SPECIAL REPORT

THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION'S SUPERVISION OF JOHN GARDNER

OFFICE OF THE INSPECTOR GENERAL

DAVID R. SHAW
INSPECTOR GENERAL

STATE OF CALIFORNIA
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David R. Shaw, Inspector General

Office of the Inspector General

June 2, 2010

Matthew L. Cate, Secretary
California Department of Corrections and Rehabilitation
1515 S Street, Room 502 South
Sacramento, California 95814

Dear Mr. Cate:

Enclosed is the Office of the Inspector General's special report of the California Department of Corrections and Rehabilitation's (department) parole supervision of John Gardner. We conducted this review under the authority of California Penal Code section 6126, which assigns the Office of the Inspector General responsibility for oversight of the department.

The special report concludes that during the department's parole supervision of Gardner, it did not identify Gardner's aberrant behavior, including unlawfully entering the grounds of a state prison—a felony—as well as numerous parole violations. Had the department identified Gardner's criminal act and parole violations, it could have referred them to the district attorney or Board of Prison Hearings for appropriate action. Successful prosecution of Gardner's crime and administrative action in response to his parole violations could have sent Gardner back to prison, making it impossible for him to murder the two young girls and commit the attempted sexual assault. The department did not identify Gardner's crime and parole violations because it did not require parole agents to review the GPS data associated with the GPS device it required Gardner to wear. In March 2010, the department established policy which requires parole agents to periodically review GPS data for parolees such as Gardner. However, this policy, although improved, remains deficient because under its provisions, the department remains unlikely to have detected crimes such as Gardner's felony or many of his parole violations. The policy also limits parole agents' field activities by imposing laborious GPS data review techniques. However, by using Criminal Intelligence Specialists and better review techniques, the department could free up parole agents' time, thereby enhancing public safety through effective parole supervision. Finally, the department could be more effective if it used the GPS system's zone-monitoring capacity to a greater extent and realigned some of the responsibilities for reviewing the alerts that the zones produce.

We would like to thank you and your staff for the cooperation extended to my staff in completing this special report. If you have any questions concerning this report, please contact Samuel Dudkiewicz, Chief Assistant Inspector General, Bureau of Criminal Investigations, at (916) 830-3600.

Sincerely,

David R. Shaw
Inspector General

Enclosure

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Executive Summary

On May 14, 2010, John Gardner was sentenced to state prison for life without the possibility of parole for the rapes and murders of 14-year-old Amber Dubois and 17-year-old Chelsea King, and for the assault on 23-year-old Candice Moncayo with the intent to commit rape. Each of these heinous crimes occurred subsequent to the Department of Corrections and Rehabilitation's (department) September 2008 discharge of Gardner after he completed a three-year parole term for sexually assaulting a 13-year-old girl in 2000.

Findings in Brief

The Office of the Inspector General finds that the Department of Corrections and Rehabilitation:

- Did not identify the felony that Gardner committed which could have returned him to prison and thereby potentially prevented him from murdering two young girls and assaulting another victim.
- Did not identify Gardner's repeated parole violations, including the following:
  - Being within 100 yards of places where children congregate.
  - Residing within a half-mile of a school.
  - Leaving his residence during curfew.
  - Having access to a storage facility.
- Has recently developed a GPS policy, but the policy still falls short of aggressively monitoring sex offenders for the following reasons:
  - It requires review of only 13 percent of the GPS data of 4,500 sex offender parolees monitored under the department's passive GPS monitoring program.
  - It is unlikely to have detected Gardner's crime at a state prison and his numerous parole violations.
  - It may limit parole agents' available time in the field.
- Could enhance public safety in the following ways:
  - Review GPS data in batches rather than point by point.
  - Use trained specialists, not parole agents, to review GPS data and receive most system alerts.
  - Increase its use of GPS zones.

Our review revealed that during Gardner's parole supervision, the department did not identify his aberrant behavior, including unlawfully entering the grounds of a state prison—a felony—as well as numerous instances of violating the conditions of his parole. Had the department aggressively monitored Gardner's GPS data during parole, it would have identified his criminal act and parole violations, enabling the department to refer them for appropriate action. Successful prosecution of Gardner's crime and administrative action in response to his parole violations would have sent Gardner back to prison, making it impossible for him to murder the two young girls and commit the attempted sexual assault. Indeed, the San Diego District Attorney advised us that had the department brought to her attention Gardner's criminal act of entering the grounds of a state prison, she would have charged Gardner with a third-strike felony, which, if Gardner were convicted, could have resulted in his serving a 25-years-to-life sentence.

The department did not identify Gardner's crime and parole violations because even though it placed a GPS monitoring device on Gardner

in September 2007, it did not require parole agents to review the GPS data associated with the device. We identified this weakness in our November 2009 special report titled *The California Department of Corrections and Rehabilitation's Supervision of Parolee Phillip Garrido*. In March 2010, the department issued a GPS monitoring policy that requires parole agents to periodically review GPS data for parolees such as Gardner. Nonetheless, the new passive GPS policy, although improved, remains deficient in meeting the department's goal of aggressively monitoring all sex offender parolees. Under its provisions, the department remains unlikely to have detected crimes such as Gardner's felony or many of his parole violations. The department's current policy still ignores 87 percent of the GPS data collected for parolees such as Gardner.

The policy also limits the time that parole agents spend in the field by imposing on parole agents laborious GPS data review techniques. However, by using Criminal Intelligence Specialists and better review techniques, the department could free up parole agents' time, thereby enhancing public safety through effective parole supervision. These specialists could forward to parole agents any GPS data that requires further review and action.

Finally, the department could also be more effective if it used the GPS system's zone-monitoring capacity to a greater extent and realigned some of the responsibilities for reviewing the alerts that the zones produce.

Recommendations

In this special report, the Office of the Inspector General discloses systemic problems that transcend parolee Gardner's case and jeopardize public safety. To address these deficiencies, the department should revise its GPS monitoring policy in the following ways:

- Review all GPS data for parolees monitored under its passive GPS program.
- Assign trained Criminal Intelligence Specialists (specialists), rather than parole agents, to perform the initial review and analysis of GPS data, alerting parole agents to the data that merit additional review.
- Require specialists to review GPS tracks in batches rather than review every track point by point.
- Automatically establish GPS zone alarms for conditions that apply to all parolees, or to large groups of parolees such as sex offenders.
- Require parole agents to use GPS zone alarms to enforce all relevant conditions of parole and legal restrictions.
- Establish tiers for GPS zone alarms by level of significance.
- Require specialists to receive GPS system alerts that do not require an immediate response from a parole agent.

Additionally, the department should maintain its record of supervision for each parolee with the parolee's central file and retain it according to the department's current central file retention policy.

Introduction

Murders of Amber Dubois and Chelsea King

On February 13, 2009, Amber Dubois, 14, left her Escondido home in San Diego County for school and never returned. On February 25, 2010, Chelsea King, 17, went to the Rancho Bernardo Community Park in San Diego County to go for a run on the extensive trail system around nearby Lake Hodges and failed to return home. In both instances, local law enforcement initiated an extensive search and investigation including local, state and federal law enforcement agencies and volunteers from the community. In neither case did the initial search efforts locate the missing girls.

On February 28, 2010, the San Diego Sheriff's Department announced that the Fugitive Task Force had arrested 30-year-old John Gardner in connection with the disappearance of Chelsea King. Gardner was also suspected of assaulting Candice Moncayo, 23, at the same location on December 27, 2009. In its announcement, the sheriff's department stated that it had found evidence linking Gardner to Chelsea King "in such a manner as to warrant his arrest." Two days later, on March 2, 2010, law enforcement discovered the body of Chelsea King in a shallow grave near the shoreline of Lake Hodges.

On March 3, 2010, the San Diego County District Attorney formally charged Gardner with one count of murder in the case of Chelsea King and one count of assault with intent to commit rape in the case of Candice Moncayo.

On March 5, 2010, in exchange for a promise not to use the information against him in court, Gardner led authorities to the buried body of Amber Dubois. The district attorney agreed to Gardner's condition, she explained, to "end the anguish of the unknown" for the family of Amber Dubois and to bring Amber's body home. The district attorney noted that law enforcement agencies had worked day and night to identify evidence connecting Gardner to the murder of Amber Dubois, but that despite their best efforts, law enforcement had been unable to develop sufficient evidence to charge Gardner for the murder.

On April 16, 2010, in exchange for the district attorney's not seeking the death penalty, Gardner admitted to the February 13, 2009, rape and murder of Amber Dubois, the December 27, 2009, assault on Candice Moncayo to commit rape, and the February 25, 2010, rape and murder of Chelsea King. Gardner's plea agreement is included as Appendix A of this report. The district attorney emphasized that she had accepted the plea agreement only to secure an otherwise unobtainable conviction for the murder of Amber Dubois.

Gardner's September 2000 Conviction

Gardner had been previously imprisoned for the March 16, 2000, sexual assault of a 13-year-old girl in San Diego. In September 2000 the San Diego Superior Court sentenced John Gardner to six years in state prison for the sexual assault. Gardner reportedly accepted a plea

agreement on advice of his legal counsel, pleading guilty to two counts of lewd and lascivious acts with a child under 14 years of age and one count of false imprisonment.

Gardner's Incarceration

John Gardner was sent to state prison on September 18, 2000, at the California Department of Corrections and Rehabilitation (department) reception center at Richard J. Donovan Correctional Facility in San Diego. In December 2000, after Gardner was assessed and evaluated, the department transferred him to the California Correctional Institution in Tehachapi. Gardner remained at Tehachapi until April 2004, when he was transferred to Avenal State Prison in Avenal. In September 2005, Gardner was released from Avenal State Prison when he was paroled after serving five years of a six-year sentence. While incarcerated, Gardner completed an architectural drafting course and worked as a teacher's aide, assisting in English and math programs for inmate-students who speak English as a second language.

Figure 1: Richard J. Donovan State Prison. Source: USGS

During his period of incarceration, Gardner avoided serious disciplinary problems. He received seven rules violation reports, most of which were for smoking. Additionally, he received nineteen write-ups for less severe issues, such as failing to report to his assigned work or program location or failing to report to the medication dispensary as required.

Gardner's Parole Term

Upon being released on parole, Gardner planned to live with his mother in San Diego County and was accordingly assigned to the department's Escondido parole office. The department also assigned Gardner to its high-control level of parole supervision, which is required for sex offenders entering parole, and ordered him to report to his parole office within 24 hours of his release from prison.

Those parole records in his central file indicate that Gardner reported to his parole office on September 27, 2005, the day after he was released from prison. Gardner met with a parole agent and reviewed and agreed to his conditions of parole, which included the following:

- You shall comply with all instructions of your parole agent and will not travel more than 50 miles from your residence without his/her prior approval.
- You shall not engage in conduct prohibited by law (state, federal, county or municipal).

- You will actively participate in the Parole Outpatient Clinic and remain in that treatment program as directed by your parole agent.
- You will not initiate, establish or maintain contact with anyone under the age of 18 without prior Parole and Community Services Division (P&CSD) approval. "No contact" means exactly that: in any manner direct or indirect, personally, by telephone, letter or through another person. This includes attempting contact with an adult with the possibility that children may be in the area.
- You may not be within 100 yards of the perimeter of places where children congregate (schools, parks, playgrounds, video arcades, swimming pools, etc.) without prior P&CSD approval.
- You are prohibited from residing within one-quarter mile of any school that contains grades kindergarten through six.
- You may not be within 100 yards of the perimeter of any school (elementary, middle, junior or senior high) without prior P&CSD approval.

In September 2007, when a change in department policy included Gardner in a Global Positioning System (GPS) monitoring program, it imposed on him additional conditions of parole, which included the following:

- You shall observe a 9:00 p.m. to 5:00 a.m. curfew and remain within your approved residence except with the prior written permission of your parole agent.
- You are prohibited from residing within one-half mile of any school that contains grade kindergarten through 12th, without Field Administrator approval.
- You shall not have access to a post office box, storage facility or locker.
- You are ordered to comply with all zone/curfew restrictions and equipment care issues associated with GPS.
- You must charge the GPS device 1 full hour, twice a day.
- You shall notify your parole agent in advance if you plan to spend the night away from your address of record, giving the name, address and phone number.

Because of Gardner's September 2000 sex crime conviction, the California Penal Code also required him to register as a sex offender with local law enforcement agencies annually or whenever he changed addresses. Records obtained from various law enforcement agencies in or near the San Diego area verify that Gardner registered each year and each time he changed residences. Appendix B lists the date, jurisdiction, and purpose of each of his registrations.

Gardner remained under parole supervision for three years, until the department discharged him from parole on September 26, 2008. During his parole period, Gardner reported living at six different addresses and was homeless for a period of three and one-half months.

Department records indicate that parole officials considered revoking Gardner's parole on seven different occasions. In each of these instances, Gardner was allowed to remain on parole rather than return to prison. In six of the instances, the decision to continue Gardner's parole was made by parole officials, and in one instance the decision had been elevated to the Board of Prison Terms (now called Board of Parole Hearings), which has the authority to revoke parole. The Board of Prison Terms decided to continue the conditions of Gardner's parole.

GPS Monitoring of Parolees

In June 2005 the department implemented a GPS monitoring program with a pilot project that tracked high-risk sex offenders. The pilot program was designed to assist parole agents and local law enforcement in supervising these parolees. In November 2006, California voters passed Proposition 83—referred to as Jessica's Law—which, among other things, requires lifetime GPS monitoring of felony registered sex offenders. Based on the results from the GPS pilot project, the department received additional funding to place GPS devices on all registered sex offenders on parole in California. This represents the department's effort to fulfill the Proposition 83 GPS monitoring requirement while sex offenders are on parole. However, after the department discharges parolees from parole supervision, the responsibility to continue GPS monitoring transfers to local governments. Regrettably, GPS monitoring is yet to be fully implemented at the local government level. Consequently, many sex offenders are no longer monitored with GPS technology after being discharged from parole.

GPS monitoring device
Source: Office of the Inspector General

Placing parolees on GPS monitoring allowed the department to monitor sex offenders whose crimes predated the passage of Jessica's Law and who were therefore not legally mandated to be monitored. This included Gardner, who was placed into the department's GPS monitoring program in September 2007.

The Department Commits to Aggressively Monitor Every Sex Offender

In April 2008, the department's then-director of adult parole operations, Thomas Hoffman, reported that the department had placed GPS monitoring devices on all of its 2,500 high-risk sex offenders and on another 2,300 of its approximately 6,500 sex offenders who were not assessed as high-risk, and noted that by June 2009, the department will have placed GPS monitoring devices on all sex offender parolees. Hoffman asserted, "Not only do we monitor these individuals by GPS, we have put them on reduced caseloads so that our parole agents can focus on keeping track of this population. Our parole agents are out there every day doing their best to monitor these individuals to prevent them from re-offending." Subsequently, the department secretary declared in January 2009 that monitoring every sex offender on state parole with GPS technology was a "significant milestone to protecting public safety by holding these individuals accountable for [*their*] actions and their whereabouts. The [*department*] is holding true to a commitment it has made to fit every sex offender parolee with a GPS device and monitor them aggressively." Although this statement of intent occurred after Gardner's

release from parole supervision, it has a direct bearing on the department's current parole policies and practices.

GPS technology provides the department with the ability to monitor the movements of parolees. Through the use of satellites, the GPS device worn by the parolee transmits to a receiver the data used to determine a parolee's location, speed of movement and direction of travel, and provides a date and time stamp for each of these events. This information is then available to parole agents, who can track a parolee's movements on a geographic map.

Parole agents may also establish zones on the GPS system maps to determine whether parolees adhere to travel or time restrictions. Using the GPS monitoring software, parole agents can draw boundaries on a map that tracks a parolee, thereby creating zones that a parolee must avoid or remain within. For example, parole agents can draw boundaries around a school and around the residence and workplace of a victim, to keep the parolee out; they can also draw boundaries around the perimeters of the parolee's house and surrounding property, to keep the parolee in. Parole agents can establish larger geographic zones, like a 50-mile radius from a parolee's house beyond which the parolee may not travel without permission, and they can also establish time zones during which a parolee must remain at a certain location. The GPS monitoring device worn by the parolee transmits a signal every minute, tracking the parolee's location. The system sends alerts to the parole agent if the parolee travels outside of a permitted zone, crosses an off-limits boundary, violates a curfew, or if there is an issue with the device.

Active and Passive GPS Monitoring

Parolees are monitored at either the active or passive level, depending upon the parolee's assessed risk to the community. At the active monitoring level, transmissions from the parolee's monitoring device are uploaded at near real-time intervals and parole agents are alerted immediately if a parolee crosses a boundary or violates a curfew. At the passive monitoring level, transmissions from the parolee's monitoring device are uploaded at set intervals and alerts are usually sent to the parole agent the next day. Because the department's application of its static risk assessment tool[1] did not result in the department's assessing Gardner as a high-risk sex offender, the department placed Gardner in its passive GPS monitoring program.

As of April 2010, the department reported monitoring with GPS devices nearly 6,700 sex offender parolees, approximately 2,200 of whom are classified as active and 4,500 classified as passive.

Revised GPS Monitoring Policy

In November 2009, the Office of the Inspector General released a special report titled *The California Department of Corrections and Rehabilitation's Supervision of Parolee Phillip*

1 The department's use of a static risk assessment tool—referred to as the "Static-99"—is mandated by Penal Code Section 290.04. The assessment tool used static data—Gardner's September 2000 conviction—to determine his parole supervision level. A dynamic assessment tool would have taken into consideration current factors such as Gardner's state of mind and the stability of his housing arrangements, among other factors, to assess the risk that he would offend again. For more information about the department's parolee assessment tools, see the California State Sex Offender Management Board's April 2010 publication *Response to Governor Arnold Schwarzenegger's Request for Review of the John Gardner Case*, http://www.cce.csus.edu/conferences/cdcr/casomb/reports.htm.

Garrido, which reported that the department had no formal policies guiding parole agents on how to monitor parolees assigned to GPS monitoring. On March 18, 2010, the department issued a detailed 20-page policy titled *Policy and Procedures on the Use of Global Positioning System Technology as a Parole Supervision Tool*. Five days later, on March 23, 2010, the department issued a policy addendum titled *Activation of Global Positioning System Exclusion Zones, Case Supervision Specifications, and Reportable Violations*. Subsequently, on April 16, 2010, the department issued a revised version of its March 18 policy. The policy guides the department's parole agents on such issues as the goals of the GPS monitoring program; the roles and responsibilities of agents, supervisors, and managers; required actions and activities; and caseload guidelines.

Parameters of Review

To develop the information contained in this special report, the Office of the Inspector General completed the following activities:

- Reviewed the department's central file on Gardner.
- Reviewed department policies and procedures related to GPS monitoring and file retention.
- Interviewed the parole agent and parole supervisor who supervised Gardner while he was in the GPS monitoring program.
- Attended meetings of the Sex Offender Management Board when it discussed the Gardner case.
- Obtained GPS data on Gardner from the department's GPS monitoring system vendor.
- Reviewed and analyzed the GPS data to determine whether Gardner adhered to conditions of his parole.
- Contacted local law enforcement agencies in the San Diego area.
- Obtained Gardner's sex offender registration documents from relevant law enforcement agencies.
- Met with Bonnie Dumanis, San Diego County District Attorney.
- Interviewed appropriate department staff and collected relevant documents to obtain information regarding the destruction of Gardner's parole file. While our review was in process, we also received a legislative request to look into the destruction of parole records. Our findings and our recommendation to the department that resulted from this effort were transmitted to the department in a letter sent concurrently with this report. A copy of this letter is included in this report as Appendix C.
- Interviewed John Gardner following his sentencing.
- Interviewed other relevant civilian, law enforcement, and department staff.

Results of Special Review

The Department Failed to Detect Violations That Could Have Returned Gardner to Prison for Many Years

Until March 2010, the department's informal policy did not require parole agents to review the GPS tracks of parolees in its passive GPS monitoring program, including those of John Gardner. As a result, the department did not discover that Gardner unlawfully entered the grounds of a state prison in July 2008. Additionally, although the department did identify seven fairly minor potential parole violations committed by Gardner, it did not identify that he regularly violated more serious conditions of his parole. Had the department aggressively monitored Gardner's GPS tracks and referred his aberrant behavior to the proper authorities for prosecution, it is likely that Gardner would have been returned to prison for many years—perhaps even for the rest of his life. Therefore, Gardner's incarceration could have potentially prevented Gardner from assaulting a young woman and murdering two teenage girls.

The department did not provide policy guidance to parole agents

As we discussed in our November 2009 special report titled *The California Department of Corrections and Rehabilitation's Supervision of Parolee Phillip Garrido*, the department did not require parole agents supervising passive GPS parolees to regularly review GPS tracks. Until recently, the department provided no formal policies guiding parole agents in monitoring parolees assigned to the GPS monitoring program. The only guidance parole agents received was delivered at a series of training classes provided by the department's GPS contractor as it initiated the GPS monitoring program. During the training, parole agents were told that they were only to review GPS data on a daily basis if parolees were monitored at the active GPS level. Parole agents did not need to review GPS data for parolees monitored at the passive GPS level, they were told, unless the GPS system alerted them to a violation of parole. Because the department's application of the Static 99 Risk Assessment Tool did not result in Gardner's being assessed as a high-risk sex offender, the department placed Gardner in its passive GPS monitoring program. Accordingly, Gardner's parole agent did not regularly review the parolee's GPS tracks.

Furthermore, in our review of the Gardner case, we were unable to completely assess the department's adherence to its parole supervision policies unrelated to GPS monitoring because it has—in accordance with then-existing policy—destroyed the relevant documents. Unlike its implementation of its GPS monitoring program, the department had detailed policies that establish parole agent expectations in supervising parolees like Gardner. Because Gardner is a sex offender, the department requires parole agents to provide high-control supervision, which includes frequent home visits and collateral contacts. However, as we discuss in Appendix C of this report, the department shredded its record of Gardner's supervision, the record that documents the parole agent's efforts in supervising the parolee.

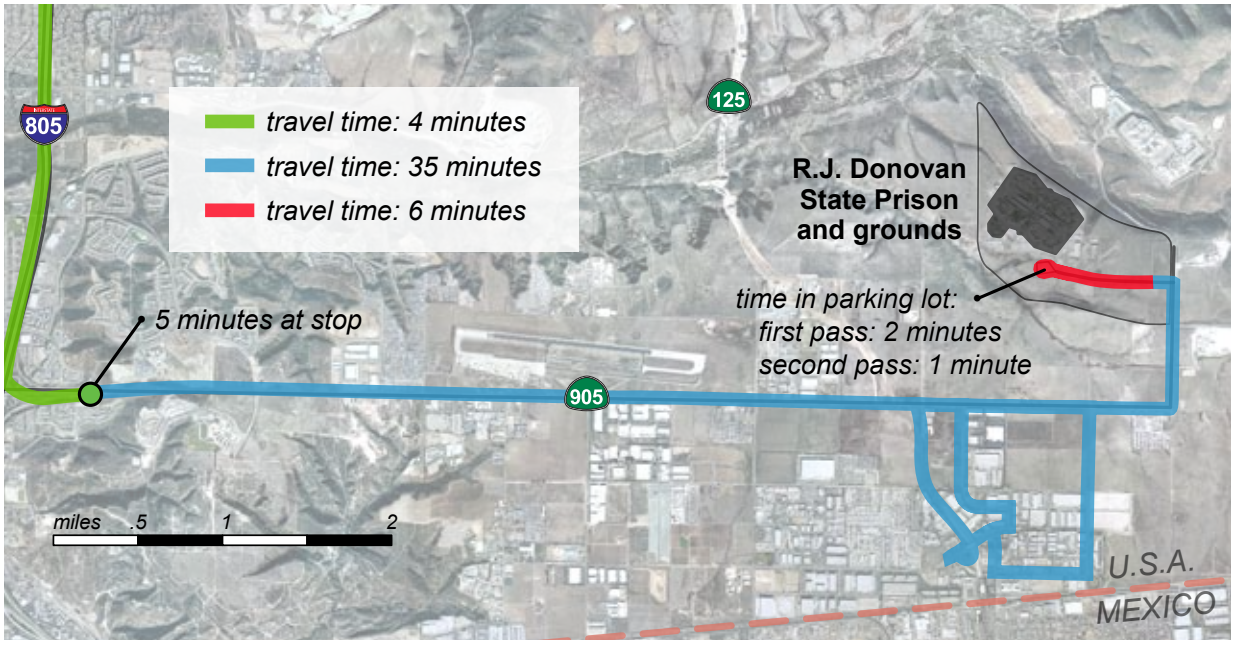

Figure 2: Gardner Unlawfully Entered State Prison Grounds While on Parole in 2008, Committing a Felony. Source: image: USGS; graphic: Office of the Inspector General

The department did not identify that Gardner committed a felony

Gardner's GPS data shows that he unlawfully travelled onto the grounds of a state prison, violating a state law that prohibits felons from unauthorized entry into such facilities. Even though the GPS tracks clearly place Gardner on the prison grounds, the department was not aware of the violation since it did not require its parole agents to review GPS data for passive GPS parolees. The department therefore, as a result of a flawed practice, failed to adequately monitor Gardner, arrest him, and seek prosecution against him for this crime.

The GPS tracks in Figure 2 show that around 9:30 a.m. on July 12, 2008, Gardner travelled south on Interstate 805, turning east on Highway 905 (Otay Mesa Road). Gardner loitered for about 20 minutes in an area south of Otay Mesa Road—approximately 1.5 miles from Richard J. Donovan State Prison—and then proceeded onto the prison grounds. The tracks reveal that Gardner travelled to a visitor parking lot on the east side of the prison, remained there for approximately two minutes, and then departed the prison grounds towards Otay Mesa Road. He then doubled back and returned to the parking lot at the prison, staying only one minute. Gardner then departed the prison again, traveling west on Otay Mesa Road and then north on I-805. Gardner had been incarcerated at Richard J. Donovan State Prison for approximately three months in 2000 when he was initially sentenced to prison.

State law designates Gardner's presence on state prison grounds as a felony. Penal Code Section 4571 specifies that:

> *Every person who, having been previously convicted of a felony and confined in any State prison in this State, without the consent of the warden or other officer in charge of any State prison or prison road camp, or prison forestry camp, or other prison camp*

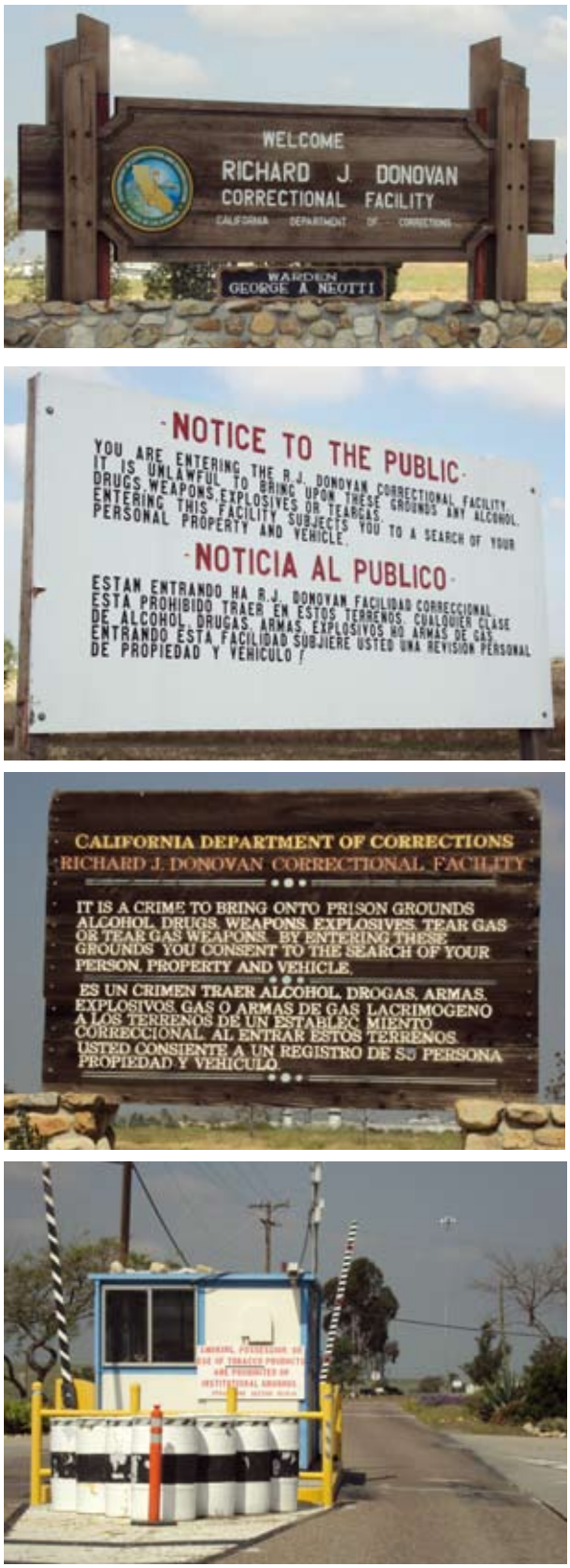

Figure 3: Signage and Gatehouse Along the Road Entering Richard J. Donovan State Prison. Source: Office of the Inspector General

or prison farm or any other place where prisoners of the State prison are located under the custody of prison officials, officers or employees, or any jail or any county road camp in this State, comes upon the grounds of any such institution, or lands belonging or adjacent thereto, is guilty of a felony.

This prohibition applied to Gardner as a result of his three felony convictions in September 2000 and subsequent five-year incarceration in state prison.

We spoke to an official at the state prison to determine whether Gardner had permission to be on the grounds on that date. The official reviewed the records of people authorized to visit the prison, including previously convicted felons like Gardner, and informed us that Gardner was not authorized to be on the grounds.

We can not determine from the GPS tracks Gardner's purpose for unlawfully entering the state prison. When we spoke to him on May 14, 2010, Gardner stated that he was taking a friend to visit an inmate at the prison. Allegedly, he drove this friend to the visitor parking lot, dropped her off, and then left the prison grounds. Gardner said that as he was leaving, he received a call from his friend advising him that the prison staff would not let her visit the inmate and that she needed him to return to the prison and pick her up, which he did.

Our discussions with prison staff provide an additional reason for the department to be concerned about Gardner's or any monitored parolee's unlawful entry onto prison grounds. According to officers from Richard J. Donovan State Prison's investigative services unit, during the time of Gardner's visit, the parking lot was a location from

which contraband was repeatedly introduced into the prison. In fact, they told us that they had discovered a path worn into the ground from inmates moving surreptitiously from its nearby minimum security housing facility to the parking lot to retrieve contraband left at the location. According to the officers, the prison has since taken actions to limit inmates' access to the parking lot, raising the height of the fence surrounding the minimum security housing facility and placing razor wire atop the fence.

Regardless of Gardner's reason for going to the prison, his unauthorized presence on the grounds of a state prison constituted a felony. Gardner was clearly aware that he was entering a state prison as he travelled onto the facility grounds. As shown in Figure 3, several signs situated along the road leading up to the prison grounds plainly communicate to visitors that they are entering a state prison. Gardner travelled past each of these signs and passed by an unmanned sentry shed with crossing bars in a raised position.

The department ignored available information that would have identified a criminal act committed by Gardner

Had the department regularly reviewed the GPS data on Gardner, it would have detected that Gardner unlawfully visited Richard J. Donovan State Prison. Based on this crime, the San Diego District Attorney could have charged Gardner with a felony. Because Gardner had already committed two potential serious felony strikes under the state's three-strikes law for the crimes he committed in 2000, a successful prosecution could have resulted in a 25-years-to-life sentence.

Indeed, we discussed with the San Diego District Attorney Gardner's activity at the prison and asked her how she would have prosecuted the crime if the department had discovered it and referred it to her office for prosecution. The district attorney told us that she would have prosecuted the case as a third strike felony. She noted that her office has successfully prosecuted sex offenders under the three-strikes law for failing to register as a sex offender, so she would not hesitate to prosecute as a third strike a crime such as that committed by Gardner.

Even if the court determined that the offense was not appropriately charged as a third strike, a felony conviction still would likely have resulted in Gardner's receiving a prison term long enough to render him unable to commit his subsequent criminal acts. According to a representative of the San Diego District Attorney's office, the court would have had the following options when sentencing Gardner:

- A maximum of six years, with a possible 15 percent reduction due to good time credits, resulting in a period of incarceration of just over five years.
- A maximum of three years, with a possible 50 percent reduction due to good time credits, resulting in a period of incarceration of one and one-half years.
- Grant probation,[2] resulting in no prison time, with or without county jail time.

Therefore, under the first two options, Gardner could have been incarcerated on the dates

2 According to the San Diego District Attorney, the likelihood of Gardner receiving probation for this crime is remote.

in question. Under the first option, based on his July 2008 crime, Gardner could have been incarcerated for a period of five years, or until 2013, and under the second option, for one and one-half years, or until 2010. Thus, whether the felony at the state prison applied as Gardner's third strike or whether Gardner's prior felonies merely enhanced the sentence for his felony at the prison, the fact remains that had the department detected Gardner's criminal activity and referred it to the proper authorities for prosecution, the department could have potentially prevented Gardner from murdering Amber Dubois in February 2009 and Chelsea King in February 2010, and from assaulting Candice Moncayo to commit rape in December 2009.

Gardner regularly violated the conditions of his parole

We also identified at least four conditions of parole that Gardner violated on a regular basis: being within 100 yards of places where children congregate, residing within a half-mile of a school, leaving his residence during a curfew period, and having access to a storage facility.

One of Gardner's conditions of parole specified that he could not be present within 100 yards of the perimeter of places where children congregate. This prohibition includes locations such as schools, day care centers, parks and playgrounds. Nevertheless, the department's GPS records reveal that Gardner routinely disregarded this prohibition. We identified two locations—a high school and a preschool—that Gardner frequently loitered nearby.

Figure 4: Gardner Loitered Near Places Where Children Congregate. The red dots indicate Gardner's GPS signal during a two-week period in January 2008. The shaded area indicates the 100-yard exclusion zone set as a condition of his parole. Source: USGS

For example, Figure 4 shows Gardner's GPS tracks near a San Diego preschool during a two-week period in January 2008. Each mark represents Gardner's location for each minute that the GPS system took a reading while he was at that location. This record reveals that Gardner spent a significant amount of time at this location, which is immediately behind the preschool and oversees a playground area covered with blue and yellow coverings. Gardner's visits to this location continued throughout his GPS-monitored period of parole, and included times when children would have been present at the preschool.

We went to the location in an attempt to determine the

purpose of his visits. Although the site is currently under construction and the structures shown in the lower left of Figure 4 no longer exist, we spoke to a representative of the company that manages the property. The representative said that at the time of Gardner's visits, the site contained subsidized housing. The structure that Gardner appears to be loitering near was a four-plex housing unit. Since the location was within 100 yards of the perimeter of a place where children congregate, Gardner's repeated presence at the location violated the condition of his parole.

Further, we identified three other locations—two middle schools and a church preschool—that Gardner visited on isolated occasions. We cannot determine from the GPS data Gardner's reason for spending time at these locations where children congregate. But clearly, in each of these instances, Gardner violated the terms of his parole.

We also determined that Gardner violated the condition of parole that prohibited him from living within a half-mile of a school. The department placed Gardner under GPS supervision in September 2007. On September 13, 2007, a parole agent advised Gardner that he would have to move from his residence because it was situated too close to a school. In their review of this violation, the Board of Parole Terms (now called the Board of Parole Hearings) chose to allow Gardner to remain on parole. Unfortunately, the location Gardner moved to with the assistance of the department was also within a half-mile of a school.

Figure 5: Gardner Resided Within One-Half Mile of a School. The shaded area indicates the one-half mile school exclusion zone set from his residence as a condition of his parole. Gardner resided here from September 2007 until April 2008. Source: USGS

As shown in Figure 5, Gardner's residence located at 701 East Pennsylvania Avenue in Escondido was within a half-mile of Mission Middle School. Local police records show that Gardner resided at this location between September 21, 2007, and April 4, 2008. Therefore, throughout this time period, Gardner was in violation of this condition of parole, which evidently was not detected by the department.

Additionally, the department's GPS data demonstrates that Gardner regularly ignored his curfew. The department restricted Gardner to his approved residence between the hours of 9:00 p.m. and 5:00 a.m. Yet GPS data clearly shows that Gardner routinely disregarded this prohibition and remained at locations other than his approved residence during the restricted hours.

Indeed, our analysis of the GPS data reveals that Gardner violated his curfew 158 times during the 13-month period that he was monitored with GPS technology.[3] For example, Figure 6 captures an evening that Gardner spent at a resort on Coronado Island in San Diego. The GPS data shows that Gardner arrived at the resort at approximately 5:00 p.m. on December 15, 2007, and stayed until approximately 4:00 a.m. on December 16, 2007. Zooming in closer, we find that the data reveals Gardner spending much of the time at a bay-front location at the resort as well as loitering in a parking lot outside a nearby swimming pool. Again, we are unsure of the nature of Gardner's activities during this time. But Gardner demonstrably violated the conditions of his parole term by being outside of his approved residence between the hours of 9:00 p.m. and 5:00 a.m.

Figure 6: Gardner Violated Curfew. GPS tracks indicated in red show Gardner's presence at a bayside resort between 5:00 p.m. December 15 and approximately 4:00 a.m. December 16, 2007. Source: USGS

As we discuss later in this report, the department's GPS monitoring system has the capability of establishing "zones" that detect whether a monitored parolee is at a location that is off-limits to him, and whether he is at a location where he is required to remain. To enforce Gardner's curfew restriction, the department could have easily employed the latter, referred to as an "inclusion zone." This type of zone would automatically alert the parole agent if Gardner left his approved residence during his curfew. Unfortunately, the department did not require its parole agents to use such zones to enforce curfew restrictions, and one was not

3 To determine the frequency of Gardner's curfew violations, we included all GPS tracks that we found beyond a one-quarter mile radius of Gardner's residence of record and were made between the hours of 9:00 p.m. and 5:00 a.m.

employed on Gardner. In fact, the department did not use zones at all in monitoring Gardner. Had it employed this useful tool, the department would have known that Gardner regularly violated his curfew.

The department's GPS data also demonstrates that Gardner had access to a storage facility, which is another parole violation. The department imposed on Gardner a condition of parole specifying that he could not have access to a post office box, storage facility or locker. This condition of parole guarded against Gardner's concealing indications of illegal or inappropriate activity at locations unknown to his parole agent.

As we reviewed the department's GPS data for Gardner, we identified a storage facility that the parolee frequently visited. During the months of March through August 2008, Gardner visited the storage facility multiple times each month.

We contacted the storage facility and confirmed that the storage facility unit was rented to Gardner's mother from February 2007 to January 2010. On the facility unit contract, Gardner's mother specifically authorized Gardner to have access to the five-foot-by-10-foot unit. Had the parole agent reviewed the GPS tracks and investigated, the parole agent would have discovered that Gardner routinely violated this condition of his parole as well.

Suspicious behavior

As we reviewed Gardner's GPS data, we noted disturbing activity in addition to the violations of parole conditions. While on its face this activity did not violate a law or a condition of parole, it appeared to be suspicious and should have led a reasonable parole agent to question Gardner. We identified at least 13 locations that Gardner visited, several of which were situated in remote rural areas, which should have resulted in the parole agent closely questioning Gardner about his purpose for being in those areas.

For example, at approximately 3:00 a.m. on July 5, 2008, Gardner travelled to a remote mountainous region east of Escondido. From the GPS data alone we cannot determine why Gardner went to this location. Gardner was transient during this time, with no fixed address, and the department should have been interested in his whereabouts. Furthermore, at about 7:00 p.m. that day Gardner travelled to another remote mountaintop location 30 miles away and stayed there for about 20 minutes. These unusual travels to remote locations should have spurred a parole agent to question Gardner.

The department could have returned Gardner to prison

Gardner's parole violations discussed above did not constitute crimes that the department could have referred for prosecution. However, state law does allow the department to refer violations of parole conditions to the Board of Parole Hearings for revocation proceedings. The board adjudicates referred cases and determines whether the evidence merits revoking the offender's parole term. If parole is revoked, the parolee is sent back to prison for an amount of time determined by the board.

It is unknown what actions the board would have taken if the department had aggressively monitored Gardner's GPS tracks and referred his frequent violations of parole to the board for revocation hearings. At a minimum, the board's inquiry would have put Gardner on notice that parole agents were tracking him and thereby possibly deterred his aberrant behavior. However, the board also could have revoked Gardner's parole for up to one year for each violation, up to a total of four years. State regulations provide that the board can re-incarcerate for up to one year parolees who violate parole terms if their original commitment crime was committed on or after January 1, 1979. Because Gardner's original crime was committed in 2000, this provision applies. The regulations also provide that the board can extend an offender's period of parole when it re-incarcerates a parolee. Since Gardner was released on parole in September 2005, he could have been re-incarcerated up to one year at a time, until September 2009.

The Department's Current GPS Policies Still Fall Short of Its Goal of Aggressively Monitoring All Sex Offenders

In response to the Office of the Inspector General's November 2009 report titled *The California Department of Corrections and Rehabilitation's Supervision of Parolee Phillip Garrido*, the department established a policy to guide parole agents who supervise parolees included in the GPS monitoring program. We applaud the department for providing policy guidance to its parole agents who supervise sex offender parolees, and acknowledge that it faces resource limitations. However, these policies still fall short of the department's goal of aggressively monitoring all sex offender parolees.

Current passive GPS monitoring policy is not likely to detect crimes like those committed by Gardner

Importantly, the policy fails to adequately protect the public. Under current passive GPS monitoring provisions, the department may have detected some of Gardner's parole violations, but remains unlikely to have detected Gardner's criminal act. The policy requires a review of only a small portion of the parolee's GPS data. Departing from its previous practice of requiring no review of GPS data for sex offender parolees in its passive GPS monitoring program, the department now requires agents to review some GPS tracks. The new policy specifies the following:

> *For each* [passive GPS] *case, complete a minimum of two Track Reviews each calendar month. Each Track Review will consist of two consecutive days (48-hour period).*

Under the department's policy, each month parole agents will review four days' tracks for each passive GPS parolee. Annually, this equates to reviewing GPS tracks for 48 of 365 days—about 13 percent of the time. Put another way, the department does not review approximately 87 percent of a passive GPS parolee's tracks. If a parolee violates a condition of parole or commits some other crime during those four days each month that the department reviews the parolee's GPS tracks, he or she may be caught; crimes or violations committed on the other 25 to 27 days, although tracked by GPS software, may pass unobserved by parole agents. Accordingly, it is unlikely that the department would have identified Gardner's criminal behavior under its current policy.

As previously noted in the introduction of this report, in April 2008, the department's then-director of adult parole operations, Thomas Hoffman, reported that the department had placed GPS monitoring devices on all of its 2,500 high-risk sex offenders and on another 2,300 of its approximately 6,500 sex offenders not assessed as high-risk, and noted that by June 2009, the department will have placed GPS monitoring devices on all sex offender parolees. Hoffman said, "Not only do we monitor these individuals by GPS, we have put them on reduced caseloads so that our parole agents can focus on keeping track of this population. Our parole agents are out there every day doing their best to monitor these individuals to prevent them from re-offending." Subsequently, the department secretary declared in January 2009 that monitoring every sex offender on state parole with GPS technology was a "significant milestone to protecting public safety by holding these individuals accountable for *[their]* actions and their whereabouts. The *[department]* is holding true to a commitment it has made to fit every sex offender parolee with a GPS device and monitor them aggressively." Since the department currently only reviews about 13 percent of the GPS tracks for parolees monitored under its passive GPS program, which includes approximately 68 percent of the department's 6,700 sex offender parolees, we do not believe that the department is meeting its goal to aggressively monitor these parolees.

Current policy may limit parole agents' available time in the field

Additionally, the department's policy burdens parole agents with laborious and unreasonable GPS data review requirements, decreasing the amount of time they can be in the field performing important tasks such as home visits and collateral contacts.

The policy requires parole agents to review and analyze GPS tracks by playing a recording of a parolee's GPS points one at a time, pausing and zooming in and out to determine the parolee's actions. The policy requires parole agents to view tracks daily for active GPS parolees and four days per month for passive GPS parolees.

According to a parole supervisor with whom we spoke, the current policy as perceived will require the parole agent to be in the office most of each work day instead of out in the field. The supervisor does not believe that GPS parole agents can meet the policy's requirements within a normal work week and observes that the policy's review and documentation requirements minimize parole agents' available time in the field, thereby decreasing public safety.

The supervisor voiced specific concerns in a memorandum to a parole administrator about the department's requirement that parole agents review and analyze GPS points one at a time. The supervisor noted that the current GPS monitoring policy significantly increases a parole agent's workload, and that it could take a parole agent as much as 24 hours to view and analyze a single day's GPS tracks for each parolee. If this estimate is even reasonably accurate, the current policy is unmanageable and impossible to follow. Parole agents supervising active GPS parolees carry up to 20 cases; passive GPS parole agents supervise up to 40 parolees.

The department could be more efficient in its GPS data review

To perform our review of the department's GPS data for Gardner, we obtained a data file from

the department's GPS vendor containing every GPS track for Gardner over the 13-month period that the department supervised him using GPS technology. We broke the data into two-week segments, and then viewed each segment graphically as a batch in Google Earth. Using this method, we were able to review and analyze Gardner's activities over a two-week period in about 15 minutes. We found that we quickly identified his normal travel patterns and were able to focus on those areas that were out of the ordinary. For example, we identified locations containing hundreds of tracks that appeared to be sites at which Gardner worked. This is reasonable if Gardner worked eight-hour work days at the location during the two-week period. Rather than reviewing each point included at that location, we refocused on those tracks that were out of the ordinary, such as the tracks that we located at Richard J. Donovan State Prison.

The department could be more efficient in its review and analysis of GPS tracks if it departed from its requirement that parole agents view tracks point by point and instead used a batch review approach. We believe that this process could significantly reduce the time necessary to review GPS data.

Trained analysts, not parole agents, are better suited to review GPS data

Just as importantly, the department should reconsider who it tasks with analyzing the GPS tracks. We found that most of the tracks we reviewed did not raise concerns about illegal, inappropriate, or even questionable activity. Activities such as going to and from work, or time spent at work, leave behind ordinary and unremarkable tracks. Although such tracks must be reviewed in order to provide the context that identifies other tracks that may relate to illegal, inappropriate, or questionable activity, it is not the best use of resources to require that the parole agent sift out the questionable tracks from the ordinary. Effective public safety requires parole agents to be present in the field to the greatest extent possible.

Public safety also requires effective monitoring of sex offenders' GPS data. Therefore, the department should use trained analysts to complete the initial reviews of parolee GPS track data. Trained analysts could identify potential areas of concern and inform the parole agents. Parole agents would then spend time reviewing only tracks related to areas of concern rather than sifting through complete sets of tracks.

The department would benefit from this approach in several ways. First, generally speaking, an analyst's skill set is more closely aligned than a parole agent's with the task of analyzing GPS tracks to identify potential areas of concern. Second, an analyst is much less expensive to employ and less expensive to train and equip than a parole agent, who is a peace officer. For example, the California Department of Justice currently uses the civil service classification Criminal Intelligence Specialist (specialist), a classification which includes the responsibilities of collecting, analyzing, correlating, evaluating, and disseminating criminal information. This classification has an initial maximum monthly salary of $3,424, which is 56 percent less than the comparable parole agent monthly salary of $7,772. Finally, and most importantly, employing specialists to review GPS tracks will free parole agents to employ their skills in the field, thereby enhancing public safety and reducing the risk of recidivism.

The Department Can Use GPS Zones More Effectively

The department's current GPS monitoring policy requires parole agents to use a limited number of zones to help monitor parolees in the GPS program. However, the department could be more effective, and further enhance public safety, if it used this zone-monitoring capacity to a greater extent and realigned some of the responsibilities for reviewing the alerts that the zones produce.

Parole agents can create zones that a parolee must avoid—exclusion zones—and can create zones that a parolee must remain within—inclusion zones. Parole agents can also add time frames to these zones to make a restriction applicable to specific time periods. The department's GPS policy requires parole agents to use a minimum of three zones to monitor all parolees in the GPS program. The policy specifies the following:

> The parole agent shall place a minimum of three zones on all GPS parolees.
>
> - One zone shall be an inclusion zone around the parolee's residence of record.
> - One zone shall be either a 25 or 50 mile inclusion (travel restriction) zone in accordance with his or her specific conditions of parole.
> - One zone shall be an exclusion zone to provide notification if the parolee were to leave the State of California.

The policy also specifies that if the parolee is transient, the parole agent will establish a ten-mile zone around the city or county center in which the parolee registers as a sex offender, and/or around the locations that the parolee discloses he or she intends to stay. The policy additionally provides that if a parolee is prohibited by law from being within 35 miles of his or her victim due to a prior stalking conviction, the parole agent will establish an appropriate exclusion zone. Further, the policy requires parole agents to place exclusion zones around the residences and work locations of all known victims of the parolee.

However, the department could further enhance GPS effectiveness by using zones more extensively. Using the Gardner case as an example, we noted that the department's current GPS policy would not have required the parole agent to create a zone to detect Gardner entering the grounds of a correctional facility, loitering within 100 yards of locations where children congregate, residing within a half-mile of a school, or accessing a storage facility. Each of these violations in Gardner's case presents an opportunity for the department to improve its use of technology to aggressively monitor sex offender parolees. For example, the department could automatically establish for every monitored parolee an exclusion zone around every prison and jail in the state. Had the department employed such a zone, it would have been alerted that Gardner had entered the grounds of a state prison, and it could have referred the crime to the San Diego District Attorney for prosecution.

The department should also reconsider which personnel receive and respond to the alerts generated by the GPS monitoring system. Currently, the department tasks parole agents with receiving, analyzing, investigating, and responding to alerts. Some of these tasks may be better suited for other personnel. The time that parole agents spend responding to alerts could be diminishing their ability to effectively supervise parolees.

Before the department instituted its current GPS policy, we determined that it did not always respond to GPS alerts. In our November 2009 report titled *The California Department of Corrections and Rehabilitation's Supervision of Parolee Phillip Garrido*, we reported that the parole agent routinely ignored alerts related to curfew, charging GPS data devices, and the loss of GPS signal. We have similar concerns in the Gardner case, although to a lesser extent. GPS records show that the department received seven alerts reporting that Gardner's battery charge was low. The parole agent did initiate parole revocation actions on four of these occasions. However, the parole agent only followed GPS monitoring protocol for two of the seven alerts by acknowledging the alerts electronically in the GPS monitoring system and documenting the actions taken in response to the alerts. In addition to those low-battery alerts, the department also received 17 alerts reporting that Gardner had lost GPS signal for more than six hours. Again, the parole agent followed GPS monitoring protocol for only one of these alerts.

This low response rate to alerts indicates that parole agents may be overburdened with the requirement to receive, analyze, investigate and respond to each alert. Indeed, when we spoke to parole agents in the field, they expressed concerns about the burden of this requirement.

The department should reconsider its approach to responding to alerts. Two vendors operate the department's GPS tracking system. One of these vendors advised us that they are able to "tier" the alerts, based on relative importance. The system has the ability to distinguish between critical alerts, such as a parolee violating an exclusion zone established around a victim's residence, and less important alerts, such as a low battery charge warning. The other vendor told us they could implement "tier" alerts but that considerable modification of their system would be required. While it is important for parole agents to continue to receive alerts for critical events, the department could assign many of the other alerts to an analyst. The analyst could then review the alerts and notify the parole agent if appropriate. This approach would relieve parole agents from spending time on many of the alerts they now receive, yet still provide the department with the opportunity to review the information, analyze and assess it, and respond appropriately.

Findings

As a result of this special review into the department's parole supervision of parolee John Gardner, the Office of the Inspector General finds the following:

Parole Supervision

- The department shredded its record of supervision, which documents its activities in supervising parolees.
- The department did not identify Gardner's felonious behavior.
  - Gardner unlawfully entered the grounds of a state prison.
- The department could have potentially prevented Gardner from murdering Amber Dubois and Chelsea King, and from assaulting Candice Moncayo to commit rape.
- Gardner regularly violated the conditions of his parole, including the following:
  - Being within 100 yards of places where children congregate.
  - Residing within a half-mile of a school.
  - Leaving his residence during a curfew period.
  - Having access to a storage facility.
- The department could have referred Gardner to the Board of Prison Hearings for parole revocation, potentially returning him to prison up to one year at a time, until September 2009.

GPS Policy

- The department's current passive GPS policy still falls short of its goal of aggressively monitoring all sex offenders.
- The department reviews only 13 percent of GPS tracks for parolees monitored under its current passive GPS program, which includes approximately 68 percent of the department's 6,700 sex offenders.
- Current passive GPS monitoring policy is unlikely to have detected Gardner's criminal violation.
- Current policy limits parole agents' available time in the field.
- Batch review could make the department's GPS data review more efficient.
- Trained Criminal Intelligence Specialists (specialists), not parole agents, are better suited to review GPS data.
- Monitoring practices should include a more effective use of GPS zones.
- Trained specialists, not parole agents, should receive and respond to many alerts.

Recommendations

In this special report, the Office of the Inspector General discloses systemic problems that transcend parolee Gardner's case and jeopardize public safety. To address these deficiencies, the department should revise its GPS monitoring policy in the following ways:

- Review all GPS data for parolees monitored under its passive GPS program.
- Assign trained Criminal Intelligence Specialists (specialists), rather than parole agents, to perform the initial review and analysis of GPS tracks, referring to parole agents the tracks that merit additional review.
- Require specialists to review GPS tracks by batches rather than review every track point by point.
- Automatically establish GPS zone alarms for conditions that apply to all parolees or to large groups of parolees such as sex offenders.
- Require parole agents to use GPS zone alarms to enforce all relevant conditions of parole and legal restrictions.
- Establish tiers for GPS zone alarms by level of significance.
- Require specialists to receive GPS system alerts that do not require an immediate response from a parole agent.

Additionally, the department should maintain its record of supervision for each parolee with the parolee's central file and retain it according to the department's current central file retention policy.

Appendix A: Gardner's Guilty Plea (page 1 of 4)

FILED
Clerk of the Superior Court
For Court Use Only
APR 16 2010
By: ELAINE SABLAN, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

PEOPLE vs John Albert Gardner Defendant

PLEA OF GUILTY/NO CONTEST – FELONY

Court Number: CD225886
DA Number: ACR576

I, the defendant in the above-entitled case, in support of my plea of Guilty/No Contest, personally declare as follows:

1. Of those charges now filed against me in this case, I plead Guilty to the following offenses and admit the enhancements, allegations and prior convictions as follows:

COUNT	CHARGE	ENHANCEMENT/ALLEGATION
1	PC187(a) murder (Chelsea K) (1st degree)	PC190.2(a)(17)-special circumstance - RAPE
2	PC220(a) ASSAULT with intent to RAPE	
3	PC187(a) murder (Amber D) (1st degree)	PC190.2(a)(17)-special circumstance - RAPE

PRIORS: (LIST ALLEGATION SECTION, CONVICTION DATE, COUNTY, CASE NUMBER, AND CHARGE)
VIOLENT PRISON PRIOR: PC288(a)x2 5-31-2000 SCD151675
SERIOUS FELONY PRIOR: PC288(a)x2 5-31-2000 SCD151675
STRIKE PRIORS: PC288(a)x2 5-31-2000 SCD151675

2. I have not been induced to enter this plea by any promise or representation of any kind, except: *(State any agreement with the District Attorney.)*
Parties stipulate to maximum punishment allowed by law other than death

3. I am entering my plea freely and voluntarily, without fear or threat to me or anyone closely related to me.

4. I understand that a plea of No Contest is the same as a plea of Guilty for all purposes.

5. I am sober and my judgment is not impaired. I have not consumed any drug, alcohol or narcotic within the past 24 hours.

CONSTITUTIONAL RIGHTS

6a. I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer or the Court will appoint a lawyer for me if I cannot afford one.

I understand that as to all charges, allegations and prior convictions filed against me, and as to any facts that may be used to increase my sentence, now or in the future, I also have the following constitutional rights, which I now give up to enter my plea of guilty/no contest:

6b. I have the right to a **speedy and public trial by jury**. **I now give up this right.**

6c. I have the right to **confront and cross-examine all the witnesses** against me. **I now give up this right.**

6d. I have the right to **remain silent** (unless I choose to testify on my own behalf). **I now give up this right.**

6e. I have the right to **present evidence in my behalf** and to have the court subpoena my witnesses at no cost to me. **I now give up this right.**

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Appendix A: Gardner's Guilty Plea (page 2 of 4)

Defendant: John Albert Gardner | CASE NUMBER: CD 225886

CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST

7a. I understand that I may receive this maximum punishment as a result of my plea: Life without parole years in State Prison, $ 20,000 fine and NO ~~years~~ parole (4, 7, 14, life) with return to prison for every parole violation. If I am not sentenced to prison I may receive probation for a period up to 5 years or the maximum prison term, whichever is greater. As conditions of probation I may be given up to a year in jail custody, plus the fine, and any other conditions deemed reasonable by the Court. I understand that if I violate any condition of probation I can be sent to State Prison for the maximum term as stated above.

7b. I understand that I must pay a restitution fine ($200 - $10,000), that I will also be subject to a suspended fine in the same amount, and that I must pay full restitution to all victims.

7c. I understand that my conviction in this case will be a serious/violent felony ("strike") resulting in mandatory denial of probation and substantially increased penalties in any future felony case.

7d. I understand that if I am not a U.S. citizen, this plea of Guilty/No Contest may result in my removal/deportation, exclusion from admission to the U.S. and denial of naturalization. Additionally, if this plea is to an "Aggravated Felony" listed on the back of this form, then I **will** be deported, excluded from admission to the U.S., and denied naturalization.

7e. I understand that my plea of Guilty or No Contest in this case could result in revocation of my probation or parole in other cases, and consecutive sentences.

7f. My attorney has explained to me that other possible consequences of this plea may be: (Circle applicable consequences.)

(1) Consecutive sentences
(2) Loss of driving privileges
(3) Commitment to Youth Authority
(4) Registration as an arson / sex / narcotic / gang offender
(5) Cannot possess firearms or ammunition
(6) Blood test and saliva sample
(7) Priorable (increased punishment for future offenses)
(8) Prison prior
(9) Mandatory prison
(10) Presumptive prison
(11) Sexually Violent Predator Law
(12) Possible/Mandatory hormone suppression treatment
(13) Reduced conduct credits
a. Violent Felony (No credit or max. 15%)
b. Prior Strike(s) (No credit to max. 20%)
c. Murder on/after 6/3/98 (No credit)
(14) Loss of public assistance
(15) AIDS education program
(16) Other: _____

OTHER WAIVERS

8. **(Appeal Rights)** I give up my right to appeal the following: 1) denial of my 1538.5 motion, 2) issues related to strike priors (under PC sections 667(b)-(i) and 1170.12), and 3) any sentence stipulated herein.

9. **(*Harvey* Waiver)** The sentencing judge may consider my prior criminal history and the entire factual background of the case, including any unfiled, dismissed or stricken charges or allegations or cases when granting probation, ordering restitution or imposing sentence.

10. **(*Blakely* Waiver)** Except where a prison term has been set by stipulation of the parties, I agree that the sentencing judge may determine the existence or non-existence of any aggravating facts which may be used to increase my sentence on any count or allegation above the middle term, either at the initial sentencing or at any future sentencing in the event my probation is revoked.

11. **(*Arbuckle* Waiver)** I give up my right to be sentenced by the judge who accepts this plea.

12. **(Probation Report)** I give up my right to a full probation report before sentencing.

SDSC CRM-12(Rev. 4-06) **PLEA OF GUILTY/NO CONTEST - FELONY** Page 2 of 4

Appendix A: Gardner's Guilty Plea (page 3 of 4)

Defendant: John Albert Gardner | CASE NUMBER: CS225886

13. **(Evidence Disposal Waiver)** I give up my interest in all non-biological property/evidence impounded during the investigation of this case except _____ and acknowledge that if I listed any property here, I must also file a claim with the impounding agency within 60 days after pronouncement of judgment or my ability to make a claim will expire. ☒

PLEA

14. I now plead Guilty/No Contest and admit the charges, convictions and allegations described in paragraph #1, above. I admit that on the dates charged, I: *(Describe facts as to each charge and allegation)* SEE ADDENDUM ☒

15. I declare under penalty of perjury that I have read, understood, and initialed each item above and any attached addendum, and everything on the form and any attached addendum is true and correct. ☒

Dated: 04/05/2010 Defendant's Signature John Albert Gardner

Defendant's Address: _____ Street

_____ City State Zip

Telephone Number: ( )

Defendant's Right Thumb Print

ATTORNEY'S STATEMENT

I, the attorney for the defendant in the above-entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges and possible defenses with the defendant, and the consequences of this plea, including any immigration consequences. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his/her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Dated: 4/5/2010 Michael J. Popkins Mel Epley Michael J. Popkins Mel Epley

(Print Name) Attorney for Defendant (Signature)

(Circle one: (PD) / APD / PCC / RETAINED)

INTERPRETER'S STATEMENT (If Applicable)

I, the sworn _____ language interpreter in this proceeding, truly translated for the defendant the entire contents of this form and any attached addendum. The defendant indicated understanding of the contents of this form and any addendum and then initialed and signed the form and any addendum.

Dated: _____

(Print Name) Court Interpreter (Signature)

PROSECUTOR'S STATEMENT

The People of the State of California, plaintiff, by its attorney, the District Attorney for the County of San Diego, concurs with the defendant's plea of Guilty/No Contest as set forth above.

Dated: 4/16/10 Kristen D Spidle Kristen D Spidle

(Print Name) Deputy District Attorney (Signature)

COURT'S FINDING AND ORDER

The Court, having questioned the defendant and defendant's attorney concerning the defendant's plea of Guilty/No Contest and admissions of the prior convictions and allegations, if any, finds that: The defendant understands and voluntarily and intelligently waives his/her constitutional rights; the defendant's plea and admissions are freely and voluntarily made; the defendant understands the nature of the charges and the consequences of the plea and admissions; and there is a factual basis for same. The Court accepts the defendant's plea and admissions, and the defendant is convicted thereby.

Dated: 4/16/10 David J. Danielsen

DAVID J. DANIELSEN Judge of the Superior Court

SDSC CRM-12(Rev. 4-06) **PLEA OF GUILTY/NO CONTEST - FELONY** Page 3 of 4

Appendix A: Gardner's Guilty Plea (page 4 of 4)

ADDENDUM TO ITEM #14
FACTUAL BASIS FOR THE PLEA

As to Count One, I admit that on February 25, 2010, I attacked Chelsea King while she was running. I dragged her to a remote area where I raped and strangled her. I then buried her in a shallow grave. I admit that this killing was done with premeditation and deliberation. I further admit that this murder occurred during the course of a rape, within the meaning of Penal Code Section 190.2 (a)(17). This murder took place within an hour of my initial contact with Chelsea King.

As to Count Two, I admit that on December 27, 2009, I attacked Candice Moncayo while she was running and unlawfully assaulted her with the intent to rape her.

As to Count Three, I admit that on February 13, 2009, I took Amber Dubois to a remote area of Pala where I raped and stabbed her. I then buried her in a shallow grave. I admit that this killing was done with premeditation and deliberation. I further admit that this murder occurred during the course of a rape, within the meaning of Penal Code section 190.2 (a)(17). This murder took place within an hour and a half of my initial contact with Amber Dubois.

Appendix B: Gardner's Sex Offender Registration

Date	Law Enforcement Agency	Reason for Registration
9/27/2005	San Diego Police Department	Initial (release from prison)
10/7/2005	San Diego Police Department	Change of address
10/20/2005	San Diego Police Department	Change of address
4/10/2006	San Diego Police Department	Annual
4/5/2007	San Diego Police Department	Annual
9/21/2007	San Diego Police Department	Leaving jurisdiction
9/21/2007	Escondido Police Department	Initial (entering jurisdiction)
4/4/2008	Escondido Police Department	Leaving jurisdiction
4/4/2008	San Diego Sheriff's Department	Initial (entering jurisdiction)
5/2/2008	San Diego Sheriff's Department	Leaving jurisdiction
5/2/2008	Escondido Police Department	Initial (entering jurisdiction)
5/30/2008	Escondido Police Department	Transient
6/27/2008	Escondido Police Department	Transient
7/28/2008	Escondido Police Department	Transient
8/15/2008	Escondido Police Department	Change of address
4/7/2009	Escondido Police Department	Annual
9/10/2009	Escondido Police Department	Change of address
1/5/2010	Escondido Police Department	Leaving jurisdiction
1/7/2010	Riverside Sheriff's Department	Initial (entering jurisdiction)

Appendix C: Letter Report on The Department's Destruction of Gardner's Parole Field File (page 1 of 2)

David R. Shaw, Inspector General

Office of the Inspector General

June 2, 2010

Matthew L. Cate, Secretary
California Department of Corrections and Rehabilitation
1515 S Street, Room 502 South
Sacramento, California 95814

Dear Mr. Cate:

Assemblyman Nathan Fletcher requested the Office of the Inspector General to investigate the circumstances surrounding the destruction of the parole field file the department maintained on parolee John Gardner. A parole field file contains assorted documents pertaining to the parolee, his or her adjustment to parole, and the parole agent's activities. We determined that the department destroyed the file in accordance with its policy that was in place at that time. Further, the department recently revised its parole field file retention and disposition policy. Although this new policy now retains important parole records for sex offenders such as Gardner, it continues to direct parole staff to shred important documents for other parolees after one year.

The department's Operation Manual requires parole offices to retain parole field files for 120 days after a case is closed by reason of discharge or death, and then destroy the file by burning or shredding. Parole officials told us that in September 2008, the director of the department's Division of Adult Parole Operations revised this policy to require parole offices to retain field files for one year. This was the policy that was in effect when Gardner was discharged from parole in September 2008.

Accordingly, approximately one year later the parole office destroyed Gardner's field file. The office manager of the parole office told us that they maintained groups of field files by the month that the respective parolee was discharged. After a year had gone by, the office would take the group of field files and turn them over to a contractor, who would shred the documents at the parole office in a mobile shredder under the supervision of a parole agent. The office manager told us they did not maintain a log of which files were shredded, or when files where shredded. She estimated that Gardner's field file would have been shredded in either October or November 2009. We reviewed invoices from the parole office's shredding vendor and confirmed that they indeed did shred 64 gallon containers of documents at the parole office location in both October and November.

In Mach 2010, the director of the Division of Adult Parole Operations again revised the parole field file retention and disposition policy. This policy specifies that parole offices should forward to the department's central records unit the field files of all discharged parolees who are required to register as sex offenders. The policy states that for all remaining parolees, the parole office will forward, upon discharge, to the central records unit the following documents:

CDCR Form 1676, Charge Sheet/Revocation Tracking/Scheduling Request;

Arnold Schwarzenegger, Governor

P.O. Box 348780, Sacramento, CA 95834-8780 Phone (916) 830-3600 Fax (916) 928-5996

Appendix C: Letter Report on The Department's Destruction of Gardner's Parole Field File (page 2 of 2)

CDCR Form 1500, Parole Violation Decision Making Instrument; and
CDCR Form 1502, Activity Reports.

Similar to the prior policy, the remaining parole field files will be retained by the parole office for one year, and then burned or shredded by an approved vendor.

One important document that the department does not include in its list of documents that parole offices should send to central records for retention is the record of supervision. According to the department's parole field agent guide, the record of supervision is a legal document and is intended to provide an accurate record of any and all efforts to supervise a parolee. It notes that parole agents should make entries on a daily basis and that information placed into the record of supervision should be sufficiently detailed to allow a reader to have a complete understanding of the information. Examples of information that should be included in the record of supervision include the following:

- Contact with the parolee at their residence, in the parole office, place of employment, or in a county or city jail.
- Collateral contacts made.
- Telephone contacts made with the parolee.
- Attempts to contact the parolee.
- Anti-narcotic testing, inclusive of the test results.

The record of supervision should also document the parole agent who supervised the parolee and the period of that supervision. The field guide states that recording this information as well as other essential case information is important because parole agents are called upon to testify in court as well as routinely appear at revocation hearings.

By destroying the record of supervision for non-sex-offender-parolees one year after they have been discharged from parole, the department is losing valuable information it and others may later need. As illustrated by the Gardner case, discharged parolees sometimes commit new crimes. Although Gardner will never be paroled after his most recent heinous crimes, other parolees who commit lesser crimes will. These records would be helpful to parole agents when the offender returns to parole supervision. Further, these records could be useful to law enforcement agencies who investigate subsequent crimes. Information about known addresses, associates, employers, and work locations that would be found in these records would be very helpful to investigators. Therefore, the department should include the record of supervision in the parole field file documents it retains.

If you have any questions concerning this issue, please contact Sam Dudkiewicz, Chief Assistant Inspector General, Bureau of Criminal Investigations, at (916) 830-3600.

Sincerely,

David R. Shaw
Inspector General

California Department of Corrections and Rehabilitation's response to the special report (page 1 of 3)

STATE OF CALIFORNIA —DEPARTMENT OF CORRECTIONS AND REHABILITATION ARNOLD SCHWARZENEGGER, GOVERNOR

OFFICE OF THE SECRETARY

P.O. Box 942883
Sacramento, CA 94283-0001

June 1, 2010

Mr. Dave Shaw, Inspector General
Office of the Inspector General
P.O. Box 348780
Sacramento, CA 95834-8780

Dear Mr. Shaw:

On behalf of the law enforcement officers of the California Department of Corrections and Rehabilitation (CDCR), I am compelled to respond personally to the Office of the Inspector General's (OIG) report on the supervision of former parolee John Gardner. This Department is wholly dedicated to the mission of public safety. As such, we are always deeply grieved by the loss or victimization of anyone at the hands of a current or former parolee, especially when it involves young people like Amber Dubois, Chelsea King, and Candice Moncayo, whose lives are cut short or threatened by a monster like John Gardner. The anguish and loss of victims and families cannot be overstated. In the end, only a life sentence can eliminate the risks presented by a predator like Gardner. Nonetheless, it is essential that CDCR and the entire law enforcement community work together to determine what more can be done to prevent crimes like these and how we can better protect the public.

For line officers in the field, the introspection that naturally follows a tragedy like this is particularly severe. Parole agents put their lives on the line every day because they care deeply about public safety. Even when criticized, their commitment drives them back into harm's way every day, endeavoring to do an even better job to protect the public from tomorrow's John † ① Gardner. And so I write today to stand with our parole staff as they take on the extremely difficult job of supervising 109,000 offenders across California and to address the GPS policy issues raised in your report.

② The OIG report on the supervision of John Gardner at its core finds flaws in a GPS system that no longer exists. As you are aware, in 2006, there were two types of GPS supervision put in place, "active" and "passive." Active supervision caseloads consisted of 20 high-risk sex offenders and agents were required to review every offender's GPS tracks on a daily basis. This policy is substantially unchanged. Passive supervision caseloads consisted of 40 lower-risk sex offenders and agents were not expected to review their tracks unless there was a crime reported or some other evidence of misconduct. As will be explained below, the passive GPS program was discarded in March of this year.

When the Department began utilizing GPS for sex offender supervision, the best guide was the High Risk Sex Offender Task Force Report (chaired by former Assemblymembers Rudy Burmudez and Todd Spitzer, and by former CDCR Secretary Jim Tilton). This report strongly recommended a focus on high-risk sex offenders, which the Department followed by placing high-risk sex offenders on active GPS monitoring. For sex offenders who did not fit the

† Circled numbers correspond to OIG's response (on page 35) to CDCR's response text.

definition of "high-risk," there was no comparable recommendation, so the Department's administrators made the best decision they could at the time and adopted the passive GPS program. It is important to keep in mind that there was little in the way of research or parallel experience from other states to utilize at that time, so decisions on a number of sex offender issues were based on the best information available. For example, when Jessica's Law passed in November 2006, it was not clear whether the law would apply to all sex offenders or only those convicted after the initiative became law. The Department took the aggressive position of strapping every sex offender under its jurisdiction with a GPS device, regardless of when they were convicted. As a result, offenders who were convicted and placed on parole prior to enactment, like John Gardner, were strapped with a GPS device even though Jessica's Law did not apply to them.

You point out that Gardner was on passive GPS in 2007-2008 and, as a result, the Department did not detect the fact that he violated the law on July 12, 2008 by being on prison grounds, and that he likely violated curfew and other conditions of parole on multiple occasions. As noted above, the Department's policies have improved since then to incorporate new techniques and to discard flaws in the previous program. In particular, following the Garrido case, the Department discarded the passive GPS policy, and now requires agents to review even lower-risk parolees' GPS tracks for two randomly selected 48-hour periods every month. This policy was intended to enhance the likelihood of detecting offenders involved in a pattern of misconduct. By periodically reviewing tracks, it is more likely an agent will uncover continuing violations of parole, like those committed by Garrido, and recurring violations, like those committed by Gardner. That said, with perfect hindsight, we now understand that even more must be done to detect those crimes and violations that occur in isolation, like illegally entering a prison parking lot. Of course, the only way to accomplish this goal is to review every offender's tracks, by one means or another, for every day. Moving forward, the Department must take this experience and make every effort to detect every crime and violation possible, especially if doing so could reduce the likelihood of a future crime being committed. ③

Without the benefit of 20-20 hindsight, which you and I have now, it is very difficult for anyone to perfectly anticipate how a policy or program will stand up to real world experience. In fact, even seven months ago when your office issued its report on Garrido, neither your report, nor our response, anticipated some of the very issues you raise now. For example, your present report recommends the utilization of a "batching" approach to GPS monitoring that your November 2009 Garrido report nowhere mentions. Likewise, while your November 2009 Garrido report recommended that we "[r]equire parole agents to investigate, resolve, and record the resolution to all GPS system alerts," your recent report now recommends a somewhat different approach whereby GPS alerts are tiered by significance so parole agents can avoid investigating all of them. This is not intended as a criticism, but to point out that we apparently share a willingness to modify a position, recommendation, or policy as we learn more about emerging technologies and as new situations unfold. In my view, this is far from a fault, but actually demonstrates a commitment to public safety as we strive for constant improvement in carrying out our respective duties. ④

Turning to the work of our parole agents, I must emphasize that unless one has worked as an agent on the streets, it is difficult to understand the challenges of supervising 40 sex offenders.

For each offender, the agent must utilize an individualized set of strategies to reduce the likelihood of reoffending, including personal contact with the parolee, home and office visits, community contacts, rehabilitation and employment program referrals, housing assistance, conflict resolution, searches for contraband, drug tests, parole violation enforcement and often, arrest. Merely adding GPS data does not make the job of supervising offenders less difficult. The agents must be able to effectively utilize the data and the expectations for their response must be realistic. For example, the Department's 274 agents assigned to supervise sex offenders received 934,000 GPS alerts last year. I know you will agree that to effectively manage the alerts, the agents must have the ability to focus on the most important, without fear that every advisory alert might end their career. ⑤

As described above, for parolees like Gardner who were assigned to "passive" caseloads, the GPS device was used primarily to deter criminal acts and to assist law enforcement in solving suspected crimes. And while the original passive GPS program did in fact solve crimes, it was not designed to detect violations as they occurred. As your report states, the agent in this case was not expected to check Gardner's tracks unless the agent received an alert or suspected Gardner was involved in criminal misconduct. As such, unless the agent happened upon Gardner during the commission of the misconduct, the agent could not have been aware that Gardner briefly entered a prison parking lot one day in July 2008, or that he violated his curfew and committed the other potential violations listed in your report. Of course, our agents must continue to improve and we all very much wish the results were different, but the Department stands with our staff as they do everything in their power to protect the public.

Together we commit to more effectively utilizing our resources for the supervision of all sex offenders. We look forward to implementing many of the thoughtful recommendations set forth in your report, especially the better use of GPS technology and utilization of analysts to assist agents meet the massive obligations associated with parole supervision. We will also continue to implement the recommendations set forth by the Sex Offender Management Board in its most recent report.

Unfortunately, we know that even if we had unlimited resources and could do all of these things immediately, we would not be able to prevent all of tomorrow's crimes. But if law enforcement partners continue to work collaboratively with one another to find areas for improvement, we will more effectively protect tomorrow's victims. The victims of the past deserve no less.

As always, thank you for your professionalism and the opportunity to candidly respond to your report. I stand ready to work with you on this matter in the future.

Sincerely,

Matthew L. Cate

MATTHEW L. CATE
Secretary

The Office of the Inspector General's Comments on the Department's Response (page 1 of 1)

Although we are not responding to all of the department's statements as outlined in its response, we are commenting on the following specific issues to provide clarity and perspective:

‡① We too stand with the department's parole agents who carry out the difficult task of supervising paroled offenders in the community. In our report, our criticisms are directed at the department's failure to provide fully-developed GPS monitoring policies. Clear policies are essential to a parole agent's ability to provide effective parole supervision and advance public safety.

② This report at its core finds flaws in the department's current GPS monitoring policy. We use the facts of the Gardner case to assess the policy. In doing so, it is quite evident that the department's current GPS monitoring remains deficient.

③ As we state in our report, under the provisions of the department's current GPS monitoring policy, the department ignores 87 percent of the GPS data it collects on passive GPS parolees. Accordingly, the department is unlikely to detect crimes such as the one committed by Gardner. We believe the department should review all GPS data to further enhance public safety.

④ In the Garrido report, we did not prescribe how the department should resolve its weakness of failing to use the data from its GPS monitoring system. Rather, we believed that the department should develop its own strategies to address the identified weaknesses. In the Gardner report, we are more specific in our recommendations. Although we still believe the department should be responsible for developing its own strategies, we felt more specificity was needed because we believed the department's corrective action in response to the Garrido report was insufficient.

⑤ Nowhere in our report do we state that merely adding GPS data will solve the workload problems faced by the department's parole agents. We do point out that the department should use—rather than ignore—the GPS data that it collects on passive GPS parolees. Indeed, our report provides recommendations that could help the department free up parole agents' time, allowing them to spend more time in the field, thereby enhancing public safety.

‡ Circled numbers correspond to CDCR's response text beginning on page 32.

SPECIAL REPORT

THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION'S SUPERVISION OF JOHN GARDNER

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STATE OF CALIFORNIA
JUNE 2010

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