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Granting People Safety: GPS Tracking for Domestic Violence Offenders

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GRANTING PEOPLE SAFETY: GPS TRACKING FOR DOMESTIC VIOLENCE OFFENDERS

I. INTRODUCTION

In front of their children's school, surrounded by other parents, teachers, and school staff, Joel attacked Theresa and their children.[1] In a different incident, Diane was ambushed and stabbed to death by Paul, her ex-boyfriend, outside her parents' house.[2] In both of these domestic violence incidents, the courts had previously granted Theresa and Diane protective orders against their abusers.[3] However, the courts did not require the abusers to wear a Global Positioning System ("GPS") tracking device when the protective orders were issued, which allowed the respective attacks to occur.[4]

Incidents like these may seem extreme, but that does not mean similar incidents do not occur every day. In the United States, twenty people become victims of physical violence by an intimate partner every minute.[5]

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1 *See* Ariana Green, *More States Use GPS to Track Abusers*, N.Y. TIMES (May 8, 2009), http://www.nytimes.com/2009/05/09/us/09gps.html?_r=0 [https://perma.cc/8NFT-3N88] (describing one of the violent incidents). The beating was not something that was uncommon, as Joel often perpetrated violence upon Theresa and the children. *Id*. Theresa endured endless amounts of physical abuse, death threats, and stalking at the hands of her husband. *Id*. Theresa was often terrified of what her husband would do to her, and the presence of seventeen guns in the house did not make matters any better. *Id*.

2 *See* Lisa Black, *Tougher Rules Ahead on Domestic Abuse*, CHI. TRIB. (Sept. 1, 2014), http://www.chicagotribune.com/news/local/ct-domestic-violence-law-change-met-20140831-story.html [https://perma.cc/H3JH-AB5U] (illustrating the tragic story of Diane and Paul). This was not the first time Paul was violent with Diane, which is why Diane had obtained a protective order. *Id*. In a violent episode a month before the fatal attack, Paul kidnapped Diane. *Id*. Following the kidnapping, Diane renewed the order of protection. *Id*. Three days after the order of protection was renewed, Paul fatally stabbed Diane. *Id*.

3 *See* Green, *supra* note 1 (indicating that Theresa sought a protective order against Joel); *see also* Black, *supra* note 2 (stating that Diane had a protective order against Paul when her fatal attack occurred). A researcher found that out of the number of women who are killed by their domestic violence abusers, about one quarter of these women had restraining orders against their killers. Green, *supra* note 1.

4 *See id*. (mentioning that Joel was required to wear the Global Positioning System ("GPS") tracking device following the last violation); Black, *supra* note 2 (discussing the lack of safety measures besides the protective order). However, Joel was eventually ordered to wear a GPS tracking device following a violation of the protective order. Green, *supra* note 1. It is not surprising that Joel violated the protective order because in Massachusetts, the state where Theresa lives, twenty-five percent of all protective orders are violated each year. *Id*. A protective order can feel like just a piece of paper at times, and the use of GPS monitoring can make a protective order feel as though it is offering more protection to the victim. *Id*.

5 *See Facts Everyone Should Know about Intimate Partner Violence, Sexual Violence & Stalking*, NAT'L INTIMATE PARTNER & SEXUAL VIOLENCE SURV., http://www.cdc.gov/violenceprevention/pdf/nisvs-infographic.pdf [https://perma.cc/LUY2-MUTN] [hereinafter *Facts Everyone Should Know*] (discussing the statistics associated with domestic violence). This

This shocking statistic indicates that although domestic violence is an important issue in society today, it has not been properly dealt with in the past.[6] A major problem associated with domestic violence is the intimate relationship that exists between the victim and the offender.[7] Because such relationships exist, an additional mechanism, aside from typical remedies for domestic violence, must be used to prevent the continuation of the abuse. The additional mechanism needed is GPS tracking technology.[8]

Every state should implement the model statute proposed in this Note, which authorizes courts to require domestic violence offenders to wear a GPS tracking device.[9] This Note analyzes existing GPS statutes—both sex offender and domestic violence offender GPS statutes—to create a model statute to be used in domestic violence situations.[10] Part II of this

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figure includes both violence to men and women. *Id*. Violence is not limited to one race or ethnicity; four in ten American Indian or Alaskan Native women, three in ten Hispanic men, and five in ten multiracial women are victims of physical violence, rape, or stalking at some point in their lives. *Id*.

6 *See generally id*. (listing the statistics regarding domestic violence victims). Violence is perpetrated early in that seventy-nine percent of women reported being raped before turning twenty-five years old, and twenty-eight percent of men reported being raped for the first time at ten years old or younger. *Id*. About one in five men and one in two women have been sexually victimized at some point in their lives. *Id*.

7 *See Facts Everyone Should Know*, *supra* note 5 (indicating that domestic violence occurs between intimate partners). The statistics listed are perpetrated by intimate partners, thereby showing the intimate relationship that exists. *Id*.

8 *See infra* Part IV (providing a solution that allows domestic violence offenders to be tracked through the use of GPS monitoring). The solution is in the form of a model statute that draws on several different existing statutes regarding the GPS monitoring of both sex offenders and domestic violence offenders. *Infra* Part IV.

9 *See infra* Part IV (suggesting a model statute for states to implement regarding the imposition of GPS tracking of domestic violence offenders). The statute includes important aspects of existing GPS monitoring statutes, including factors to consider in imposing the GPS monitoring, exclusionary zones, and other conditions. *Infra* Part IV.

10 *See infra* Part III (analyzing existing statutes that allow the use of GPS monitoring for either sex offenders or domestic violence offenders). Furthermore, Part III examines statutes for the most appropriate components for a model statute. *Infra* Part III. This Note is by no means equating sex offenders and domestic violence offenders. The two types of offenders are viewed drastically different in society today. This Note is not downplaying the seriousness of sexual offenses. On the contrary, this Note is merely using the only statutes that exist that authorize the use of GPS devices as a starting point to develop similar statutes for domestic violence offenders. Moreover, this Note is generally centered on domestic violence perpetrated by men onto women. However, this is not to say that men are not victims of domestic violence. But, because the prevalence of female victims far exceeds male victims of domestic violence, this Note generally discusses domestic violence as a male on female phenomenon. *See* Alanna Vagianos, *30 Shocking Domestic Violence Statistics That Remind Us It's an Epidemic*, HUFFINGTON POST (Oct. 23, 2014), http://www.huffingtonpost.com/2014/10/23/domestic-violence-statistics_n_5959776.html [https://perma.cc/N785-NM5L] (indicating the number of women affected by domestic violence). Fifteen

Note discusses the background associated with GPS tracking, including a discussion of the definitions of domestic violence and GPS, as well as an examination of current GPS statutes for both sex offenders and domestic violence offenders.[11] Then, Part III examines the existing sex offender and domestic violence GPS statutes to determine the elements that are essential to a model domestic violence GPS monitoring statute.[12] As a solution, Part IV proposes a model statute for states to enact regarding the use of GPS tracking technology for domestic violence.[13] Finally, Part V concludes that states will benefit by implementing the model statute to protect domestic violence victims.[14]

II. BACKGROUND

Given the astonishing number of domestic violence instances, like Theresa's and Diane's, current laws do not provide adequate protection for domestic violence victims.[15] This pervasive problem will not go away on its own, which is why states must implement the model statute that requires domestic violence offenders to be subjected to GPS monitoring.[16] Part II explains why domestic violence is a problem today and looks to existing GPS monitoring statutes to discuss the current state of victim protection.[17] First, Part II.A discusses what domestic violence is, why it is a problem, and the remedies presently available for domestic violence victims.[18] Then, Part II.B examines important issues related to GPS

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percent of domestic violence victims are men, while eighty-five percent of victims are women. *Id*.

11 *See infra* Part II.A (describing what domestic violence is and the available remedies); *see also infra* Part II.B (discussing GPS tracking technology); *infra* Part II.C (examining sex offender statutes that authorize the use of GPS tracking); *infra* Part II.D (exploring domestic violence statutes that allow GPS tracking).

12 *See infra* Part III (analyzing both sex offender and domestic violence GPS tracking statutes).

13 *See infra* Part IV (proposing a model statute that incorporates elements from sex offender and existing domestic violence statutes to authorize the use of GPS tracking in domestic violence cases).

14 *See infra* Part V (concluding that GPS monitoring is ideal in the domestic violence context to better protect victims).

15 *See* Green, *supra* note 1 (discussing the domestic violence incidents that occurred between Theresa and her husband); *see also* Black, *supra* note 2 (examining the fatal attack between Paul and Diane).

16 *See infra* Part III (assessing the need for a model statute created from the use of existing sex offender and domestic violence offender statutes).

17 *See infra* Part II (discussing domestic violence and GPS monitoring).

18 *See infra* Part II.A (examining domestic violence and its importance). This Part defines what domestic violence is, discusses different forms of domestic violence, and provides important statistics that indicate the prevalence and importance of domestic violence. *Infra* Part II.A.

monitoring, including how it works and its costs.[19] Next, Part II.C describes the existing GPS monitoring statutes that deal with sex offenders.[20] Finally, Part II.D surveys GPS monitoring statutes governing domestic violence offenders.[21]

A. Domestic Violence: What Is It and Why Is It a Problem?

Domestic violence is a taboo topic in today's society due to the common misconception that it is strictly a private matter.[22] Because of its seemingly private nature, many people may not be aware of the prevalence of domestic violence or even know what domestic violence is.[23] Domestic violence can take many different forms.[24] In general, domestic violence can be defined as "the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another."[25] Stemming from the definition, there are four identified types of domestic violence: emotional abuse, financial abuse, sexual abuse, and physical abuse.[26]

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19 *See infra* Part II.B (explaining GPS monitoring).

20 *See infra* Part II.C (analyzing existing statutes authorizing GPS monitoring of sex offenders).

21 *See infra* Part II.D (describing statutes that allow GPS monitoring of domestic violence offenders).

22 *See Breaking the Silence on Domestic Violence*, U.S. DEP'T OF AGRIC., http://www.dm.usda.gov/shmd/handbook.htm [https://perma.cc/G7WC-YH6J] (discussing the private nature of domestic violence). Domestic violence is not a private matter; instead, it is a criminal offense warranting a strong response. *Id.* Although victims want the abuse to end and that is why they choose to report the abuse, many do not want the relationship to end. *Myths and Facts about Domestic Violence*, DOMESTIC VIOLENCE INTERVENTION PROGRAM (2016), http://www.dvipiowa.org/myths-facts-about-domestic-violence/ [https://perma.cc/3S6U-W57H] [hereinafter *Myths and Facts*].

23 *See* Nancy E. Murphy, *Queer Justice: Equal Protection for Victims of Same-Sex Domestic Violence*, 30 VAL. U. L. REV. 335, 337 (1995) (discussing the public's perception of domestic violence). Domestic violence has gained a significant amount of awareness in the past fifty years, but in general, domestic violence is still largely misunderstood. *Id.*

24 *See What Is Domestic Violence*, IND. COAL. AGAINST DOMESTIC VIOLENCE (2016), http://www.icadvinc.org/what-is-domestic-violence/ [https://perma.cc/C6WK-5L8P] (indicating the different types of domestic violence). Abuse can be sexual, economic, psychological, physical, emotional, or threats to influence the victim. *Id.*

25 *What Is Domestic Violence?*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE http://www.ncadv.org/need-help/what-is-domestic-violence [https://perma.cc/MWQ4-BHZS] [hereinafter *Domestic Violence*]. Although the degree of abuse varies significantly from each abusive relationship, the common thread that exists is the abuser's efforts to consistently be in a position of control and power over the victim. *Id.*

26 *See What Is Domestic Violence*, *supra* note 24 (describing four different types of domestic violence abusers). A domestic violence offender may not fit into a precise category and may use all four forms of domestic violence. *See Domestic Violence*, *supra* note 25 (indicating the different abusive tendencies of a domestic violence offender that encompass all different

Emotional abuse occurs when abusers constantly criticize or insult their victims and exercise control by restricting where the victim goes, who the victim has contact with, and expecting the victim to seek permission before doing anything.[27] Financial abuse happens when abusers control the access and use of money and may even refuse to give victims the necessary money required to fulfill basic needs.[28] Sexual abuse takes place when abusers use sex to control the victim by demanding sex whenever the abuser wants it—even if the victim does not.[29] Physical abuse ensues when an abuser harms the victim through threatened and actual acts of physical violence and may even thwart attempts to seek medical or police assistance.[30]

Regardless of the type of domestic violence perpetrated, the number of people affected by domestic violence is staggering.[31] The number of

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types of domestic violence categories). However, there are other types of domestic violence such as stalking, control of sexual or reproductive health, and psychological aggression. *See National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, NAT'L CTR. FOR INJURY PREVENTION AND CONTROL OF THE CTRS. FOR DISEASE CONTROL AND PREVENTION 37 (Nov. 2011), http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf [https://perma.cc/UWM6-BKY8] [hereinafter *Summary Report*] (indicating the types of domestic violence surveyed). Violence by an intimate partner can include several different types of violence, including sexual, physical, stalking, psychological aggression, control of reproductive health, and threats of violence. *Id*.

27 *See What Is Domestic Violence*, *supra* note 24 (explaining the symptoms of an emotional domestic violence abuser). An emotionally abusive relationship may also include the abuser calling the victim names, not trusting the victim, being jealous, attempting to isolate the victim from friends and family, preventing the victim from going to work, humiliating the victim, punishing the victim by not giving affection, or threatening the victim or the victim's family or pets. *Id*.

28 *See id*. (listing factors that may exist if the offender is a financial abuser). Other factors that may be present in a financially abusive situation are creating debt on joint accounts, obstructing the victim's ability to work, denying the victim access to bank accounts, or requiring access to the public benefits of the partner. *Id.* Additional examples may include forcing the victim to take out loans, requiring the victim to give the abuser money, and demanding items be placed in the abuser's name and not the victim's name. *What is Economic Abuse?*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE (2015), http://www.ncadv.org/files/Domestic%20Violence%20and%20Economic%20Abuse%20NCADV.pdf [https://perma.cc/BP8F-HAR5] [hereinafter *Economic Abuse*].

29 *See What Is Domestic Violence*, *supra* note 24 (indicating the types of sexual abuse within domestic violence). A sexually abusive relationship may also include insulting the victim sexually, viewing women as objects, requiring the victim to dress in a sexual way, hurting the victim during sex, or pinning the victim down during sex. *Id*.

30 *See id*. (mentioning what a physical abuser may do to exert control). Other factors that may exist within a physically abusive relationship are leaving the victim in dangerous areas, scaring the victim by reckless driving, being physically abusive during sex, and making the victim leave the house. *Id*.

31 *See Facts Everyone Should Know*, *supra* note 5 (providing statistics on those who are affected by domestic violence in the United States).

women who have reported physical abuse in their lives totals 38,028,000.[32] One in every ten women has been raped by their intimate partner in their lifetime.[33] About thirteen million women have been victims of stalking by their intimate partner in their lifetime.[34] Almost half of all women in the United States have been a victim of psychological aggression in their lifetime by their intimate partner.[35] From 2001 to 2012, 11,766 women were murdered by their partners.[36] During the same time period, a total

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[32] *See* Vagianos, *supra* note 10 (indicating the number of women that are affected by domestic violence). This number accounts for the number of women who will experience physical abuse in their lifetimes. *See* Matthew J. Breiding et al., *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization*, NAT'L INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY 10 (2011), http://www.cdc.gov/mmwr/pdf/ss/ss6308.pdf [https://perma.cc/96U7-YA3F] (analyzing the number of women affected by different types of domestic violence). Men are affected by domestic violence as well, but the number of men affected is drastically smaller. *See Summary Report*, *supra* note 26, at 44 (discussing the number of men who are physically abused in their lifetime). For example, the number of women who reported being hurt by their partner by choking or suffocating in their lifetime was 11,605,000, whereas the number of men who reported the same type of violence totaled 1,259,000. *Id.* at 44–45. Moreover, the number of men who reported being beaten sometime in their lifetime by their partner was 2,982,000 compared to the 13,386,000 women who reported that type of abuse. *Id.*

[33] *See id*. at 42 (describing the number of women raped by their intimate partner). This figure includes a total of about 11.1 million women. *Id.*

[34] *See id*. at 44 (detailing the amount of women that are stalked during their lifetimes by intimate partners). This amounts to one in ten women in the United States who have been stalked by their partner. *Summary Report*, *supra* note 26, at 44. A total of 3.3 million women reported being stalked during the twelve months before the report. *Id*. The methods of stalking varied, including receiving unwanted text messages and phone calls, being followed or watched, or being subjected to unwanted visits at the victim's home or workplace. *Id*. For men, 2.1% have reported stalking by an intimate partner at some point in their lives. *Id*. at 45. This number totals 2.4 million men. *Id*.

[35] *See id*. (discussing the prevalence and description of psychological aggression). This equates to about 57.6 million women who have been subjected to psychological aggression. *Summary Report*, *supra* note 26, at 45. Psychological aggression can take many forms, including where the abuser tells the victim she is ugly, crazy, stupid, a failure, or other insults meant to humiliate her. *Id*. at 46. Among men in the United States, about half have been victims of psychological aggression. *Id*. at 45. The most common type of psychological aggression experienced by men include demanding to know where he is at any given time, being called names such as stupid, crazy, or fat, being told he was not good enough, or being humiliated or made fun of. *Id*. at 46.

[36] *See* Vagianos, *supra* note 10 (stating the number of women killed by their partners during the time period). Every day, three women in the United States are killed by a current or former partner. *Id*. In 2011, 1,509 women were killed by men they knew. *Id*. Nine hundred twenty-six of the 1,509 women were killed by an intimate partner. *Id*. Of the 926 women, 264 of those were murdered by their partner during an argument. *Id*. In about half of all the murders of women in the United States, domestic violence is the cause. *See* Rebecca G. Goddard, *When It's the First Time Every Time: Eliminating the Clean Slate of Pretrial Diversions in Domestic Violence Crimes*, 49 VAL. U. L. REV. 267, 272 (2014) (describing one of the causes of women's murders). Within these murders, seventy to eighty percent of women were physically abused by their partners before their murders. *Id*.

of 6,488 American troops were killed in Iraq and Afghanistan.[37] The amount of women killed by their intimate partners almost doubles the amount of casualties in wartimes.[38] However, these numbers consist of only those women who report the abuse, not those who experience abuse but do not report it.[39] Based upon these shocking statistics and the fact that many women do not report the abuse, domestic violence proves to be a bigger problem than the public has previously viewed it.[40]

To combat domestic violence, states provide two general remedies for domestic violence victims.[41] These remedies include requesting a civil protective order or pressing criminal charges.[42] A protective order prohibits an offender from being anywhere near the victim, which allows the victim to feel as though she is protected from future violent incidents.[43]

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[37] *See* Vagianos, *supra* note 10 (considering the amount of American troops killed during wartimes in Iraq and Afghanistan). This Note is not downplaying the significance of military deaths in wartimes. It is simply using the figure as a comparison tool to show the striking difference between an area where deaths are seemingly inevitable and an area where death is not expected.

[38] *See id*. (comparing the two death tolls). While these are two very different situations, both are largely publicized and are issues that do not go away quickly and quietly. *Id*.

[39] *See Summary Report*, *supra* note 26, at 4 (indicating reasons why victims choose not to report the violence). Victims may choose not to report the violence that they are subjected to for a number of different reasons. *Id*. For example, victims may feel ashamed or embarrassed that they have been abused. *Id.* They may also feel that reporting will not do anything because law enforcement may not support their claims or because they are scared that their abusers will discover that they have reported the abuse and will subsequently retaliate. *Id*.

[40] *See id*. at 89 (indicating the need for action to be taken based upon the total number of people affected by domestic violence). For example, about one in two women have been sexually victimized in some form, other than rape, at some point in their lives. *Id*. at 19. For those women who reported experiencing physical violence, stalking, or rape by an intimate partner, over one in five women encountered domestic violence between ages eleven and seventeen for the first time. *Summary Report*, *supra* note 26, at 49.

[41] *See* Annie Pelletier Kerrick, *Protections Available to Victims of Domestic Violence: No Contact Orders, Civil Protection Orders, and Other Options*, 54 ADVOC. (IDAHO) 32, 34 (2011) (illustrating the choice is up to the victim regarding which route to take). The choice of what remedy to take is ultimately left up to the victim, which is a decision that the victim must make in her best interests. *Id*. However, victims of domestic violence are not adequately protected by the existing remedies available. *See* Rhea Gargour, *Now the Law CAN Protect Victims of Domestic Violence*, HUFFINGTON POST (Feb. 17, 2015), http://www.huffington post.co.uk/rhea-gargour/domestic-violence_b_6346376.html [https://perma.cc/H2WQ-55Y3] (expressing that domestic violence victims are not helped even after reporting the abuse).

[42] *See Options for Victims*, NAT'L CTR. FOR VICTIMS OF CRIME (2008), https://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/options-for-victims [http://perma.cc/X58N-G23E] (describing pressing charges or a protective order as options for victims). A victim can choose which avenue to take after being abused by a partner, including going through the criminal or civil justice system. *Id*.

[43] *See* Amanda Rhodes, *Strengthening the Guard: The Use of GPS Surveillance to Enforce Domestic Violence Protection Orders*, 2 TENN. J. RACE, GENDER, & SOC. JUST. 129, 131–32 (2013)

Victims file protective orders and control the process.[44] Protective orders offer victims what was lacking in their relationship with their abuser—control—and allow the victim to avoid the criminal justice system.[45] In contrast, a victim may choose to press criminal charges against her abuser.[46] As an added protection, some states offer the use of GPS monitoring as a condition of bail if the offender is charged with a domestic violence crime.[47] Regardless of the remedy employed to stop the abuse,

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(considering the purpose of protective orders); *see also* Kerrick, *supra* note 41, at 32 (discussing how victims feel about civil protection orders). A protective order may also require the offender to stay away from the victim's home, work, or school. *Options for Victims*, *supra* note 42. Every state allows victims to pursue protective orders, and many have additional provisions related to protective orders and their consequences. *See Domestic Violence Civil Protection Orders (CPOs) by State*, A.B.A. (June 2009), http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/dv_cpo_chart.authcheckdam.pdf [https://perma.cc/47ML-DRYL] (listing the states' civil protection order statutes and related provisions associated with a civil protection order). Some of the related provisions deal with whether the state allows a civil protection order against a same-sex partner, whether a statute deals with child custody, and whether restitution is available. *Id.*

44 *See* Kerrick, *supra* note 41, at 32–33 (stating the victim's role in civil protection orders). Protection orders aid the victim by restricting contact from the abuser. *Id.* at 32. Further, control over the process is essential for domestic violence victims because they were being controlled by their abuser, so being able to control something is extremely beneficial. *Id.* at 33.

45 *See id.* at 32 (revealing that civil protection orders offer an alternative to the criminal justice system). Protective orders allow victims to remain within their home and keep their pets and belongings, as opposed to moving out and staying in a domestic violence shelter. *Id.*

46 *See Options for Victims*, *supra* note 42 (describing the steps a victim may take to press charges against an offender). To report a crime, a victim must file a police report, after which the police have discretion in deciding whether an investigation occurs. *See Domestic Violence Frequently Asked Questions*, CLARK CTY. PROSECUTING ATT'Y, http://www.clarkprosecutor.org/html/domviol/domfaq.htm [https://perma.cc/UPR7-5U67] (discussing the process of how a domestic violence charge is filed). If there is enough evidence to substantiate the claim, the prosecutor may file criminal charges against the offender. *Id.* Alternatively, a victim may choose to report the abuse directly to the prosecutor, who may file the criminal charges without an investigation. *Id.*

47 *See* ARK. CODE ANN. §§ 9-15-217(a)(1), 9-15-217(b) (2016) (authorizing the use of GPS monitoring if the offender violates an ex parte or final order of protection); *see also* CAL. PENAL CODE § 136.2(a)(1)(G)(iv) (West 2016) (granting the use of GPS monitoring if the domestic violence offender violates a protective order or is charged with a domestic violence crime); COLO. REV. STAT. § 18-1.3-204(2)(a)(XIV.5) (2016) (including GPS monitoring in an array of options for probation of offenders); CONN. GEN. STAT. § 46b-38c(f) (2016) (indicating that the state may create a pilot program that allows the GPS tracking of domestic violence offenders); FLA. STAT. § 907.041(4)(b) (2016) (permitting the use of GPS in pretrial releases for those who are not charged with a dangerous crime); 730 ILL. COMP. STAT. § 5/5-8A-7 (2016) (enabling the courts to order domestic violence offenders to wear a GPS tracking device upon violation of a protective order or as a condition of bail); IND. CODE § 35-33-8-11(a) (2016) (allowing courts to require GPS monitoring if an offender is charged with a domestic violence crime); IND. CODE § 34-26-5-9(i)(1) (2016) (granting the authority to courts to require an offender of a protective order to wear a GPS tracking device); KY. REV. STAT. ANN.

there is still the possibility a relentless offender may continue to abuse the victim.[48]

B. GPS Monitoring: How It Works

Using GPS monitoring to track offenders may stop further abuse, but GPS is a relatively new phenomenon and its use in the law is somewhat limited.[49] Therefore, a basic understanding of GPS monitoring and other

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§ 403.761(1) (2015) (explaining when an offender may be required to wear a GPS device upon violation of a domestic violence order); LA. REV. STAT. ANN. § 46:2143(A) (2016) (allowing the use of a GPS device stemming from either civil or criminal remedies); MD. CODE ANN., CRIM. PROC. § 5-202(e)(2)(ii) (2015) (discussing restrictions on pretrial release); MASS. GEN. LAWS ch. 209A, § 7 (2016) (authorizing the use of a GPS device upon violation of a protective order or an abuse prevention order); MICH. COMP. LAWS § 765.6b(6) (2016) (recognizing the ability to order GPS tracking for an offender who is charged with a domestic violence or assaultive crime); MINN. STAT. § 609.135(5a) (2015) (permitting the use of GPS for domestic violence offenders for the safety of the victim); MISS. CODE ANN. § 99-5-38(2)(b) (2015) (sanctioning the use of GPS tracking as a condition of a bond); N.H. REV. STAT. ANN. § 597:2(III-a) (2015) (allowing the use of GPS to protect the victim's safety); N.D. CENT. CODE § 14-07.1-19 (2015) (endorsing the use of GPS tracking upon a violation of a domestic violence order, including a protective order or no-contact order); OKLA. STAT. tit. 22, § 60.17 (2015) (authorizing the use of GPS in conjunction with a protective order or restraining order); TENN. CODE ANN. § 40-11-150(b)(6) (2016) (enabling the use of a GPS device if the offender commits a range of crimes associated with domestic violence or upon violation of an order of protection); TEX. CRIM. PROC. CODE ANN. § 17.49(b)(2) (West 2016) (allowing the use of GPS for a domestic violence offender); UTAH CODE § 77-36-5(2) (2015) (permitting the use of a GPS device if an offender is charged with a domestic violence crime); VA. CODE ANN. § 19.2-123(A)(4) (2016) (granting the court the ability to subject an offender to GPS on release for probation); WASH. REV. CODE § 26.50.060(1)(j) (2015) (explaining when an offender may be required to wear a GPS tracking device); WIS. STAT. § 301.49(2)(a) (2015) (enabling the use of GPS when an offender violates a protective order or injunction).

48 *See* Rhodes, *supra* note 43, at 131 (indicating that protective orders are often broken). However, this is not to say that every woman who obtains a protective order or presses criminal charges will continue to be harassed. *Id*. Only about fourteen percent of women were abused further, despite the presence of a protective order. *Id*. This indicates that, in some cases, a protective order is nothing but a piece of paper that can do nothing to protect a victim from the abuse. *See* Mary Ann Scholl, *GPS Monitoring May Cause Orwell to Turn in His Grave, but Will It Escape Constitutional Challenges? A Look at GPS Monitoring of Domestic Violence Offenders in Illinois*, 43 J. MARSHALL L. REV. 845, 850 (2010) (demonstrating that violence still occurs even with a protective order in place). Protective orders do help many victims, but about one-fourth of all protective orders are reported as having been violated. *Id*.

49 *See* Matthew J. Kucharson, *GPS Monitoring: A Viable Alternative to the Incarceration of Nonviolent Criminals in the State of Ohio*, 54 CLEV. ST. L. REV. 637, 641 (2006) (describing the history of the use of GPS monitoring); *see also infra* Part II.B (discussing the uses of GPS monitoring in the law). GPS was originally used by the military to guide missiles during combat. Kucharson, *supra* note 49, at 641. The use of GPS was expanded to civilian use in 1983, but it was not until about a decade later that civilians got full use of GPS via federal legislation. *Id*. at 641–42. To work, GPS requires the twenty-four satellites in orbit. *GNSS Frequently Asked Questions – GPS*, FED. AVIATION ADMIN. (Jan. 14, 2015),

relevant aspects of its use is required.[50] GPS is a positioning system where an offender's location and movements can be identified via satellites in real time.[51] The offender typically wears a battery-operated transmitter around the ankle along with a portable tracking unit that receives the GPS signals from orbiting satellites.[52] Currently, there are twenty-four satellites orbiting the Earth that give off signals for GPS receivers to catch and subsequently measure the distance between the receiver and the satellites.[53] After the distance is calculated, the offender's location is accurately identified within feet.[54]

The ability to accurately identify the position of a person of interest indicates that GPS is an attractive option for punishing domestic violence offenders.[55] To bolster the attractiveness, the declining costs associated with GPS monitoring since its creation has further prompted the extension

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http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/techops/navservices/gnss/faq/gps/ [https://perma.cc/EXR7-RM6H].

50 *See infra* Part II.B (describing GPS monitoring in regards to its definition, costs, and advantages).

51 *See* Scholl, *supra* note 48, at 851 (describing how an offender's location can be identified). The satellites orbiting the Earth emit radio signals, which the GPS device picks up. *Id*. The signals contain information that indicates the satellite's position at a precise time, thereby indicating where an offender is at any given time. *Id*.

52 *See* Kucharson, *supra* note 49, at 643 (detailing the components necessary for GPS monitoring). To work properly, the portable tracking unit must continually receive signals from the ankle transmitter. *Id*. This ensures that the offender does not remove the portable tracking unit to avoid being monitored. *Id*. A central monitoring system is also required because it has to take the information transmitted by the portable tracking unit and utilize mapping technology to identify where the offender is located. *Id*. Lastly, there must be a charging unit for the portable tracking device because it is battery-operated and only lasts for about twenty-four hours. *Id*. at 644. Some states allow victim notification capabilities so that the victim is aware of the offender's location as well. *See, e.g.*, ARK. CODE ANN. §§ 9-15-217(c)(1), 9-15-217(c)(3) (2016) (stating that the victim is immediately notified if the offender violates the order and that the device has a loud alarm to warn the victim if the offender is near); 730 ILL. COMP. STAT. § 5/5-8A-7 (2016) (indicating the victim will be notified of any violations); IND. CODE § 34-26-5-9(i) (2016) (requiring victim notification capabilities if available); TENN. CODE ANN. § 40-11-150(b)(6) (2016) (requiring an electronic receptor be given to the victim).

53 *See* Scholl, *supra* note 48, at 851 (providing the precise process of how the signals and receiver interact to produce the offender's location). The signals are encoded messages containing the satellites' positions as well as a specific time stamp. *Id*. These signals travel at the speed of light. *Id*.

54 *See id*. at 852 (explaining how the location of the offender is identified). The twenty-four satellites emit signals down to Earth, and receivers, such as those that are used for GPS monitoring of offenders, catch the signals. *Id*. at 851. After the receiver has received the signals, it calculates how far it is from a minimum of four satellites in orbit. *Id*. at 851–52.

55 *See* Scholl, *supra* note 48, at 852 (discussing the process in identifying an offender's location with GPS). There are four main components that are required in order for the GPS to work. Kucharson, *supra* note 49, at 642–44.

in its use.[56] Moreover, the use of GPS monitoring within the context of domestic violence has proven to be effective.[57] The levels of recidivism, either for domestic violence crimes or offending in general, are lower for domestic violence offenders that are subjected to GPS monitoring.[58] Further, the use of GPS monitoring of domestic violence offenders has positive effects on victims.[59] Overall, victims feel relieved to be able to escape the abuse, go to more locations than they could before the monitoring, and possess the overwhelming feeling that the abuser could

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[56] *See id.* at 641, 658 (indicating that GPS equipment costs are falling and the use of GPS monitoring has extended from military to civilian use). The costs of GPS monitoring may be greater than the cost of traditional supervision, but GPS is far more effective. *See* Philip Bulman, *Sex Offenders Monitored by GPS Found to Commit Fewer Crimes*, NAT'L INST. OF JUST. (Feb. 2013), http://www.nij.gov/journals/271/pages/gps-monitoring.aspx [https://perma.cc/K8A8-H33G] (discussing the costs associated with GPS monitoring and traditional supervision and the corresponding effectiveness of each). For example, traditional supervision in California costs $27.45 a day, whereas GPS monitoring costs $35.96 a day. *Id.* However, despite the greater cost, GPS monitoring is more effective at preventing recidivism than traditional supervision. *Id*. GPS monitoring of sex offenders also proved to increase compliance with the terms of probation compared to traditional supervision. *Id*.

[57] *See* Rhodes, *supra* note 43, at 142 (stating the effectiveness of GPS monitoring in domestic violence cases). In particular, GPS monitoring is an effective tool in preventing recidivism and keeping offenders out of areas they are forbidden from entering. *Id*.

[58] *See* Edna Erez et al., *GPS Monitoring Technologies and Domestic Violence: An Evaluation Study*, NAT'L CRIM. JUST. REFERENCE SERV. 147 (June 2012), https://www.ncjrs.gov/pdffiles1/nij/grants/238910.pdf [https://perma.cc/9LUM-5VRT] (discussing the recidivism rates of offenders who were subjected to GPS monitoring). In addition, those subjected to GPS monitoring avoid the areas they are banned from, which bolsters the protective order's goal. *Id.* In the long run, offenders are less likely to commit another domestic violence crime than if they were not subjected to GPS monitoring. *Id*. at 70. This is so, given that traditional methods of preventing crime do not seem to be serving their purpose. *See* Peter M. Thomson, *A Comprehensive Strategy Targeting Recidivist Criminals with Continuous Real-Time GPS Monitoring: Is Reverse Engineering Crime Control Possible?*, FEDERALIST SOC'Y (Nov. 28, 2011), http://www.fed-soc.org/publications/detail/a-comprehensive-strategy-targeting-recidivist-criminals-with-continuous-real-time-gps-monitoring-is-reverse-engineering-crime-control-possible [https://perma.cc/UYF8-U467] (explaining that prisons are not effective at preventing recidivism). The use of GPS monitoring for domestic violence offenders must be aimed at reducing the recidivism rates, as there are other studies that indicate violent offenders are likely to commit similar crimes in the future. *See* Alexia D. Cooper et al., *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, BUREAU OF JUST. STAT. 1 (Apr. 22, 2014), http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf [https://perma.cc/23GL-A9VF] (discussing the recidivism rates of violent offenders).

[59] *See* Erez et al., *supra* note 58, at 97 (examining the benefits of GPS monitoring for victims). There are a variety of different benefits that are conferred onto the victim of domestic violence when the offender is required to wear a GPS device. *Id*. For example, in regards to her offender, one victim reported that "once he was put on the GPS and couldn't contact me, I felt free." *Id*.

not violate court orders without consequences.[60] In addition, domestic violence offenders have indicated that GPS monitoring was advantageous to them because it provided proof of their location if the victim alleged their presence in an area the offender was not near.[61]

C. GPS Monitoring of Sex Offenders

Despite the relatively novel application of GPS monitoring to the law, forty-two states have statutes that authorize the use of GPS monitoring for sex offenders.[62] As GPS monitoring is an area with few applications, it is

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60 *See id*. at 97 (describing the victim's perspective after the offender was GPS monitored). In addition, the victim feels safe knowing there was someone who knew that the offender was close to the victim's location. *Id*. at 98. Moreover, some victims felt as though placing the offender on GPS monitoring was preferable to jail because the offender was required to contribute to society and could not commit any other crimes in the community. *Id.*

61 *See* Erez et al., *supra* note 58, at 121 (discussing the benefits that offenders receive from the monitoring). However, not all offenders are thankful for GPS monitoring, as some situations arise in which the offender may be under full house arrest awaiting a GPS device to be given to him, which may result in unemployment. *Id*. at 109. With the use of GPS, there are many offenders and opponents that are concerned with the constitutionality associated with the monitoring. Zoila Hinson, *GPS Monitoring and Constitutional Rights*, 43 HARV. C.R.-C.L. L. REV., 285, 285 (2008). The main arguments associated with GPS monitoring are due process and search and seizure concerns. *Id*. at 285–87. The leading case associated with unreasonable search and seizures, *Katz v. United States*, established that U.S. citizens have a right to avoid unreasonable search and seizures in areas where privacy is expected. 389 U.S. 347, 361 (1967). These arguments are discussed further in Part IV.B. *Infra* Part IV.B.

62 *See* Eric M. Dante, *Tracking the Constitution – The Proliferation and Legality of Sex-Offender GPS-Tracking Statutes*, 42 SETON HALL L. REV. 1169, 1185, 1187–88 (2012) (listing the states that have sex offender GPS statutes). The remaining states do not explicitly or implicitly authorize the use of GPS monitoring for sex offenders, but rather only follow the federal mandatory registration requirements. *Id. See, e.g.*, ALA. CODE § 15-20A-20(b)–(c) (2016) (allowing the parole board to determine if a sex offender should wear a GPS tracking device); ALASKA STAT. § 12.55.100(f) (2016) (authorizing the use of GPS monitoring for sex offenders); ARIZ. REV. STAT. ANN. § 13-902(G) (2016) (permitting the use of GPS tracking for sex offenders); ARK. CODE ANN. § 12-12-923(a)(1) (2016) (requiring GPS monitoring for sex offenders); CAL. PENAL CODE § 3004(a) (West 2016) (granting some discretion in determining if certain sex offenders wear GPS devices); COLO. REV. STAT. § 18-1.3-204(2)(a)(XIV.5) (2015) (including GPS monitoring in an array of options for probation of sex offenders); CONN. GEN. STAT. § 53a-30(a)(14) (2016) (permitting the choice of GPS monitoring for sex offenders); DEL. CODE ANN. tit. 11, § 4121(u) (2016) (authorizing the use of GPS tracking devices); FLA. STAT. § 948.30(3) (2016) (mandating that sex offenders be monitored via GPS tracking devices); GA. CODE ANN. § 42-1-14(e) (2015) (requiring GPS tracking for sex offenders); HAW. REV. STAT. §§ 353G-7(a)(4)(D), 706-624(2)(p) (2016) (allowing the choice of imposing GPS monitoring); IDAHO CODE ANN. §§ 18-8308(3), 20-219(2) (2015) (imposing GPS tracking on sex offenders); 730 ILL. COMP. STAT. §§ 5/3-3-7(a)(7.7), 5/5-8A-6 (2016) (dictating that sex offenders must wear GPS tracking devices); IND. CODE § 11-13-3-4(j) (2016) (creating a mix of both mandatory and discretionary imposition of GPS monitoring); IOWA CODE § 692A.124(1) (2016) (constructing a list of factors to assess in determining whether a sex offender is subjected to GPS monitoring); KAN. STAT. ANN. §§ 21-6604(r), 22-3717(v) (2015) (requiring

necessary to discuss its use for sex offenders to extend the application of GPS monitoring from sex offenders to domestic violence offenders.[63] Part II.C.1 discusses the amount of discretion courts have when imposing GPS monitoring on sex offenders and for what time period.[64] Part II.C.2

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sex offenders to be electronically monitored); LA. REV. STAT. ANN. § 15:560.4(A) (2016) (determining which sex offenders must be GPS monitored); MD. CODE ANN., CRIM. PROC. § 11-723(d)(3)(i) (2015) (developing a hybrid of both mandatory and discretionary aspects of determining which sex offenders will be subjected to GPS monitoring); MASS. GEN. LAWS ch. 265, § 47 (2016) (imposing GPS monitoring on sex offenders); MICH. COMP. LAWS § 750.520n(1) (2016) (allowing discretion in determining if a sex offender is electronically monitored); MISS. CODE ANN. § 99-19-84 (2015) (permitting courts to determine whether a sex offender will wear a GPS tracking device); MO. REV. STAT. § 217.735(4) (2016) (determining which sex offenders must wear a GPS tracking device); MONT. CODE ANN. § 46-18-206 (2015) (imposing GPS monitoring on sex offenders); NEB. REV. STAT. § 83-174.03(4)(g) (2015) (permitting courts to determine whether a sex offender will wear a GPS tracking device); NEV. REV. STAT. § 176A.410(2)(b) (2016) (allowing courts to assess whether a sex offender will wear a GPS tracking device); N.J. STAT. ANN. § 2C:43-6.4(a) (2016) (stating a list of criteria courts look to when deciding if a sex offender will be GPS monitored); N.M. STAT. ANN. § 31-21-10.1(E) (2016) (mandating that every sex offender on parole must wear a GPS tracking device); N.Y. PENAL LAW § 65.10(4) (2016) (permitting the courts to engage in an assessment to determine whether a sex offender will wear a GPS tracking device); N.C. GEN. STAT. § 14-208.40A(c) (2015) (allowing a court to look at several factors to determine if a sex offender will wear a GPS tracking device); N.D. CENT. CODE § 12.1-32-07(3)(f) (2015) (granting courts the option of imposing GPS tracking); OHIO REV. CODE ANN. § 2929.13(L) (2016) (permitting courts to choose GPS tracking); 42 PA. CONS. STAT. § 9799.30 (2015) (offering GPS monitoring as an option for courts); R.I. GEN. LAWS § 11-37-8.2-1(b) (2016) (stipulating that sex offenders must be subjected to GPS monitoring); S.C. CODE ANN. § 23-3-540(c) (2015) (requiring GPS monitoring for sex offenders); S.D. CODIFIED LAWS § 23A-27-12.1 (2016) (authorizing courts to determine whether GPS monitoring is appropriate); TENN. CODE ANN. § 40-39-303(a) (2016) (permitting courts to determine whether a sex offender should be electronically monitored); TEX. GOV'T CODE ANN. § 508.221 (2016) (enabling courts to choose whether GPS monitoring is the appropriate supervision technique); UTAH CODE § 77-18-1(8)(a)(vi) (2015) (sanctioning the courts' discretion in choosing the appropriate type of supervision); VA. CODE ANN. § 19.2-303 (2016) (letting courts determine if a sex offender will be electronically monitored); WASH. REV. CODE § 9.94A.704(5)(b) (2015) (granting courts discretion to decide if a sex offender will wear a GPS tracking device); W. VA. CODE § 62-11D-3(a) (2016) (requiring that sex offenders must wear a GPS tracking device); WIS. STAT. § 301.48(2)(a)(8) (2015) (creating a mix of both required and discretionary impositions of GPS monitoring); WYO. STAT. ANN. § 7-13-1102(b)(i) (2015) (allowing courts to decide the appropriate supervision technique).

63 *See* Kucharson, *supra* note 49, at 641 (discussing the time frame associated with the introduction of GPS monitoring). GPS was originally utilized by the military for the Navy and Air Force to guide missiles during combat. *Id*. The military extended the use of GPS to the public in 1983, but the military largely constrained the public's use of the system. *Id*. However, because of the dependency upon accurate GPS information, the increased use by the public, and the use of GPS in its first large scale application in the military, Congress expanded its use so that the public could enjoy GPS to the fullest extent. *Id*. at 641–42.

64 *See infra* Part II.C.1 (examining the sex offender statutes that authorize courts to impose GPS monitoring on the offender and for what time period).

highlights the costs and other important characteristics in current sex offender GPS monitoring statutes.[65]

1. The Amount of Discretion Used to Determine Whether to Impose GPS Monitoring and for What Time Period

The decision to impose GPS monitoring for sex offenders varies based upon the level of discretion given to the court.[66] The statutes provide three choices: (1) the statute does not allow discretion because it mandates who is required to wear a GPS device; (2) the statute gives discretion to either the court or parole board to decide; or (3) the statute contains a mixture of both.[67]

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[65] *See infra* Part II.C.2 (elaborating on the costs of GPS monitoring of sex offenders, as well as exclusionary zones, assessments, and penalties for damage or removal of the device).

[66] *See infra* Part II.C.1 (discussing how the court decides if GPS monitoring is appropriate for a sex offender). The level of discretion given to the criminal justice system in general is contested because of the belief that courts are dealing with people's lives when making their subjective decisions, and that judges use their discretion to soften the punishments given to offenders. James Vorenberg, *Narrowing the Discretion of Criminal Justice Officials*, 1976 DUKE L. J. 651, 652 (1976). Moreover, discretion allows judges to execute policies that are not reflected in the law, but instead are viewed as norms in society. *See* Daniel P. Kessler & Anne Morrison Piehl, *The Role of Discretion in the Criminal Justice System* 3 NAT'L BUREAU OF ECON. RES., WORKING PAPER NO. 6261, http://www.nber.org/papers/w6261.pdf [https://perma.cc/E3SS-NJ39] (analyzing the negative effects of discretion in the criminal justice system). The use of discretion can allow judges to ignore the law and impose punishments that are based on characteristics of the offender or crime that are totally irrelevant to the problem at hand. *Id*. In Massachusetts, a judge declined to use her discretion to impose a GPS device onto a sex offender. Massachusetts v. Guzman, 14 N.E.3d 946, 949–50 (Mass. 2014).

[67] *See, e.g.*, ALA. CODE § 15-20A-20(b)–(c) (2016) (allowing either mandatory or discretionary imposition of GPS on sex offenders); ARIZ. REV. STAT. ANN. § 13-902(G) (2016) (mandating that sex offenders be monitored with GPS); IOWA CODE § 692A.124(1) (2016) (indicating that sex offenders may be monitored by GPS). There are eighteen state statutes with mandatory imposition of GPS monitoring for sex offenders. *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-902(G) (2016) (requiring sex offenders to be subjected to GPS monitoring); ARK. CODE ANN. § 12-12-923(a)(1) (2016) (indicating that sex offenders must be GPS monitored); MICH. COMP. LAWS § 750.520n(1) (2016) (compelling the use of GPS monitoring for sex offenders). There are twenty state statutes that have discretionary imposition of GPS monitoring for sex offenders. *See, e.g.*, IOWA CODE § 692A.124(1) (2016) (allowing the imposition of GPS monitoring for sex offenders); N.C. GEN. STAT. § 14-208.40A(c) (2015) (permitting the use of GPS monitoring of sex offenders); OHIO REV. CODE ANN. § 2929.13(L) (2016) (indicating that the court has the discretion to impose GPS monitoring on sex offenders). There are five state statutes that have a hybrid of both mandatory and discretionary imposition of GPS monitoring for sex offenders. *See, e.g.*, ALA. CODE § 15-20A-20(b)–(c) (2016) (establishing a mix of both mandatory and discretionary imposition of GPS monitoring of sex offenders); MD. CODE ANN., CRIM. PROC. § 11-723(d)(3) (2015) (indicating GPS monitoring of sex offenders can be either mandatory or discretionary); and WIS. STAT. §§ 301.48(2)(a)(8), 301.48(2g) (2015) (combining discretionary and mandatory imposition of GPS monitoring of sex offenders).

Arizona's statute, an example of mandatory imposition of GPS monitoring, states if a sex offender meets certain criteria, such as committing a dangerous crime against children, the sex offender must be subjected to GPS monitoring.[68] On the other hand, North Carolina's statute requires the court to address a list of factors besides the usual determinative factor—the offense—in making its decision to require GPS monitoring.[69] Alternatively, Alabama's statute provides a hybrid of both mandatory and discretionary imposition of GPS monitoring—requiring GPS if the sex offender is a "sexually violent predator" and permitting GPS if the sex offender is charged or convicted of a sex offense.[70]

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[68] *See* ARIZ. REV. STAT. ANN. § 13-902(G) (2016) (indicating that GPS monitoring is required). The Arizona statute states:

> If a person is convicted . . . of a dangerous crime against children . . . [and] a term of probation is imposed, the person is required to register . . . and the person is classified as a level three offender . . . the court shall require global position system or electronic monitoring for the duration of the term of probation.

Id.

[69] *See* N.C. GEN. STAT. § 14-208.40A(c) (2015) (specifying the court's approach to imposing GPS monitoring). The North Carolina statute states: "If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, has committed an aggravated offense . . . the court shall order the offender to enroll in a satellite-based monitoring program for life." *Id*. Therefore, North Carolina courts consider the following factors: if the offender is a recidivist, whether the offender is a "sexually violent predator," if the offender has committed an aggravating offense, or if the offender was convicted of statutory rape or sexual assault of a child. *Id*. The court has discretion in determining whether the offender is classified as a sexually violent predator. § 14-208.20. An offender may be considered a sexually violent predator if the offender has committed a sexually violent offense. *Id.* If the district attorney wishes to classify the offender as such, a notice must be filed and after appropriate investigation, the court decides upon the findings if the offender is a sexually violent predator. *Id*. An aggravated offense is a criminal offense that includes a sexual act involving oral, anal, or vaginal penetration through use of force with a victim of any age, or the same sexual acts with a victim younger than twelve years old. § 14-208.6(1a). The offender will be required to be monitored for life. § 14-208.40A(c). The usual factor in imposing GPS monitoring is the classification of the offense. *See* CAL. PENAL CODE § 3004(b) (West 2016) (requiring those convicted of a "registerable sex offense" or other offenses that required the offender to go to prison to be GPS monitored for life). For example, other offenses that may require a sex offender in California to be subjected to GPS monitoring for life include, but is not limited to, murder, kidnapping with intent to rape, or sexual intercourse with a child under ten years old. *Id*. This sort of thinking—taking into consideration other factors aside from the offense—is relied upon when the criminal justice system is sentencing criminals. *See The Thinking Advocate's List of Mitigating Factors*, SENTENCING PROJECT, http://sentencingproject.org/doc/publications/listofmitigating factors.pdf [https://perma.cc/NGC6-JKA5] [hereinafter *Mitigating Factors*] (indicating that while mitigating factors play a role in the sentence, personal characteristics of the defendant and the crime are also examined).

[70] *See* ALA. CODE § 15-20A-20(b)–(c) (2016) (discussing the offenders that may or are required to wear a GPS tracking device). The discretionary portion of the statute states, "[t]he Board of Pardons and Paroles or a court may require, as a condition of release on

Following the imposition of GPS monitoring on sex offenders, the statutes address the length of monitoring, which collectively fall into three main categories: (1) for life; (2) for the length of probation; or (3) for a specified period of time.[71] Some states automatically require lifetime monitoring if a sex offender commits a certain crime, such as rape, murder, or sodomy.[72] Instead of imposing GPS monitoring for life, some states require the monitoring to be for the length of probation.[73] Probation serves as a time to not only protect the public from the sex offender, but also to rehabilitate the offender.[74] The use of GPS monitoring allows the

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parole, probation . . . , that any person charged or convicted of a sex offense be subject to electronic monitoring . . . ." *Id*. The mandatory imposition of GPS monitoring as found in the statute states, "[a]ny person designated a sexually violent predator . . . upon release from incarceration, shall be subject to electronic monitoring . . . for a period of no less than 10 years from the date of the sexually violent predators release." § 15-20A-20(c). The statute allows the court or parole board to choose if the sex offender must be subjected to GPS monitoring if the offender is not a sexually violent predator. § 15-20A-20(b). If the offender is classified as a sexually violent predator, the sex offender must be monitored with GPS tracking. § 15-20A-20(c).

71 *See, e.g.*, ALA. CODE § 15-20A-20(c) (2016) (expressing that the GPS monitoring is for a period of ten years); GA. CODE ANN. § 42-1-14(e) (2015) (stating that the offender must be monitored for life); IDAHO CODE ANN. § 18-8308(3) (2015) (providing that the monitoring is for the length of probation). There are thirteen state statutes that require the sex offender be subjected to GPS monitoring for life. *See, e.g.*, GA. CODE ANN. § 42-1-14(e) (2015) (requiring sex offenders to be GPS monitored for life); MICH. COMP. LAWS § 750.520n(1) (2016) (mandating GPS monitoring for the life of the sex offender); N.C. GEN. STAT. § 14-208.40A(c) (2015) (declaring that the sex offender wear the GPS for life if the offender falls within the mandatory requirements of the statute). There are twenty-eight state statutes that require the offender to be subjected to GPS monitoring for the length of probation. *See, e.g.*, IDAHO CODE ANN. § 18-8308(3) (2015) (indicating that the monitoring of the sex offender is for the length of probation); IND. CODE § 11-13-3-4(j) (2016) (stating the sex offender is monitored throughout probation); IOWA CODE § 692A.124(1) (2016) (mentioning the time period of GPS monitoring for the sex offender is probation). There are four state statutes that require the sex offender to be subjected to GPS monitoring for a specified number of years. *See, e.g.*, ALA. CODE § 15-20A-20(c) (2016) (indicating the length of monitoring for the sex offender is ten years); ARK. CODE ANN. § 12-12-923(a)(1) (2016) (providing that the period of monitoring of the sex offender can be no less than ten years); N.C. GEN. STAT. § 14-208.40A(e) (2015) (stating that the court determines the length if it is within the court's discretion).

72 *See* CAL. PENAL CODE § 3004(b) (West 2016) (mentioning offenders must wear a GPS monitoring device for life). "Every inmate who has been convicted for any felony violation of a 'registerable sex offense' . . . shall be monitored by a global positioning system for life." *Id*.

73 *See, e.g.*, IDAHO CODE ANN. § 18-8308(3) (2015) (indicating the sex offender is monitored during probation); IND. CODE § 11-13-3-4(j) (2016) (providing that the sex offender is monitored until probation ends); IOWA CODE § 692A.124(1) (2016) (mentioning GPS monitoring is used throughout probation).

74 *See* John Worrall et al., *Does Probation Work? An Analysis of the Relationship Between Caseloads and Crime Rates in California Counties*, CAL. INST. FOR CTY. GOV'T 4 (Sept. 2001), http://www.caoac.org/bulletins/Does_Probation_Work_CICG_Brief_Sept_2001.pdf [https://perma.cc/9X9F-NZ7M] (discussing the importance of probation). Probation

sex offender's movements to be tracked at all times instead of just at probationary meetings.[75] The chances of a sex offender re-offending during probation is likely lower given the heightened level of supervision accompanying GPS monitoring.[76] On the other hand, some states set a definite amount of time for the sex offender to wear a GPS tracking device, which may help states cater to recidivism rates.[77]

2. Costs, Exclusionary Zones, Assessments, and Penalties Associated with GPS Monitoring

Aside from providing who must be monitored for a certain time period with GPS, sex offender statutes generally place the costs of GPS monitoring on the sex offender.[78] The offender must pay all or part of the

officers are essential to the process of rehabilitating offenders and protecting the public. *Id*. Probation officers monitor the offender's activities and help offenders address specific issues that may lead to recidivism, such as lack of professional skills, an unstable living situation, or substance abuse. *Id*.

75 *See* FLA. STAT. § 948.30(1)(k) (2016) (indicating that probation officers are involved in the sex offender's probationary period in the capacity of conducting searches among other things). A probation officer is authorized to conduct searches of the offender's person, vehicle, or house. *Id*.

76 *See* Worrall et al., *supra* note 74, at 13 (hypothesizing that as supervision decreases the opportunity to re-offend increases). Although a direct relationship has not been proven, the two factors are positively correlated. *Id*. With lesser levels of supervision, the opportunities for an offender to re-offend are higher. *Id*. Prior research indicates probation officers with smaller caseloads, meaning fewer parolees to supervise, witness the levels of recidivism decrease. *Id*. at 12.

77 *See, e.g.*, ALA. CODE § 15-20A-20(c) (2016) (indicating the sex offender is monitored for ten years); ARK. CODE ANN. § 12-12-923(a)(1) (2016) (providing a minimum of ten years for monitoring of the sex offender); N.C. GEN. STAT. § 14-208.40A(e) (2015) (stating the court can have discretion to impose GPS monitoring). Arkansas requires sex offenders to wear a GPS tracking device for no less than ten years following release. *See* ARK. CODE ANN. § 12-12-923(a)(1) (2016) (indicating that sex offenders must be monitored for no less than ten years). "Upon release from incarceration, a sex offender determined to be a sexually dangerous person whose crime was committed after April 7, 2006, is subject to electronic monitoring for a period of no less than ten (10) years from the date of the sex offender's release." *Id*. By requiring a strict time limit, Arkansas may have been trying to cater to recidivism rates by preventing the offender from being unsupervised during a time period that recidivism is especially high. Patrick A. Langan et al., *Recidivism of Sex Offenders Released from Prison in 1994*, BUREAU OF JUST. STAT. 1 (Nov. 2003), http://www.bjs.gov/content/pub/pdf/rsorp94.pdf [https://perma.cc/7W6S-FU3Y]. The study was designed to identify recidivism rates for a group of 9,691 sex offenders that were released from prison at the same time. *Id*. Of the total sex offenders released, 517, or 5.3%, were arrested within three years after release. *Id*. About forty percent of the sex offenses took place within the first twelve months of release. *Id*.

78 *See, e.g.*, ALA. CODE § 15-20A-20(e) (2016) (requiring that the offender pay the costs); NEV. REV. STAT. § 176A.410(2)(c) (2016) (mandating that the offender pay for the GPS device); R.I. GEN. LAWS § 11-37-8.2.1(c) (2016) (ordering the offender to pay expenses associated with the monitoring). Assuming that the state already has a GPS monitoring system in place, the

costs, unless the offender is indigent.[79] To determine if a sex offender is indigent, Kansas examines the amount of financial resources the offender has in addition to the burden the payments may impose.[80] Moreover, several state statutes require the sex offender pay a specific dollar amount every week or every year.[81] Regardless of the method of payment for the monitoring device, the existing statutes decidedly place the cost of the devices and related costs onto the offender.[82]

In addition to the aforementioned characteristics of GPS statutes, some state sex offender statutes discuss the punishments associated with the removal or damage of the GPS tracking device.[83] To be monitored, the sex offender must wear both the ankle transmitter and the portable tracking unit that receives GPS signals from the orbiting satellites at all times.[84] An offender may believe removing the portable unit or the ankle transmitter will prevent further monitoring, but law enforcement is alerted if the offender removes either device.[85] Typically the punishment

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costs associated with monitoring domestic violence offenders will be lower because start-up costs are not required. Jaime Kay Dahlstedt, *Notification and Risk Management for Victims of Domestic Violence*, 28 WIS. J.L. GENDER & SOC'Y 1, 26 (2013).

79 *See, e.g.*, ALA. CODE § 15-20A-20(e) (2016) (placing the costs on the offender unless the offender is unable to pay); NEV. REV. STAT. § 176A.410(2)(c) (2016) (compelling the offender to pay the costs of the device); R.I. GEN. LAWS § 11-37-8.2.1(c) (2016) (instructing the offender to pay the costs and authorizing the court to use all possible resources to receive payment). The average costs associated with GPS monitoring is around $10 per day. Dahlstedt, *supra* note 78, at 27.

80 *See* KAN. STAT. ANN. § 22-3717(v) (2015) (discussing what a court looks at when determining if the offender is indigent). The court orders the offender to pay "the state for all or part of the cost of such monitoring. In determining the amount and method of payment of such sum, the board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose." *Id*.

81 *See, e.g.*, ALA. CODE § 15-20A-20(e) (2016) (setting a limit at $15 per day); COLO. REV. STAT. § 18-1.3-204(2)(a)(V) (2015) (limiting the payment to $50 per month); N.D. CENT. CODE § 12.1-32-07(2) (2015) (requiring no less than $55 per month, unless the payment causes undue hardship).

82 *See, e.g.*, ALA. CODE § 15-20A-20(e) (2016) (requiring the offender pay the expenses associated with the monitoring); NEV. REV. STAT. § 176A.410(2)(c) (2016) (placing the burden of paying the costs of the device on the offender). However, as offenders may not have the appropriate resources to pay for the GPS device, some jurisdictions allow offenders to file for a fee deferral. Dahlstedt, *supra* note 78, at 27.

83 *See, e.g.*, ALA. CODE § 15-20A-20(g) (2016) (indicating that damaging the device will result in a Class C felony); S.C. CODE ANN. § 23-3-540(L) (2015) (providing the punishment for tampering with the GPS device).

84 *See* Kucharson, *supra* note 49, at 643 (explaining the parts involved in GPS monitoring). These two components, the ankle transmitter and the portable tracking unit, are necessary to accurately track the offender's movements. *Id*.

85 *See id*. (describing what happens when an offender removes the device). In order for the monitoring to work, the portable tracking unit must receive signals from the ankle transmitter, and if it does not receive a signal, the monitoring body is alerted. *Id*. The offender's movements are tracked twenty-four hours per day; therefore, authorities can

is a felony for damaging or removing the device without the requisite authorization.[86]

Another condition of GPS monitoring found in various state sex offender statutes are exclusionary zones.[87] An exclusionary zone is an area the offender knows is a prohibited area and is not allowed to enter without consequences.[88] Massachusetts's statute indicates that exclusionary zones for a sex offender include anywhere near the victim's school, job, or home.[89] If an offender enters a zone he is not supposed to, a signal alerts law enforcement, and the sex offender may be arrested.[90]

Moreover, several states accounted for the need to reassess the level of monitoring of sex offenders by allowing the court to reevaluate the conditions of the offender's supervision.[91] For example, Wisconsin permits an assessment aimed at providing the appropriate level of monitoring based upon a standard risk assessment instrument.[92] When

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easily be dispatched to the offender's location in the event the offender enters an exclusionary zone. *Id*.

86 *See, e.g.*, ALA. CODE § 15-20A-20(g) (2016) (stating the punishment is a Class C felony); NEV. REV. STAT. § 176A.410(4) (2016) (stating the punishment for removal is a gross misdemeanor); S.C. CODE ANN. § 23-3-540(L) (2015) (declaring that destruction or removal is a felony). A person who may have authority to remove the device is one that is repairing or performing maintenance on the device. *Id*.

87 *See, e.g.*, MASS. GEN. LAWS ch. 265, § 47 (2016) (prohibiting offenders from entering certain areas); MONT. CODE ANN. § 46-23-1010(1)(b) (2015) (declaring that the offender may not enter the enumerated proscribed areas).

88 *See generally* MASS. GEN. LAWS ch. 265, § 47 (2016) (stating that offenders may not enter exclusion zones). "The commissioner of probation, in addition to any other conditions, shall establish defined geographic exclusion zones including, but not limited to, the areas in and around the victim's residence, place of employment and school and other areas defined to minimize the probationer's contact with children, if applicable." *Id*.

89 *See id*. (indicating the areas that the offender is not allowed near). If the offender enters any of those areas, the location is transmitted to the police department, and upon a showing of probable cause that the offender has violated his probation, the offender may be arrested. *Id*.

90 *See, e.g.*, GA. CODE ANN. § 42-1-14(e)(2) (2015) (stating that law enforcement will be notified if the offender is in an area that is off limits); MONT. CODE ANN. § 46-23-1010(1)(b) (2015) (indicating that the offender may have prescriptive location requirements); WIS. STAT. §§ 301.48(3)(a)(3), 301.48(3)(c) (2015) (explaining that the department will create individualized exclusion zones). Creating an individualized exclusion zone seems to fit well with domestic violence given the particularized focus of domestic violence offenders on their victims.

91 *See, e.g.*, NEB. REV. STAT. § 83-174.03(3) (2015) (allowing a risk assessment to determine what level of monitoring best protects the public from the risk of recidivism); N.D. CENT. CODE § 12.1-32-07(6) (2015) (authorizing the court, with good cause and notice to the probationer, to enlarge or modify terms of probation); W. VA. CODE § 62-11D-3(b) (2016) (permitting an assessment to determine the level of supervision needed).

92 *See* WIS. STAT. § 301.48(2g) (2015) (mentioning a risk assessment is used to determine if GPS tracking is appropriate). Wisconsin's statute does not define what factors the court examines during the risk assessment. *Id.*

conducting a risk assessment for a sex offender monitored by GPS, Nebraska courts examine what level of supervision will protect the public from the offender committing another crime of similar nature.[93] These risk assessments are aimed at finding the appropriate level of supervision, even if the supervision does not require GPS monitoring and involves either a lesser or greater degree of monitoring.[94]

D. GPS Monitoring of Domestic Violence Offenders

Twenty-four states have followed the lead of sex offender statutes in the use of GPS monitoring by implementing GPS statutes for domestic violence offenders.[95] However, there are still twenty-six states that do not have GPS monitoring statutes for domestic violence offenders.[96] The language and elements found within the existing domestic violence statutes will serve as a guide as to what will be included in the proposed statute for GPS monitoring of domestic violence offenders.[97] Part II.D.1

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[93] *See* NEB. REV. STAT. § 83-174.03(3) (2015) (discussing what the court looks at when determining what level of supervision the offender needs). The conditions of supervision may include restrictions on employment, drug and alcohol testing, mandatory reporting to the supervision officer, GPS monitoring, restrictions on residences, and submission to medical or psychological treatment. § 83-174.03(4).

[94] *See* W. VA. CODE § 62-11D-3(b) (2016) (indicating that a risk assessment may result in a lesser or greater degree of monitoring). A risk assessment of the offender is intended to reach the appropriate amount of supervision that is required to keep the offender from reoffending. *Id*. The risk assessment must be done within thirty days after the offender begins probation or supervised release. § 62-11D-3(d). If an offender is required to be monitored with electronic monitoring, the statute requires that the instrument used to supervise the offender cannot be any less effective than a curfew and voice verification. *Id*.

[95] *See Helping Victims with Safety. Helping States with Implementation*, CYNTHIA L. BISCHOF MEM'L FOUND. http://www.cindysmemorial.org/ [https:/perma.cc/YA72-3UQC] [hereinafter *Helping Victims*] (providing a map of states that have a GPS statute for domestic violence offenders). The states that statutorily authorize the use of GPS devices for tracking domestic violence offenders are: Alaska, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, North Dakota, Oklahoma, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. *Id*. The number of states that have enacted a GPS monitoring statute for domestic violence offenders, as discussed throughout this Note and as represented in this list, was up to date as of October 2016. *Id.*

[96] *See id*. (indicating the states that allow domestic violence offenders to be monitored using GPS). The states that currently do not have a statute that allows GPS tracking of domestic violence offenders are: Alabama, Arizona, Delaware, Georgia, Hawaii, Idaho, Iowa, Kansas, Maine, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming. *Id*.

[97] *See infra* Part II.D (describing various elements of current domestic violence statutes that allow domestic violence offenders to be subjected to GPS monitoring); *see also infra* Part IV (providing the statute that every state should adopt for the GPS monitoring of domestic violence offenders). This model statute incorporates elements of several of the GPS statutes

discusses current GPS monitoring statutes for domestic violence offenders regarding the level of discretion courts have when imposing GPS monitoring and for what time period.[98] Then, Part II.D.2 examines other important aspects of domestic violence statutes, including the costs of the monitoring, exclusionary zones, and other special conditions.[99]

1. The Amount of Discretion Used to Determine Whether to Impose GPS Monitoring and for What Time Period

The existing state statutes authorizing GPS monitoring of domestic violence offenders grant courts the discretion to determine whether the offender must wear the device, which differs from the options available in sex offender statutes.[100] For example, Kentucky's statute indicates that to subject a domestic violence offender to GPS monitoring, the court must: find the offender committed a substantial violation of a previous domestic violence order; know the offender's criminal and protective order history; and determine that the use of GPS monitoring will increase the victim's safety.[101] Therefore, in deciding whether to require GPS monitoring of domestic violence offenders, states give wide discretion to the courts.[102]

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for sex offenders, as well as existing GPS statutes for domestic violence offenders. *Infra* Part IV.

98 *See infra* Part II.D.1 (examining the statutes that exist for domestic violence offenders who are being subjected to GPS monitoring regarding the amount of discretion and the time period of monitoring).

99 *See infra* Part II.D.2 (discussing how current domestic violence GPS monitoring statutes address important aspects, such as cost and exclusionary zones).

100 *See, e.g.*, KY. REV. STAT. ANN. § 403.761(1)(a)–(c) (2015) (permitting the use of GPS monitoring for domestic violence offenders); OKLA. STAT. tit. 22, § 60.17 (2015) (allowing the court to decide if the offender will be monitored with GPS); WASH. REV. CODE § 26.50.060(3) (2015) (providing the option to use GPS monitoring); *supra* Part II.C.1 (analyzing the use of discretion in deciding if a sex offender must be monitored by a GPS device). Imposing mandatory GPS monitoring for a domestic violence offender may work against the criminal justice system because a severe and perhaps arbitrary punishment may be imposed, which the situation does not require. Evan Bernick & Paul Larkin, *Reconsidering Mandatory Minimum Sentences: The Arguments for and against Potential Reforms*, HERITAGE FOUND., 3 http://thf_media.s3.amazonaws.com/2014/pdf/LM114.pdf [https://perma.cc/RW2K-7FYQ]. Although this article discusses the use of mandatory sentencing, it is useful to examine the arguments for imposing something on the offender as a mandatory requirement. *Id*. at 1.

101 *See* KY. REV. STAT. ANN. § 403.761(1)(a)–(c) (2015) (listing what is required for a court to impose GPS monitoring). "Substantial violation" is defined as "criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection." § 403.720(7).

102 *See, e.g.*, ARK. CODE ANN. § 9-15-217(a)–(b) (2016) (allowing the use of GPS monitoring); KY. REV. STAT. ANN. § 403.761(1)(a)–(c) (2015) (indicating that GPS monitoring is an option for punishment); WASH. REV. CODE § 26.50.060(3) (2015) (permitting offenders to be monitored with GPS).

Unlike sex offender statutes, the statutes that exist for domestic violence do not allow GPS monitoring to continue for life.[103] Instead, courts generally require the offender to wear the device for the length of the domestic violence order or for a specified period of time.[104] To account for the need to change the length of monitoring, Washington incorporated the ability to extend the period of GPS monitoring.[105] The court may extend GPS monitoring for a specific period of time if the court finds the offender will likely resume acts of domestic violence once the order expires.[106] In contrast to other domestic violence statutes, Arkansas's statute declares domestic violence offenders cannot wear the GPS tracking device for longer than a year or for less than four months.[107] Different still, Oklahoma allows courts to determine the length of the GPS monitoring.[108] Therefore, the duration of GPS monitoring of domestic violence offenders varies by state.[109]

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[103] *See, e.g.*, GA. CODE ANN. § 42-1-14(e) (2015) (stating that the offender must be monitored for life); MICH. COMP. LAWS § 750.520n(1) (2016) (mandating GPS monitoring for the life of the sex offender); N.C. GEN. STAT. § 14-208.40A(c) (2015) (declaring that the sex offender wear the GPS for life if the offender falls within the mandatory requirements of the statute).

[104] *See, e.g.*, ARK. CODE ANN. § 9-15-217(b) (2016) (stating an offender must wear the GPS tracking device for no less than four months and no more than one year); CAL. PENAL CODE § 136.2(a)(1)(G)(iv) (West 2016) (asserting that the GPS monitoring cannot be longer than one year from the date the order was issued); WASH. REV. CODE § 26.50.060(3) (2015) (stating that the GPS monitoring is for the length of the domestic violence order, but allowing an extension for a fixed period of time if conditions are met).

[105] *See* WASH. REV. CODE § 26.50.060(3) (2015) (indicating that the monitoring may be extended). The court's order may be extended upon a petition that states the reasons for the requested renewal by the victim. *Id*. The court must then hold a hearing no later than fourteen days after the petition is filed. *Id*.

[106] *See id*. (specifying what the court must find in order for the court to extend the monitoring). "The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires." *Id*.

[107] *See* ARK. CODE ANN. § 9-15-217(b) (2016) (specifying the time limit for the GPS monitoring). A violation of an order of protection is required before the offender may be monitored by a GPS device. *Id*.

[108] *See* OKLA. STAT. tit. 22, § 60.17 (2015) (discussing the court's discretion in determining the length of GPS monitoring). "In conjunction with any protective order or restraining order authorized by this section, the court may order the defendant to use an active, real-time, twenty-four-hour Global Positioning System (GPS) monitoring device for such term as the court deems appropriate." *Id*. Oklahoma's statute does not provide any factors for guiding the court in making its decision. *Id.*

[109] *See, e.g.*, CAL. PENAL CODE § 136.2(a)(1)(G)(iv) (West 2016) (providing that the GPS monitoring cannot be longer than one year from the date the order was issued); OKLA. STAT. tit. 22, § 60.17 (2015) (allowing the use of GPS monitoring for a period of time that the court deems appropriate); WASH. REV. CODE § 26.50.060(3) (2015) (indicating that the court may extend the protective order).

2. Costs, Exclusionary Zones, and Other Special Conditions Associated with GPS Monitoring

In addition to identifying who must be monitored by GPS for a certain time period, similar to sex offender GPS statutes, most domestic violence statutes place the costs of the monitoring on the offender.[110] A very important distinction available in domestic violence statutes is the ability of courts to allow other interested parties, such as the victim, to pay for the GPS monitoring.[111] In the event the domestic violence offender cannot pay for the costs associated with the monitoring, two states allow offenders to perform community service as payment for the device.[112]

Similar to sex offender statutes, many domestic violence statutes include exclusionary zones.[113] Domestic violence offenders are excluded from the victim's job, home, or child's school, but there are several states that consider additional places.[114] In doing so, some statutes allow victims

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110 *See, e.g.*, KY. REV. STAT. ANN. § 403.761(2)(a) (2015) (requiring the offender to pay as much as possible, establishing a sliding scale of payment for indigent offenders, and allowing any person to voluntarily pay); LA. REV. STAT. ANN. § 46:2143(C) (2016) (explaining that the costs of GPS monitoring are to be paid by the offender); OKLA. STAT. tit. 22, § 60.17 (2015) (explaining that the court may require the offender to pay the costs of the monitoring); *supra* Part II.C.2 (discussing the imposition of the costs of the monitoring on the sex offender). The offender has the option to remain in prison instead of being released and subjected to GPS monitoring. MICH. COMP. LAWS § 765.6b(6) (2016). By choosing to remain in prison, the offender will not have to pay for the GPS monitoring. *Id*.

111 *See* IND. CODE § 34-26-5-9(j) (2016) (declaring that a court may allow a victim or any other person to pay for the costs associated with the device); KY. REV. STAT. ANN. § 403.761(2)(a) (2015) (allowing any person to voluntarily pay the costs). Others that are allowed to pay include an organization, agency, or any other person willing to pay. IND. CODE § 34-26-5-9(j) (2016).

112 *See* MICH. COMP. LAWS § 765.6b(6) (2016) (stating that the offender must pay the costs, and in lieu of payment, perform community service); MISS. CODE ANN. §§ 99-5-38(2)(a)–(b), 99-5-38(8) (2015) (requiring the offender to pay for the device, as well as the victim receptor device, and if the court determines an inability to pay or the offender is indigent, the court may allow the defendant to perform community service as payment). By requiring offenders to complete community service, the state can get the offender to provide valuable work to the state. DAVID C. ANDERSON, SENSIBLE JUSTICE: ALTERNATIVES TO PRISON 23 (1998).

113 *See, e.g.*, 730 ILL. COMP. STAT. § 5/5-8A-7 (2016) (requiring that the technology be able to alert law enforcement and the victim if the offender enters a prohibited area); IND. CODE § 34-26-5-9(i)(2) (2016) (allowing courts to prohibit the offender from entering certain areas where the victim can be found); MICH. COMP. LAWS § 765.6b(6) (2016) (allowing the victim to supply a list of places to exclude the offender from, which the court takes into consideration); *supra* Part II.C.2 (discussing the use of exclusionary zones for sex offenders).

114 *See* KY. REV. STAT. ANN. § 403.761(2)(b) (2015) (indicating that an offender is prohibited from being located in certain areas). To prevent a domestic violence offender from entering an exclusionary zone, the order must "[s]tate with specificity the locations or areas where the respondent is prohibited from being located or persons with whom the respondent shall have no contact." *Id*. Massachusetts is one state that considers other places to exclude the domestic violence offender from. MASS. GEN. LAWS ch. 209A, § 7 (2016). The court may

to supply the court with a list of locations the victim wishes to exclude the offender from entering.[115] One state includes a punishment for entering a prohibited area because of the possibility that offenders may enter an exclusionary zone.[116] For example, the GPS monitoring statute for Massachusetts provides if a domestic violence offender enters a prohibited area, the court will revoke the offender's probation, and the offender may be fined, imprisoned, or both.[117]

In addition, various existing domestic violence statutes have special conditions that accompany the use of GPS monitoring that aid in providing extra support or safety to the victims.[118] In general, these statutes allow the victim to be notified if the domestic violence offender is within a proscribed area or if the offender has violated the order.[119] The victim may either be notified by a victim notification device the victim holds, or in some cases, if the offender is close enough to the victim, a loud alarm will sound, thereby giving notice to the victim of the offender's location.[120] Also, some statutes require the victim be given a phone

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"prohibit contact with the victim through the establishment of court defined geographic exclusion zones including, but not limited to, the areas in and around the complainant's residence, place of employment, and the complainant's child's school." *Id*.

115 *See* MICH. COMP. LAWS § 765.6b(6) (2016) (allowing the victim to supply a list of places to exclude the offender from, which the court takes into consideration); MISS. CODE ANN. § 99-5-38(3) (2015) (permitting victims to supply a list of locations to exclude the offender from entering). Such a condition is necessary given the intimate relationship that exists between the offender and the victim. Edna Erez et al., *Electronic Monitoring of Domestic Violence Cases – A Study of Two Bilateral Programs*, 68 FED. PROBATION 15, 16 (2004) [hereinafter *Electronic Monitoring of Domestic Violence Cases*].

116 *See* MASS. GEN. LAWS ch. 209A, § 7 (2016) (stating the punishment for entering a prohibited area). Upon entering an exclusionary zone, the offender's position is relayed to both the police and the complainant. *Id*.

117 *See id*. (describing the punishment for entering an exclusionary zone). The court must find that the offender has entered into an exclusionary zone before any punishment is given. *Id*.

118 *See, e.g.*, ARK. CODE ANN. §§ 9-15-217(c)(1), 9-15-217(c)(3) (2016) (stating that the victim is immediately notified if the offender violates the order and has a loud alarm to warn the victim if the offender is near); 730 ILL. COMP. STAT. § 5/5-8A-7 (2016) (indicating the victim will be notified of any violations); TENN. CODE ANN. § 40-11-150(b)(6) (2016) (stating that a victim must be given an electronic receptor).

119 *See, e.g.*, ARK. CODE ANN. §§ 9-15-217(c)(1), 9-15-217(c)(3) (2016) (allowing a loud alarm to warn the victim if the offender is near); 730 ILL. COMP. STAT. § 5/5-8A-7 (2016) (providing that the victim is notified upon breaches); TENN. CODE ANN. § 40-11-150(b)(6) (2016) (mandating that the victim be given an electronic receptor).

120 *See, e.g.*, IND. CODE § 34-26-5-9(i) (2016) (enabling victim notification capabilities if available); OKLA. STAT. tit. 22, § 60.17 (2015) (permitting the victim to monitor the offender's location by making inquiries to specified locations); TENN. CODE ANN. § 40-11-150(b)(6) (2016) (requiring an electronic receptor be given to the victim).

number to use in emergencies.[121] Finally, other state statutes require the offender to participate in a domestic violence treatment program.[122]

In conclusion, GPS monitoring accurately tracks the movements and precise location of the wearer.[123] This tool has already been used to track sex offenders and domestic violence offenders, but GPS monitoring for domestic violence offenders is far more limited.[124] This Note examines current statutes that authorize the use of GPS monitoring to develop a

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121 *See, e.g.*, MICH. COMP. LAWS § 765.6b(6) (2015) (allowing victim notification and providing a law enforcement number to call if the offender is near); MISS. CODE ANN. § 99-5-38(5) (2015) (mandating that the victim be given information on the use of GPS monitoring and providing the victim with a phone number to contact for immediate assistance).

122 *See* UTAH CODE § 77-36-5(5) (2015) (mentioning that the offender must obtain and satisfactorily complete a domestic violence treatment or therapy program); *see also* MASS. GEN. LAWS ch. 209A, § 7 (2016) (providing that an offender may be required to participate in a batterer's program). However, controversy surrounds the use of domestic violence treatment programs. Cheryl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1527 (1998). Whether to address the clinical intervention with the couple as a whole or just the male is the major dispute about treatment programs. *Id*. With couples therapy, both partners are expected to help reduce the conflict and violence that exists in the relationship, starting with taking responsibility for their respective actions. *Id*. However, the opposing side of this debate argues that the men are solely responsible for their violent behavior; therefore, women do not need to participate in the treatment. *Id*. at 1528. The success rates of individually counseling the men as opposed to couples therapy are largely similar. *Id*. The typical length of domestic violence treatment programs is six months. *Id.* Yet, the length of the program does not determine how effective the program is. Hanna, *supra* note 122, at 1528. For example, one study concluded that two different groups with different lengths, one with twelve sessions and the other with thirty-two sessions, were equally as effective at reducing violent incidents of domestic violence in the follow-up period. *Id.* at 1529. There are different models of domestic violence treatment programs, such as the Duluth, Minnesota model, or the EMERGE model in Boston. *Id*. at 1530. The Duluth, Minnesota model does not use an anger management approach, but instead uses a counseling and educational approach. *Id*. The EMERGE model utilizes self-help as a tool to end violence against women. *Id*. at 1530–31. There is evidence suggesting treatment programs reduce physical violence, but other evidence indicates that no difference exists between those who are arrested and treated and those who are arrested and not treated. *Id*. at 1532–33. However, the data that exists is significantly affected by the lack of a control group to base the evidence on. Hanna, *supra* note 122, at 1533. Because of the absence of such research, domestic violence treatment programs' effectiveness remains unclear. *Id*. Utah's statute defines what the state qualifies as a domestic violence treatment program. UTAH CODE § 62A-2-101(14) (2015).

123 *See supra* Part II.B (explaining how GPS monitoring works). The satellites in orbit emit signals that the receivers catch and subsequently measure the distance between the satellite and the receiver. Scholl, *supra* note 48, at 852.

124 *See supra* Part II.C–D (introducing statutes that allow the use of GPS monitoring of sex offenders and domestic violence offenders). Of the states that currently do not have a GPS statute for domestic violence offenders, nine states are considering such a statute. *Helping Victims*, *supra* note 95.

model statute that provides better protection to domestic violence victims.[125]

III. ANALYSIS

The fact that one in four women will become a victim of severe physical violence in their lifetimes indicates victims are not adequately protected by existing laws; thus, states should require the use of GPS to provide such protection.[126] While there are various states that authorize the use of GPS monitoring for domestic violence offenders, not every state has utilized this technology to help remedy the problem of domestic violence.[127] Therefore, it is imperative that every state utilize GPS technology to protect victims of domestic violence, just as states currently protect the victims of sex offenders.[128] Sex offender GPS monitoring statutes can serve as a framework in passing legislation for domestic violence victims.[129] Part III analyzes the need for the use of GPS devices in the context of domestic violence.[130] Part III.A assesses various aspects of state statutes that authorize the use of GPS devices for sex offenders.[131] Part III.B examines the elements of current state statutes that permit the use of GPS for domestic violence offenders.[132]

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125 *See infra* Parts III–IV (examining current statutes that allow the use of GPS monitoring and presenting a model statute that incorporates provisions from these statutes).

126 *See supra* Part I (discussing the need for additional protection for domestic violence victims); *see also* Gargour, *supra* note 41 (mentioning how domestic violence victims have been turned away and not protected from their abuser); Murphy, *supra* note 23, at 338 (indicating that legislative efforts to protect domestic violence victims have failed); Vagianos, *supra* note 10 (presenting domestic violence statistics that indicate domestic violence is an epidemic). Because there are instances where the victim is not able to be protected by the authorities, many victims are forced to go into hiding. Gargour, *supra* note 41.

127 *See Helping Victims, supra* note 95 (showing the states that have a domestic violence statute). The following states are considering a statute that allows courts to require domestic violence offenders be monitored with GPS: Arizona, Iowa, Maine, New Jersey, New Mexico, New York, North Carolina, Ohio, and Pennsylvania. *Id*.

128 *See, e.g.*, ALA. CODE § 15-20A-20(b)–(d) (2016) (allowing the parole board to determine if a sex offender should wear a GPS tracking device); COLO. REV. STAT. § 18-1.3-204(2)(a)(XIV.5) (2015) (including GPS monitoring in a list of options for punishment of sex offenders); N.D. CENT. CODE § 12.1-32-07(3)(f) (2015) (granting courts the ability to impose GPS tracking). The safety of the victim is considered, even if such a criterion is not explicitly stated in the legislative intent of the statute. Dante, *supra* note 62, at 1194.

129 *See infra* Part III.A (discussing GPS tracking for sex offenders in the context of the extension to domestic violence offenders).

130 *See infra* Part III (examining the use of GPS tracking within the context of domestic violence).

131 *See infra* Part III.A (analyzing different elements of GPS sex offender statutes that could be beneficial to a model GPS domestic violence statute).

132 *See infra* Part III.B (assessing state statutes that currently offer the use of GPS devices for domestic violence offenders).

A. Sex Offender Statutes: Can They Help Establish Domestic Violence GPS Statutes?

Currently, there are twenty-six states that do not statutorily permit courts to order domestic violence offenders to wear GPS tracking devices.[133] Therefore, developing a model statute regarding GPS monitoring for domestic violence offenders is a difficult task given that there are only twenty-four states that have this type of statute.[134] However, there are numerous states that have authorized the use of GPS monitoring for sex offenders.[135] Because the area of GPS monitoring is relatively new and not many states are utilizing the technology, legislators are advised to look at similar laws.[136]

Therefore, this Note will argue for the extension of GPS monitoring from sex offenders to domestic violence offenders by analyzing both existing sex offender and domestic violence offender statutes.[137] Part III.A.1 examines the levels of discretion courts possess for the imposition of GPS tracking for sex offenders and what time period should be required in the context of domestic violence.[138] Then, Part III.A.2 evaluates the costs, penalties, and other restrictions associated with GPS monitoring of sex offenders to establish appropriate parallels for domestic violence.[139]

1. States Should Limit Discretion and Time Limits for Domestic Violence by Examining Certain Factors

The discretion courts are given to determine if a domestic violence offender is monitored by GPS should be restrained and limited by certain

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133 *See Helping Victims*, *supra* note 95 (providing a map that shows the states that have a GPS statute). The states that statutorily authorize the use of GPS devices for tracking domestic violence offenders are: Alaska, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, North Dakota, Oklahoma, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. *Id*.

134 *See id*. (indicating the states that have GPS monitoring statutes for domestic violence offenders).

135 *See, e.g.*, IND. CODE § 11-13-3-4(j) (2016) (creating a mix of both mandatory and discretionary imposition of GPS monitoring); MISS. CODE ANN. § 99-19-84 (2015) (permitting courts to determine whether a sex offender will wear a GPS tracking device); S.C. CODE ANN. § 23-3-540(C) (2015) (requiring GPS monitoring for sex offenders).

136 *See Helping Victims*, *supra* note 95 (mentioning the states that have statutes authorizing courts to require domestic violence offenders to wear GPS devices).

137 *See infra* Part III.A–B (analyzing current statutes that allow GPS monitoring for sex offenders and domestic violence offenders, respectively).

138 *See infra* Part III.A.1 (examining the amount of discretion that may suit domestic violence and for what time period).

139 *See infra* Part III.A.2 (assessing the sex offender statutes' costs and penalty provisions to decide if such provisions would be appropriate for domestic violence).

factors.[140] Exclusively requiring offenders who commit a specific offense to wear a GPS tracking device, like those contained within various sex offender statutes, is not appropriate because of the distinctive nature of domestic violence.[141] Applying a blanket mandate to domestic violence cases may cause the court to equate a minor offense, such as assault and battery, to a major offense, such as murder or rape.[142] In doing so, the court may fail to take into account extenuating circumstances, such as whether this offense is the domestic violence offender's first offense of this nature or whether the offender has shown remorse or rehabilitation.[143] Going to an extreme form of supervision may not be justified in every situation.[144] Therefore, exclusively requiring mandatory imposition of GPS monitoring is not appropriate for domestic violence.[145]

On the other hand, allowing courts to take an unrestrained discretionary approach in deciding whether to impose GPS tracking on the offender may entice judges to substitute what the law says with their

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[140] *See* Vorenberg, *supra* note 66, at 652 (explaining the need to reign in discretion that is given to the criminal justice system). Vorenberg argues that the amount of discretion given to judges must be narrow enough so that the only room available within the discretion is to make intelligent individualized decisions. *Id*.

[141] *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-902(G) (2016) (requiring sex offenders to be subjected to GPS monitoring); ARK. CODE ANN. § 12-12-923(a)(1) (2016) (indicating that sex offenders must be GPS monitored); MICH. COMP. LAWS § 750.520n(1) (2016) (compelling the use of GPS monitoring for sex offenders).

[142] *See generally* Bernick & Larkin, *supra* note 100, at 3 (examining the arguments for and against mandatory minimum sentencing). Imposing a mandatory punishment based solely on the crime committed may lead to unduly harsh punishments, given that no discretion is afforded to the court. *Id*. Because domestic violence is a unique crime in which the parties share an intimate relationship, discretion can allow courts to take the totality of the circumstances into account, instead of applying full sanctions. Vorenberg, *supra* note 66, at 652. There are some instances where discretion is exercised to impose less than full sanctions, but there may be other instances in which the exercise of discretion may lead to wrong decisions, hiding what is truly wrong with the justice system. *Id*.

[143] *See generally* Bernick & Larkin, *supra* note 100, at 3 (indicating the discretion the prosecutor has in asking the court to reduce the sentence based upon the defendant's cooperation). The situation presented in the article—the prosecutor possessing discretion to ask the court to reduce the defendant's sentence based upon cooperation—is similar to the court not taking into account extenuating circumstances with a mandatory requirement. *Id*.

[144] *See* Massachusetts v. Guzman, 14 N.E.3d 946, 949–50 (Mass. 2014) (determining that the trial court erred in not requiring the defendant to wear a GPS tracking device). The trial court judge declined to require the defendant to be monitored with GPS during probation for an offense related to the "offense of dissemination of visual material depicting a child in a state of nudity or sexual conduct." *Id*. The trial judge considered the defendant's criminal record, which did not include any previous sex offenses, and the source of the child pornography was an Internet-based file sharing website. *Id*. at 949.

[145] *See id*. at 949–50 (examining the trial judge's view that the GPS monitoring was not justified based upon the totality of the circumstances).

own views.[146] Thus, allowing a purely discretionary technique to determine if an offender must wear a GPS tracking device is not appropriate in the context of domestic violence.[147] Because of the strong possibility of judges using their own views instead of the law, states should include a list of factors the court must examine when making its decision.[148] Requiring the court to address specific factors that a legislature considers severe enough to require GPS monitoring could be beneficial to states because in doing so the court addresses the bigger picture, which avoids solely addressing the offense committed.[149] The court's use of specific factors in making its decision will increase its accountability and prevent arbitrary decision-making.[150] In addition, explicitly stating who is required to wear the GPS tracking device is helpful because there are no gray areas—those who fall into the category must wear the device and those who do not are not required to do so.[151]

A hybrid of both mandatory and discretionary imposition of GPS monitoring incorporates the best aspects of both methods.[152] By having a mandated category of offenders who must wear a tracking device, the

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146 *See* Kessler & Piehl, *supra* note 66, at 3 (analyzing the effect of courts using discretion). A result of judges using discretion may be disparities based on immutable characteristics, such as race. *Id*. Additionally, the use of discretion may have the effect of completely nullifying laws established by legislatures. *Id*.

147 *See, e.g.*, IOWA CODE § 692A.124(1) (2016) (providing a list of factors to assess in determining whether a sex offender should be subjected to GPS monitoring); N.C. GEN. STAT. § 14-208.40A(c) (2015) (allowing a court to look at several factors in determining if a sex offender will wear a GPS tracking device); OHIO REV. CODE ANN. § 2929.13(L) (2016) (permitting courts to choose GPS tracking).

148 *See* Kessler & Piehl, *supra* note 66, at 3 (examining the use of discretion and its consequences). North Carolina's sex offender statute specifically lists the factors that the court must examine when deciding whether the offender must wear the GPS tracking device. *See* N.C. GEN. STAT. § 14-208.40A(c) (2015) (specifying the court's approach to impose GPS monitoring).

149 *See Mitigating Factors*, *supra* note 69 (discussing how sentencing decisions require examining the whole picture, including mitigating factors). While *Mitigating Factors* does not discuss the imposition of GPS monitoring, the article reveals that solely examining the offense when making an important decision may not always be justified. *Id*.

150 *See* Kessler & Piehl, *supra* note 66, at 3 (describing the chances of judges placing their own views into the punishment instead of using the law).

151 *See* Bernick & Larkin, *supra* note 100, at 4 (stating that mandatory sentences allow the court to tie the punishment to the crime and not to the person). By fixing the punishment to the crime, there is clarity in administration because if an offender commits a specific crime, the offender will be punished accordingly. *Id*.

152 *See, e.g.*, ALA. CODE § 15-20A-20(b)–(c) (2016) (providing the opportunity to mandate that an offender wear GPS or use discretion in imposing GPS monitoring of sex offenders); MD. CODE ANN., CRIM. PROC. § 11-723(d)(3)(i) (2015) (creating a combination of both mandatory and discretionary imposition of GPS monitoring); WIS. STAT. §§ 301.48(2)(a)(8), 301.48(2g) (2015) (including the option to use either discretionary or mandatory imposition of GPS monitoring of sex offenders).

statute ensures clarity in determining whether an offender falls into the category by recognizing that the most violent or worst offenders will be subjected to the monitoring.[153] In addition, allowing the decision-maker to use discretion in determining whether a specific offender is monitored is beneficial because that body has the most knowledge regarding the facts of each particular case.[154] By leaving the decision up to a body that is intimately aware of the specific facts of the case—instead of deferring to the legislature by assuming the legislature knows best concerning which offenders need to be monitored—the court has the ability to decide, and the offenders who truly do need to be monitored will likely be monitored.[155]

For those who must be monitored, the period of time that courts subject the sex offender to GPS monitoring varies by state.[156] Lifetime monitoring may not be appropriate in the domestic violence context, given that domestic violence offenders typically commit offenses against one victim.[157] Sex offenders do not always limit their offenses to one victim; thereby, these offenders require greater supervision, which simply may not be justified for a domestic violence offender with one victim.[158] However, some states automatically require lifetime monitoring if a sex offender commits a certain crime, for example, rape, murder, or sodomy.[159] Therefore, because domestic violence may involve any number of the specific sex offender crimes that require lifetime

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153 *See* CAL. PENAL CODE § 3004(c) (West 2016) (stating that lifetime GPS monitoring is required for those convicted of a "registerable sex offense" or an offense requiring the offender go to prison, such as murder).

154 *See* Bernick & Larkin, *supra* note 100, at 1 (stating that the courts are aware of the different facts of the case and should exercise discretion when deciding punishments).

155 *See id*. (indicating that courts should be given discretion to decide based upon the facts of the case instead of deferring to the legislature). There is ongoing tension regarding whether to allow the legislature to dictate what punishment is warranted for each crime, as opposed to allowing the court to decide based upon the facts of the case and any other extenuating circumstances, as well as the offense. *Id*.

156 *See, e.g.*, ARK. CODE ANN. § 12-12-923(a)(1) (2016) (providing that the period of monitoring of the sex offender can be no less than ten years); GA. CODE ANN. § 42-1-14(c) (2015) (stating that the offender must be monitored for life); IDAHO CODE ANN. § 18-8308(3) (2015) (providing that the offender will be monitored during probation).

157 *See Domestic Violence*, *supra* note 25 (explaining that domestic violence is perpetrated by one intimate partner against another). The ultimate goal of a domestic violence offender is to gain and maintain power and control over the victim, thereby indicating why domestic violence is typically focused on one victim. *Id*.

158 *See* Dante, *supra* note 62, at 1194 (discussing the need to protect victims or potential victims). There is a strong possibility of sex offenders having more than one victim, which is one of the reasons why states have created laws that allow GPS monitoring. *Id*.

159 *See* CAL. PENAL CODE § 3004(b) (West 2016) (mentioning that lifetime monitoring may be required if the offender commits specific crimes, such as kidnapping with intent to rape or sexual intercourse with a child under ten years old).

monitoring, when such a crime is done in the context of domestic violence, lifetime monitoring would be justified.[160]

As opposed to lifetime monitoring, limiting the monitoring to probation may help given that the probation officer is tracking the offender's movements and determining through personal contact whether the offender has been rehabilitated during a time immediately following the crime, and not for the offender's entire life.[161] Different still, establishing a definite amount of time for the offender to wear a GPS tracking device may be useful to help states cater to recidivism rates.[162] Within five years of being released from prison, 71.3% of violent offenders re-offend.[163] With that in mind, states could benefit by requiring domestic violence offenders to wear the GPS tracking device for a specific number of years, taking into consideration the recidivism rates of violent offenders.[164]

2. Costs, Penalties, and Other Restrictions of GPS Monitoring: Should Domestic Violence Statutes Follow the Sex Offender Statutes?

After a court determines an offender requires GPS monitoring, the sex offender statutes place the costs on the offender, which should be the standard for domestic violence statutes.[165] Requiring a domestic violence offender to pay the costs of the GPS device may be unfeasible to the

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160 *See What is Domestic Violence*, *supra* note 24 (examining what domestic violence may entail). Domestic violence includes several different forms of abuse, with the purpose to exercise complete control over the victim. *Id*. Examples of different forms of abuse include control of sexual or reproductive health, stalking, threats of violence, and sexual violence. *Summary Report*, *supra* note 26, at 37.

161 *See* Worrall et al., *supra* note 74, at 4 (mentioning the importance of probation). Probation officers are involved in the daily activities of the offender, which may include daily reporting. *Id*.

162 *See, e.g.*, ALA. CODE § 15-20A-20(c) (2016) (stating that the offender will be monitored for ten years); ARK. CODE ANN. § 12-12-923(a)(1) (2016) (indicating that ten years is the minimum amount of time to be monitored with GPS); Cooper et al., *supra* note 58, at 1 (examining the recidivism rates of violent offenders). The study indicates that of the 404,638 prisoners that were released in 2005, 67.8% were arrested within three years of release and 76.6% were arrested after five years. *Id*.

163 *See id*. at 8 (explaining the recidivism rates associated with domestic violence offenders). Within six months of being released from prison, 20.8% of violent offenders reoffended by raping or committing sexual assault. *Id.*

164 *See id*. at 1 (indicating that offenders are likely to reoffend upon release). Two out of five prisoners released in 2005 were arrested within the five years following release. *Id*.

165 *See, e.g.*, KAN. STAT. ANN. § 22-3717(v) (2015) (requiring sex offenders to pay the costs associated with the device); OHIO REV. CODE ANN. § 2929.13(L) (2016) (mandating that the offender pay the costs, unless indigent); TENN. CODE ANN. § 40-39-303(c) (2016) (indicating that the offender must pay based on ability to do so).

offender.[166] However, the state cannot bear all of the costs, so states should place the costs on the offender to offset the overall cost of supervision.[167] Moreover, paying for the GPS tracking device requires offenders to take personal responsibility for their actions.[168] In addition, various state sex offender statutes include punishment for removing or damaging the tracking device.[169] Because offenders do not want to be continually monitored, some offenders will attempt to remove the GPS device by any means necessary.[170] Therefore, including a punishment for removing or damaging the GPS device is important to deter the offender from removing the device.[171]

Coupled with other characteristics, such as penalties for removal, many statutes allowing GPS monitoring for sex offenders correctly include specific restrictions, such as exclusionary zones.[172] In the context of domestic violence, exclusionary zones are useful because of the intimate relationship between the offender and the victim.[173] By the very nature of their relationship, the offender is likely aware of where the victim is located.[174] If the offender is required to avoid specific areas and will be

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166 *See Economic Abuse*, *supra* note 28 (discussing different situations that constitute economic abuse). Economic abuse may include the abuser demanding the victim give him money. *Id*. Here, the state requiring the offender to pay for the costs of GPS monitoring is effectively controlling the offender's finances, which may be considered economic abuse. *Id*.

167 *See* Erez et al., *supra* note 58, at xi (indicating that a disadvantage of using GPS is the cost on the agencies involved). The costs associated include the monitoring of the offender's position, the employees' workloads, and associated salaries. *Id*.

168 *See* Kucharson, *supra* note 49, at 652 (explaining that the offender is required to pay the costs). When the technology was first invented, only serious offenders were monitored, but equipment costs decreased and the number of those who could be monitored increased. *Id*. at 658.

169 *See, e.g.*, ARK. CODE ANN. § 12-12-923(e)(1) (2016) (stating that sex offenders will be punished for tampering with the device); GA. CODE ANN. § 42-1-14(e)(3) (2015) (providing that an alarm will alert authorities if the offender tampers with or removes the device); IDAHO CODE ANN. § 18-8308(3) (2015) (explaining that the punishment for tampering with the device is a felony).

170 *See* Dante, *supra* note 62, at 1186 (mentioning a limitation of GPS tracking devices). Other notable limitations to GPS tracking technology that were discovered by Indiana when it attempted to create a GPS monitoring sex offender statute include the problems associated with monitoring homeless offenders, issues with signals, the frequency of false alarms, and the problem that the technology does not actually prevent crimes from happening. *Id*.

171 *See id*. (assessing the removability of the GPS tracking device). Because the device is simply an ankle monitor with the receptor, the device can be easily removed. *Id*.

172 *See, e.g.*, ARK. CODE ANN. § 12-12-923(b)(1) (2016) (allowing the use of exclusionary zones for sex offenders); GA. CODE ANN. § 42-1-14(e)(2) (2015) (stating that the offender may not enter prohibited areas); 730 ILL. COMP. STAT. § 5/5-8A-6 (2016) (indicating that the system will know if the offender departs from certain areas).

173 *See Electronic Monitoring of Domestic Violence Cases*, *supra* note 115, at 16 (describing the close relationship between a domestic violence offender and the victim).

174 *See id*. (discussing how the offender is aware of the victim's routines).

punished if he enters the area, the offender will likely stay away from those zones and the victim will be safer.[175] Generally, exclusionary zones should be adopted for domestic violence statutes.[176]

Moreover, the need to reassess the level of supervision is properly incorporated into several states' sex offender statutes.[177] States should include a provision in the domestic violence GPS statute that allows a court to reassess the offender's level of monitoring because it would be beneficial for purposes of rehabilitation.[178] It may be the case that an offender has been rehabilitated after being monitored by GPS for a period of time and no longer needs such stringent supervision; therefore, the allowance of an assessment could seek to help such an offender.[179] Thus, sex offender statutes that authorize the use of GPS monitoring provide several characteristics that may prove to be an asset in the context of domestic violence.[180]

B. Existing Domestic Violence Statutes: Providing Critical Components for a Model Statute

In addition to its use in monitoring sex offenders, GPS has been used to track domestic violence offenders.[181] To establish a model statute, examining existing GPS statutes for domestic violence offenders is imperative.[182] Given the unique nature of domestic violence, in both the relationship between the offender and victim, and the nature of the crime, the effectiveness of how other states have attacked the pervasive problem of domestic violence must be evaluated.[183] Part III.B.1 assesses the existing domestic violence statutes' provisions regarding the level of discretion

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175 *See id*. (indicating that GPS monitoring is designed to address the fact that the offender is aware of the victim's routines and usual locations).

176 *See infra* Part III.B.2 (elaborating about domestic violence exclusionary zones).

177 *See, e.g.*, NEB. REV. STAT. § 83-174.03(3) (2015) (allowing the use of a risk assessment to determine the best level of monitoring that will adequately protect the public from the risk of recidivism); W. VA. CODE § 62-11D-3(b) (2016) (authorizing the use of an assessment to determine the level of supervision needed).

178 *See* Kucharson, *supra* note 49, at 638–39 (stating that GPS monitoring is being used for rehabilitative purposes). It is argued that GPS monitoring is restricting the freedom of offenders, but at a lower cost than prison. *Id*. at 639.

179 *See id*. at 638–39 (mentioning states are considering monitoring offenders with GPS in the hopes of rehabilitation and as an alternative to prison).

180 *See supra* Part III.A.1–4 (dissecting sex offender statutes and their applicability to domestic violence offenders).

181 *See supra* Part II.D (discussing the use of GPS monitoring for domestic violence offenders).

182 *See infra* Part III.B (assessing current statutes that authorize the use of GPS monitoring for domestic violence offenders).

183 *See infra* Part III.B (evaluating existing domestic violence statutes regarding the imposition of GPS technology).

and the time limit of GPS monitoring.[184] Then, Part III.B.2 examines how existing domestic violence statutes address the costs of GPS monitoring and other special restrictions accompanying the use of GPS.[185]

1. The Level of Discretion and Length of GPS Monitoring Domestic Violence Statutes Allow

The domestic violence statutes that allow GPS monitoring of offenders appropriately give the courts discretion to decide whether the offender will be monitored with GPS.[186] A court should be required to examine a list of factors when deciding whether the offender should be monitored by GPS.[187] The court should examine an offender's past conduct because domestic violence usually does not occur just one time throughout a relationship.[188] Examining prior violations and past criminal and protective order history will provide the court with a better understanding of the type of offender with whom it is dealing.[189] These elements establish a pattern of abuse from the offender, even if the abuse is not targeted at one victim, thereby making a stronger case for requiring GPS monitoring of that particular offender.[190] Moreover, the court should consider the victim's safety because the victim is the person who has been

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184 *See infra* Part III.B.1 (examining the level of discretion and time limits of the use of GPS monitoring for domestic violence offenders).

185 *See infra* Part III.B.2 (analyzing both where states place the costs of the GPS monitoring and how states place restrictions on domestic violence offenders).

186 *See, e.g.*, MASS. GEN. LAWS ch. 209A, § 7 (2016) (indicating when a GPS device may be used for a domestic violence offender); VA. CODE ANN. § 19.2-123(A)(4) (2016) (allowing the offender to be monitored with GPS throughout the offender's probation).

187 *See* Kessler & Piehl, *supra* note 66, at 3 (discussing the role that discretion plays in the criminal justice system). Kentucky includes various factors that the court can examine when making the decision of whether to require GPS monitoring. *See* KY. REV. STAT. ANN. § 403.761(1)(a)–(c) (2015) (listing the factors that the court examines to decide if a domestic violence offender must be GPS monitored).

188 *See Domestic Violence*, *supra* note 25 (mentioning that domestic violence is a pattern). Abusers may not always be easily identified in the beginning of the relationship. *Id.* Several of the early abusive behaviors may be able to be explained away or marginalized, such as threats, possessiveness, or mistrust. *Id.* After an abuser engages in this type of behavior, he is likely to apologize and attempt to demonstrate how much he loves the victim. *Id.* Even with the apology and promise to not to do it again, the violence happens again and is often intensified. *Id.*

189 *See What Is Domestic Violence, supra* note 24 (defining the different types of domestic violence offenders). Abuse can be psychological, emotional, sexual, economic, physical, or any combination of those types. *Id.*

190 *See Domestic Violence*, *supra* note 25 (describing domestic violence as a pattern of abuse). A domestic violence abuser wants to obtain control and dominance over the victim through a pattern of controlling and abusive behavior. *Id.*

affected the most by the offender's actions, thus the victim's safety must be the court's number one priority at all times.[191]

In considering the victim's safety, domestic violence offenders are typically required to wear the GPS tracking device for the length of the domestic violence order or a specified period of time.[192] Employing GPS monitoring in conjunction with a domestic violence order allows the GPS to serve as added protection and can make the victim feel safer because GPS monitoring provides more protection than just a piece of paper.[193] For example, one state accounts for an extension of GPS monitoring if the court finds the offender will likely resume acts of domestic violence after the order expires.[194] This statute takes into account the very real possibility that the offender may not be rehabilitated at all following the duration of the domestic violence order and corresponding GPS monitoring.[195] Instead, the statute acknowledges that the domestic violence offender may wish to harm the victim as soon as the offender's supervision lifts.[196]

Conversely, requiring GPS monitoring for a specific period of time may not be adequate for those who are repeat offenders or are seemingly more dangerous offenders because these offenders may require longer monitoring than the statute can provide.[197] Therefore, if the offender

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191 *See Myths and Facts*, *supra* note 22 (discussing the fact that batterers may be violent only to the victim). Domestic violence offenders typically are only violent towards their partners and do not become violent with anyone else in their lives. *Id*.

192 *See, e.g.*, ARK. CODE ANN. § 9-15-217(b) (2016) (providing a strict time limit of no less than four months and no more than a year of GPS monitoring); CAL. PENAL CODE § 136.2(a)(1)(G)(iv) (West 2016) (indicating the longest period of GPS monitoring is one year from the date the order was issued); WASH. REV. CODE § 26.50.060(3) (2015) (stating the offender will be monitored for the length of the domestic violence order).

193 *See* Scholl, *supra* note 48, at 850 (indicating that a protective order in effect is just a piece of paper). Domestic violence victims are not safe from their abusers—even if victims do obtain protective orders—because every day, three women are killed by their partners. *Id*.

194 *See* WASH. REV. CODE § 26.50.060(2) (2015) (allowing courts to extend the length of GPS monitoring). The court can either extend the protective order for a specific time period or grant a permanent protective order. *Id*.

195 *See* Kucharson, *supra* note 49, at 638–39 (stating that GPS monitoring can help rehabilitate offenders).

196 *See* Langan et al., *supra* note 77, at 1 (discussing recidivism rates of violent offenders). To determine whether the offender will commit domestic violence acts as soon as the order is lifted, states should look to the elements that Kentucky uses to determine whether an offender should wear a GPS tracking device. KY. REV. STAT. ANN. § 403.761(1)(a)–(c) (2015). These elements are: whether the offender has committed a substantial violation of a previous domestic violence order, the offender's criminal and protective order history, and whether the use of GPS monitoring will increase the victim's safety. *Id.* By doing so, the court will have a real understanding of the type of domestic violence offender that particular offender is and the propensity the offender has to commit additional domestic violence acts.

197 *See* Bernick & Larkin, *supra* note 100, at 4 (mentioning that certain crimes require specific sentences). By establishing a minimum penalty for a specific crime, it ensures that the court

committed a crime that requires punishment for longer than the statute provides, the statute is not adequately punishing the offender.[198] On the other hand, allowing a court to determine the length of GPS monitoring is appropriate because the court can look at extenuating circumstances and take the bigger picture into account when making the decision.[199] Accordingly, the statute should include specific factors the court must examine when deciding the length of time for GPS monitoring.[200]

2. The Costs and Restrictions of GPS Monitoring Present in Domestic Violence Statutes

Accompanying the level of discretion and length of GPS monitoring, the existing domestic violence statutes appropriately address the costs of monitoring by requiring the offender to pay and allowing interested third parties to pay.[201] Allowing the option for the victim to pay should be included in every state's statute for GPS monitoring of domestic violence offenders because the victim is at the highest risk of danger if the offender cannot be monitored in this fashion.[202] Therefore, victims should have the option to pay for the safety they desire.[203] However, because some offenders and other interested parties may not be able to pay for the GPS device, including a provision that allows offenders to perform community

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remains consistent with legislative intent. *Id*. One state allows for a specific period of time that the domestic violence offender must be monitored. *See* ARK. CODE ANN. § 9-15-217(b) (2016) (providing that a domestic violence offender cannot be monitored with GPS for longer than a year or less than four months). The imposition of GPS tracking for domestic violence offenders in Arkansas is purely discretionary. *Id*. §§ 9-15-217(b)(1), 9-15-217(c).

198 *See* Bernick & Larkin, *supra* note 100, at 4 (explaining that crimes must match their punishments). There are instances where minimum penalties may lead to unjust results in relation to the crime that was committed. *Id*.

199 *See* OKLA. STAT. tit. 22, § 60.17 (2015) (evaluating the court's discretion in determining the length of the monitoring). Oklahoma's statute does not provide any factors for guiding the court in making its decision. *Id*.

200 *See* Kessler & Piehl, *supra* note 66, at 3 (mentioning that pure discretion leads judges to decide based on their own views). The court can look at the crime the offender committed, the punishment for such a crime, whether the offender has been rehabilitated, whether the offender has any other protective orders or domestic violence charges, what level of risk the offender poses to the victim(s), and so on.

201 *See, e.g.*, IND. CODE § 34-26-5-9(j) (2016) (declaring that a court may allow a victim or any other person to pay for the costs associated with the device); KY. REV. STAT. ANN. § 403.761(4)(b) (2015) (allowing any person to voluntarily pay the costs); LA. REV. STAT. ANN. § 46:2143(C) (2016) (providing that the offender must pay the costs of GPS monitoring).

202 *See* Scholl, *supra* note 48, at 850 (mentioning that without adequate safeguards such as GPS, a victim may be subjected to more harm by reporting the abuse). The harm that may result is the lack of protection or action by the police department. *Id*.

203 *See id*. (discussing the inadequacies associated with current protections available to domestic violence victims).

service can be beneficial to both the community and the victim.[204] Accepting community service as payment ensures that jobs, which are vital to the community, are done without having to pay for labor.[205] In addition, community service is used for other types of criminals and for rehabilitation.[206] Thus, allowing domestic violence offenders to perform community service for payment of the GPS monitoring can serve as an additional layer of rehabilitation throughout the process, as well as a way to meaningfully serve the community.[207]

Another suitable specific restriction found in domestic violence GPS statutes are exclusionary zones or areas the offender cannot enter.[208] An exclusionary zone is vital within the realm of domestic violence because of the strong relationship that exists between the offender and the victim.[209] The offender knows the victim extremely well and thereby knows the locations the victim goes to frequently, such as the victim's home, workplace, or child's school.[210] Statutorily excluding the domestic violence offender from those very areas is critical to the protection of the victim, so victims may feel safe in going about their normal routine without worrying the offender may suddenly show up.[211] Moreover, with the use of exclusionary zones, those implementing GPS monitoring do not have to constantly monitor the location of the offender because the

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204 *See* MICH. COMP. LAWS § 765.6b(6) (2016) (offering the option of community service in lieu of payment); MISS. CODE ANN. §§ 99-5-38(2)(a)–(b), 99-5-38(8) (2015) (permitting the offender to do community service as payment if the court determines an inability to pay or the offender is indigent).

205 *See* ANDERSON, *supra* note 112, at 23 (commenting on when and how community service is used). These jobs include the following: cleaning up litter, lawn work, clerical work, or helping out at hospitals or other like organizations. *Id*. To find an area where the offender can be the most helpful, the offenders should be interviewed to identify their skills. *Id*. at 25.

206 *See id*. (explaining the function of community service). At the very least, the community service is added punishment for the crimes or violations committed, which is another purpose of community service. *Id*.

207 *See id*. (examining the role of community service). Community service has many advantages that appeal to judges, such as the low cost, rehabilitation, and punishment. ANDERSON, *supra* note 112, at 24–25. For criminal defendants, judges impose the hours of community service according to a set formula. *Id.* at 25. For example, six hours of community service is equivalent to one day in jail. *Id*. In the domestic violence context, six hours of community service can pay for one to two days that the offender is monitored by GPS.

208 *See, e.g.*, 730 ILL. COMP. STAT. § 5/5-8A-7 (2016) (declaring that law enforcement and the victim must be alerted if the offender enters a prohibited area); IND. CODE § 34-26-5-9(i)(2) (2016) (permitting courts to prohibit the offender from entering certain areas where the victim can be found).

209 *See Electronic Monitoring of Domestic Violence Cases*, *supra* note 115, at 16 (mentioning that the offender knows the victim and the victim's routines intimately).

210 *See id*. (providing that the offender knows the victim's day-to-day activities).

211 *See id*. (stating that the victim's whereabouts are known to the offender).

offender's location will only be known if the offender enters a forbidden area.[212]

Statutorily established exclusionary zones ignore the situations where offenders show up at other locations the victim frequents; therefore, allowing the victim to supply a list of locations from which to exclude the offender is invaluable given the nuances of every victim's schedule.[213] The victim may go to a weekly class or a meeting outside of the home or workplace, which the offender is fully aware of, but the court may not be.[214] Permitting victims to list locations the victim wishes to exclude the domestic violence offender from could help courts in reducing violence to the victims.[215]

Moreover, an additional restriction, the punishment if an offender enters an exclusionary zone, should be included because it provides clarity to not only the offender and the victim, but also to the state in its implementation.[216] Such clarity is ideal because offenders have to know that severe consequences will result if the offender is in violation of the conditions associated with GPS monitoring.[217] Without such clarity, the offender may not take affirmative steps to avoid the victim because of the lack of awareness of the precise consequences of doing so.[218]

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212 *See* Kucharson, *supra* note 49, at 645 (discussing an advantage of the usage of exclusionary zones). The agency implementing the GPS monitoring will only have to respond to situations when the offender has entered an established area that is prohibited. *Id*.

213 *See Electronic Monitoring of Domestic Violence Cases*, *supra* note 115, at 16 (commenting that domestic violence offenders know of the places that the victims frequent). There are two states that allow victims to supply a list of locations to exclude the domestic violence offender from. *See* MICH. COMP. LAWS § 765.6b(6) (2016) (allowing the victim to supply a list of places to exclude the offender from, which the court takes into consideration); MISS. CODE ANN. § 99-5-38(3) (2015) (permitting victims to exclude the offender from certain locations).

214 *See Electronic Monitoring of Domestic Violence Cases*, *supra* note 115, at 16 (indicating that the daily routines of the victim are known to the offender).

215 *See id*. (considering the possibility that the offender may use the knowledge of the victim's routines to harm or harass the victim).

216 *See* Kucharson, *supra* note 49, at 645 (describing what an exclusionary zone is). The exclusionary zones are programmed into the GPS monitoring system. *Id*. An exclusionary zone's radius can be as large as two thousand feet or as small as three hundred feet. *Id*. As opposed to exclusionary zones, there are some states that create inclusion zones. *Id*. Contrary to an exclusionary zone, an inclusion zone is an area where the offender is supposed to be at a particular point in time. *Id*.

217 *See id*. (providing what happens when an offender enters an exclusionary zone). Entering an exclusionary zone sends an alert to those who are overseeing the GPS monitoring. Kucharson, *supra* note 49, at 645.

218 *See id*. (mentioning the events that transpire if the offender enters an exclusionary zone). After the offender enters an exclusionary zone, authorities will be sent to the area that the offender has entered. *Id*.

Furthermore, the unique condition found in various domestic violence statutes that allows the victim to be notified if an offender is nearby should be included in the model statute, because the victim can prepare from the time of the notification to the impending confrontation by calling the authorities, if necessary.[219] Moreover, providing a phone number victims can contact directly for immediate assistance will ensure that time is not wasted by forwarding the call to the relevant department because the appropriate number is supplied to the victim from the beginning.[220] Further, another appropriate characteristic found within a domestic violence statute is the added requirement of the offender's participation in a domestic violence treatment program.[221] Requiring a domestic violence offender to successfully complete therapy is an excellent way to ensure that offenders do not re-offend or continue on the violent path that justified the GPS monitoring to begin with.[222] The use of a domestic violence treatment program has been tied to lower physical violence rates following the completion of the program; consequently, such a program may help to lower domestic violence rates.[223] In conclusion, statutes that authorize the use of GPS monitoring of domestic violence offenders do not adequately protect victims.[224] A model statute that includes provisions from both sex offender and domestic violence offender GPS statutes can be beneficial to all states who seek to combat domestic violence.[225]

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219 *See, e.g.*, ARK. CODE ANN. §§ 9-15-217(c)(1), 9-15-217(c)(3) (2016) (allowing the victim to be notified of violations of the order); IND. CODE § 34-26-5-9(i) (2016) (stating that the GPS device must have victim notification capabilities if available).

220 *See* MICH. COMP. LAWS § 765.6b(6) (2016) (enabling victim notification and supplying a number for law enforcement for the victim to call if the offender is near). "The victim shall also be furnished with a telephone contact with the local law enforcement agency to request immediate assistance if the defendant is located within that proximity to the victim." *Id*.

221 *See* UTAH CODE § 77-36-5(5) (2015) (requiring offenders to participate in a therapy program for domestic violence). The offender is required to participate in a domestic violence treatment program, unless the court finds that treatment is not necessary or if a licensed program is not available. *Id*. A domestic violence treatment program is defined in Utah as "a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence." *Id*. § 62A-2-101(14).

222 *See Myths and Facts*, *supra* note 22 (indicating that domestic violence offenders have the capacity to rehabilitate). Domestic violence offenders are capable of change if they learn to communicate effectively without resorting to abuse and to take responsibility for their actions. *Id*.

223 *See* Hanna, *supra* note 122, at 1532–33 (describing the effect domestic violence treatment programs have on the continuation of domestic violence following completion).

224 *See supra* Part III.B (addressing current state statutes that allow the use of GPS monitoring for domestic violence offenders).

225 *See infra* Part IV.A (providing a model statute for GPS monitoring of domestic violence offenders for all states to implement in whatever capacity the state desires).

IV. CONTRIBUTION

Based upon the inadequacies or absence of current domestic violence statutes, all states should enact the model statute that allows GPS monitoring to be a remedy for domestic violence victims.[226] States that currently do not have domestic violence GPS statutes would benefit greatly by implementing this statute because it will provide protection to domestic violence victims that is presently absent.[227] Additionally, states that have statutes allowing GPS monitoring of domestic violence offenders will similarly benefit because the model statute includes provisions that can correct deficiencies in their statutes.[228] Part IV.A proposes the model statute for states to enact that authorizes the use of GPS monitoring for domestic violence offenders.[229] Then, Part IV.B provides commentary regarding the model statute and addresses criticisms of the use of GPS monitoring.[230]

A. Proposed Model Statute

All fifty states should enact, in whole or in part, the following model statute:

GPS Monitoring of Domestic Violence Offenders

(1) (a) When a defendant is found guilty of a domestic violence crime, upon violation of a protective order, or *in extreme cases, in conjunction with the issuance* of a protective order, the court may require the defendant to be subjected to GPS monitoring for the length of probation or the length of the protective order.

(b) To decide if the defendant must be monitored with GPS and for what time period, the court must examine the following factors:

(i) The offense committed;
(ii) The seriousness of the offense;
(iii) The amount and severity of the abuse;

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226 *See infra* Part IV.A (stating the domestic violence GPS monitoring statute that states should implement).

227 *See supra* Part II.A (examining the lack of protection that exists for domestic violence victims).

228 *See supra* Part II.D (describing aspects found in current domestic violence GPS monitoring statutes).

229 *See infra* Part IV.A (proposing the model statute for states to implement).

230 *See infra* Part IV.B (analyzing the language chosen for the statute).

(iv) The defendant's criminal and protective order history;
(v) The safety of the victim;
(vi) The likelihood GPS monitoring will deter the defendant from seeking to kill, injure, stalk, or threaten the victim; and
(vii) Any other relevant factors.

(c) The court may extend the period of GPS monitoring if the court finds that the defendant will likely resume acts of domestic violence against the victim, the victim's children, or the victim's family after the order expires.

(2) (a) The defendant is ordered to pay the costs associated with the monitoring.

(b) The defendant is required to pay the costs associated with the monitoring, unless the defendant is indigent or a third party, such as the victim, an agency, or an organization, volunteers to pay the costs.

(i) To determine if the defendant is indigent, the court may examine the defendant's financial resources as well as the burden payments may impose.

(c) If the defendant is unable to pay and no third party wishes to pay for the costs, the defendant must perform community service instead of payment.

(3) (a) The defendant is excluded from entering court defined exclusionary zones. The defendant may not enter areas in and around the victim's residence, place of employment, and the victim's child's school.

(b) In addition to the aforementioned exclusionary zones, a victim may submit to the court a list and explanation of the areas from which to exclude the defendant from entering. The court must consider the list when defining the exclusionary zones.

(c) If a defendant enters an exclusionary zone, the defendant's location will be transmitted to the victim and police. Upon a finding that the defendant entered an exclusionary zone, the court will revoke the defendant's probation and the defendant may be fined, imprisoned, or both.

(i) The defendant's location is only transmitted upon entrance to an exclusionary zone.

> (4) The court must conduct an annual, standardized review of the offender's monitoring order to determine whether GPS monitoring is still required.
> (5) (a) The GPS monitoring equipment must provide victim notification capabilities, if possible.
>
> (b) The court must provide the victim with a telephone number that the victim may call in emergency situations.
> (6) The defendant must participate and successfully complete treatment in a domestic violence treatment program, if available, unless the court determines that treatment is not necessary.
> (7) (a) A person who knowingly removes, tampers, damages, or destroys the GPS tracking device of a domestic violence offender under this section is, upon conviction, guilty of a felony.
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> (b) Subsection 7(a) does not apply to those who are authorized to perform maintenance or repairs to the GPS monitoring equipment.[231]

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[231] This model statute is a compilation of several different statutes that allow the use of GPS monitoring. The proposed amendments are italicized and are the contribution of the author. Section 1(a) creates the length of GPS monitoring and the level of discretion the court has in determining if domestic violence offenders are subjected to GPS monitoring. *See* UTAH CODE §§ 77-36-5(1)(a), 77-36-5(2) (2015) (indicating when GPS monitoring can be imposed). Sections 1(b)(iv)–(vi) establish three of the factors that the court is required to examine when determining if a domestic violence offender is required to wear a GPS tracking device. *See* KY. REV. STAT. ANN. § 4037.61(1)(b)–(c) (2015) (providing the court with factors that should be examined when making the decision to impose GPS monitoring); MICH. COMP. LAWS § 765.6b(6) (2016) (listing a factor that the court examines when determining if an offender must wear a GPS device). Section 1(c) allows the court to extend the period of GPS monitoring. *See* WASH. REV. CODE § 26.50.060(3) (2015) (indicating that the monitoring may be extended). Section 2(a)–(c) requires that the defendant pay the costs of the GPS monitoring, either in cash or community service, unless the offender is indigent or an interested third party wishes to pay. *See* ARK. CODE ANN. § 12-12-923(c)(2) (2016) (requiring the offender pay the costs of the GPS device); IND. CODE § 34-26-5-9(j) (2016) (granting the ability of a third party to pay for the costs of the GPS device); KAN. STAT. ANN. § 22-3717(v) (2015) (describing what a review board may consider in determining the amount the offender is required to pay); MISS. CODE ANN. § 99-5-38(2)(a) (2015) (ordering community service instead of cash payment at the court's discretion). Section 3(a)–(c) describes the process of creating exclusionary zones that the domestic violence offender cannot enter and the penalties associated with doing so. *See* MASS. GEN. LAWS ch. 209A, § 7 (2016) (providing the punishment for entering an exclusionary zone); MICH. COMP. LAWS § 765.6b(6) (2016) (allowing a victim to supply a list of locations to exclude the offender from); MISS. CODE ANN. § 99-5-38(2)(a) (2015) (indicating areas that the offender may not enter); Hinson, *supra* note 61, at 286 (indicating that an offender's location is not transmitted unless the offender enters an exclusionary zone). Section 4 provides the ability of a court to reevaluate the level

B. Commentary

The proposed model statute serves to correct the void that exists for the twenty-six states that do not currently have such a statute, as well as an aid for states to supplement or alter their current statute.[232] First, the proposed model statute commences by indicating when GPS monitoring should be utilized.[233] The statute includes a list of factors the court must consider when determining if a domestic violence offender must be monitored with GPS and for what time period.[234] These factors are important because courts should not be given unbridled discretion to determine if the offender will be monitored with GPS; rather courts should decide based on a list of factors to ensure arbitrary decisions will not be made.[235]

Next, the model statute addresses the costs associated with monitoring.[236] Specifically, it requires the defendant pay for the GPS monitoring device and provides alternatives to the defendant paying—either by the defendant, in cash or community service, or by an interested third-party. Taking into consideration the seriousness of the problem and the need to guarantee that a dangerous domestic violence offender is monitored appropriately, the model statute provides several different ways to pay for the GPS device.

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of monitoring required for domestic violence offenders. *See* OKLA. STAT. tit. 22, § 60.17 (2015) (requiring an annual assessment of the level of monitoring). Section 5(a)–(b) allows the victim to have control over her situation, either because the victim is aware of the offender's presence through the actual equipment or the victim has a direct line to authorities in the event of the offender coming near her. *See* IND. CODE § 34-26-5-9(i) (2016) (enabling victim notification capabilities if available); MICH. COMP. LAWS § 765.6b(6) (2016) (mentioning that the victim must be given a number to contact law enforcement in emergency situations). Section 6 requires a domestic violence offender to successfully complete a domestic violence treatment program. *See* UTAH CODE § 77-36-5(5) (2015) (compelling the offender to participate in a treatment program). Section 7(a)–(b) describes the penalties for tampering with the device and creates an exception for those who are authorized to perform maintenance on the devices. *See* ARK. CODE ANN. § 12-12-923(e)(1) (2016) (discussing the penalties for removal of the GPS device); ARK. CODE ANN. § 12-12-923(e)(2) (2016) (stating who may remove the device without being charged with a felony).

232 *See supra* Part IV.A (proposing a model statute for monitoring domestic violence offenders with GPS).

233 *See supra* Part IV.A (evaluating why GPS monitoring is imposed on domestic violence offenders).

234 *See supra* Part IV.A (listing the factors that courts must examine when determining whether to monitor the offender).

235 *See* Kessler & Piehl, *supra* note 66, at 3 (discussing the need for sentencing guidelines to reign in the judicial discretion exercised). A set guideline should be considered when making a decision regarding the imposition of GPS to help ensure that the decision is not arbitrary, just as mandatory sentencing laws do for certain crimes. *Id*.

236 *See supra* Part IV.A (stating how the costs of the monitoring may be paid).

Moreover, the model statute provides for several aspects related to exclusionary zones, such as how they are determined and the penalties for entering.[237] Exclusionary zones are vital to domestic violence because the offender is intimately aware of the victim's habits; therefore, the model statute must define areas the offender cannot enter and penalties for doing so. Besides the obvious deterrent that stems from the use of GPS on an offender—monitoring the offender's movements—including a punishment for entering an exclusionary zone, is important because it acts as a further preventative measure.

In addition, the model statute includes the opportunity for a risk assessment.[238] Risk assessments facilitate an important determination of whether the original level of monitoring is still required. Because of the possibility of the offender becoming rehabilitated, accounting for the possibility of modification to the level of monitoring is useful because it provides that offenders are not monitored longer than necessary. Furthermore, the model statute requires victim notification capabilities or a phone number that must be given to the victim to use in the event of an emergency.[239] The victim is in the most danger if the offender breaks the conditions of the monitoring; therefore, the victim should be equipped with information or technology to help avoid any future abuse.

Further, the model statute includes a provision that requires the offender participate and successfully complete a domestic violence treatment program.[240] Due to the risk of recidivism, completing domestic violence therapy attempts to ensure the offender does not commit future acts of domestic violence. Last, the model statute provides a punishment for damage or removal of the GPS tracking device, which is important because an offender may try to avoid supervision.[241] Overall, the model statute addresses several different aspects that are necessary to combat domestic violence, and can be used to correct deficiencies in current domestic violence GPS statutes or can be implemented in states that do not have a similar statute.[242]

Although there are several states that allow the use of GPS monitoring of domestic violence offenders, there are concerns that accompany the use of GPS monitoring in general, such as privacy concerns and the

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237 *See supra* Part IV.A (examining exclusionary zones).

238 *See supra* Part IV.A (indicating a risk assessment may be used to determine the level of monitoring necessary).

239 *See supra* Part IV.A (providing for victim notification capabilities).

240 *See supra* Part IV.A (requiring the offender to complete therapy for domestic violence).

241 *See supra* Part IV.A (stating the punishment for removing or damaging the GPS tracking device).

242 *See supra* Part IV.A (creating a model statute for GPS monitoring of domestic violence offenders).

effectiveness of GPS monitoring.[243] Opponents argue the offender is stripped of his Fourth Amendment rights because the monitoring was imposed without due process.[244] In addition, opponents argue that an individual is protected from unreasonable search and seizure in places where privacy is expected.[245] However, due process is not violated if the statute allows for a standardized individual assessment.[246] The domestic violence offender is not required to wear a GPS tracking device if the offender does not meet the standards provided in the statute.[247] The model statute requires courts to examine the same standards for each individual offender; therefore, due process rights will not be violated.[248] Further, because the model statute provides that an offender's position will not be transmitted unless the offender enters an exclusionary zone, GPS monitoring is not an unreasonable search and seizure.[249] An unreasonable search and seizure occurs when the offender has an expectation of privacy, and because an offender is legally required to avoid an exclusionary zone, the offender does not have an expectation of privacy in those areas.[250]

Moreover, opponents to the use of GPS monitoring argue that the method of supervision is not effective.[251] Opponents argue that GPS monitoring does not physically protect the victim as it only conveys the

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243 *See* Rhodes, *supra* note 43, at 133, 136, 138 (addressing various counterarguments accompanying the use of GPS monitoring). There are several constitutional issues implicated from GPS monitoring including: the Fourth Amendment's "search and seizure" provision, equal protection issues, and due process issues. *Id*.

244 *See id*. at 133 (describing the concerns of GPS monitoring as they relate to the Fourth Amendment).

245 *See* Katz v. United States, 389 U.S. 347, 361 (1967) (creating the right to avoid unreasonable search and seizures in areas where privacy is expected). A person's home and the person's movements are areas where privacy is expected; therefore, a search must be reasonable for it to be constitutional. Scholl, *supra* note 48, at 856. Americans possess the basic expectation of privacy and the imposition of GPS monitoring violates this expectation without the requisite consent. Rhodes, *supra* note 43, at 133.

246 *See* Hinson, *supra* note 61, at 286 (discussing the need for an individualized assessment to avoid due process violations).

247 *See id*. (establishing that due process rights are not violated if the court takes into consideration uniform dangerousness standards before imposing GPS monitoring).

248 *See id*. (providing that an individualized dangerousness assessment will prevent offenders' due process rights from being violated).

249 *See id*. at 287 (indicating that transmitting the location of an offender in a location that the offender is legally required to avoid does not constitute an unreasonable search and seizure).

250 *See id*. (providing that an exclusionary zone is not an area of privacy).

251 *See* Rhodes, *supra* note 43, at 143 (evaluating the limitations of GPS monitoring). Despite the numerous advantages of GPS monitoring to the public at large, the state, and the victim, GPS monitoring does have limitations. *Id*.

position of the offender.[252] However, GPS monitoring has proven to be effective at targeting recidivism rates of offenders.[253] In addition, opponents suggest the temporary nature of the monitoring does not prevent the problem that has persisted for a significant period of time.[254] However, other methods of controlling crime have failed and the use of GPS monitoring should be used in their place.[255] A limitation of GPS monitoring suggested by opponents—the temporary nature of the remedy—is not specific to GPS monitoring, as this limitation is present with other forms of crime control, such as incarceration.[256] Although criticisms associated with the use of GPS monitoring exist, the ultimate goal of keeping the victim safe from further abuse far outweighs such criticisms.[257]

V. CONCLUSION

Every minute, twenty people are subjected to domestic violence in the United States.[258] This statistic demonstrates that domestic violence persists as a problem in society today, whether that is because of the level of awareness, or the lack of actions taken to combat the problem. Victims have few options when deciding to take action against their abuser and the options that do exist do not adequately protect victims. GPS monitoring is a new technology that can help protect domestic violence victims because it specifically tracks the offender's movements, ensuring

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252 *See id*. (examining the fact that GPS monitoring does not protect the victim physically). GPS monitoring cannot protect a victim if the abuser has the intent to kill or physically harm. Erez et al., *supra* note 58, at 112. As one offender indicated "[i]f your intent was to go out there and hurt or murder somebody, [GPS] is not going to stop you . . . . [I]t's not foolproof . . . because if it's going to happen, it's going to happen." *Id*.

253 *See* Bulman, *supra* note 56 (describing the effectiveness of GPS monitoring for sex offenders).

254 *See* Rhodes, *supra* note 43, at 143–44 (indicating the temporary nature of the monitoring does not help the victims in the long run). The victim may get used to the idea of having the GPS monitoring, and then as soon as the monitoring period is over, the victim reverts back to a paranoid state, wondering when the next attack will be. *Id*. at 144.

255 *See* Thomson, *supra* note 58 (discussing the failure of other methods to control crime in the past and the use of GPS monitoring). Despite the high incarceration rates of the United States, the crime rate is not lower. *Id*. On the contrary, the amount of violent crime has risen significantly, about 350%, since 1964. *Id*. These facts indicate that the criminal justice system today is not efficient at preventing crime. *Id*.

256 *See* Rhodes, *supra* note 43, at 144 (explaining the rebuttals to the GPS monitoring counterarguments). GPS monitoring may be temporary, but so is imprisoning the offender or providing emergency shelter to the victim. *Id*.

257 *See* Erez et al., *supra* note 58, at 97 (describing the benefits of GPS monitoring for victims).

258 *See Facts Everyone Should Know*, *supra* note 5 (providing a shocking statistic about domestic violence in the United States).

the victim is protected at all times. However, given how new the technology is, GPS has not been used often in the law. The most extensive use of GPS monitoring is for sex offenders. While there are some states that have statutes authorizing the use of GPS monitoring of domestic violence offenders, the use of GPS in regards to sex offenders is much more prevalent. The statutes that exist that allow GPS monitoring serve as a starting point for a model statute authorizing GPS monitoring of domestic violence offenders. The proposed statute fills a void that many states have due to their lack of a similar statute and provides states that do have a similar statute with provisions that may be absent in their statutes. Maybe Theresa and her kids and Diane could have been saved from the brutal attacks of their abusers had their offenders been monitored with a GPS tracking device when the protective orders were issued.

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