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INFORMATION REGARDING SEX OFFENDER REGISTRATION, TRACKING AND RESIDENCY REQUIREMENTS (INCLUDING PROPOSITION 83)

(updated 12/10/10)

This letter addresses common questions about the legal requirements that apply to people who have been convicted of sex offenses and then released on parole or discharged from custody. This letter includes information about the changes to those requirements that resulted from Proposition 83, which was passed by the voters on November 7, 2006. Proposition 83 is also known as “Jessica’s Law,” the “Sexual Predator Punishment and Control Act,” or the “SPPCA.”

There are three main types of special requirements for sex offenders: registration with local law enforcement authorities, GPS tracking, and restrictions on residency (where a person can live). These requirements apply while you are on parole and for the rest of your life after discharge from parole.

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REGISTRATION¹

Who has to register as a sex offender?

When you are released on parole or probation or discharged from custody, you will be required to register as a sex offender if you have ever been convicted of any crime listed in Penal Code § 290(c). Penal Code § 290(c) includes a wide range of offenses including forcible sex crimes involving non-consenting adults, most sex crimes involving children, prostitution and child pornography-related crimes, kidnap or assault for purposes of committing a sex crime, soliciting another person to commit a sex offense, and attempt or conspiracy to commit any of the included crimes.²

You can also be required to register based on convictions for crimes that are *not* listed in § 290(c) if you committed the crime “as a result of sexual compulsion or for purposes of sexual gratification.”³ This determination is made by a judge or jury at the time of your conviction or sentencing.⁴

If you have been convicted of a qualifying offense but have had your conviction dismissed following completion of probation, you still must register as a sex offender.⁵

Some groups of people are required to register even if they have not been convicted of a qualifying California sex crime. You will be required to register if you meet any of the following criteria:

- you were adjudicated as a ward of the juvenile court for certain sex offenses and committed to the California Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice (DJJ) (formerly the California Youth Authority or CYA) or the equivalent agency in another state;⁶

¹ Information about registration requirements can be found on the Department of Justice website at <http://www.meganslaw.ca.gov>. The information is available in numerous languages.

² Penal Code § 290. The requirements apply for any conviction occurring on or after July 1, 1944.

³ Penal Code § 290.006.

⁴ The California Supreme Court is currently considering whether the finding that a crime was “a result of sexual compulsion or for purposes of sexual gratification” can lawfully be made by a judge, or whether it must be made by a jury. *People v. Mosley*, No. S169411, previously published at (2009) 168 Cal.App.4th 512.

⁵ Penal Code § 290.007.

⁶ Penal Code § 290.008. The list of offenses for which juveniles are required to register is shorter than that which applies to adults or juveniles tried as adults. Compare Penal Code § 290.008(c) with § 290(c), and § 290.066. See also *In re Derrick B.* (2006) 39 Cal.4th 535, 539-540 (court does not have authority to require juvenile to register for offense not listed in section applicable to juveniles, even if offense committed for sexual gratification). This provision does not apply unless the person was discharged from the CYA or DJJ for the sex offense on or after January 1, 1986. Penal Code § 290.008.

- you have been found not guilty by reason of insanity of any of the offenses listed in Penal Code § 290(c);⁷
- you have ever been found to be a Mentally Disordered Sex Offender (MDSO) or Sexually Violent Predator (SVP);⁸
- you have been convicted in another state or in a federal or military court of any offense that would be punishable as one of the offenses listed in Penal Code § 290(c).⁹ Also, if you are required to register as a sex offender in another state, you are almost certainly required to register in California.¹⁰

You should be informed of your duty to register by the court when you are sentenced for a sex offense and by the prison, jail, probation or other custody authority before you are released.¹¹ Also, if you were convicted of a sex offense by a plea of guilty or no contest, you should have been informed of the registration requirement as part of the plea bargain.¹² If you are in state prison, your correctional counselor and parole officer should go over the registration requirement as part of the process of informing you about your conditions of parole.

If you are subject to registration, then registration is mandatory and you are required to register for the rest of your life, so long as you reside in California.¹³ You may also be required to register in California if you are living in another state, but are employed in or doing business in California for more than 14 days in a row or more than 30 days in a year, or if you are attending school full- or part-time in California.¹⁴

If you move out of state, you must notify the local California authorities, in person, within 5 working days of your move. After that, you don't need to keep registering in California, so long as you

⁷ Penal Code § 290.004.

⁸ Penal Code §§ 290.001, 290.004.

⁹ Penal Code § 290.005.

¹⁰ See Penal Code §§ 290.002, 290.005.

¹¹ Penal Code § 290.017; *Lambert v. California* (1957) 355 U.S. 225, 229-230 (registration provisions violate due process when applied to a person with no actual knowledge of duty to register).

¹² *People v. McClellan* (1993) 6 Cal.4th 367, 379-381 (defendant may be allowed to withdraw guilty plea if he or she was not advised of mandatory registration requirement and would not have entered the plea if he had known of it); *People v. Zaidi* (2007) 147 Cal.App.4th 1470 (same); see also *People v. Olea* (1997) 59 Cal.App.4th 1289, 1298-1299 (where registration may be imposed at discretion of court, registration cannot be imposed after no contest or guilty plea unless the possibility of registration was included in the plea agreement).

¹³ Penal Code §§ 290(b), 290.005.

¹⁴ Penal Code § 290.002.

don't spend much time in California.¹⁵ However, if you move to another state or country, you should check the local laws to see if you are required to register there.

How do I register?

You must register in person with the police department of the city where you live, or with the sheriff's department if you live in an unincorporated area or in a city that has no police department.¹⁶ If you live at more than one address, and your addresses are in different cities or counties, you must register with multiple police or sheriff's departments so that you are registered in all locations.¹⁷ If you are a university or college student, employed by a college, or living on a college campus, you must also register with the campus police.¹⁸

You have 5 working days to register after you are released from custody or placed on probation or parole.¹⁹ When you register, you will be required to provide all of your current residence addresses.²⁰ The definition of residence is broad and you can be "residing" at an address for registration purposes even if you are only spending the night there occasionally or staying there on a temporary basis.²¹ When you register, your fingerprints will be taken. You must also provide the name and address of your employer, the license plate number of any car that you drive regularly, and proof of your residence location, such as an ID with your address, a recent rent or utility bill or receipt, or a bank or official document showing your address.²²

You must also update your registration every year within 5 working days of your birthday.²³ In addition, if you have been found to be a Sexually Violent Predator, you must update your registration

¹⁵ Pen.Code § 290.13; see *People v. Wallace* (2009)176 Cal.App.4th 1088 (overturning convictions for failure to update registration where it was possible that defendant moved out of state, but upholding conviction for failing to provide notice of move).

¹⁶ Penal Code § 290(b).

¹⁷ Penal Code § 290.010.

¹⁸ Penal Code §§ 290(b), 290.009.

¹⁹ Penal Code §§ 290(b), 290.015.

²⁰ Penal Code § 290.010.

²¹ Penal Code § 290.011(g) ("Residence means one or more addresses at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles."); see *People v. Gonzales* (Feb. 23, 2010) ___ Cal.App.4th ___, 2010 WL 619702, 10 Cal. Daily Op. Serv. 3740; *People v. Williams* (2009) 171 Cal.App.4th 1667, 1672-1673.

²² Penal Code § 290.015.

²³ Penal Code § 290.012(a).

every 90 days.²⁴ If you change your name, you must notify the police or sheriff within 5 working days of your name change.²⁵

If you move, you must notify, in person, the local authorities about your new address within 5 working days.²⁶ If you are moving to a different city or county, you must notify, in person, *both* the local authorities where you were previously registered and the local authorities in your new city or county.²⁷ If you don't know what your new address will be, then you still have to notify the agency with authority over your old residence that you will be going to a new general location; once you do get a new address, you then have 5 working days to send a registered or certified letter informing the agency of your exact new address.²⁸ If you move out of California, you must notify California authorities in person of your intended destination within 5 working days of the move.²⁹

There are special rules for people who are homeless or do not have a permanent home, who are sometimes referred to as being "transient." If you are homeless, you are required to register within 5 working days of release, every 30 days after that, and within 5 working days of your birthday every year.³⁰ If you have a home but then become homeless, you must update your registration within 5 working days of losing your home.³¹ When you register, you will have to provide information about where you sleep, eat, work, and spend time.³² Note that if you spend the night at a shelter, that shelter qualifies as a "residence," and you will have to register the address of the shelter within 5 working days of going there.³³ If you find a place to live, you must update your registration and tell the authorities your address within 5 working days.³⁴

If you get sent to the CDCR or a state mental hospital, officials at those institutions are supposed to inform the Department of Justice of your confinement.³⁵ If you are incarcerated or civilly committed for 30 days or more, you must re-register upon your release. You do not need to re-register if you are incarcerated or civilly committed for less than 30 days and you then return to your last registered address

²⁴ Penal Code § 290.012(b).

²⁵ Penal Code § 290.014; see *People v. Vincelli* (2005) 132 Cal.App.4th 646 (statute requiring registration after name change not unconstitutionally vague).

²⁶ Penal Code § 290.013.

²⁷ Penal Code §§ 290(b), 290.013(a).

²⁸ Penal Code § 290.013(b); *People v. Annin* (2004) 117 Cal.App.4th 591, 603-604.

²⁹ Penal Code §§ 290.011(f), 290.013(a).

³⁰ Penal Code § 290.011(a)-(b).

³¹ Penal Code § 290.011(b).

³² Penal Code § 290.011(d).

³³ Penal Code § 290.11(g); 15 CCR § 3652(c)(2).

³⁴ Penal Code § 290.011(b).

³⁵ Penal Code § 290.013(d).

(unless your normal re-registration date came up while you were incarcerated).³⁶

If you are on parole, you must also provide your parole officer with proof of registration within 6 working days of your release from prison. The police must provide you with a copy of your registration form free of charge. You must notify your parole officer of any updates or changes to your registration information within 5 working days of the update or change.³⁷

What happens if I don't register?

Failure to register is a crime. If the sex offense conviction that requires you to register was a misdemeanor or a juvenile adjudication, then failure to register is usually a misdemeanor for the first violation and a felony for subsequent violations. If your sex offense conviction was a felony, failure to register is usually a felony.³⁸ There is no statute of limitations on failure to register since courts consider it to be a continuing offense.³⁹

You can be convicted of a separate offense for each requirement you violate. For example, you can be convicted of two crimes for failing to update your registration annually and failing to inform authorities of a change of address, even if both offenses happened during the same time period.⁴⁰ However, there are rules that prohibit courts from imposing sentences for two registration crimes that arise from a single course of conduct. For example, if you move to a new county and do not notify authorities in either the county you are leaving or the county you are entering, you can be convicted of two crimes but can be punished for only one.⁴¹

In order to be a crime, your failure to register must be "willful."⁴² Thus, if you can demonstrate that you did not know you had to register or that you were precluded from registering by circumstances beyond your control, then you may be able to avoid a conviction for violating the registration law.⁴³ However, it is very difficult to show that you did not know you had to register unless you were never

³⁶ Penal Code § 290.015(a).

³⁷ Penal Code § 290.85.

³⁸ Penal Code § 290.018.

³⁹ *People v. Fioretti* (1997) 54 Cal.App.4th 1209, 1217.

⁴⁰ Penal Code § 290.018(i); *People v. Meeks* (2004) 123 Cal.App.4th 695, 703.

⁴¹ *People v. Britt* (2004) 32 Cal.4th 944, 953-954.

⁴² Penal Code § 290.018(a)-(b); *People v. Garcia* (2001) 25 Cal.4th 744, 574.

⁴³ *Bartlett v. Alameida* (9th Cir. 2004) 366 F.3d 1020, 1024 (although there was evidence that petitioner was given written notice of duty to register, petitioner was entitled to present evidence that he did not read the forms, did not comprehend them, or misinterpreted the requirements); *People v. Edgar* (2002) 104 Cal.App.4th 210, 221 (conviction reversed where defendant was transient, documents did not provide clear notice of requirements for a person with multiple residences, and prosecutor failed to show that defendant knew that he was required to register additional addresses).

notified of your duty to register.⁴⁴ Simply forgetting to register is not a defense, even if your memory lapse was related to depression.⁴⁵ However, you should be able to avoid conviction if you lacked actual knowledge of the duty to register because of a severe involuntary physical or mental condition.⁴⁶

The punishment for failure to register can be severe. Many of the crimes that require registration are violent or serious offenses, so a person who fails to register may face a doubled sentence under the “two strikes law” or a life sentence under the “three strikes law.”⁴⁷ Courts have upheld some third strike sentences for failure to register against claims that those sentences were cruel and unusual punishment in violation of the federal Constitution’s Eighth Amendment.⁴⁸ However, in a few cases courts have overturned life sentences where the failure to register was a technical violation and the prior sex offense convictions occurred long ago.⁴⁹

In addition to being a statutory requirement, the registration requirement will be included as a special condition of parole. If you do not sign your conditions of parole agreeing to register, your parole will be revoked for up to 6 months at a time.⁵⁰ If you fail to register while on parole, you can be returned to custody for a parole violation in addition to or instead of being prosecuted for a criminal offense.⁵¹

Can I be released from or challenge my registration requirement?

There are very few ways to get a registration requirement removed and only a few people with particular situations are likely to be successful in challenging a registration requirement.

As discussed above, obtaining a dismissal of your sex offense conviction under Penal Code § 1203.4 following successful completion of probation will not relieve of your requirement.⁵²

Most people who have committed registerable sex offenses are either barred from obtaining a

⁴⁴ *People v. Garcia* (2001) 25 Cal.4th 744, 574-575; *People v. Vigil* (2001) 94 Cal.App.4th 485, 501-502.

⁴⁵ *People v. Barker* (2004) 34 Cal.4th 345, 356-357; *People v. Sorden* (2005) 36 Cal.4th 65, 72; *People v. Bejarano* (2009) 180 Cal.App.4th 583, 195.

⁴⁶ *People v. Sorden* (2005) 36 Cal.4th 65, 72.

⁴⁷ See Penal Code §§ 667(b)-(i), 667.5(c), 1192.7(c).

⁴⁸ See, e.g., *Bartlett v. Duncan* (C.D. Cal. 2003) 262 F.Supp.2d 1053, 1063-1064, reversed on other grounds in *Bartlett v. Alameida* (9th Cir. 2004) 366 F.3d 1020; *People v. Poslof* (2005) 126 Cal.App.4th 92, 108-109; *People v. Haller* (2009) 174 Cal.App.4th 1080,

⁴⁹ See, e.g., *People v. Cluff* (2001) 87 Cal.App.4th 991; *People v. Carmony* (2005) 127 Cal.App.4th 1066; *Gonzalez v. Duncan* (9th Cir. 2008) 551 F.3d 875.

⁵⁰ Penal Code § 3060.5.

⁵¹ See generally Penal Code §§ 3056-3057.

⁵² Penal Code § 290.007; see also *Doe v. Brown* (2009) 177 Cal.App.4th 408.

certificate of rehabilitation or will not be relieved of the duty to register even if they do obtain a certificate of rehabilitation. However, there are a few exceptions.⁵³

If you obtain a full governor's pardon, you do not have to register as a sex offender.⁵⁴ There are two ways to obtain a full pardon. First, a person who obtains a certificate of rehabilitation will automatically be recommended for a full pardon; however, a pardon is not normally available by this means to a person who has twice been convicted of a felony.⁵⁵ Second, a person may apply directly to the governor for a pardon.⁵⁶

Also, if you were convicted before January 1, 1976 for conduct that has since been decriminalized (meaning it is no longer a crime), you can take steps to remove your registration requirement.⁵⁷

Broad legal arguments against the registration law have thus far been unsuccessful, and California's sex offender registration law has been upheld against due process challenges and claims that applying the requirements retroactively violates the U.S. Constitution's prohibition on "ex post facto" laws.⁵⁸ The United States Supreme Court has upheld similar provisions in Alaska's Sex Offender Registration Act against an ex post facto challenge.⁵⁹

⁵³ Penal Code § 290.5. See § 290.5(c) for a list of crimes for which a certificate of rehabilitation will not relieve a person of the duty to register as a sex offender.

The requirements and procedures for obtaining a certificate of rehabilitation are set forth in Penal Code § 4852.01 et seq. Generally, the rules require a person to live a law abiding life for a certain period of time, some of which must be as a California resident. A person is barred from obtaining a certificate of rehabilitation if he or she is in the military, serving a life parole term, or was convicted of §§ 286(c), 288, 288a(c), 288.5, or 289(j). Penal Code § 4852.01(d); see also *People v. Ansell* (2001) 25 Cal.4th 868, 880 (bar applies to persons convicted prior to statute's effective date of January 1, 1998).

⁵⁴ Penal Code § 290.5(b).

⁵⁵ Penal Code § 4852.16.

⁵⁶ Penal Code §§ 4800 et seq., § 4853.01(d) (in extraordinary circumstances, direct pardon available to sex offenders who are barred from obtaining certificate of rehabilitation).

⁵⁷ See Penal Code § 290.019 for the procedures.

⁵⁸ *Hatton v. Bonner* (9th Cir. 2004) 356 F.3d 955; *People v. Castellanos* (1999) 21 Cal.4th 785.

⁵⁹ *Smith v. Doe* (2003) 538 U.S. 84.

The federal Ninth Circuit Court of Appeal has barred application of a federal statutory registration requirement to juvenile offenders who committed their offenses before the law went into effect, in part because the rehabilitative goals of the juvenile justice system distinguish it from the adult criminal justice system. *United States v. Juvenile Male* (9th Cir. 2010) 590 F.3d 924, 941-942. Few (if any) California registrants could make a similar argument as California's registration statute for juveniles applies only if the juvenile was released from the CYA or DJJ on or after the statute's January 1, 1986 effective date.

Some courts have struck down registration requirements as violating the guarantee of equal protection when the law treats similar offenses differently without any rational justification. For example, the California Supreme Court struck down a registration provision applied to a person convicted of oral copulation with a 16-year-old minor (Penal Code § 288a(b)(1)) because a person convicted of sexual intercourse with a 16-year-old minor (Penal Code § 261.5) is not subject to mandatory registration.⁶⁰ The lower courts have issued varying opinions as to whether registration requirements for other non-forcible crimes involving minors pose similar equal protection problems.⁶¹

If you believe that you are wrongly being ordered to register, and you are still in prison or on parole, you can file a state petition for writ of habeas corpus in superior court. If you are no longer either in custody or on parole, you should file a petition for writ of mandate in superior court.⁶² The court that imposed the registration requirement would most likely be the appropriate court in which to file your action. If you believe you were improperly convicted of failing to comply with registration requirements, you can challenge your conviction in a direct criminal appeal or in a state petition for writ of habeas corpus. The Prison Law Office can provide free information about these types of legal actions upon request.

GPS TRACKING

Who must wear a GPS tracking device?

Under Proposition 83, which became effective on November 8, 2006, if (1) you have been convicted of a felony that requires you to register as a sex offender and (2) you were sentenced to prison, then you must wear a GPS tracking device (usually an ankle bracelet) during your parole, and for the rest of your life.⁶³

The life-long GPS requirement applies only if you were convicted of a felony that requires you to register as a sex offender. However, parole authorities may also require other parolees to wear GPS

⁶⁰ *People v. Hofsheier* (2006) 37 Cal.4th 1185; see also. *In re J.P.* (App. 1 Dist. 2009) 89 Cal.Rptr.3d 17, 170 Cal.App.4th 1292 (applying *Hofsheier* where juvenile adjudicated for violation of 288a(b)(1), even though victim was in fact under 14).

⁶¹ Cases finding equal protection violations include *People v. Ranscht* (2009) 173 Cal.App.4th 1369 (mandatory registration for § 289(h)) and *People v. Garcia* (2008) 161 Cal.App.4th 475 (mandatory registration for § 288a(b)(2)). Cases finding no equal protection violation include *People v. Manchel* (2008) 163 Cal.App.4th 1108 (registration for § 288a(b)(2)), *People v. Anderson* (2008) 168 Cal.App.4th 135 and *People v. Cavallaro* (2009) 178 Cal.App.4th 103 (both re: registration imposed for § 288(c)(1)).

⁶² *People v. Picklesimer* (Mar. 15, 2010) ___ Cal.App.4th ___, 2010 WL 891304, 10 Cal. Daily Op. Serv. 3211.

⁶³ Penal Code § 3004(b); see also Penal Code § 3000.07.

tracking devices while they are on parole.⁶⁴ If you are on parole and do not comply with a GPS requirement, your parole can be revoked. The statute does not specify what, if any, punishment may be imposed if you do not comply with the GPS requirement after you have been discharged from parole.

The CDCR can require you to pay to cover the cost of the GPS monitoring. The CDCR can waive these fees if you are unable to pay, and must take into account the matter of whether you owe any court-ordered fines, restitution, or other payments.⁶⁵

Law enforcement agencies have taken varying positions on whether Proposition 83's life-long GPS tracking provision applies retroactively and whether you will have to wear the GPS device if your sex offense was committed prior to November 8, 2006.⁶⁶ Federal courts have ruled that the GPS requirement does not apply to persons who were convicted prior to the effective date of the statute *and* were paroled, given probation, or released from custody prior to that date.⁶⁷ There will likely be further court proceedings on related issues.

If you believe you are unlawfully being subjected to the GPS restrictions and you are in prison or parole, you can file a state court petition for writ of habeas corpus. The Prison Law Office can provide free information about this type of legal action upon request. If you believe that you are wrongly being subjected to GPS restrictions and you are no longer in prison or on parole, you most likely will need to file a petition for writ of mandate to raise the issue.

RESIDENCY RESTRICTIONS

What are the restrictions on where registered sex offenders may live?

A sex offender parolee may not reside in a single-family house with another person who is also required to register as a sex offender, unless they are legally related by blood, marriage, or adoption.⁶⁸

Up until November 8, 2006, the law forbade sex offender parolees convicted under Penal Code § 288 or § 288.5 from living within half a mile (2,640 feet) of a K-8 school; if deemed "high risk" by the

⁶⁴ Penal Code §§ 3004(a), 3010-3010.7. This law existed prior to the November 8, 2006 effective date of Proposition 83.

⁶⁵ Penal Code §§ 3004(c), 3010.8.

⁶⁶ See Walsh, D., *Parolee's Legal Challenge is Second Levied Against New Sexual Predator Law*, S.F. Daily Journal, Nov. 20, 2006, p. 3.

⁶⁷ *Doe v. Schwarzenegger* (E.D.Cal. 2007) 476 F.Supp.2d 1178; see also *Doe v. Schwarzenegger* (N.D. Cal. Feb. 22, 2007) No. C 06-06968 JSW.

⁶⁸ Penal Code § 3003.5(a).

CDCR, such parolees could not live within a half-mile of a K-12 school.⁶⁹

The residency restrictions became much stricter upon passage of Proposition 83, which went into effect on November 8, 2006. Proposition 83 enacted a new statute that forbids any registered sex offender from living within 2,000 feet of a school or park where children regularly gather.⁷⁰ This requirement applies to *all* sex offender registrants, regardless of whether the underlying offense was a felony or misdemeanor, whether the offense involved children, and whether the sex offender is on or off parole. These residency restrictions have forced many parolees to become homeless because they are unable to find compliant housing.

The CDCR has standard procedures for enforcing the residency requirements.⁷¹ Within 6 days of your release on parole, parole agents will verify with GPS handheld devices that your proposed residence is not within 2,000 feet of a school or park. The CDCR will measure the straight-line distance between the main entrance of the parolee's residence and the exterior boundary of the nearest park or school, not the driving or walking distance between the two points. If you are homeless or transient (moving from place to place), parole agents will monitor your GPS "tracks" to ensure that you are not loitering or staying in noncompliant locations. If you want to move into a new residence, you must give the parole agent 6 working days' notice of your new address, so that the agent can ensure that it is at least 2,000 feet from the nearest school or park.

Parole agents and the BPH have been instructed to make exceptions for parolees who are mentally ill and housed in a licensed mental health facility or are in need of medical care in a licensed facility. Also, parolees who indicated to their agent their intent to become transient are not to be arrested, though they must continue to keep the agent informed of their whereabouts.

CDCR has interpreted the residency restriction to prohibit parolees from spending more than 2 hours in any building that is within 2000 feet of a school or park unless they are working or receiving medical services or conducting legitimate business in a licensed business, professional or government building. Thus, spending even one night in a building establishes that building as a "residence." Parolees may work in businesses that are within 2000 feet of schools or parks if they have permission from their agent.⁷²

⁶⁹ Former Penal Code § 3003(g). Current Penal Code 3003(g) still prohibits people released on parole for a violation of Penal Code §§ 288 or 2885 from residing within one-half mile of any K-12 school.

⁷⁰ Penal Code § 3003.5(b).

⁷¹ Information on CDCR's policies is taken from the CDCR website at http://www.cdcr.ca.gov/Parole/Sex_Offender_Facts/Jessicas_Law.html and CDCR Department of Adult Parole Operations Policies No. 07-36, 8-14 and 8-35.

⁷² CDCR Department of Adult Parole Operations Policy 08-35.

In July 2009, the CDCR announced that it was changing its policy to give parole agents discretion

If you are on parole and you do not comply with the residence restrictions, you may be arrested on a parole violation charge, referred to the Board of Parole Hearings (BPH) for a revocation hearing, and possibly returned to prison.⁷³ Violations of the residency rules are likely to result in re-incarceration for 10-12 months, eligible for half-time unless you have a commitment offense or other conduct that prohibits you from earning good conduct credits.

Parole agents and the BPH have been instructed to make exceptions to the residency rules for parolees who are mentally ill and housed in a licensed mental health facility or are in need of medical care in a licensed facility. In either case, if the facility has 24-hour supervision, parole agents have been instructed to get a decision from the Director of the CDCR Division of Adult Parole Operations on whether the parolee may stay in that facility until the continued care is no longer needed.

After you are discharged from parole, it is unclear what, if any, punishment may be imposed if you do not comply with the residency restrictions.

You should be aware that local cities, towns and counties are permitted to adopt ordinances which impose further restrictions on where you can live.⁷⁴ If you are unsure whether your residence is in compliance with local law, check with someone who is familiar with your community's laws.

How can I challenge the residency restrictions?

Courts have issued some important decisions on Proposition 83's residency restrictions. A federal court ruled that the residency provision does not apply to people who were convicted prior to November 8, 2006 and paroled, placed on probation, or released from custody prior to that date, even if they later move into residences located less than 2,000 feet from a school or park.⁷⁵ On the other hand, the California Supreme Court held in *In re E.J., et al.* that the residency restrictions apply to *anyone released on parole on or after November 8, 2006*, regardless of the offense for which they are being released.⁷⁶ For example, someone who was convicted of a sex offense and released on parole prior to November 8, 2006, but who was re-incarcerated for a parole violation and re-released on parole *after* that date, is subject to the residency provision. The same goes for a person who was released for a sex offense term prior to November 8, 2006, but convicted of and released on parole for a *non-sex offense* after that date.

to decide whether a homeless parolee is residing within the 2,000 foot limit or is just stopping by. Greg Katz, *State Will Roll Back Sex Offender Rule*, S.F. Daily Journal, June 29, 2009, p.1. However, it appears that some parole officials are continuing to enforce the 2-hour policy. Greg Katz, *State Promised to Fix Sex Offender Policy, But Still Enforces It*, S.F. Daily Journal, Oct. 29, 2009, p.1.

⁷³ 15 CCR § 2616(a)(15).

⁷⁴ Penal Code § 3003.5 (c).

⁷⁵ *Doe v. Schwarzenegger* (E.D. Cal. 2007) 476 F.Supp.2d 1178.

⁷⁶ *In re E.J., et al.* (2010) 47 Cal.4th 1258, 1272-1273.

The California Supreme Court in *In re E.J., et al.* did not address other questions about whether Proposition 83's residency requirement is an unreasonable, vague, and overbroad law that violates fundamental constitutional rights.⁷⁷ The Court sent the four individual petitioners in *In re E.J., et al.* back to the local superior courts for further evidentiary hearings to resolve these questions. The Court stayed enforcement of the residency provision as to the four individuals in those cases, so that they do not have to comply with the restrictions while their cases are being heard. The Court denied a request to stay enforcement as to all parolees who are affected by the residency restrictions, but stated that individual parolees can file actions for relief from the residency restrictions and request stays in the local superior courts. On November 1, 2010, a superior court judge enjoined the CDCR from enforcing section 3003.5(b) as to all Los Angeles county parolees; however, on November 18, 2010, the court of appeal stayed the superior court order pending further consideration.⁷⁸

Upon request, the Prison Law Office can provide a free model state habeas petition and request for stay of the sex offender residency restrictions.

PUBLIC NOTIFICATION

Can the government release information about me to the public?

Unless you fall under certain exceptions or your sex offense was committed as a juvenile, the state can publish your name, photograph, physical description, date of birth, and zip code on the internet.⁷⁹ The state cannot publish the name of your employer or any criminal history not related to your registration requirement.⁸⁰ Any person who is required to register is not permitted to look at this website; it is a misdemeanor to do so.⁸¹

A few people can apply to be taken off the website. These are people who have never been found to be Sexually Violent Predators (SVPs), and whose only registerable sex offenses are for (1) a violation of Penal Code § 243.4(a); (2) a misdemeanor violation of § 647.6 or former § 647(a); or (3) an offense which did not involve penetration or oral copulation, the victim of which was a child, stepchild,

⁷⁷ *Id.* at pp. 1264-1265.

⁷⁸ *In re Moreland/Brown* (Los Angeles Super. Ct. Nov. 1, 2010) Nos. PV000527, PV000533, PV000512, PV000712, Order; *In re Moreland* (2nd. Dist. Ct. of Appeal Nov. 18, 2010) No. B228821, Order.

⁷⁹ Penal Code § 290.46.

⁸⁰ Penal Code § 290.46(a)(1).

⁸¹ Penal Code § 290.46(k). The web site on which information about sex offenders is published is <http://www.meganslaw.ca.gov>. You cannot enter the restricted portion of the website without first reading a warning and clicking to acknowledge that warning.

grandchild, or sibling of the offender, and for which the offender successfully completed or is successfully completing probation.⁸² Effective January 1, 2010, people convicted of §§ 311.1; 311.2(b), (c), or (d); 311.3; 311.4; 311.10; or 311.11 may also ask to be removed from the website if the victims of their crimes were 16 years or older.⁸³ The form for applying for removal from the website is available at <http://www.meganslaw.ca.gov/pdf/Application.pdf>.

The information on the website should only be used for protection of the public. If it is used to commit a crime against you, the person who committed the crime may be punished and can also be liable in a civil suit.⁸⁴ In addition, the information should not be used to deny you health insurance, credit, educational funds, housing, or (with certain exceptions) a job.⁸⁵ You also cannot be excluded from a public business establishment because of your registration status.⁸⁶

In addition to the website, law enforcement agencies are permitted to otherwise release identifying information about sex offender registrants when the release is for the purpose of protecting the public.⁸⁷

OTHER PAROLE CONDITIONS

Parole officials may also impose other special conditions of parole on parolees who were convicted of sex offenses. Such special conditions might include participation in sex offender treatment or limitations on computer access. Generally, to show that a condition of parole is invalid you must show that it (1) has no relation to the crime of which the offender has been convicted; (2) relates to conduct which is not in itself criminal; and (3) requires or forbids conduct that is not reasonably related to future criminality.⁸⁸ You can also convince a court to hold a parole condition invalid if the condition infringes upon a constitutional right, is not reasonably related to a compelling state interest in reformation and

⁸² Penal Code § 290.46(e).

⁸³ Penal Code § 290.46(e)(2)(C).

⁸⁴ Penal Code § 290.46(j) and (l).

⁸⁵ Penal Code § 290.46(l). There are other provisions of law that may allow you to be excluded from certain jobs. See Penal Code § 290.95(c) (prohibiting § 290 registrants whose offenses involved children under age 16 from work (paid or volunteer) that would involve direct, unaccompanied, regular contact working with minors); Penal Code § 290.95(a)-(b), (d) (requiring disclosure of registration status to any employer where job involves contact with children, including work that involves providing goods or services to minors). Failure to comply is a misdemeanor. Penal Code § 290.95(e).

⁸⁶ Penal Code § 290.46(l)(2)(H).

⁸⁷ Penal Code § 290.45.

⁸⁸ *People v. Burgener* (1986) 41 Cal.3d 505, 531, overruled on other grounds in *People v. Reyes* (1998) 19 Cal.4th 743; *People v. Dominguez* (1967) 256 Cal.App.2d 623, 627; *People v. Lent* (1975) 15 Cal.3d 481, 486. Although *Lent* and *Dominguez* concern probation conditions, courts have generally applied the same legal analysis to conditions of parole. See *People v. Reyes* (1998) 19 Cal.4th 743.

rehabilitation, and is not specifically tailored to the individual parolee.⁸⁹

Neither Proposition 83 nor any other law prohibits sex offenders from living in a household with children. However, parolees who have been convicted of sex offenses report that parole officials commonly place special conditions barring them from living with any minors, including their own children, step-children, nieces and nephews, or minor siblings. Whether such conditions are lawful probably depends on case-by-case factors, such as the type and number of sex offenses committed in the past, the findings of any risk assessment evaluation, the sex and age of the minor child, and the closeness of the family relationship.

Another parole condition required by the CDCR is that transient parolees who must register as sex offenders are required to report to their parole agents in person every week. Any transient parolee who is not on GPS monitoring must also report to the parole agent daily by telephone.⁹⁰

If you believe that you are being subjected to an unlawful parole condition, you can challenge that parole condition in a state petition for writ of habeas corpus. The Prison Law Office can provide free information about this type of legal action upon request.

⁸⁹ *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084-1085; *In re Stevens* (2004) 119 Cal.App.4th 1228; *In re Daniel R.*(2006) 144 Cal.App.4th 1.

⁹⁰ CDCR Department of Adult Parole Operations Policy 08-35.