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### *Your Responsibility When Using the Information Provided Below:*

When putting this material together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you want legal advice backed by a guarantee, try to hire a lawyer to address your specific problem. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in a law library.

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

(updated 7/30/09)

This letter addresses common questions about the special 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 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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## REGISTRATION<sup>1</sup>

### 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 section 290 (c). Some of those crimes are: sexual battery; rape; forcible sexual penetration; inducing sex by false pretenses causing fear; pimping and pandering; procurement of a child under 16 for lewd acts; sexual assault or molest of a child; incest; sodomy or oral copulation of a minor; lewd acts with a child; continuous sexual abuse of a child; preparing, possessing, duplicating or distributing child pornography; kidnap or assault for the purpose of committing rape, sodomy, lewd acts upon a child, oral copulation, forcible sexual penetration or prostitution; soliciting another to commit rape, sodomy, oral copulation or lewd acts on a child; indecent exposure; contributing to the delinquency of a minor involving lewd and lascivious conduct; or sending harmful sexual material to a minor. You will also be required to register if you were convicted of an attempt or conspiracy to commit any of these crimes.<sup>2</sup>

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

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.<sup>5</sup>

Some other groups of people are required to register. For example, you are required to register if you have been found not guilty by reason of insanity of any of the offenses listed in Penal Code § 290 (c).<sup>6</sup> If you were adjudicated as a ward of the juvenile court for certain sex offenses and committed to the

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<sup>1</sup> Information about registration requirements can be found on the Department of Justice website at [www.meganslaw.ca.gov/index.aspx?lang=ENGLISH](http://www.meganslaw.ca.gov/index.aspx?lang=ENGLISH). The information is available in numerous languages.

<sup>2</sup> Penal Code § 290. The registration requirements apply to any qualifying crimes committed since July 1, 1944. Penal Code § 290, § 290.003 and § 290.023. Consult the statutes starting at Penal Code § 290 if you have any doubt about whether you are required to register.

<sup>3</sup> Penal Code § 290.006.

<sup>4</sup> 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.

<sup>5</sup> Penal Code § 290.007.

<sup>6</sup> Penal Code § 290.004.

California Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice (formerly the California Youth Authority) or the equivalent agency in another state, then you will be required to register.<sup>7</sup> In addition, if you have ever been found to be a Mentally Disordered Sex Offender or Sexually Violent Predator, you are required to register.<sup>8</sup> You must register if you live in California and 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 section 290 (c).<sup>9</sup> In addition, if you are required to register as a sex offender in another state, you are almost certainly required to register in California.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> If you are in state prison, your correctional counselor and parole officer should go over the registration requirement as part 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.<sup>13</sup> 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 are attending school full- or part-time in California.<sup>14</sup>

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<sup>7</sup> 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 290.008 (c) with 290 (c) and 290.066. See also *In re Derrick B.* (2006) 39Cal.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).

<sup>8</sup> Penal Code § 290.001 and § 290.004.

<sup>9</sup> Penal Code § 290.005.

<sup>10</sup> See Penal Code § 290.002 and § 290.005.

<sup>11</sup> 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).

<sup>12</sup> *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).

<sup>13</sup> Penal Code § 290 (b), § 290.005.

<sup>14</sup> Penal Code § 290.002..

If you move out of state, you don't need to keep registering in California, so long as you don't spend much time in California. 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 which has no police department.<sup>15</sup> 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 departments so that you are registered in all locations.<sup>16</sup> 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.<sup>17</sup>

When you register, you will be required to provide all of your current residence addresses. 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.<sup>18</sup>

You have five working days to register after you are released from custody or placed on probation or parole.<sup>19</sup> You must update your registration every time you move within five working days of moving. You must also update your registration every year within five working days of your birthday.<sup>20</sup> In addition, if you have been found to be a Sexually Violent Predator, you must update your registration every 90 days.<sup>21</sup> If you change your name, you must notify the police or sheriff within five working days of your name change.<sup>22</sup>

If you move, you must notify, in person, the local authorities about your new address within five working days.<sup>23</sup> 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.<sup>24</sup> If

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<sup>15</sup> Penal Code § 290 (b).

<sup>16</sup> Penal Code § 290.010. You can be residing at an address even if you are only living there on a temporary basis. *People v. Williams* (2009) 171 Cal.App.4th 1667, 1672-1673.

<sup>17</sup> Penal Code § 290 (b), § 290.009.

<sup>18</sup> Penal Code § 290.015.

<sup>19</sup> Penal Code § 290 (b); § 290.015.

<sup>20</sup> Penal Code § 290.012 (a).

<sup>21</sup> Penal Code § 290.012 (b).

<sup>22</sup> Penal Code § 290.014; see *People v. Vincelli* (2005) 132 Cal.App.4th 646 (statute requiring registration after name change not unconstitutionally vague).

<sup>23</sup> Penal Code § 290.013.

<sup>24</sup> Penal Code § 290 (b), § 290.013 (a).

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 five working days to send a registered or certified letter informing the agency of your exact new address.<sup>25</sup> If you are going to move out of California, you must notify California authorities in person of your intended destination within five working days of the move.<sup>26</sup>

There are special rules for people who are homeless or do not have a permanent home, sometimes referred to as being "transient." If you are homeless, you are required to register within five working days of release, every 30 days after that, and within five working days of your birthday every year.<sup>27</sup> If you have a home but then become homeless, you must update your registration within five working days of losing your home.<sup>28</sup> When you register, you will have to provide information about where you sleep, eat, work, and spend time.<sup>29</sup> If you find a place to live, you must update your registration and tell the authorities your address within five working days.<sup>30</sup>

If you get sent to the California Department of Corrections or a state mental hospital, officials at those institutions are supposed to inform the Department of Justice of your confinement.<sup>31</sup> 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 (unless your normal re-registration date came up while you were incarcerated).<sup>32</sup>

If you are on parole, you must also provide your parole officer with proof of registration within six 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 five working days of the update or change.<sup>33</sup>

### **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

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<sup>25</sup> Penal Code § 290.013 (b); *People v. Annin* (2004) 117 Cal.App.4th 591, 603-604.

<sup>26</sup> Penal Code § 290.011 (f); § 290.013 (a).

<sup>27</sup> Penal Code § 290.011 (a) and (b).

<sup>28</sup> Penal Code § 290.011 (b).

<sup>29</sup> Penal Code § 290.011 (d).

<sup>30</sup> Penal Code § 290.011 (b).

<sup>31</sup> Penal Code § 290.013 (d).

<sup>32</sup> Penal Code § 290.015 (a).

<sup>33</sup> Penal Code § 290.85.

register is usually a felony.<sup>34</sup> There is no statute of limitations on failure to register since courts consider it to be a continuing offense.<sup>35</sup>

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.<sup>36</sup> 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.<sup>37</sup>

In order to be a crime, your failure to register must be “willful.”<sup>38</sup> 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.<sup>39</sup> However, it is very difficult to show that you did not know you had to register unless you were never notified of your duty to register.<sup>40</sup> Simply forgetting to register is not a defense, even if your memory lapse was related to depression.<sup>41</sup> 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.<sup>42</sup>

The punishment for failure to register can be serious. 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.”<sup>43</sup> Courts have upheld some third strike

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<sup>34</sup> Penal Code § 290.018.

<sup>35</sup> *People v. Fioretti* (1997) 54 Cal.App.4th 1209, 1217.

<sup>36</sup> Penal Code § 290.018 (i); *People v. Meeks* (2004) 123 Cal.App.4th 695, 703.

<sup>37</sup> *People v. Britt* (2004) 32 Cal.4th 944, 953-954.

<sup>38</sup> Penal Code § 290.018 (a) and (b); *People v. Garcia* (2001) 25 Cal.4th 744, 574.

<sup>39</sup> *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).

<sup>40</sup> *People v. Garcia* (2001) 25 Cal.4th 744, 574-575; *People v. Vigil* (2001) 94 Cal.App.4th 485, 501-502.

<sup>41</sup> *People v. Barker* (2004) 34 Cal.4th 345, 356-357; *People v. Sorden* (2005) 36 Cal.4th 65, 72.

<sup>42</sup> *People v. Sorden* (2005) 36 Cal.4th 65, 72.

<sup>43</sup> See Penal Code § 667 (b)-(i), § 667.5 (c) and § 1192.7 (c).

sentences for failure to register against claims that those sentences were cruel and unusual punishment in violation of the federal constitution's Eighth Amendment.<sup>44</sup> 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.<sup>45</sup>

In addition to being a statutory requirement, the registration requirement will be included as a special condition of parole for any parolee. If you do not sign your conditions of parole agreeing to register, your parole will be revoked for up to six months at a time.<sup>46</sup> 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.<sup>47</sup>

### **Can I be released from or challenge my registration requirement?**

For most sex offenses, obtaining a certificate of rehabilitation does not relieve a person of the duty to register; however, there are a few exceptions.<sup>48</sup> Most people convicted of registerable offenses are eligible to apply for a certificate of rehabilitation ten years after their release from custody or release on parole or probation, whichever is sooner. They must also have been living in California for five years during this period.<sup>49</sup> Certain sex offenders are not eligible to obtain a certificate of rehabilitation at all.<sup>50</sup>

If you obtain a full governor's pardon, you do not have to register as a sex offender.<sup>51</sup> 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.<sup>52</sup> Second, a person may apply directly to the

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<sup>44</sup> *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,

<sup>45</sup> *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.

<sup>46</sup> Penal Code § 3060.5.

<sup>47</sup> See generally Penal Code §§ 3056-3057.

<sup>48</sup> Penal Code § 290.5

<sup>49</sup> Penal Code § 4852.01 (c) and § 4852.03 (a)(2). People convicted of § 311.2 (b)(c) or (d), § 311.3, § 311.10, or § 314 need only demonstrate a seven-year period of rehabilitation.

<sup>50</sup> Penal Code § 4852.01 (d) (barring people from obtaining certificate of rehabilitation if they are in the military, serving life parole terms, or were convicted of violating § 286 (c), 288, 288a (c), 288.5 or 289 (j)). This section, which took effect on January 1, 1998, also applies to persons convicted of sex offenses prior to that date. *People v. Ansell* (2001) 25 Cal.4th 868, 880.

<sup>51</sup> Penal Code § 290.5 (b).

<sup>52</sup> Penal Code § 4852.16.

governor for a pardon.<sup>53</sup>

Also, if your conviction was 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.<sup>54</sup>

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 prohibition on "ex post facto" laws.<sup>55</sup> The United States Supreme Court has also upheld similar provisions in Alaska's Sex Offender Registration Act against an ex post facto challenge.<sup>56</sup>

On the other hand, some courts have struck down registration requirements as violating the guarantee of equal protection where the law treats similar offenses disparately 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 (§ 288a (b)(1)) because a person convicted of sexual intercourse with a 16-year-old minor (§ 261.5) is not subject to mandatory registration.<sup>57</sup> The lower courts have issued varying opinions as to whether registration requirements for other non-forcible crimes involving minors pose similar equal protection problems.<sup>58</sup>

If you believe that you are being wrongly ordered to register, you can file a state petition for writ of habeas corpus. 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.

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<sup>53</sup> 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).

<sup>54</sup> See Penal Code § 290.019 for the procedures.

<sup>55</sup> *Hatton v. Bonner* (9th Cir. 2004) 356 F.3d 955; *People v. Castellanos* (1999) 21 Cal.4th 785.

<sup>56</sup> *Smith v. Doe* (2003) 538 U.S. 84.

<sup>57</sup> *People v. Hofsheier* (2006) 37 Cal.4th 1185.

<sup>58</sup> Compare *People v. Ranscht* (2009) 173 Cal.App.4th 1369 (equal protection violated when registration automatically imposed for § 289 (h)) and *People v. Garcia* (2008) 161 Cal.App. 475 (equal protection not violated when registration imposed for § 288a (b)(2)) with *People v. Manchel* (2008) 163 Cal.App.4th 1108 (equal protection not violated when registration imposed for § 288a (b)(2)) and *People v. Anderson* (2008) 168 Cal.App.4th 135 (equal protection not violated when registration imposed for § 288 (c)(1)).

## 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.<sup>59</sup>

The life-long GPS requirement applies only if you were convicted of a felony which requires you to register as a sex offender. However, parole authorities may also require parolees who were convicted of crimes which do not require sex-offender registration to wear GPS tracking devices while they are on parole.<sup>60</sup> If you are on parole and do not comply with a GPS requirement, your parole can be revoked. The statute does not specify what punishment may be imposed if you do not comply with the GPS requirement after you have been discharged from parole.

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.<sup>61</sup> 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 who were paroled, given probation, or released from custody prior to that date.<sup>62</sup> There will likely be further court proceedings on related issues.

The California Department of Correction and Rehabilitation ("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.<sup>63</sup>

If you believe you are unlawfully being subjected to the GPS restrictions, you can file a petition for writ of habeas corpus in state court. The Prison Law Office can provide free information about this type of legal action upon request.

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<sup>59</sup> Penal Code § 3004 (b); see also Penal Code § 3000.07.

<sup>60</sup> Penal Code § 3004 (a), §§ 3010-3010.7. This law existed prior to the November 8, 2006 effective date of Proposition 83.

<sup>61</sup> See Walsh, D., "*Parolee's Legal Challenge is Second Levied Against New Sexual Predator Law*", S.F. Daily Journal, Nov. 20, 2006, p. 3.

<sup>62</sup> *Doe v. Schwarzenegger* (E.D. Cal. 2007) N 476 F.Supp.2d 1178; see also *Doe v. Schwarzenegger* (N.D. Cal. Feb 22, 2007) No. C 06-06968 JSW.

<sup>63</sup> Penal Code § 3004 (c); Penal Code § 3010.8.

## RESIDENCY RESTRICTIONS

### What are the restrictions on where registered sex offenders may live?<sup>64</sup>

Up until November 8, 2006, the law forbade sex offender parolees convicted of § 288 or § 288.5 from living within one half mile (2,640 feet) of a K-8 school; if deemed “high risk by the CDCR, such parolees could not live within a half mile of a K-12 school.<sup>65</sup> Also, 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.<sup>66</sup>

The residency restrictions on sex offenders 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.<sup>67</sup> 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. The CDCR’s position is that compliance is determined by 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.

The CDCR has standard procedures for enforcing the residency requirements. 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. 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.<sup>68</sup> If you are homeless, you will also be required to inform you agent of your whereabouts daily, and to meet with your parole agent every week. If you want to move to a new residence while you are on parole, you must give the parole agent six 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.

If you do not comply with the residency restrictions, you could be arrested for a misdemeanor. If

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<sup>64</sup> Some of the information on CDCR’s policies is taken from the CDCR website at [www.cdcr.ca.gov/Parole/Sex\\_Offender\\_Facts/JessicasLaw.html](http://www.cdcr.ca.gov/Parole/Sex_Offender_Facts/JessicasLaw.html).

<sup>65</sup> Former Penal Code § 3003 (g).

<sup>66</sup> Penal Code § 3003.5 (a).

<sup>67</sup> Penal Code § 3003.5 (b).

<sup>68</sup> Previously, the CDCR had a policy of not allowing homeless sex offender parolees to remain within 2,000 feet of a school or park for more than two-hours at a time, to prevent homeless parolees from violating the residency requirements by “couch-surfing.” As of July 2009, the CDCR is changing the policy to give parole agents discretion to decide whether a homeless parolee is residing within the 2,000 limit or is just stopping by. Katz, *State Will Roll Back Sex Offender Rule*, S.F. Daily Journal, June 29, 2009, p 1.

you are on parole, 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. If you are notified by a parole agent that your housing is too close to a school or park, the parole agent should generally give you six working days to move to compliant housing. If you have not moved out of the non-compliant housing by that time, the parole agent will submit a violation report to the BPH. If you move to compliant housing and satisfy the parole agent that your housing is compliant within 45 calendar days of the notice, the revocation process should end with no arrest and a “Continue on Parole” disposition.

If you fail to comply with the housing requirements within 45 days, you will be arrested on a parole violation charge and brought to a revocation hearing before the BPH. 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 charged conduct that prohibits work or good behavior credits.

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. 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.

You should also be aware that local cities, towns and counties are permitted to adopt ordinances which impose further restrictions on where you can live.<sup>69</sup> 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?**

Two federal judges have ruled that the residency provision of Proposition 83 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 those people later move into residences located less than 2,000 feet from a school or park.<sup>70</sup>

It is still in dispute as to whether the residency provision of Proposition 83 is lawful at all. There are also unresolved disputes about to whom the provision applies and how the 2,000 foot distance should be measured (by a straight line or by driving or walking distance). The Governor and the CDCR are arguing that the residency requirements of Proposition 83 apply to people who were convicted prior to November 8, 2006 but paroled after that date. The CDCR has also taken the position that the residency requirements apply to people who were paroled prior to November 8, 2006, but then were later re-incarcerated on parole violations and re-released to parole. The CDCR also is taking the position that the residency restrictions apply even if the parolee is currently on parole for a non-sex crime only.

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<sup>69</sup> Penal Code § 3003.5 (c).

<sup>70</sup> *Doe v. Schwarzenegger* (E.D.Cal. 2007) 476 F.Supp.2d 1178.

The Prison Law Office and the law firm of Rosen, Bien & Asaro are currently challenging the Prop. 83 residency restrictions in the California Supreme Court in the cases of *In re E.J.*, No. S156933; *In re S.P.*, No. S157631; *In re J.S.*, No. S157633 and *In re K.T.*, No S157634. The Court has stayed enforcement of the residency provision as to the four named parolees 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. However, the Court stated that individual parolees could file actions for relief from the residency restrictions in the local superior courts. Upon request, the Prison Law Office can provide a model individual 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.<sup>71</sup> The state cannot publish the name of your employer or any criminal history not related to your registration requirement.<sup>72</sup> Any person who is required to register is not permitted to look at this website; it is a misdemeanor to do so.<sup>73</sup>

A few people can apply to be excluded from the website. These are people who have never been found to be Sexually Violent Predators and whose only registerable sex offenses are for a violation of Penal Code § 243.4 (a); a misdemeanor violation of § 647.6 or former § 647 (a); or an offense which did not involve penetration or oral copulation, the victim of which was a child, stepchild, grandchild, or sibling of the offender, and for which the offender successfully completed or is successfully completing probation. Effective January 1, 2010, people convicted of § 311.1b)(c) or (c), § 311.2, § 311.2, § 311.4, § 311.10, or § 311.11 may also seek exclusion from the website if the victims of their crimes were 16 years or older.<sup>74</sup> The form for applying for exclusion from the website is available at [www.meganslaw.ca.gov/pdf/Application.pdf](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

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<sup>71</sup> Penal Code § 290.46.

<sup>72</sup> Penal Code § 290.46 (a)(1).

<sup>73</sup> Penal Code § 290.46 (k). The web site on which information about sex offenders is published is [www.meganslaw.ca.gov](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.

<sup>74</sup> Penal Code § 290.46(e).

in a civil suit.<sup>75</sup> In addition, the information should not be used to deny you health insurance, credit, educational funds, housing or (with certain exceptions) a job.<sup>76</sup> You also cannot be excluded from a public business establishment because of your registration status.<sup>77</sup>

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.<sup>78</sup>

### 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.<sup>79</sup> You can also convince a court to hold a parole condition invalid if the condition infringes upon a constitutional right and is not reasonably related to a compelling state interest in reformation and rehabilitation and is not specifically tailored to the individual parolee.<sup>80</sup>

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 or 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

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<sup>75</sup> Penal Code § 290.46 (j) and (l).

<sup>76</sup> Penal Code § 290.46 (l). There are other provisions of law that may allow you to be excluded from certain jobs. See Penal Code section 290.95 (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 if registerable offense, requiring disclosure of registration status to any employer where job involves contact with children.) Failure to comply is a misdemeanor. Penal Code § 290.95 (d).

<sup>77</sup> Penal Code § 290.46 (l)(2)(H).

<sup>78</sup> Penal Code 290.45.

<sup>79</sup> *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.

<sup>80</sup> *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.

past, the findings of any risk assessment evaluation, the sex and age of the minor child, and the closeness of the family relationship.

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.