offender’s activity to the monitoring authority.<sup>58</sup> The printouts show such detailed information about where the offender went, and at what time, that the service will know whether the offender stopped at traffic

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47. See generally *Katz v. United States*, 389 U.S. 347, 350-51, 350 n.5 (1967) (elucidating the rights to be inferred from each amendment).

48. *Id.* at 351.

49. CAL. CIV. CODE § 1798.1 (West 1998).

50. See CAL. CONST. art. I, § 1 (“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”).

51. *White v. Davis*, 13 Cal. 3d 757, 774-75, 533 P.2d 222, 233-34 (1975).

52. *Id.*

53. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 17 (Mar. 29, 2005).

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 19.

lights.<sup>59</sup> To ensure maximum efficiency, the departments need parole agents and probation officers available twenty-four hours per day to respond to alarms.<sup>60</sup>

### III. CHAPTER 484

Chapter 484 authorizes county probation departments and the Department of Corrections (referred to collectively as “departments”) to use continuous electronic monitoring of parolees and probationers (referred to collectively as “offenders”) who require a high level of supervision, including use of GPS.<sup>61</sup> The departments may contract with either public or private agencies to supervise the electronic monitoring systems.<sup>62</sup> Chapter 484 further authorizes the departments to use a device that an offender may wear, which is resistant to damage, either intentional or unintentional, and functions twenty-four hours per day.<sup>63</sup> The device must emit a signal capable of being tracked across a large area, as determined feasible by the parole and probation authorities.<sup>64</sup> The electronic monitoring system may notify the departments of parole and probation violations, and it may be used as evidence in a court proceeding against the offender.<sup>65</sup> Chapter 484 permits probation or parole officers to arrest an offender without a warrant, upon reasonable cause to believe that the offender has violated probation or parole.<sup>66</sup>

Chapter 484 requires the departments to establish certain standards for the purpose of enhancing public safety.<sup>67</sup> Each department must, at minimum, evaluate the department’s resources, the offender’s criminal background, and the safety of crime victims when setting the time interval between transmissions.<sup>68</sup> The department must set the accuracy of the information obtained from electronic monitoring to standards reflecting the resources of the department, the need to accurately detect proximity to a crime, and the need to prevent false indications.<sup>69</sup> Access to the information that the tracking devices provide is limited to authorized use as determined by the departments.<sup>70</sup> Further, the monitoring devices may not be used to record conversations or to eavesdrop, except for purposes of voice identification.<sup>71</sup>

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59. Usher, *supra* note 27.

60. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 19 (Mar. 29, 2005).

61. CAL. PENAL CODE §§ 1210.7(a)-(d), 3010(a)-(d) (enacted by Chapter 484).

62. *Id.* §§ 1210.16(a), 3010.9(a).

63. *Id.* §§ 1210.8, 3010.1.

64. *Id.* §§ 1210.8(b), 3010.1(b).

65. *Id.* §§ 1210.9(a)-(b), 3010.2(a)-(b).

66. *Id.* §§ 1210.14, 3010.7.

67. *Id.* §§ 1210.10, 3010.3.

68. *Id.* §§ 1210.10(a)(1)-(3), 3010.3(a)(1)-(3).

69. *Id.* §§ 1210.10(b)(1)-(3), 3010.3(b)(1)-(3).

70. *Id.* §§ 1210.11(a), 3010.4(a).

71. *See id.* §§ 1210.11(b), 3010.4(b) (indicating that a conversation may only be recorded between a participant and a supervisor for the sole purpose of voice identification).

Under Chapter 484, the county chief probation officer and the parole authority have the sole discretion to select which individuals need monitoring by establishing written guidelines consistent with terms and conditions of probation and parole.<sup>72</sup> The offenders may be monitored up to the entire term of probation or parole.<sup>73</sup> Also, the county chief probation officer and the parole authority have the discretion to revoke monitoring when appropriate.<sup>74</sup>

To reduce costs of the program, the departments may require that the monitored offender pay for the costs of monitoring, to the extent that the offender is capable.<sup>75</sup> Payment of monitoring costs is secondary to payment of other outstanding court imposed fines and penalties.<sup>76</sup>

#### IV. ANALYSIS OF CHAPTER 484

##### A. *Crime Reduction and Public Safety*

Supporters of Chapter 484 believe it will reduce recidivism.<sup>77</sup> Supporters claim a reduction in recidivism will significantly reduce costs of corrections in California,<sup>78</sup> and the cost of GPS monitoring is cheaper than incarceration by approximately \$16,000 per person, per year.<sup>79</sup> Further, overcrowding in correctional facilities requires an urgent reduction in the number of persons housed.<sup>80</sup> California prisons are at double capacity, resulting in double-bunked beds and beds in gyms and dayrooms.<sup>81</sup> As a result, prisons release an average of 14,089 inmates early each month.<sup>82</sup> However, many believe that releasing prisoners on traditional parole will not reduce the crime rate and will simply

72. *Id.* §§ 1210.12, 3010.5.

73. *Id.* §§ 1210.12(a), 3010.5(a).

74. *Id.* §§ 1210.13, 3010.6.

75. *Id.* §§ 1210.15(a), 3010.8(a). Daily costs of GPS monitoring run approximately twelve dollars per day, per unit. SENATE APPROPRIATIONS COMMITTEE, FISCAL SUMMARY OF SB 619, at 1 (May 2, 2005).

76. See CAL. PENAL CODE §§ 1210.15(b), 3010.8(b) (requiring the offender to first satisfy "outstanding base fines, state and local penalties, restitution fines, and restitution orders imposed by a court" before being responsible for costs of electronic monitoring).

77. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 6 (June 21, 2005).

78. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 10 (Mar. 29, 2005) (stating that the reduction in recidivism could result in \$1.2 billion in savings each year).

79. See Editorial, *Our Views; Track Predators*, PRESS ENTER. (Riverside, Cal.), Apr. 25, 2005, at B06 (stating that GPS monitoring costs about \$5,000 per person per year, while a jail cell costs \$21,000 per year).

80. See Letter from Bob Doyle, Sheriff, Riverside County, to Senator Jackie Speier, Cal. State Senate (May 16, 2005) (on file with the *McGeorge Law Review*) (stressing the current constraints in housing convicted offenders in current facilities); Letter from Nick Warner, Legis. Dir., Cal. State Sheriffs' Ass'n to Senator Jackie Speier, Cal. State Senate (Mar. 22, 2005) (on file with the *McGeorge Law Review*) (discussing the need for electronic monitoring as a result of mandatory early release of convicted persons due to overcrowding).

81. Jeffrey G. Corp, In Definite Need of Correction: The Decline of the California Department of Corrections 12-13 (Jan. 2005) (unpublished manuscript, on file with the *McGeorge Law Review*).

82. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 21 (Mar. 29, 2005).



result in that parolees' return to prison.<sup>83</sup> The author of Chapter 484 trusts that continuous electronic monitoring will serve as an effective deterrent, reducing recidivism and thereby reducing the population in California prisons.<sup>84</sup>

Supporters argue that continuous electronic monitoring is a necessary step in maintaining public safety in light of the need to reduce the number of prisoners in California.<sup>85</sup> Chapter 484's primary objective is to reduce the number of people that persons on parole and probation victimize.<sup>86</sup> The author believes that GPS monitoring, in combination with therapy and other intervention techniques, will deter violent offenders from re-offending.<sup>87</sup>

The author of Chapter 484 relies on a similar program in Florida that has significantly reduced recidivism in all groups of offenders.<sup>88</sup> Florida performed a study between 1996 and 2000, tracking approximately 64,000 offenders released from Florida prisons and jails.<sup>89</sup> Parole revocations after one year for new felonies, misdemeanors, or technical parole violations decreased by approximately fifty percent compared to revocations for persons not on continuous electronic monitoring.<sup>90</sup> According to the Florida study, parole revocations after two years decreased by approximately sixty percent.<sup>91</sup> California could save approximately \$1.2 billion per year if it experiences similar reduction due to continuous electronic monitoring under Chapter 484.<sup>92</sup>

83. See Swanson, *supra* note 13 (criticizing the current system for early release of prisoners and arguing that "parole, as typically implemented, has largely failed to . . . prevent former prisoners from returning to crime").

84. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 10 (Mar. 29, 2005) (illustrating the need to avoid court-ordered population caps in prison, and expressing a belief that GPS monitoring, along with therapy and police intervention, will be a greater deterrent than current parole and probation systems).

85. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 6 (June 21, 2005) (finding that continuous electronic monitoring is an effective tool to supervise persons on probation to maintain public safety); see also Letter from Harriet Salarno, Chair, Crime Victims United of Cal., to Senator Elaine Alquist, Cal. State Senate (Mar. 22, 2005) (on file with the *McGeorge Law Review*) ("Prevention and knowledge of an offenders' [sic] whereabouts is a high priority helping parole agents and local law enforcement maintain public safety in California communities.").

86. CAL. PENAL CODE § 1210.7(b) (enacted by Chapter 484).

87. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 5 (June 21, 2005).

88. See Fla. Dep't of Corrs., Bureau of Research & Data Analysis, A Controlled Study of the Effects of Electronic Monitoring and Officer Caseload on Outcomes for Offenders on Community Control 2-3 (Mar. 11 2003) (hereinafter "Fla. Study") (unpublished manuscript, on file with the *McGeorge Law Review*) (finding that those subject to continuous electronic monitoring "are significantly less likely to have a revocation of any type, have a revocation for a felony, have a revocation for a misdemeanor, have a revocation for technical reason, or to abscond within one or two years of being placed on supervision").

89. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 9 (Mar. 29, 2005).

90. *Id.*

91. See Fla. Study, *supra* note 88 at 4 (reducing two year recidivism from 46 to 18.4 percent).

92. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 619, at 10 (Mar. 29, 2005) ("[F]igure \$30,000 average annual cost per prisoner x 40,000 prisoners not returned to prison = \$1.2 billion.").

## B. Privacy Issues

Civil rights groups, including the American Civil Liberties Union (ACLU), expressed concern that continuous electronic monitoring will unreasonably interfere with rights to privacy under the California Constitution by allowing access to details of the private lives of those on probation or parole.<sup>93</sup> Although trial courts currently have broad discretion to establish conditions of parole and probation during sentencing,<sup>94</sup> the ACLU believes that continuous electronic monitoring as established by Chapter 484 violates the test for probation conditions under *In re Byron B.*<sup>95</sup> The ACLU argues that continuous electronic monitoring unconstitutionally interferes with privacy rights because it has no relationship to the original crime, relates to non-criminal conduct, and forbids conduct not reasonably related to future criminal conduct.<sup>96</sup>

However, the decisions of the California Supreme Court indicate that the legislative intent to reduce recidivism and to protect the public requires flexibility to make regulations.<sup>97</sup> The court held the conviction for a serious crime is itself enough to indicate a substantial risk of recidivism.<sup>98</sup> Further, the California Supreme Court pronounced that supervision will deter future criminal conduct and will encourage rehabilitation; therefore, supervision relates directly to future criminal conduct.<sup>99</sup> The court also held that persons granted the privilege of parole and probation have agreed to sacrifice a number of their constitutional rights, including the right to privacy.<sup>100</sup> According to the court in *People v.*

93. Letter from Francisco Lobaco, Legis. Dir., & Valerie Small Navarro, Legislative Advocate, Am. Civil Liberties Union, to Senator Jackie Speier, Cal. State Senate (Mar. 23, 2005) (on file with the *McGeorge Law Review*).

94. See *People v. Lent*, 15 Cal. 3d 481, 486, 541 P.2d 545, 548 (1975).

95. 119 Cal. App. 4th 1013, 1016, 14 Cal. Rptr. 3d 805, 807 (2004) (holding an unreasonable adult probation condition “(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . [or] if it unduly restricts the exercise of a constitutional right”).

96. See Letter from Francisco Lobaco to Senator Jackie Speier, *supra* note 93 (citing test from *In re Byron B.*, 119 Cal. App. 4th 1013, 14 Cal. Rptr. 3d 805 (2004)).

97. See *In re Alva*, 33 Cal. 4th 254, 289-90, 92 P.3d 311, 332 (2004) (“[T]he Legislature must have regulatory leeway to deal with the serious problem of recidivist sex offenses . . . . In furtherance of its regulatory goal, the Legislature may extend its monitoring provisions to this general class of offenses, without precise calibration of the risks and dangers presented in each individual case.”).

98. See *id.* at 277-78, 92 P.3d at 324 (elaborating on the Supreme Court’s analysis in *Smith v. Doe*, 538 U.S. 84 (2003)). “[C]onviction for a sex offense provides evidence of substantial risk of recidivism. The legislature’s findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class . . . . [T]he risk of recidivism posed by sex offenders generally is ‘frightening and high.’ *Smith v. Doe*, 538 U.S. 84, 103 (2003).

99. See *People v. Bravo*, 43 Cal. 3d 600, 610, 738 P.2d 336, 342 (1987) (“[I]nformation obtained [during searches] would afford a valuable measure of the effectiveness of the supervision given the defendant and his amenability to rehabilitation.”).

100. See *id.* at 607, 738 P.2d at 340 (holding that the probationer relinquished his right to privacy when he consented to warrantless searches of his home).

Adams, convicted criminals simply have a lower expectation of privacy than citizens without a criminal record.<sup>101</sup>

## V. CONCLUSION

Given the lack of resources in California correctional facilities, another method is necessary to keep the public safe from convicted criminals.<sup>102</sup> At least thirty states already use global positioning technology to track convicted offenders of violent or sexual crimes, although specific reports of their effectiveness are generally unavailable.<sup>103</sup> Several California counties already use continuous electronic monitoring to track offenders.<sup>104</sup> Chapter 484 will expand the use of global positioning technology throughout California, and continuous electronic monitoring will provide increased support for law enforcement.<sup>105</sup>

Although opponents expressed privacy concerns, the state has a compelling interest in protecting innocent Californians,<sup>106</sup> and people convicted of crimes have a diminished expectation of privacy.<sup>107</sup> Furthermore, probationers have received the benefit of not being incarcerated in exchange for some of their constitutional rights.<sup>108</sup> On the balance, GPS monitoring likely falls within federal and California constitutional boundaries.

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101. *People v. Adams*, 115 Cal. App. 4th 243, 258-59, 9 Cal. Rptr. 3d 170, 182-83 (2004).

102. *See supra* notes 7-17, 80-83 and accompanying text (discussing the current state of California corrections).

103. Jennifer Smith, *High-Tech Eye on Offenders: Suffolk Bill Would Beef Up its Monitoring of Sexual Predators by Having Some Wear GPS Tracking Devices*, *NEWSDAY, NASSAU & SUFFOLK ED.*, Jan. 25, 2005, at A06.

104. *See* Letter from Stephanie Lewis, Chief Prob. Officer, Orange County Prob. Dep't, to Senator Elaine Alquist, Cal. State Senate (Mar. 18, 2005) (on file with the *McGeorge Law Review*) (explaining Orange County's use of continuous electronic monitoring and encouraging support for SB 619); *see also* Usher, *supra* note 27 (outlining Placer County Probation Department's implementation of a probationer monitoring system using GPS).

105. *See supra* notes 18-19 and accompanying text (explaining the intent of Chapter 484).

106. *See supra* notes 47-52 and accompanying text (illustrating privacy rights in California).

107. *See supra* notes 93-101 and accompanying text (explaining the reduction of the privacy expectation of parolees and probationers).

108. *See People v. Bravo*, 43 Cal. 3d 600, 607, 738 P.2d 336, 340 (1987) (holding that probationers may sacrifice their rights in exchange for the benefits of being on probation instead of being incarcerated).