



2010-2011 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

SEX OFFENDER TRACKING IN SANTA CLARA COUNTY

Introduction

For more than fifty years, persons convicted of sex offenses in California have been required to register their names and addresses with local law enforcement agencies. That information was not easily accessible by the public until the passage of “Megan’s Law” in 1996, which arose from the rape and murder of a child by a convicted sex offender. Unbeknownst to Megan and her family, the sex offender lived across the street. (For the full text of Megan’s Law, see Appendix A; for an overview of the scope and requirements of Megan’s Law, visit the website <http://www.meganslaw.ca.gov/index.aspx?lang=ENGLISH>). In an effort to give the public access to information regarding the location of convicted sex offenders, which may protect against the recurrence of such a crime, California law was amended to allow the public to search for and retrieve certain limited information regarding the location of convicted sex offenders by means of a computer.

While the public’s ability to easily access that information is relatively new, the requirement to register is not. Under California law, a person who has been convicted of any of a number of sex offenses listed in California Penal Code, Section 290 must register his or her name and address with the appropriate local law enforcement agency or be subject to further prosecution and penalties for failure to do so. Registrable offenses include those that most would agree are very serious crimes, such as rape and sexual abuse of a child; but other less serious offenses, such as indecent exposure, are also subject to registration requirements. (For a current list of registrable sexual offenses, visit the website <http://www.meganslaw.ca.gov/registration/offenses.aspx?lang=ENGLISH>).

The Grand Jury conducted a review of how different law enforcement agencies within Santa Clara County carry out their obligations to accomplish the monitoring of sex offenders required under California law, specifically focusing on the following issues:

1. How do law enforcement agencies monitor the thousands of Santa Clara County residents registered as sex offenders pursuant to “Megan’s Law”?
2. Does the nature, quality, or frequency of monitoring vary according to the seriousness of the underlying offense?
3. Have recent County budget cuts impacted the monitoring of serious and/or violent offenders?
4. In accomplishing the monitoring required by law, what are the roles of the Office of the Sheriff (Sheriff), the San Jose Police Department (SJPD), the District Attorney’s Office (DA), and the California Department of Corrections and Rehabilitation, Division of Adult Parole Operations (Parole)?

Methodology

The Grand Jury conducted a series of interviews with persons actively involved in the monitoring process in Santa Clara County. In particular, the Grand Jury interviewed representatives from the Sheriff, SJPD, the DA, and Parole. The Grand Jury did not examine any documents specific to a particular case or discuss particular cases with the law enforcement agencies. Further, the Grand Jury did not examine, analyze or make recommendations regarding the legitimacy or value of any particular law applicable to the registration and monitoring of sex offenders. General questions were developed to elicit information regarding the administrative and operational processes and procedures used by each agency to carry out its monitoring function.

Overview

Of the nearly two million residents of Santa Clara County, approximately 2,500 are registered as sex offenders. While the number of registrants fluctuates and their residence addresses change, the overwhelming majority of these offenders reside in San Jose. The remainder are scattered throughout other cities and unincorporated areas throughout the county. Responsibility for monitoring those persons is divided among four law enforcement agencies as described below.

Office of the Sheriff

The Sheriff, through its Project Safe, monitors over 250 persons with a staff of one Sergeant, one Detective, and one Analyst. Project Safe encompasses a number of different law enforcement agencies within and without Santa Clara County that cooperate to efficiently monitor registrants who reside in their jurisdiction. Project Safe is funded in large part through grants obtained from the State of California. These grants are awarded based on, among other criteria, the number of registrants requiring monitoring. The Sheriff reports a 95% “compliance rate,” where compliance is defined as the extent to which Sheriff’s personnel can verify that an accurate address has been reported by registrants. This compliance rate is a success indicator in that it directly leads to federal grant eligibility. In addition to monitoring and verifying addresses, the Sheriff offers monitoring assistance to SJPD and to other counties throughout California upon request.

San Jose Police Department

SJPD monitors registered sex offenders through its Sexual Assault Team. This Team, with cooperation from the Sheriff and other agencies, is responsible for tracking, verifying reported addresses, and conducting in-person visits with registrants living in San Jose. The Sexual Assault Team is composed of one Sergeant, four Detectives, and one Clerk. In addition to its monitoring responsibilities under Megan’s Law, the Team is charged with the investigation and enforcement of laws involving the following categories of crime:

- General Crimes
- Pornography Offenses
- Potential Violations of Registration Requirements under Megan's Law.

Funding for much of this work is obtained through federal grants, which are normally awarded every two years. These funds have allowed SJPD to hire additional officers to conduct in-person visits to different registrants, approximately twice per week, as required by law. SJPD reports an 80% to 85% compliance rate in the reporting and verification of registrant addresses. Again, this compliance rate is a success indicator in that it directly leads to federal grant eligibility. While the funding for SJPD's Sexual Assault Team and monitoring efforts is currently protected by grant monies, that funding will expire in June 2011.

Santa Clara County District Attorney's Office

The DA's Office is responsible for interpreting the laws applicable to sex offender registration, compliance by registrants, and monitoring throughout Santa Clara County, and for educating the agencies tasked with enforcing those laws. To fulfill these duties, it has assigned one Deputy DA to oversee those efforts. A paralegal is available when needed. The Deputy DA who holds this assignment is recognized locally and statewide as an expert in sexual registration law. This individual is also certified to conduct training throughout the state on legal issues associated with registration, monitoring, and enforcement, while maintaining a caseload of roughly 300 registrants, with new cases added daily.

The Grand Jury learned that the following requirements apply to registered sex offenders:

- Must register within five days of their birthday each year
- Must report any change of address within five days to the appropriate law enforcement agency
- Must report any change in location within five days if transient
- Must register and report any concurrent address (a part-time residence) within five days of establishing that residence
- Must report to the appropriate law enforcement agency within five days of release from incarceration.

California Department of Corrections and Rehabilitation, Division of Adult Parole Operations

The Division of Adult Parole Operations (under the California Department of Corrections and Rehabilitation) is responsible for monitoring parolees in Santa Clara County. The Grand Jury interviewed a representative Parole Agent who is part of a seven-member unit responsible for tracking and monitoring high-risk and low-risk parolees, approximately 200 parolees at the time of this report. Apart from this unit, Parole employs approximately fifty agents, four psychologists and one psychiatrist who are assigned to monitoring and tracking duties. Each unit is assigned to a particular geographic area within the county, such as West San Jose, Gilroy, and other locations. Parole Agents conduct the required monitoring through the use of GPS devices, which parolees subject to registration requirements are mandated to wear at all times. Currently, over 350 sex offenders living in Santa Clara County wear a GPS device. While these GPS devices are used as a tool to aid in tracking, the particular device in use presents some hurdles to efficiency and accuracy, because it requires recharging every twelve hours, or more often if the individual is active and mobile.

The Grand Jury learned that the GPS tracking system is subject to failure or inaccuracy for the following reasons, among others:

- Parolees fail to recharge the device as required
- Parolees, for reasons including drug or alcohol intoxication, fail to observe or respond to low battery warnings emitted by the device
- Parolees cut the device off.

When the Parole Agent responsible for monitoring becomes aware that a particular parolee is not registering through the GPS tracking system, he or she will conduct an in-person visit to verify the parolee's reported address and to conduct a health and safety check. Even if GPS monitoring is in place, California law mandates that parolees be visited in person on a regular basis.

In order to more effectively monitor those under its supervision, Parole has developed a matrix of factors and conditions used to generally assess parolee risk. Those factors taken into consideration include the nature of the offense of conviction, the number of previous convictions, and whether the crime involved actual physical contact with a victim. Those assigned a greater risk category are subject to more frequent and closer supervision.

Factors That Affect Monitoring

The Grand Jury found that the following issues and conditions, among others, may positively and negatively affect [Santa Clara County] law enforcement agencies' ability to properly carry out their monitoring function and responsibilities:

- In 2006, Californians passed Proposition 83, commonly known as “Jessica’s Law.” (For full text, see Appendix B; and for more information, visit the website http://www.cdcr.ca.gov/Parole/Sex_offender_facts/index.html). Among other provisions, the law forbids registered sex offenders from living within 2,000 feet of a school or park and some other public facilities. According to those interviewed by the Grand Jury, an unintended consequence of the law has been to prevent many registrants from establishing a permanent residence, forcing them into a transient living condition. For obvious reasons, transients are difficult to monitor and track and therefore are difficult to direct into available counseling or other services. The Grand Jury learned that approximately 50% of Santa Clara County’s registered sex offenders are transients, often living in homeless encampments. Enforcement and monitoring under Jessica’s Law has been further complicated by recent Court rulings, including a November 2010 ruling by the Los Angeles Superior Court, finding the residency restrictions imposed by "Jessica's Law" unconstitutional.
- Budgetary constraints have an impact on tracking and monitoring resources. While federal grants have gone far to assist in covering the expenses associated with monitoring, continued grant funding is uncertain. The amount of state, county, and federal monies available and/or allotted to support monitoring is difficult to predict.
- A collegial attitude and respect was evident among the personnel interviewed (each praised some aspect of the others’ conduct, and all were highly complimentary of the professionalism and knowledge of the Deputy DA assigned to enforcement). This cooperation and genuine concern for the safety of county residents is reported by the agencies to be a contributing factor to their history of effective monitoring of sex offenders in Santa Clara County.

Summary

The law enforcement agencies in Santa Clara County that are tasked with implementing the monitoring requirements of sex offenders, established by Megan’s Law, are performing that function diligently and successfully, despite difficulties created by budgeting, and in some instances, unintended consequences of well-intentioned laws. Their high compliance rate leads to eligibility for federal grant monies. The four agencies serving Santa Clara County are well organized and have developed respected, recognized programs. Nonetheless, as one interviewee observed, “Law enforcement can only do so much. Parents have a responsibility to monitor their children’s activity and know what is going on in their neighborhood.”

For more information about laws relating to registration of sex offenders, inquiry may be made of the law enforcement agencies mentioned in this report or by visiting one of the many websites focused on this subject, including www.meganslaw.ca.gov, and www.nsopw.gov.

Appendix A

California Penal Code, Section 290(a)(2)(A)-(E) (“Megan’s Law”)

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

Appendix B

California Penal Code Section 3003.5 (“Jessica’s Law”)

(a) Notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which registration is required pursuant to Section 290, that person may not, during the period of parole, reside in any single family dwelling with any other person also required to register pursuant to Section 290, unless those persons are legally related by blood, marriage, or adoption. For purposes of this section, "single family dwelling" shall not include a residential facility which serves six or fewer persons.

(b) Notwithstanding any other provision of law, it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2000 feet of any public or private school, or park where children regularly gather.

(c) Nothing in this section shall prohibit municipal jurisdictions from enacting local ordinances that further restrict the residency of any person for whom registration is required pursuant to Section 290.

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 14th day of April, 2011.

Helene I. Popenhager
Foreperson

Gerard Roney
Foreperson pro tem

Kathryn Janoff
Secretary