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

When we wrote this information, we did our best to give you useful and accurate information because we know that prisoners often have difficulty obtaining legal information and we cannot provide specific advice to all the prisoners who request it. The laws change frequently and are subject to differing interpretations. 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 is applicable to your situation. Most of the materials you need should be available in your institution law library.

### **INFORMATION RE: NEW CALIFORNIA SUPREME COURT CASE ON SEX OFFENDER RESIDENCY RESTRICTIONS (*IN RE E.J.*)**

(Updated February 2, 2010)

On November 7, 2006, California voters enacted Proposition 83 (Jessica's Law). Among other things, Proposition 83 changed the law so that registered sex offenders are forbidden from living within 2,000 feet of a school or park where children regularly gather. This requirement, set forth in Penal Code § 3003.5(b), applies 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 California Department of Corrections and Rehabilitation (CDCR) has been enforcing Penal Code § 3003.5(b) by making compliance with the residency restriction a condition of parole for all parolees who are required to register as sex offenders. (CDCR Policy No. 07-36.)

On February 1, 2010, the California Supreme Court issued a decision in a group of four cases in which individual parolees challenged Penal Code § 3003.5(b). (*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 official reporter citation for the decision is not yet available].) Each of the petitioners is a parolee who was convicted of a sex offense *before* the passage of Proposition 83 and was released on parole *after* Proposition 83 took effect on November 8, 2006. The Court made the following rulings:

- C The Court found that applying the residency restriction to people who were convicted of sex crimes prior to November 8, 2006 does not violate the *ex post facto* clauses of the United States and California Constitutions or the Penal Code § 3 presumption that statutes are not to operate retroactively, so long as the person was released on parole anytime on or after November 8, 2006.

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It does not matter whether the term for which the person is currently on parole is for a sex offense or for some other type of offense. It also does not matter if the person was initially paroled before November 8, 2006 and then re-incarcerated for a parole violation, so long as he or she has been re-released to parole anytime on or after November 8, 2006.

- C The Court *did not decide* whether Penal Code section 3003.5(b) is generally an unreasonable, vague and over-broad parole condition that infringes on fundamental constitutional rights. The Court decided that there will have to be evidentiary hearings before these issues can be resolved. The Court ordered that the four individual cases be sent back to the local superior courts for further hearings. The Court continued to stay the enforcement of Penal Code section 3003.5(b) as to the named petitioners in the cases, meaning that these four people do not have to comply with the residency restriction while their cases are being heard in the lower courts.
  
- C A federal court previously ruled that Penal Code section 3003.5(b) does not apply to people who were convicted *prior* to November 8, 2006 and were last 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. (*Doe v. Schwarzenegger* (E.D.Cal. 2007) 476 F.Supp.2d 1178.) The California Supreme Court did not disturb that federal court ruling in its *In re E.J., et. al* decision.

As part of *In re E.J. et al.*, the California Supreme Court denied a request to stay enforcement of Penal Code section 3003.5(b) as to all parolees who are affected by the residency restrictions. However, the Court stated that individual parolees can file actions for relief from the residency restrictions in the local superior courts and can request that Penal Code section 3003.5(b) be stayed while their individual cases are pending. It appears that many superior courts have been willing to grant such stays.

Upon request, the Prison Law Office can provide:

- (1) a model PETITION FOR WRIT OF HABEAS CORPUS AND APPLICATION FOR IMMEDIATE STAY OF ENFORCEMENT OF CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION POLICY NO. 07-36, and/or
  
- (2) a more detailed letter on the SEX OFFENDER REGISTRATION, TRACKING AND RESIDENCY REQUIREMENTS