

# Residency Restrictions Leaving No Place for Sex Offenders Deemed Unconstitutional

by Roslyn Myers\*

**Editor's Note:** *Victims groups and prosecutors laud sex offender restrictions and residency restrictions as crucial to public safety, especially for children. One such law, eponymously known as Jessica's Law, passed in California in 2006, was a "wide-ranging initiative [designed to] strengthen and improve the laws that punish and control sexual offenders [to] help Californians better protect themselves, their children, and their communities. . . from problems posed by sex offenders." (Prop. 83 (Nov. 7, 2006) § 2, subd. (f); § 31.)*

*Like other sex offender residency restrictions, Jessica's Law established "predator-free zones" near schools and parks to "prevent sex offenders from living near where our children learn and play." (Voter Information Guide, Calif. Gen Elec. (Nov. 7, 2006) argument in favor of Prop. 83, p. 46.) Specifically, the law amended California Penal Code § 3003.5, addressing residency restrictions for parolees, by adding a new subdivision (b) that established a circumference of 2,000 feet around designated institutions and areas frequented by children. (See, e.g., **In re E.J.**, 47 Cal.4th 1258, 1263 (2010).) Definitive research on this has not yet put hard numbers to the public safety claims.*

*At the same time, as restrictions grow more far-reaching, released sex offenders have begun to push back against harsh regulatory structures. They have challenged laws that "single out sex offenders for eviction, employment termination, ostracism, and vigilante justice, with the latter including threats of violence, assault, arson, and even murder." (Sex Offenders Rally to Fight Discriminatory Laws, *Prison Legal News*, Feb. 2016, available at [www.PrisonLegalNews.org/news/2016/feb/2/Sex-Offenders-Rally-Fight-Discriminatory-Laws](http://www.PrisonLegalNews.org/news/2016/feb/2/Sex-Offenders-Rally-Fight-Discriminatory-Laws).)*

*Although it would be difficult if not impossible to significantly reduce discriminatory treatment of registrants, courts have taken a second look at the expansive laws governing this set of parolees. A national group calling itself Reform Sex Offender Laws (RSOL,*

*www.NationalRSOL.org) "seeks to convince judges, lawmakers, and the public that restrictive statutes and ordinances targeting sex offenders are unconstitutional and ineffective." (Id.) In one of RSOL's successful advocacy cases, the city of Cypress, CA, repealed a measure requiring registered sex offenders to post signs on their front doors on Halloween. More significantly, California's Supreme Court in 2014 declined to review two lower court decisions that invalidated local ordinances barring sex offenders from parks and other public places. A handful of other courts have narrowed the application of registrant restrictions in specific cases. One such case is outlined below.*

In a consolidated *habeas corpus* proceeding in California courts brought by registered sex offenders on active parole in San Diego County, the petitioners argued that the restrictive residency restrictions of Jessica's Law were unconstitutional. (**In re Taylor**, 60 Cal.4th 1019 (2015).) Jessica's Law, formally known as The Sexual Predator Punishment and Control Act of 2006, imposes mandatory residency restrictions on registered sex offenders prohibiting them from residing within 2,000 feet of any public or private school or park where children regularly gather. (See Prop. 83 (Nov. 7, 2006).) This allowed the county to make large areas of urban and suburban San Diego, including virtually all of the downtown area, completely off-limits to sex offenders because of the overlapping 2,000-foot radii delineated by the law as areas where children regularly gather.

Petitioners also showed that the law prevented them from living with parents, spouses, children, and other family or friends whenever these houses were not compliant with Jessica's Law, which leaves many offenders homeless or nearly so. (Several petitioners were living in an alley near the parole office and/or were housed with other sex offenders away from their families. Another had to live in a boarding house three hours away by bus from his parole office and from his designated treatment facilities.)

## Lower Court Finds Restrictions Unconstitutional

The trial court agreed with the petitioners' arguments, finding the mandatory residency

restriction unconstitutional as applied to all registered sex offenders in San Diego County. The court issued an injunction against enforcement of the law in the County. However, the court ruled that law enforcement could impose special parole conditions on individual sex offender parolees, including residency restrictions that might be equally prohibitive as Jessica's Law if the restrictions were based on an evaluation of the individual parolee's circumstances. The court thus rejected the blanket application of residency restrictions in San Diego County. The Court of Appeals affirmed, and the outcome was appealed again.

## California Supreme Court Affirms

The California Supreme Court examined both the applicability of the law and the circumstances of the 482 registered sex offenders in San Diego County at the time of the hearings. The court took note of the following evidence:

- In San Diego County, 34% of paroled sex offenders were transient or homeless;
- This population represented a substantial increase in dire residential situations from the time that Jessica's Law became effective;
- Jessica's Law effectively eliminated approximately 97% of all rental housing as possible residences for these parolees;
- The challenges for law enforcement associated with homeless parolees reduced public safety and burdened law enforcement because homeless individuals are more difficult to supervise than those with established residences;
- Homelessness created similar challenges for treatment professionals whose efforts to rehabilitate sex offenders were compromised by unstable living situations; and
- Instability in their living situations created a significant impediment to the mental and physical health of these parolees, further compromising their ability to re-enter society and comply with laws applicable to them. (**Taylor**, 60 Cal.4th 1040-41.)

See **RESIDENCY RESTRICTIONS**, next page

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In light of these facts, the court noted that the law imposed “harsh and severe restrictions and disabilities on the affected parolees’ liberty and privacy rights, however limited, while producing conditions that hamper, rather than foster, efforts to monitor, supervise, and rehabilitate those persons.” (**Taylor**, 60 Cal.4th 1038.) The court opined that homeless sex offender parolees posed more of a risk to public safety than those with known addresses. The court summarized its findings as follows:

Blanket enforcement of the residency restrictions against these parolees has severely restricted their ability to find housing in compliance with the statute, greatly increased the incidence of homelessness among them, and hindered their access to medical treatment, drug and alcohol dependency

services, psychological counseling, and other rehabilitative social services available to all parolees, while further hampering the efforts of parole authorities and law enforcement officials to monitor, supervise, and rehabilitate them in the interests of public safety. It thus has infringed their liberty and privacy interests, however limited, while bearing no rational relationship to advancing the state’s legitimate goal of protecting children from sexual predators, and has violated their basic constitutional right to be free of unreasonable, arbitrary, and oppressive official action. (**Taylor**, 60 Cal.4th 1023.)

Nevertheless, the court noted that the admittedly discriminatory residency restrictions under § 3003.5(b) were within the statutory authority of the CDCR, as discretionary parole conditions for sex offender parolees, who remain “constructively

prisoner[s] in the legal custody of state prison authorities until officially discharged from parole.” (**Taylor**, 60 Cal.4th 1037 quoting **Prison Law Office v. Koenig**, 186 Cal.App.3d 560, 566 (1986).) Saving its most important phrase for the end of the section of its ruling, the California Supreme Court added: “[CDCR restrictions must be] based on, and supported by, the particularized circumstances of each individual parolee.” (**Taylor**, 60 Cal.4th 1037.) While parolees “enjoy fewer constitutional rights than do ordinary persons,” they are constitutionally protected from “arbitrary and oppressive official action” that fails to pass even a rational basis standard of review, under which a state’s legitimate goal (in this case, protecting children from sexual predators) must be rationally related to the means by which it achieves this goal. Thus, the judgment of the appeals court was affirmed. ■



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