

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,)
)
 Plaintiff and Respondent,) No. S187965
)
 v.)
)
 STEVEN LLOYD MOSLEY,)
)
 Defendant and Appellant.)
)
 _____)

**COPIES OF DOCUMENTS OF WHICH APPELLANT
HAS ASKED THE COURT TO TAKE JUDICIAL NOTICE**

Fourth Appellate District, Division Three, No. G038379
Orange County Superior Court No. 05NF4105
Honorable David Hoffer, Judge

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**SUPREME COURT
FILED**

JAN 18 2012

Frederick K. Ohlrich Clerk

Deputy

TABLE OF CONTENTS

Document 1 – the December 2008 publication by the California Sex Offender Management Board (CASOMB) entitled *Homelessness Among Registered Sex Offenders in California: The Numbers, the Risks and the Response*

Document 2 – the January 2010 publication of the CASOMB entitled *Report and Recommendations*

Document 3 – the August 2011 publication of the CASOMB entitled *Homelessness Among California Registered Sex Offenders, An Update*

Document 4 – the February 18, 2011, Statement of Decision by the San Diego County Superior Court in *In re Briley, et al.*, HC 19612

Document 1

The December 2008 publication by the California Sex
Offender Management Board (CASOMB) entitled
*Homelessness Among Registered Sex Offenders in
California: The Numbers, the Risks and the Response*

COPY

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Plaintiff and Respondent,)	No. S187965
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)	Superior Court No. 05NF4105)
STEVEN LLOYD MOSLEY,)	
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Defendant and Appellant.)	
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MOTION TO TAKE JUDICIAL NOTICE

Appellant Steven Lloyd Mosley hereby asks the Court to take judicial notice of four documents pursuant to Evidence Code sections 452 and 459 and rule 8.252 of the California Rules of Court. The four documents are: (1) the December 2008 publication by the California Sex Offender Management Board (CASOMB) entitled *Homelessness Among Registered Sex Offenders in California: The Numbers, the Risks and the Response*; (2) the January 2010 publication of the CASOMB entitled *Report and Recommendations*; (3) the August 2011 publication of the CASOMB entitled *Homelessness Among California Registered Sex Offenders, An Update*; and (4) the February 18, 2011, Statement of Decision by the San Diego County

Superior Court in *In re Briley, et al.*, HC 19612.

The briefs of the parties and amici make reference to and quote from these four documents. (See, e.g., (1) the references to document 1 in Respondent's Opening Brief on the Merits at p. 24, Appellant's Answer Brief on the Merits at pp. 24-25, 34-35, and Respondent's Reply Brief on the Merits at p. 25; (2) references to document 2 in Respondent's Opening Brief on the Merits at pp. 23-24, Appellant's Answer Brief on the Merits at pp. 23-25, and Respondent's Reply Brief on the Merits at p. 25; (3) the references to document 3 in Respondent's Reply Brief on the Merits at p. 25, Amicus Curiae Brief of CACJ at p. 19, and Amicus Curiae Brief of CCOSO and ATSA at pp. 7, 15; and (4) the references to document 4 in the Amicus Curiae Brief of CACJ at pp. 11-14.) For the convenience of the Court, concurrently with the filing of this motion appellant is lodging with the Court copies of the four documents and a proposed order.

This case involves the interpretation and effect of Jessica's Law and the constitutional requirements for its application to "discretionary" sex offender registrants under Penal Code section 290.006. The four documents are relevant to this appeal because they contain data showing the effects of Jessica's Law on registrants, which, in turn, is relevant to whether Jessica's Law is punitive and therefore subject to the requirements of *Apprendi v. New Jersey* (2000) 530 U.S. 466.

Appellant did not ask the trial court to take judicial notice of the documents, and the documents do not relate to proceedings

occurring after the judgment that is the subject to this appeal. The matters to be noticed are not in the record, which is why appellant is filing copies concurrently with this motion.

Evidence Code section 459, subdivision (a) provides, in relevant part: "The reviewing court may take judicial notice of any matter specified in Section 452." CASOMB, which is the agency that prepared documents 1-3, is a state agency created in 2006 by AB 1015. Its mission is to provide the Governor and Legislature with and assessment of current sex offender management practices. Its reports are official acts of the executive and legislative departments of California and may be judicially noticed pursuant to section 452, subdivision (c). Indeed, this Court made reference to document 1 in *In re E.J.* (2010) 47 Cal.4th 1258, 1281-1282. Document 4 is an official record of a court of this state and may be judicially notice pursuant to section 452, subdivision (d)(1).

Because all four documents are relevant and statutorily subject to judicial notice, appellant respectfully asks the Court to take judicial notice of them.

DATED: January 11, 2012

Respectfully submitted



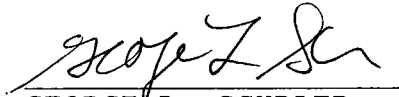
GEORGE L. SCHRAER
Attorney for Appellant

PROOF OF SERVICE

I, George L. Schraer, declare under penalty of perjury that I am a member of the State Bar of California and not a party to this cause. My business address is 5173 Waring Road, #247, San Diego, California 92120. On January 11, 2012, I served the attached MOTION TO TAKE JUDICIAL NOTICE; PROPOSED ORDER by placing true and correct copies in envelopes addressed to

Attorney General
State of California
P. O. Box 85266
San Diego, CA 92186-5266

and by sealing the envelopes and depositing them, with first class postage fully prepaid, in the United States mail at San Diego, California.

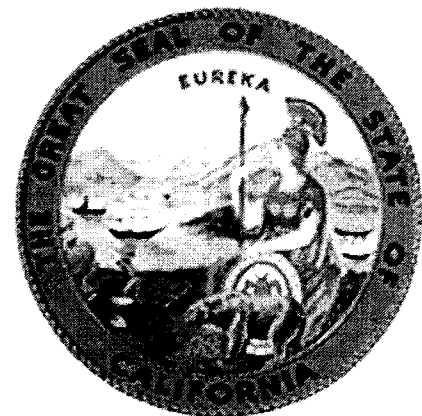


GEORGE L. SCHRAER

CALIFORNIA SEX OFFENDER MANAGEMENT BOARD

**HOMELESSNESS AMONG REGISTERED SEX
OFFENDERS IN CALIFORNIA:
THE NUMBERS, THE RISKS AND
THE RESPONSE**

DECEMBER 2008



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CASOMB CHAIR
EXECUTIVE DIRECTOR
CALIFORNIA COALITION AGAINST SEXUAL ASSAULT

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CALIFORNIA STATE UNIVERSITY, SACRAMENTO

THE CALIFORNIA SEX OFFENDER MANAGEMENT BOARD

In 2006, the California Sex Offender Management Board (CASOMB) was created when Assembly Bill (AB) 1015 was passed by the California State Legislature and signed by Governor Arnold Schwarzenegger. CASOMB is comprised of 17 appointed members representing various agencies that play a critical role in sex offender management. Five of the appointees come from state agencies, eight from local government (county or city) and four from the non-government sector.

Under AB 1015, CASOMB has been charged with providing the Governor and the California State Legislature with an assessment of current sex offender management practices, a progress report on the Board's work and a final report with recommendations. To accomplish these tasks, CASOMB meets monthly as a full Board and has broken up into Committees that meet during the interim period between Board meetings. The work by CASOMB connects with its mission and vision.

Vision

The vision of the CASOMB is to decrease sexual victimization and increase community safety.

Mission

This vision will be accomplished by addressing issues, concerns, and problems related to community management of adult sexual offenders by identifying and developing recommendations to improve policies and practices.

CASOMB's role in state government is to make recommendations, using evidence based practices as examples, to those who do have the authority to set policies and determine practices for the systems that manage sex offenders. CASOMB also serves as a resource for state legislators and other policymakers.

WANT MORE INFORMATION?

Monthly CASOMB meetings are open to the public and time is made available for public comment. CASOMB's web site (www.casomb.org) is the best source for meeting dates, agendas, minutes, and other resources including Board publications as well as national research.

TABLE OF CONTENTS

	EXECUTIVE SUMMARY	1
	OVERVIEW AND OUTLINE OF CONTENTS	5
PART I	SINCE THE IMPLEMENTAION OF RESIDENCY RESTRICTIONS, THE NUMBER OF SEX OFFENDERS REGISTERING AS TRANSIENT HAS SIGNIFICANTLY INCREASED.	7
PART II	HOMELESSNESS INCREASES THE RISK THAT SOMEONE WHO HAS OFFENDED SEXUALLY MAY COMMIT ANOTHER SEX CRIME.	15
PART III	THE RESPONSE TO HOMELESSNESS AMONG SEX OFFENDERS REQUIRES A CREATIVE AND COLLABORATIVE EFFORT TO CREATE STABLE AND SUITABLE HOUSING.	21
PART IV	CONCLUSIONS	27
	REFERENCES	29
APPENDIX A:	CALIFORNIA TRANSIENT SEX OFFENDER DISTRIBUTION BY COUNTY	33
APPENDIX B:	LOCAL ORDINANCES REGULATING RESIDENCE AND PRESENCE OF SEX OFFENDERS	35
APPENDIX C:	RESIDENCE RESTRICTIONS: WHAT DOES THE FUTURE HOLD?	37

HOMELESSNESS AMONG REGISTERED SEX OFFENDERS IN CALIFORNIA: THE NUMBERS, THE RISKS AND THE RESPONSE

NOVEMBER 2008
SACRAMENTO, CALIFORNIA

EXECUTIVE SUMMARY

Why should our community care about issues related to homelessness among registered sex offenders? In the wake of the passage of state law and local ordinances restricting the residency of sex offenders, the number of sex offenders who registered as transient has risen significantly. Among all registered sex offenders (parolees, probationers and unsupervised), the number of sex offenders registering as transient has increased from 2050 in June 2007 to 3,267 by August 2008 – an increase of 60%. The only population of sex offenders where the residency restrictions of Proposition 83 has been consistently enforced has been parolees. Among parolees (parolees constitute approximately 15% of all registered sex offenders), the number of sex offenders registering as transient increased from 88 in November 2006 (prior to the passage of Proposition 83) to 1,056 by June 29, 2008 – an increase of over 800%. Currently, only the Department of Corrections and Rehabilitation, U.S. Probation and a few counties are enforcing Proposition 83. The Board anticipates that the number of sex offenders registering as transient will increase to a greater extent should other entities decide to enforce residency restriction laws. To better understand the significance of this rise in sex offenders registering as transient, the Board examined the events surrounding the increase in homelessness among sex offenders and how that increase may impact community safety.

Among all registered sex offenders (parolees, probationers and unsupervised), the number of sex offenders registering as transient has increased from 2050 in June 2007 to 3,267 by August 2008 – an increase of 60%. The only population of sex offenders where the residency restrictions of Proposition 83 has been consistently enforced has been parolees. Among parolees (parolees constitute approximately 15% of all registered sex offenders), the number of sex offenders registering as transient increased from 88 in November 2006 (prior to the passage of Proposition 83) to 1,056 by June 29, 2008 – an increase of over 800%.

It can be no coincidence that the rise in homelessness among registered sex offenders corresponds with recent changes regarding residency restrictions

imposed on registered sex offenders. California imposes various limitations on where a registered sex offender may live depending on whether the offender is a High Risk Sex Offender (HRSO), a sexually violent predator (SVP) or a person required to register under Penal Code section 290 as the consequence of a conviction for any specified sexual crime. Local governments have also imposed their own residency restrictions, usually directed toward all Penal Code section 290 registrants. In addition, this state's registration and notification laws have provided communities with the ability to locate sex offenders within their neighborhoods. An unintended and collateral effect of this state's registration and community notification laws was the mobilization of neighborhoods to oust sex offenders. As a result, the housing options for sex offenders have diminished significantly. With fewer options available, the number of sex offenders registering as transient has increased.

Common sense leads to the conclusion that a community cannot be safer when sex offenders are homeless. In this case, the empirical evidence supports common sense. Lack of stability is a primary contributing factor to an increased risk of reoffending, including sexual reoffending. Residential instability leads to unstable employment and lower levels of social support. Unstable employment and lack of social support lead to emotional and mental instability. Emotional and mental instability breaks down the ability to conform and leads to a greater risk of committing another sex crime.

The Board believes that the rise in homelessness among sex offenders needs attention because it is so closely associated with an increased level of threat to community safety. Based on its examination of the available evidence, the Board makes the following findings:

- The evidence shows an unmistakable correlation between the implementation of residency restrictions and the increase in homelessness among registered sex offenders.
- The evidence shows that homelessness increases the risk that a sex offender may reoffend.
- Partnerships between different levels of governments and between government and the public to make stable and appropriate housing available to sex offenders provide the strongest hope for reducing the transient sex offender population and the associated risk of future sexual victimization.

The following report will examine more closely each of the elements noted in this summary and will provide information about the research which supports each of the statements made and conclusions drawn by the Board.

OVERVIEW

To understand the events leading to the increase in sex offenders registering as transient and the impact this increase may have on community safety, the Board explored the numbers, the risks and the response to this increase.

Part I of this report looks at the number of sex offenders registering as transient. The data is viewed by examining the increase in homelessness among all registered sex offenders and sex offenders who are on parole. It also sets out the historical events correlating with the rise in sex offenders registering as transient. More importantly, this part identifies the numerous federal, state and local laws limiting where sex offenders may live.

Part II examines the risk that transient sex offenders may pose to community safety. It begins with an exploration of the factors affecting the risk of reoffending, looks at the destabilizing affects of homelessness and reaches the conclusion that transiency increase the risk of reoffending.

Part III looks at the response and lack of response to the increase in transiency among sex offenders. It begins with a look at the methods used by other states to provide housing for sex offenders and concludes with a summary of Governor Schwarzenegger's "California Summit for Safe Communities."

Part IV gives the conclusions of the Board. The Conclusions section identifies factors that may increase or decrease the level of homelessness among sex offenders. It concludes with specific findings as supported by available evidence.

OUTLINE OF CONTENTS

- Part I. **SINCE THE IMPLEMENTATION OF RESIDENCY RESTRICTIONS, THE NUMBER OF SEX OFFENDERS REGISTERING AS TRANSIENT HAS SIGNIFICANTLY INCREASED.**
 - a. Among all registered sex offenders, the number of sex offenders registering as transient has increased by sixty percent.
 - b. Registration and notification laws have impacted where sex offenders may live.
 - c. The housing options for sex offenders are limited by federal, state and local laws.

- Part II. **HOMELESSNESS INCREASES THE RISK THAT SOMEONE WHO HAS OFFENDED SEXUALLY MAY COMMIT ANOTHER SEX CRIME.**
 - a. What are the factors that increase a sex offender's risk of committing another sex crime?

- b. Homelessness, a dynamic risk factor, destabilizes the sex offender and increases the risk of committing another sex crime.
- c. Housing helps the sex offender to stabilize and reduces the risk of re-offending.
- d. Housing leads to stable employment and social support, which are factors reducing the risk of re-offending.

Part III. THE RESPONSE TO HOMELESSNESS AMONG SEX OFFENDERS REQUIRES A CREATIVE AND COLLABORATIVE EFFORT TO CREATE STABLE AND SUITABLE HOUSING.

- a. Efforts to reduce homelessness among sex offenders have led to innovative approaches to housing.
 - i. Shared Living Arrangements
 - ii. Secure Community Transition Facility for sexually violent predators
 - iii. Mobile trailers as transition housing
 - iv. Leased Unit Model
 - v. Private landlords with informal agreements with the government
 - vi. Funding for construction of homes for the homeless
- b. The solution to the problem of housing sex offenders begins with examining and developing a state-wide housing policy.

Part IV. CONCLUSIONS

Part I. SINCE THE IMPLEMENTATION OF RESIDENCY RESTRICTIONS, THE NUMBER OF SEX OFFENDERS REGISTERING AS TRANSIENT HAS SIGNIFICANTLY INCREASED.

- a. Among all registered sex offenders, the number of sex offenders registering as transient has increased by sixty percent.*

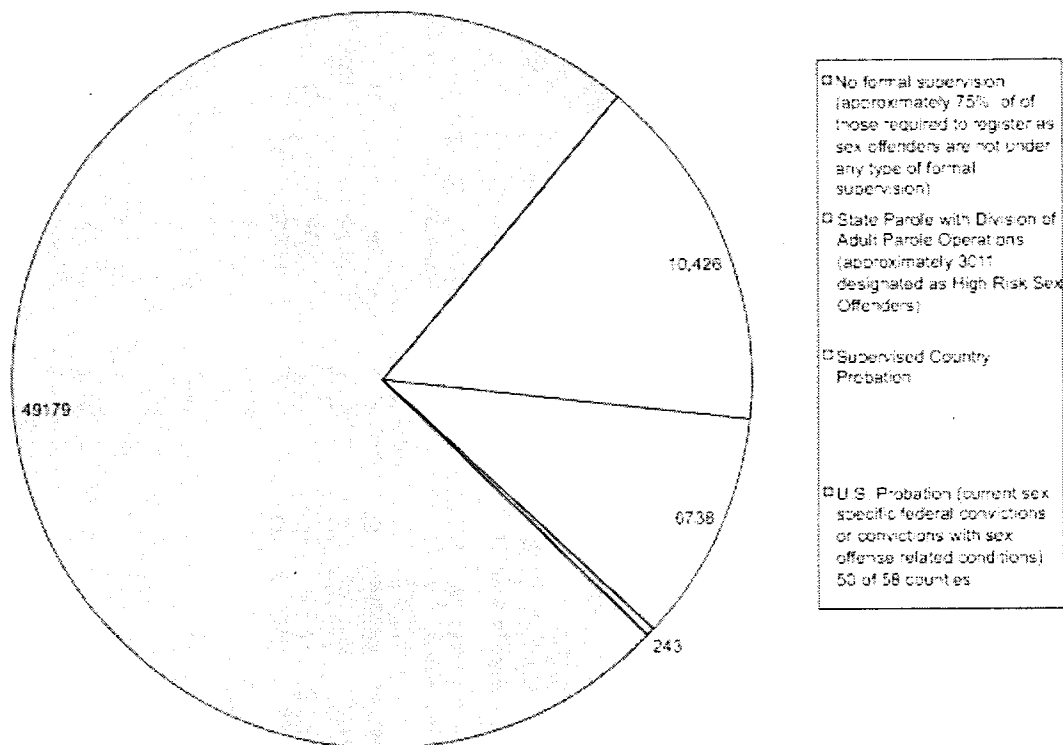
Since the implementation of Proposition 83, there has been a surge in the number of sex offenders who register as transient. The most notable increase has been among paroled sex offenders. Paroled sex offenders are under close supervision and the California Department of Corrections and Rehabilitation (hereafter CDCR) has been the primary agency that has enforced Proposition 83.¹ The Board anticipates that, if residency restrictions were enforced against all registered sex offenders, including those on probation and those who are unsupervised, the number of sex offenders registering as transient would further increase.

The majority of registered sex offenders are not supervised. The California data base that contains information on those individuals who are required to register as sex offenders under Penal Code 290 is managed and maintained by the California Department of Justice (DOJ) under the State Attorney General. Data is submitted to DOJ by the various law enforcement agencies throughout the state who receive such information directly from the registrants. Approximately 70 - 80% of all sex offenders living in the community are not under the direct authority of the criminal justice system and are, therefore, under no formal supervision. Selected individuals may be kept under some level of observation by local law enforcement, particularly with regard to registration residency information. The other 25% are under the authority of either state parole or county probation. The distribution of supervised and unsupervised registered sex offenders is represented below in Chart 1-1.

¹ U.S. Probation and a few counties in California have also enforced Proposition 83.

Chart 1-1: Sex Offender Registrants in the Community

(Source: CASOMB Initial Report 2008)



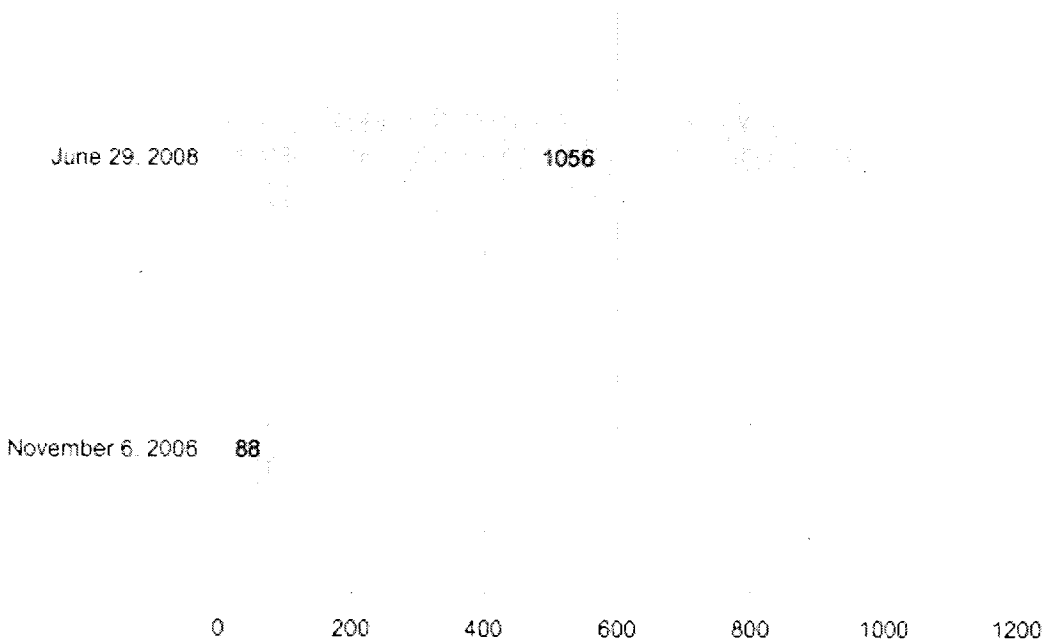
California voters passed Proposition 83 on November 6, 2006. In August 2007, CDCR established a procedure for implementing Proposition 83 (CDCR Policy No. 07-36, Aug. 17, 2007). The Memorandum directed unit supervisors to locate the current listing of all public and private schools and parks within their communities. Parole agents were then instructed to serve all affected parolees with a "Modified Condition(s) of Parole Addendum" (MCOPA) and/or a Notice to Comply instructional letter. The MCOPA and Notice to Comply advised the affected parolees of Proposition 83. Parolees were given 45 days after service to comply. Parole agents were to advise affected parolees that non-compliance will result in arrest and referral to the Board of Parole Hearings. Parole agents were to utilize a Global Positioning System (GPS) device to measure the proximity of the primary entrance of the affected parolee's residence from the exterior boundary of the prohibited school or park. Parole agents were to consider any parolee who absconds from parole supervision to avoid compliance with Proposition 83 as a Parolee-At-Large (PAL) and to request a warrant.

Parolees who declare themselves as transient had to comply with additional requirements. Penal Code section 290.011 provides that "transient" means a person who has no residence. '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.” Transient parolees are required to contact their parole agent daily via telephone or in person. Once each week, they must report in person to the Parole Unit.

The rise in the number of sex offender parolees registering as transient rose significantly after enforcement of Proposition 83. On November 6, 2006 (prior to the passage of Proposition 83), 88 sex offenders on parole registered as transient. By June 29, 2008, the number had increased to 1056 – an increase of over 800 percent.

Chart 1-2: Changes in Homelessness among Paroled Sex Offenders
 Data provided by the California Department of Corrections and Rehabilitation

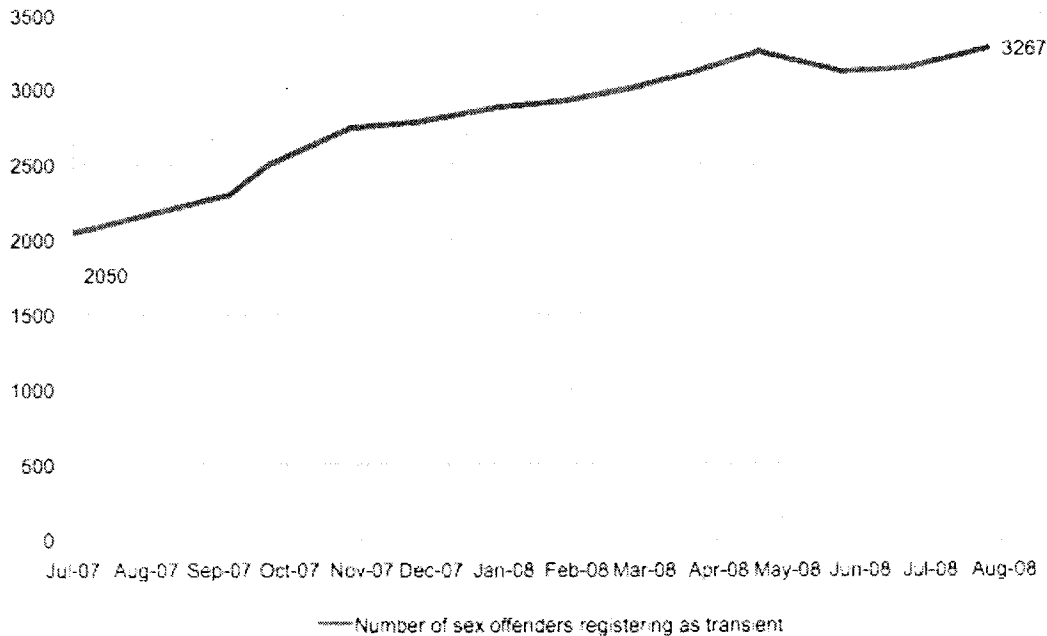


Number of sex offenders on parole who registered as transient

When looking at all registered sex offenders (those on parole, those on probation, and those who are unsupervised), a similar pattern of a notable increase can be found. In June 2007, 2050 sex offenders registered as transient. By August 2008, the number had risen to 3,267 – an increase of sixty percent. (See Appendix A for the distribution by county of all registered sex offenders and

sex offenders registering as transient.) As noted above, the Board anticipates that, if residency restrictions were enforced against sex offenders on probation and unsupervised sex offenders, the number of sex offenders registering as transient would further increase.

Chart 1-3: Changes in Homelessness among All Registered Sex Offenders
Data provided by the California Department of Justice



b. Registration and notification laws have impacted where sex offenders may live.

Sex offender registration is not new. In 1947, California implemented the nation's first sex offender registry. However, the public's attention focused on sex offending when the media publicized particular incidents of sex attacks on children. Responding to public outcry, other states enacted sex offender laws.

The incentive for all states to pass registration and notification laws came when the federal government passed three laws: the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act (1994), Megan's Law (1996) and the Pam Lychner Sexual Offender Tracking and Identification Act (1996). Collectively, these federal laws required all states to establish registration and notification programs. For example, the Jacob Wetterling Act prohibits states from receiving ten percent of the funds allocated to a state under the Omnibus Crime Control and Safe Streets Act of 1968 should the state fail to

implement a notification program. Congress continued to draw attention to sex offenders when, in 2006, it passed the Adam Walsh Child Protection and Safety Act of 2006. Among other provisions, the Act establishes a national database of sex offenders and allows public access to information regarding sex offenders released from prison.

In response to public outcry concern as well as federal mandate, California enacted the Child Protection Act of 1994. The Act created a Child Molester Identification Line 900 Number, which provided the public with the ability to call and inquire whether an individual was registered as a sex offender. In support of the Act, the California Legislature declared that sex offenders posed a high risk of re-offending, that there was a "necessary and compelling public interest" for the public to have access to information regarding sex offenders, and that convicted sex offenders had a reduced expectation of privacy. The system which provides such information to those citizens who take the initiative to inquire is sometimes called "passive notification."

Two years later, California amended the Child Protection Act of 1994 to include the means for "active" community notification. Commonly known as "Megan's Law," the amendments authorized local law enforcement to take the initiative to disclose offender information when deemed necessary for public safety. The amendments also provided for registration information to be made available to the public through CD-ROM and other electronic media. Members of the public would need to go in person to a special "kiosk" computer at a local police station to obtain the information.

The current version of California's registration and notification laws is found in the Sex Offender Punishment, Control, and Containment Act of 2006. The Department of Justice is required to make available to the public "via an Internet Web site" certain identifying information regarding persons required to register pursuant to Penal Code section 290 (Cal. Penal Code, § 290.46). Megan's Law continues to permit local law enforcement agencies to notify their communities about the presence of designated registered sex offenders who pose a risk in their area. Local law enforcement may use "whatever means the entity deems appropriate, when necessary to ensure the public safety" (Cal. Penal Code, § 290.45).

Notification laws provide communities with the ability to protect themselves by informing them where sex offenders live. However, one of the unintended and collateral effects of registration and community notification is that neighborhoods may attempt to oust the offender.

For example, earlier this year when they learned from the DOJ website about a "concentration" of 290 registrants in their neighborhood, residents of Long Beach mobilized to move out sex offenders living at a halfway house in

Alamitos Beach (Long Beach, 2008). Similarly, the Riverside Press-Enterprise reported that an angry mob picketed the home of a sex offender (as cited in Fry-Bowers, 2004). The mob's intimidating actions forced the offender to move away. In Hayward, CDCR had placed seven sex offenders at the Island Motel. However, the manager had all seven leave after area residents called and said they were outraged that sex offenders were living in their neighborhood (Graham, 2006). Last year in Lake County, the Megan's Law website may have led to the killing of a sex offender (Megan's Law, 2007). When a resident of a trailer park learned that a sex offender had moved in, the resident allegedly killed the sex offender because the resident was concerned that a child molester had moved into the neighborhood. The resident was wrong. The sex offender had raped an adult. Thus, though not intended to limit where registered sex offenders may live, registration and community notifications laws have impacted the availability of housing for registered sex offenders.

- c. *The housing options for sex offenders are limited by federal, state and local laws.*

Housing of known sex offenders is closely regulated. The fundamental statutory requirement for all parolees is that a parolee shall be returned to the county that was the parolee's last legal residence (Cal. Pen. Code, § 3003, subd. (a)). On rare occasions, the parolee may be returned to another county if returning to another county is "in the best interest of the public" (Cal. Pen. Code, § 3003, subd. (b)). When making such a decision, the paroling authority must give the greatest weight to the protection of the victim and the safety of the community.

A second restriction is imposed on parolees who committed certain enumerated violent crimes (Cal. Pen. Code, § 3003, subd. (f)). The parolee may not reside within 35 miles of the actual residence of the victim or witness to the crime. The enumerated sex crimes are:

- Rape (Cal. Pen. Code, §§ 261, subd. (a)(2) & (a)(6) & 262, subd. (a)(1) & (a)(4));
- Sodomy (Cal. Pen. Code, § 286, subd. (c) & (d));
- Oral copulation (Cal. Pen. Code, § 288a, subd. (c) & (d)); and
- Lewd or lascivious act (Cal. Pen. Code, § 288, subd. (a) & (b))

State residency restrictions directed specifically to sex offenders fall under two broad categories: (1) Offenders who were released from prison and would be subject to parole supervision, and (2) offenders who were required to register under Penal Code section 290. Regarding the second category, whether the offender is, or is not, under supervision as a parolee or probationer does not matter. Chart 1-4 lists the state statutes that restrict where sex offenders may live.

Chart 1-4: State statutes restricting the residency of sex offenders

Statute	Pen. Code, § 3003.5, subd. (b)	Pen. Code, § 3003.5, subd. (a)	Pen. Code, § 3003, subd. (g)	Welf & Inst. Code, § 6608.5, subd. (f)
Restriction	2000 feet of any public or private school, or park where children regularly gather	With another registered sex offender in a single family dwelling*	¼ mile from any public/private school, grades K-12	¼ mile from any public/private school, grades K-12
<i>All registered sex offenders</i>	Yes			
<i>Registered sex offenders who are on parole</i>	Yes	Yes		
<i>High Risk Sex Offenders who</i> (1) <i>Are on parole and</i> (2) <i>were convicted of violating either Pen. Code, §§ 288 (Lewd and Lascivious Acts) or 288.5 (Continuous Sexual Abuse of a Child)</i>	Yes	Yes	Yes	
<i>Sexually Violent Predators who</i> (1) <i>are on parole and</i> (2) <i>either have had</i> <i>(a) a previous conviction for violating Pen. Code, § 288.5, subd. (a) & (b) or Pen. Code, § 288, subd. (c)(1) or</i> <i>(b) a finding by a court that the parolee has a history of improper sexual conduct with children.</i>	Yes	Yes		Yes

* Penal Code section 3003.5 provides an exception for persons legally related by blood, marriage or adoption to the parolee. This section also states that a "single family dwelling" shall not include a residential facility which serves six or fewer persons."

Proposition 83 also permits local jurisdictions to enact ordinances restricting sex offender residency (Cal. Pen. Code, 3003.5, subd. (b)). As of October 2008, seventeen cities and three counties had enacted ordinances limiting where sex offenders may live. (See Appendix B for a list of the local jurisdiction imposing its own residency restrictions.) To the knowledge of the Board, no local jurisdiction is enforcing its ordinances limiting where sex offenders may live.

Federal law further limits where sex offenders may live. 42 U.S.C. §13663 prohibits federally assisted housing from admitting any person who is subjected to lifetime registration under a state sex offender registration program. Penal Code section 290 provides that sex offenders must register for life. As such, registered sex offenders in California cannot live in low-income subsidized housing.

To determine the impact of Proposition 83's 2,000 foot residency restriction, the San Diego District Attorney's Office used Geographic Information Systems (GIS) to assess the law's impact on San Diego County (Wartell, 2007). The researchers extracted out the residential parcels in San Diego County and overlaid the 2,000 foot buffers extending from schools and parks. The analysis revealed that fewer than 28 percent of the residential parcels were available for housing sex offenders. The analysis did not consider whether any of the housing in the available parcels was affordable to sex offenders.

The combined effects of federal, state and local residency restrictions, state registration and notifications laws, and public sentiment have significantly reduced the housing options for sex offenders. One result of these limitations is an increase in the number of sex offenders registering as transient.

Part II. HOMELESSNESS INCREASES THE RISK THAT SOMEONE WHO OFFENDED SEXUALLY MAY COMMIT ANOTHER SEX CRIME.

- a. *What are the factors that increase a sex offender's risk of committing another sex crime?*

There are several empirical risk factors that raise the risk that an offender will re-offend sexually. These include deviant sexual preference (such as a desire for young children); an antisocial lifestyle (such as a propensity to violate rules); employment instability; and reckless, impulsive behavior (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2004, 2005). Other important factors include young age at time of offense, number of prior offenses, single marital status, failure in treatment, a preoccupation with sexual fantasy and poor interpersonal relationships (Hanson & Morton-Bourgon, 2004, 2005).

Dynamic risk factors are extremely important to assess because they are changeable over time. Static factors (such as age at time of offense and number of prior offenses), while easier to assess empirically, do not change from month to month or day to day. Therefore, monitoring them does not yield any helpful information in assessing current risk for re-offending (Harris, 2006). There are empirically-derived questions that can be used. Systems—such as the STABLE 2000 and the ACUTE 2000, which are used for evaluating changes in dynamic risk factors (Craig, Browne, & Beech, 2008)—can be assessed via a structured dynamic interview by a well-trained practitioner (Cauley, 2007; Harris, 2006).

Stable dynamic risk factors may change over time, usually months or years (Harris, 2006). Key dimensions are significant negative social influences; intimacy deficit feelings of rejection or loneliness; attitudes supportive of sexual assault or of hostility towards women; lack of cooperation with supervision; poor regulation of deviant sexual interests and general self-regulation, such as managing impulsive behaviors (Craig, Browne, & Beech, 2008; Hanson, Harris, Scott & Helmus, 2007).

Acute dynamic risk factors may change over more limited periods of time, such as weeks, days or hours (Harris, 2006). Key dimensions include sexual interests/ frequency of sexual fantasies; cooperation with treatment; clinical symptoms such as negative mood and substance use; and contextual factors such as isolation, unemployment, poor social influences, low levels of social support, relationship problems and access to potential victims (Craig et al., 2008).

Hanson and Harris (2000) reported an increase in acute dynamic factors offenders in the month prior to a sexual re-offense, specifically:

- An increase in negative mood or anger
- A decrease in physical appearance
- A decrease in compliance with supervision.

Hanson and Harris (2000) also cite an emotional crisis; a collapse of previous social supports; contextual factors such as hostility, substance abuse, and sexual preoccupations; and a unique trigger for the offending behavior such as a date or anniversary, health problem or homelessness. Both stable and acute dynamic factors have been found to be reliable predictors of sexual recidivism (Hanson, 2005), although they are most accurately used in a predictive capacity when combined with static factors (Hanson, et al., 2007).

- b. Homelessness, a dynamic risk factor, destabilizes the sex offender and increases the risk of committing another sex crime.*

Levenson and Cotter (2005) surveyed sex offenders in Florida under 1000 foot residency restrictions and found that most sex offenders felt that decreased stability and increased financial hardship were the result of not being able to live with or near family members. Most felt an increased risk of re-offending due to the resultant isolation. Burchfield and Mingus (2008) interviewed sex offenders and found that sex offenders have limited housing options, and have difficulty finding landlords who are willing to rent to a registered sex offender. Although there is no known study that empirically examines the risk of homelessness on sexual re-offense, Willis and Grace (2008) examined a group of released sex offenders who had completed a 32-week prison-based treatment program between 1990 and 2000, and were convicted of a sexual re-offense since February 2001. In evaluating the sample of 81 ex-offenders, Willis and Grace found that accommodation was a significant predictor of sexual recidivism, even when controlling for dynamic risk factors such as anger and other deviant thinking.

Despite the lack of large empirical studies, many researchers and policy makers are of the strong opinion that lack of housing in a sex offender population will lead to higher levels of risk and will decrease public safety. The United Kingdom sees finding appropriate accommodations for registered sex offenders to be a very high priority in reducing risk, and questions the helpfulness of putting too many restrictions on sex offenders with the concern that it could “backfire and encourage sex offenders to hide their activities. The potential for reduction or withdrawal of restrictions on the other hand was seen as a motivator, enabling the sex offender to demonstrate change and achieve targets” (Managing Sex Offenders in the Community, 2005, p. 29).

Durling (2006) states: "Low income sex offenders face a severe housing problem when they are released from prison because residency restrictions can dramatically limit where an offender can live...and prevent offenders from living in the areas closest to jobs and public transit" (p.334). Durling (2006) also states that even though residency restrictions are meant to protect communities, they may instead "banish" the sex offender, which may lead to higher levels of risk (p. 335).

Unstable housing has been linked with a lack of social support and with difficulty finding employment, both dynamic risk factors for sexual re-offense (Hanson & Morton-Bourgon, 2004, 2005). Similarly, Levenson, Zgoba, and Tewksbury (2007) argue that helping sex offenders locate stable housing will increase not only their levels of social support but also their success at finding lasting employment, thereby reducing their risk of re-offending. Residency restrictions have the unintended consequence of increasing homelessness and creating more transient sex offenders, "making them difficult to track and monitor" (Levenson et al., 2007, p.4). Data from Iowa in 2006 is cited by Levenson and her colleagues, stating that once residency restrictions were passed, the number of registered sex offenders who could not be located doubled, putting the sex offender registry validity and reliability in doubt, and raising community risk.

Additionally, the creators of the COMPAS, a risk assessment instrument now being validated for the State of California, found that parolees who have a high score on residential instability are at higher risk of recidivism (Brennan, Dieterich, Ehret & Beate, 2007). Using the COMPAS Matrix-R, a secondary assessment for parolees once they have been out on parole, Brennan et al. found that California parolees with the highest levels of recidivism had higher scores on residential instability and also had vocational and educational problems.

- c. *Housing helps the sex offender to stabilize, and reduces the risk of re-offending.*

Finding housing is a serious issue; in addition, helping returning offenders find housing can be a way of keeping communities safe (Rodriguez & Brown, 2003). Housing options for returning prisoners who do not stay with family members or friends are very limited (Clark, 2007; Returning Home, The Urban Institute, 2008). There are few housing options in general, but options are particularly limited for sex offenders who are unable to receive any federally subsidized housing assistance such as special needs housing through HUD, or to live in group situations, common re-entry housing plans for returning offenders (Returning Home, 2008).

Financial challenges may push sex offenders into poorer neighborhoods. Neighborhood characteristics can affect recidivism rates. Kubrin and Stewart

(2006) found that for 5,002 released offenders living in Oregon, living in a disadvantaged neighborhood was a risk factor for recidivism, while living in a resource rich neighborhood performed an important protective factor in reducing re-offending.

“Stable housing is an essential component of safe reentry and is a key to success” for high-risk sex offenders.

Aylward (2006) stated that in the State of Washington, “Stable housing is an essential component of safe reentry and is a key to success” for high-risk sex offenders (p. 77). Aylward also saw finding stable employment with an adequate wage as a key to maintaining housing, and having a good relationship with a significant other as a pro-social influence in keeping sex offenders from re-offending.

Other countries see re-entry and homelessness as a growing problem. An Australian report issued by the Department of Family and Community Services (2004) found that housing is a key factor that influences re-offending. In their 2004 report the Department of Family and Community Services reported many specific housing recommendations to prevent ex-offenders from becoming homeless, stating, “Research suggests that the availability of housing with support post-release has a positive impact on successful reintegration” (p. 20). The report also cites the lack of housing options for ex-offenders as a problem, because surveys and a needs analysis of ex-offenders found that many offenders attribute repeat offending to unemployment, homelessness, and lack of family support upon release (Department of Family and Community Services, Australian Government, 2004). The United Kingdom is concerned with creating local strategies and protocols in providing housing for high-risk sex offenders, which is seen as an important strategy to decrease community risk (Managing Sex Offenders in the Community, 2005).

When examining research focused on offenders who are convicted of a variety of criminal offenses, there have been many studies demonstrating that homelessness and incarceration are factors that are intertwined. Individuals who have been incarcerated tend to be homeless for longer than those who have not been incarcerated (Phelan & Link, 1999). Metraux and Culhane (2004, 2006) found that a significant portion (about one fourth) of individuals staying at a New York City Shelter had been incarcerated at a New York State prison or New York City Jail in the previous two years. Shelter stays among recently released prisoners are more likely a transitional stage than a long-term pattern of homelessness, and this transition may cause an increase in recidivism (Metraux & Culhane, 2004). In a study by DeLisi (2000), jail inmates who came from one

year or more of chronic transiency were more violent and had longer criminal histories than jail inmates who were domiciled in the year prior to arrest.

In numerous interviews with 25 repeat offenders ages 15 to 24, a lack of stable housing and accommodation emerged as a key theme in their re-offending behaviors (Halsey, 2007). Halsey found that the lack of stable housing increased their stress levels, decreased the likelihood of a supportive family environment, and decreased their likelihood of remaining out of prison. Roman and Travis (2004) found that when prisoners have no place to go upon release they are more likely to violate their parole conditions or to be rearrested. Meredith, Speir, Johnson and Hull (2003) found that each time a parolee moved, his or her likelihood of re-arrest increased by 25%. In California, Williams, McShane, and Dolny (2000) found that having unstable living arrangements was the most important factor in determining whether a large sample of parolees absconded from supervision.

- d. *Housing leads to stable employment and social support, which are factors reducing the risk of re-offending.*

Unstable employment or unemployment has been seen as an important risk factor for all types of offenders reentering the community. Finding and maintaining employment upon release from prison has been seen as a way of reducing recidivism (Returning Home, The Urban Institute, 2008). Employment and vocational programs both in and out of prison including job linkage and placement services are classified as “what works” in corrections (Aos, Miller & Drake, 2006; The Little Hoover Commission Report, 2003; MacKenzie & Hickman, 1998). Tarlow and Nelson (2007) found that released offenders who start work immediately upon leaving prison have lower recidivism rates. Released offenders who were unable to find work, and who returned to disadvantaged neighborhoods with low levels of social support and economic problems, were more likely to be rearrested (McBride et al., 2005).

Visher (2007) of the Urban Institute states that finding employment is the single largest concern reported by men and women before they are released from prison. Over 75% of soon-to-be-released prisoners said that finding a job would be an important factor in keeping them from returning to prison, and 88% reported that they needed job training or more education (Visher, 2007). Petersilia determined in her report on Governor Schwarzenegger’s Rehabilitation Strike Team (2007) that employment causally contributes to successful reentry outcomes, because it signals that an individual has embraced a pro-social lifestyle, has money, makes positive social connections, and has social controls that prevent criminal behavior. She estimates that between 60% and 80% of parolees are unemployed one year after release from parole. Petersilia (2007) cites the California Legislative Analyst’s 2007 report as stating that parolees who

have stable housing and who find and maintain a steady job are more likely to avoid re-offense and to successfully complete their parole.

Social stability and support is also seen as an important factor in reintegrating into society and enhancing public safety (Petersilia, 2003). The Urban Institute's Returning Home Project cited family support as the most important factor in ex-offenders keeping out of prison (McBride, Visher, & LaVigne, 2005). Since most returning prisoners live with a family member, close friend, or significant other, it is a major problem if the offender is unable to live with these supportive individuals due to some conflict or legal restriction (Roman & Travis, 2004).

In summary, sex offenders are more likely to be faced with legal restrictions, preventing them from returning to social supports and homes due to current residency restriction laws in many states, including California. Homelessness, unemployment, and lack of social support may end up being factors facing many sex offenders, both those who are re-entering California communities and those who are continuing registered sex offenders. These factors increase dynamic risk and therefore may increase re-offending behaviors.

**Part III. THE RESPONSE TO HOMELESSNESS AMONG SEX OFFENDERS
REQUIRES A CREATIVE AND COLLABORATIVE EFFORT TO
CREATE STABLE AND SUITABLE HOUSING.**

- a. *Efforts to reduce homelessness among sex offenders have led to innovative approaches to housing.*

States such as Washington and Colorado have employed innovative housing methods such as (1) shared living arrangements, (2) secure community transition facilities, (3) mobile trailers as transition housing and (4) the leased unit model. Sex offender housing is also provided by private landlords in a special agreement with parole authorities in Washington State.

Of these innovative housing methods, only the shared living arrangement has been studied to determine its effects on the level of violations by paroled sex offenders. Based on a 2004 study, Colorado has determined that high-risk sex offenders living in shared living arrangements had significantly fewer violations than those in other living arrangements (living alone or with family or friends).

i. Shared Living Arrangements

Shared Living Arrangements ("SLA") are based on the Therapeutic Community Treatment modality (*Colorado Dept. of Public Safety, 2004*). Therapeutic Community Treatment differs from other treatment approaches principally in its use of a community, comprising of the treatment staff and the recipients of the treatment, as key agents of change. In other words, peer influence is used to help participants learn and assimilate social norms which include not re-offending sexually.

SLA is used exclusively by Colorado. SLA consists of two or three sex offenders living together. They rent or own the house. The offenders are financially responsible for the housing. The treatment provider incurs no housing costs.

The location of the residence must be approved by the supervising officer and the treatment provider. The supervising officer ensures that the residence is not located within sight of a "school, playground, or next-door to a residence that has 'child-type' items (for example, a swing set)."

The residents hold each other accountable for their actions. They also have a responsibility to report certain high risk behavior such as returning home late or having contact with children. There are no treatment providers or supervising officers living on the premises. Instead, both the treatment provider and supervising officer conduct frequent site checks.

A study of SLA revealed that:

- SLA was occupied by higher risk offenders than those not living in SLA.
- Those living in SLA had fewer violations (reoffended or technical) than those living alone or with family or friends
- Those living in SLA who violated their conditions of parole were caught more quickly than those living alone or with family or friends (because the roommates reported the violations).
- Proximity of sex offender residency to where children regularly congregate had no impact on recidivism.

Based on the study, the Colorado Sex Offender Management Board found that:

- SLA functions as an effective containment modality for high risk sex offenders.
- Policies restricting a sex offender from living with another sex offender did not enhance community safety.
- Restrictions prohibiting sex offenders from residing near where children regularly congregate did not enhance community safety.

ii. Secure Community Transition Facility for sexually violent predators

A "secure community transition facility" ("SCTF") is the Washington State statutory name for a less restrictive alternative residential facility program operated or contracted by the Department of Social and Health Services. A "less restrictive alternative" placement is defined in the state law as a living arrangement that is less restrictive than total confinement.

The SCTF has on-site supervision and lock-down security. It also provides or ensures the provision of sex offender treatment services. The program offers 24-hour intensive staffing and line-of-sight supervision by trained escorts when residents leave the facility.

SCTF houses only court-approved, civilly committed sexually violent predators. The offender must first complete his prison term and then successfully complete a rigorous treatment program at the Washington State MacNeil Island's Special Commitment Center. Only a civil court can decide whether to transfer the offender from the confinement of the Special Commitment Center to the less restrictive SCTF.

At the SCTF, the resident will continue with treatment and will learn how to reintegrate into society. The residents attend weekly individual and group therapy sessions. The focus of the sessions is to teach and reinforce positive behavior.

Residents are required to maintain a journal and share the journal with their treatment providers.

Residents may leave the SCTF for trips. However, a community corrections officer must first determine that the destination is safe before approving the trip. The resident may then leave the SCTF in the company of a trained escort.

To date, no study has been completed to show the effects of this housing arrangement on reducing re-offending and on increasing community safety. Of significance, SCTF serves a very small community – sexually violent predators transferred by a court. For example, the SCTF in the SODO neighborhood of Seattle is equipped for only six residents.

iii. Mobile trailers as transition housing

Officials in Suffolk County, New York are experimenting with mobile trailers as transitional housing for sex offenders (Suffolk County, 2007). Each trailer houses eight sex offenders. The trailers are parked on county lands away from residential areas. Under county law, the trailers cannot be placed within 1,000 feet of schools, churches, daycare centers or nursing homes. A curfew is imposed on the residents from 8 p.m. to 7:30 a.m.

These trailers are moved from one part of the county to another part every one to three weeks. The continuous movement “avoids having to burden any single neighborhood with a permanent shelter for [sex offenders]” (Suffolk County, 2007). The movement also prevents too many sex offenders from settling into the same area. By constantly moving the trailers, the county distributes the offenders throughout the county.

The trailers are not intended as permanent residences. Instead, they serve as transition housing for those sex offenders who have yet to find permanent housing. To motivate sex offenders to find housing, the trailers have minimum comforts.

During the daytime, a van transports the sex offenders to work or to agencies providing referrals for permanent housing and other services. The operating cost is approximately \$85 per person per night.

To date, no study has been completed to show the effects of this housing arrangement on reducing re-offending and on increasing community safety. The literature suggests that its primary purpose is to reduce fear in the community and not to reduce recidivism.

iv. Leased Unit Model

In 2004, the Partnership of Community Safety in Washington State recommended a pilot project called the "Leased Unit Model" (Restricted Transition Housing, no date). The key concept of a Leased Unit Model (LUM) is that the government enters into a contract with private landlords to lease to sex offenders. The housing provided in the recommended model is structured with supervision by corrections officers; participation in treatment by the offenders; assistance for the offender to find employment, permanent housing and a supportive social network; and coordination with local law enforcement. The participant is expected to pay \$400 for monthly rent and program costs. The remainder of the rent is subsidized by the state.

As of this report, it is unknown if the LUM has been adopted by Washington State. As such, its impact on recidivism and on community safety is unknown.

v. Private landlords with informal agreements with the government

In Washington State, approximately one dozen landlords have agreed to house sex offenders (Homes, 2003.) The landlords feel safe since corrections officers are constantly visiting the premises. Washington officials believe that housing sex offenders together increases community safety because "They can pick up on signs and behavior" and "are the first ones to tell on each other" (pg. 11). The state does not compensate the landlords. Instead, the offenders pay the entire rent.

As an example of private landlords providing housing to sex offenders, Linda A. Wolfe-Dawidjan owns and manages the New Washington Apartments. She rents to 39 sex offenders and 15 other tenants with criminal backgrounds. Because of her reputation, she has a waiting list of sex offenders desiring to live at her apartment. Four of her tenants work as her office managers in exchange for rent. She describes her tenants as timely with rent, quiet in demeanor and stable as renters.

vi. Funding for construction of homes for the homeless

Funding to build new homes for the homeless can come from the community. In Minnesota, the McKnight and Blandin Foundations provided \$32.5 million to help construct 3,000 units of affordable housing for the homeless (Safe Homes, 2001).

b. The solution to the problem of housing sex offenders begins with examining and developing a state-wide housing policy.

States are beginning to look at their policies regarding the housing of sex offenders. From 2000 until 2004, a Washington State multidisciplinary group entitled "The Partnership for Community Safety" met to identify the barriers and solutions to housing high risk sex offenders. This partnership was composed of the Washington State Department of Corrections, the Washington Coalition of Sexual Assault Programs, the Washington Association of Sheriffs and police Chiefs, state legislators, victim advocacy organizations and others.

On March 19, 2007, Governor Schwarzenegger hosted the "California Summit for Safe Communities." The summit was "a gathering of state and local stakeholders to discuss the challenges that communities face regarding the release and placement of high risk sex offenders and sexually violent predators" (California Summit). The report from the summit may be found at www.casomb.org/docs/SUMMIT%20FINAL%20REPORT.pdf. During the brainstorming session, the participants were asked to identify both gaps and solutions related to the housing of HRSOs and SVPs. The result of the summit was an extensive list of suggestions on how to provide housing to sex offenders while maintaining community safety.

One of the gaps identified was "finding appropriate housing" (p. 39). The commonality among the many suggested solutions is the need for a collaborative partnership between each level of government (state, county and city), between government and private businesses (landlords, treatment facilities), and between government and the public. One focus was to improve communication between the partners.

Some of the suggestions are to:

- (1) "meet and confer (six months prior to anticipated release) between state and local agency," (pg. 39)
- (2) "educate the community about housing and plan proactively," (pg. 40) and
- (3) "create private-public partnerships to include city and county input on location" (pg. 39).

Another focus was to provide sex offenders with transitional housing. Some of the suggestions related to transitional housing are to:

- (1) "review [the] halfway house model of the 1970's and 1980's and connect them to day reporting programs," (pg. 39)
- (2) change the "transitional housing setting to include work furlough program," (pg. 40) and

(3) “establish licensed board and care/group home facilities that provide 24 hour supervision, treatment and vocational training” (pg. 39).

The suggested solutions also focus on providing incentives to local governments and private entities to participate in housing sex offenders. “Liability protection for private landlords and possible incentives such as tax break,” “incentives for local government to develop long term/short term housing for sex offenders,” and “state mandate coupled with state funding for housing in each county” were suggested (pg. 39).

Part IV. CONCLUSIONS

The substantial rise in numbers of transient sex offenders cannot be ignored. Among paroled sex offenders and all registered sex offenders, the number of sex offenders registering as transient has significantly increased.

Though it is difficult to predict whether the current increase will continue, the factors affecting the number of sex offenders registering as transient can be identified:

- The number of landlords willing to rent to sex offenders
- Enactment of more local ordinances restricting residency
- High media coverage of sex crimes
- Passage of more state statutes restricting residency
- Lack of funding for low-income housing open to sex offenders
- Low availability of stable employment
- Mobilization of neighborhoods to exclude sex offenders

(For a list of additional factors that may affect the number of sex offenders registering as transient, see Appendix C.)

Based on its examination of the available evidence, the Board makes the following findings:

- *The evidence shows an unmistakable correlation between the implementation of residency restrictions and the increase in homelessness among sex offenders.*
 - The number of sex offenders registering as transient has increased 60% among all registered sex offenders since the implementation of Proposition 83.
 - The combined effects of federal, state and local residency restriction, and neighborhoods mobilizing to exclude sex offenders, have severely limited the housing options for sex offenders.
- *The evidence shows that homelessness increases the risk that a sex offender may re-offend.*
 - Lack of stability is a primary contributing factor to an increased risk of re-offending. Residential instability leads to unstable employment and lower levels of social support. Unstable employment and low levels of social support lead to emotional and mental instability. Emotional and mental instability breaks down the ability to conform and leads to a greater risk of committing another sex crime.
 - Stable housing fosters stable employment and social support. Stable employment and social support lead to

emotional and mental stability and a reduced risk that the sex offender will commit another sex crime.

- *Partnerships between different levels of governments and between government and the public to make stable and appropriate housing available to sex offenders provide the strongest hope for reducing the transient sex offender population and the associated risk of future sexual victimization.*
 - As identified during the 2007 California Summit for Safe Communities, improved communications between partners, incentives for local governments and private parties, and innovative thinking on creating stable housing for sex offenders are necessary for an effective housing policy.

Partnerships between different levels of governments and between government and the public to make stable and appropriate housing available to sex offenders provide the strongest hope for reducing the transient sex offender population and the associated risk of future sexual victimization.

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**APPENDIX A: CALIFORNIA TRANSIENT SEX
OFFENDER DISTRIBUTION BY COUNTY**
Prepared by the California Coalition on Sex
Offending
June 2008

COUNTY	SEX REGISTRANTS IN THE COMMUNITY	REGISTERED TRANSIENTS
ALAMEDA	2,453	147
ALPINE	1	0
AMADOR	70	1
BUTTE	697	33
CALAVERAS	88	0
COLUSA	52	1
CONTRA COSTA	1,362	97
DEL NORTE	151	0
EL DORADO	335	8
FRESNO	2,338	31
GLENN	70	3
HUMBOLDT	454	38
IMPERIAL	221	3
INYO	50	3
KERN	2,128	50
KINGS	353	1
LAKE	269	0
LASSEN	81	0
LOS ANGELES	15,249	620
MADERA	378	4
MARIN	151	0
MARIPOSA	63	1
MENDOCINO	265	24
MERCED	703	30
MODOC	41	0
MONO	12	1
MONTEREY	692	36
NAPA	189	12
NEVADA	167	8
ORANGE	2,878	177
PLACER	558	19

PLUMAS	42	2
RIVERSIDE	3,159	127
SACRAMENTO	5,173	164
SAN BENITO	103	2
SAN BERNARDINO	3,787	166
SAN DIEGO	3,941	354
SAN FRANCISCO	1,144	193
SAN JOAQUIN	1,775	59
SAN LUIS OBISPO	461	55
SAN MATEO	779	57
SANTA BARBARA	715	64
SANTA CLARA	3,475	261
SANTA CRUZ	408	36
SHASTA	777	25
SIERRA	8	0
SISKIYOU	185	6
SOLANO	863	62
SONOMA	803	56
STANISLAUS	1,280	59
SUTTER	225	2
TEHAMA	275	6
TRINITY	64	0
TULARE	1,009	22
TUOLUMNE	167	5
VENTURA	1,110	70
YOLO	404	22
YUBA	281	6
Totals	64,932	3,229

**APPENDIX B: LOCAL ORDINANCES REGULATING RESIDENCE AND
PRESENCE OF SEX OFFENDERS
AS OF OCTOBER, 2008**

Prepared by the California Department of Corrections and Rehabilitation

Type of Restriction	In which County	Residence	Loitering or Being	School for Children	Bus Stop	Child/ Day Care	Swimming Pool	Play Ground or Park	Sports Facility	Arcade or Amusement Center	Library or Museum	Skate Park	Church or Place of Worship	Children's Facility	From Another Sex Offender	Single Family Dwelling	Multi-family Dwelling	Other	Being Locally Enforced by Local Jurisdiction
CITY																			
Apple Valley	San Bernardino	NONE	500 ft.	Y		Y				Y	Y								No
Baldwin Park		2000 ft.	300 ft.											Y					No
Canyon Lake	Riverside	NONE	500 ft.																No
Cerritos	Los Angeles															Y	Y		No
Chula Vista	San Diego	500 ft.	NONE	Y ¹				Y											No
El Centro	Imperial		300 ft.	Y		Y		Y		Y				Y					No
El Monte	Los Angeles		300 ft.	Y		Y		Y		Y									No
Folsom	Sacramento	NONE	300 ft.	Y		Y	Y	Y		Y		Y							No
Galt	Sacramento	NONE	300 ft.	Y	Y	Y	Y	Y	Y	Y	Y	Y							No
Grover Beach	San Luis Obispo	1000 ft.	NONE	Y		Y		Y											No
Hesperia	San Bernardino	4000 ft.	500 ft.																No
La Mesa	San Diego	NONE	300 ft.	Y		Y		Y		Y									No
Long Beach	Los Angeles	2000 ft.	300 ft.	Y ²	Y ³	Y	Y	Y			Y								No
Loomis	Placer	NONE	300 ft.		Y	Y	Y	Y		Y		Y							No
National City	San Diego	NONE	300 ft.	Y		Y		Y		Y									No
Palmdale	Los Angeles	3000 ft.	300 ft.	Y	Y ⁴	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y				No
Paso Robles	San Luis Obispo	1320 ft.	NONE	Y ⁴		Y		Y	Y		Y		Y						No
Placerville	El Dorado	NONE	300 ft.	Y	Y	Y	Y	Y	Y	Y		Y							No
Pomona	Los Angeles																		No
Porterville	Tulare	NONE	300 ft.	Y		Y		Y		Y									No
San Diego	San Diego	2000 ft.	300 ft.	Y		Y		Y			Y								No
San Marcos	San Diego	300 ft.	300 ft.	Y		Y		Y	Y	Y									No
Santa Ana	Orange	NONE	300 ft.											Y					No
Santee	San Diego	NONE	300 ft.	Y		Y		Y	Y	Y									No
Shafter	Kern	2000 ft.	300 ft.	Y	Y	Y		Y											No
South Lake Tahoe	El Dorado	2000 ft.	300 ft.	Y	Y	Y	Y	Y	Y	Y		Y							No

Type of Restriction	In which County	Residence	Loitering or Being	School for Children	Bus Stop	Child/ Day Care	Swimming Pool	Play Ground or Park	Sports Facility	Arcade or Amusement Center	Library or Museum	Skate Park	Church or Place of Worship	Children's Facility	From Another Sex Offender	Single Family Dwelling	Multi-family Dwelling	Other	Being Locally Enforced
CITY																			
Stockton	San Joaquin	None	300 ft.	Y	Y	Y	Y	Y	Y	Y		Y							No
Suisun City	Solano	NONE	1000 ft.	Y		Y	Y	Y	Y	Y		Y							No
Taft	Kern	2000 ft.	300 ft.			Y													No
Victorville	San Bernardino	2000 ft.	300 ft.																No
Wasco	Kern	2000 ft.	300 ft.	Y	Y	Y		Y											No
Weed	Siskiyou	NONE	300 ft.	Y	Y	Y	Y	Y	Y	Y		Y							No
West Covina	Los Angeles	2000 ft.	300 ft.	Y										Y					No
Fresno County		3000 ft.		Y	Y	Y		Y			Y								No
Kern County		2000 ft.	Yes			Y													No
Sacramento County		NONE	300 ft.	Y	Y	Y	Y	Y	Y	Y	Y	Y							No
San Bernardino County *		2640/2000	300 ft	Y				Y											No
San Diego County			300 ft.	Y		Y		Y		Y									No

¹ K-8
¹ K-12
¹ School bus stop
¹ K-1
Y = YES

APPENDIX C: RESIDENCE RESTRICTIONS: WHAT DOES THE FUTURE HOLD?

Even though it is not possible to predict future turns of events, it would be remiss not to not at least take note of a number of factors which could have an impact on the situation related to sex offender residence restrictions and their consequences. It should not be assumed that the following list is exhaustive, nor that the descriptions apply equally to every area of the state: opinions differ considerably about some of the issues noted.

- The California Supreme Court appears likely to hear a case in the Fall of 2008 which centers on residence restrictions. The court could view the matter broadly and render a decision which could range from overturning the entire set of restrictions on constitutional grounds to declaring that no elements of the law violate constitutional rights. Observers, however, anticipate a more narrowly focused ruling that addresses only the specific situations of the petitioners. Depending upon the decision, appeals or other court challenges could follow.
- County authorities and county probation departments may move forward with decisions about whether and how to interpret and enforce residence restrictions as they apply to individuals on probation. Since there is approximately the same number of sex offenders on county probation as there is on state parole, the number of affected sex offenders could approximately double if counties decide to take an approach similar to that taken by state parole officials. Counties appear to vary, at present, with regard to their interpretation and application of the law and some appear to be waiting for legal clarification.
- Law enforcement agencies may clarify their policies and strategies with respect to enforcement of the residence restrictions as they apply to sex offenders who are no longer on parole or probation. At this time there does not appear to be uniformity around the state in the way this population is responded to. Since the restrictions are not being viewed as retroactive, they will only be applied to those who are completing their parole term and, possibly, those completing probation. This population is relatively small at present but will only continue to grow.
- CDCR's Division of Adult Parole Operations may modify the level of assistance they are able to provide—both financial assistance and assistance in locating suitable housing—to paroled sex offenders who are at risk of being homeless. Such assistance may increase or may decrease and so may result in either more or fewer transient sex offenders.
- Local jurisdictions appear likely to continue to enact their own residence restrictions, in many cases imposing even more stringent requirements which will reduce even further the current pool of potential housing options.
- The number of parolees and—depending on county decisions as noted previously—probationers who are technically “subject to” housing restrictions can be expected to continue to increase as new offenders are released from prison or jail, or move through the court system. Since the residence restrictions will apply for the duration of the offender's life, the numbers will continue to swell for many years until all registered sex offenders are covered under the restrictions.
- The amount of housing actually available to sex offenders will continue to shrink as the limited supply of legal available units is absorbed through being occupied

by “new” sex offenders emerging from prison or jail or—again depending on local interpretation—placed on local probation supervision.

- Legislation which would allow landlords to freely exercise their own discretion in refusing to rent to anyone listed as a registered sex offender may be reintroduced and could become law. The impact on the pool of housing realistically available to sex offenders could only be expected to be reduced by such a policy. (Currently the information on the Megan’s Law website may not be used to discriminate against registrants.)

Document 2

The January 2010 publication of the CASOMB
entitled *Report and Recommendations*

CALIFORNIA

SEX OFFENDER MANAGEMENT BOARD

Decrease victimization

Increase community safety

Recommendations Report

January 2010



California Sex Offender Management Board

Recommendations

January 2010

“

Tools such as GPS and parole supervision can fall tragically short when jurisdictions don't work together to develop comprehensive strategies to share information and communicate about supervision practices. This tragic case [Jaycee Dugard] highlights the need for systemic changes that will promote collaboration between agencies and the community at large.

Community safety depends on what we see, what we know and how we talk to each other.

USA Today
September 3, 2009

Table of Contents

Key Recommendations	5
Introduction	7
CASOMB Focus Areas	
Victim Services	16
Investigation, Prosecution and Disposition	24
Treatment	29
Re-entry, Supervision and Housing	37
Registration and Notification	50
Special Populations	59
Summary of Gaps from Previous CASOMB Publications	64
Summary Recommendations from Previous CASOMB Reports	79
Appendices	87
CASOMB Publications	110

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Key Recommendations

The California Sex Offender Management Board (CASOMB) was created to provide the Governor and the State Legislature as well as relevant state and local agencies with an assessment of current sex offender management practices and recommended areas of improvement.

The work of the CASOMB has been divided into several significant committee focus areas. Provided below are the key summary recommendations of each committee. More substantive discussion, data and additional recommendations are located in the body of the report itself.

Re-entry, Supervision and Housing

- In order to mitigate the potential public safety risk of increased offender transience, California should target the use of residence restrictions utilizing a hybrid model of restrictions similar to a 2009 Iowa law:
 - *Residence* restrictions should apply to the most serious offenders (SVP, repeat sex offenders, and offenders convicted of violent sex offenses) who have committed an offense against a child.
 - *Loitering* restrictions should apply to designated Penal Code Section 290 registrants in places where children congregate (child safe zones)
- California cities and counties should not pass sex offender residence restriction ordinances that are in conflict with or exceed state law.
- GPS monitoring should only be utilized in conjunction with some form of community supervision, with the understanding that some high-risk offenders may need to be subject to extended supervision (including lifetime supervision for exceptionally high-risk offenders).

Victim Services

- Funding for victim service programs should be sufficient and stable so as not to erode the protection of victim rights and access to services.
- Multidisciplinary teams should be institutionalized at the state policy level.

Investigation, Prosecution, Disposition

- Communities should employ *best practices* that consider the Victim/Survivor's health and well-being in addition to maximizing evidence gathering, successful prosecution and holding sex offenders legally accountable. These *best practices* include: Sexual Assault Response Teams (SART), Child Assault Centers (CAC), Multi-Discipline Interview Teams (MDIT) and Family Justice Centers.

- Law Enforcement and Prosecution should employ *best practices* designed to increase the effectiveness of responding to, investigating and prosecuting sexual assault cases. These *best practices* include: Specialized Sexual Assault Investigative Units and Specialized Sexual Assault Prosecution Units.

Treatment

- To ensure effective treatment, CASOMB should be provided resources to develop written policies and standards which should be implemented at the State level for programming for sexual offenders. Separate standards are needed for adult, developmentally disabled and juvenile sex offenders.
- Risk level-appropriate and evidence-based sex offender specific treatment should be routinely required for all adult and juvenile sex offenders under supervision in California.

Registration and Notification

- California should concentrate state resources on more closely monitoring high-and-moderate risk sex offenders. A sex offender's risk of re-offense should be one factor in determining the length of time the person must register as a sex offender and whether to post the offender on the Internet; other factors that should determine duration of registration and Internet posting include whether the sex offense was violent, was against a child, involved sexual or violent recidivism, and whether the person was civilly committed as a sexually violent predator.
- Law enforcement should allocate resources to enforce registration law, actively pursue violations, maximize resources and results by devoting more attention to higher-risk offenders.

Special Populations

- California should investigate methods of increasing available treatment hours and participation rates for Penal Code Section 290 registrants who are committed or detained as inpatients within the Department of Mental Health.
- California should identify a more efficient method of determining when a parole violation is related to reoffense risk and appropriately triggers a clinical re-evaluation versus parole violations not related to risk that should not require an additional evaluation for parolees who have been previously evaluated and rejected for the Sexually Violent Predator Program.

Introduction

Policymakers and public safety professionals bear an incredible weight of responsibility to promote the safety of California's communities. The decisions that they make related to either the management of specific offenders or through broader public safety policies can have sweeping implications that profoundly impact real lives.

Vision

The vision of the CASOMB is to decrease sexual victimization and increase community safety.

Mission

This vision will be accomplished by addressing issues, concerns, and problems related to community management of adult sexual offenders by identifying and developing recommendations to improve policies and practices.

In 2006, Governor Schwarzenegger signed AB 1015, which created the California Sex Offender Management Board (CASOMB). The board was created to provide the Governor, the State Legislature and relevant state and local agencies with an assessment of current sex offender management practices and recommended areas of improvement.

The board is comprised of individuals who serve across the public safety sector and who volunteer their time and expertise in the service of CASOMB's vision and mission. Appointed by

both the executive and legislative branch, or identified as representatives from designated agencies, board members bring a varied set of skills and professional experiences and hail from jurisdictions as diverse as the state of California itself.

The CASOMB takes seriously its role to provide informed advice to state and local leaders. Over the last three years, the CASOMB has

- held monthly public meetings;
- held a series of public hearings across California;
- provided consultation to legislators, state and local agencies and;
- developed a series of papers and reports on emerging issues in an earnest attempt to identify policies and strategies, based on the best available evidence and professional experience, that will aid in the safe and successful management of California's population of identified, adult sex offenders.

The board's mandate is ambitious and in 2008 during the CASOMB's initial assessment of California's sex offender management practices, the board observed:

California is an exceptional state. Its size, diversity, distribution of resources and variations in practices make any assessment of public safety strategies a complex and expansive challenge.

The complexity of this challenge has not diminished over time. In fact, due to California's economic crisis and significant changes in state law, the challenge of quantifying, assessing and recommending policy changes that would improve sex offender management practices statewide has become both more complex and more fundamentally important.

The information regarding any one of the programs, themes, gaps and recommendations identified in this report could be significantly expanded upon. In some cases, it was impossible to attain a level of detail that would completely describe dilemmas that public safety agencies face daily because the required supporting data is simply available or reliable. Also, the structural limitations of a volunteer board operating with limited dedicated staff forced the board to leave some areas for inquiry open to future discussion and examination.

The reality in California is, rather than a coherent and coordinated sex offender management system, the state has multiple sex offender management strategies created by various legislative, voter initiative and executive branch actions with varied "mandates" and very different funding requirements and funding assurances. California's system of sex offender management was created – for the most part – piece by piece through separate and uncoordinated legislative and administrative actions. Although various components of the system have learned to work together, the overall system could not be described as coherent, cohesive and coordinated.

In many ways the CASOMB's challenge to understand, map and improve a complex, ever-changing system within the limited confines of time and resources is emblematic of the challenge that local communities and state agencies which manage sex offenders face constantly. Everyday public safety professionals at every level of government, in every community in California, continue to struggle valiantly to address what is one of the most challenging issues in community safety in an environment that is polarized, fraught with complexities and starved for even the most basic resources.

"Managing convicted sex offenders in the community poses extremely difficult challenges for policymakers. No other category of criminal evokes more fear and public outrage, and few communities want convicted sex offenders living in their area.... Inaccurate perceptions have made it difficult for policymakers to enact research-based policies." (Managing Convicted Sex Offenders in the Community; National Governors Association - Center for Best Practices; 2007)

Sexual crimes rightly outrage communities. The legacy of sexual assault in the lives of victims is often profound and long-lasting. In the aftermath of an assault, communities often demand with great vehemence that policymakers and public safety professionals DO SOMETHING. The root of the desire to acknowledge the serious nature of the crime is difficult to disparage but, when combined with fear, misinformation and the heat of media inquiry, the flame of community outrage can create a political environment that rewards swift action over more methodical, effective approaches. On occasion, these

swift approaches may address short-term community outrage at the cost of directing resources and skilled personnel away from investments in strategies for long-term safety.

The CASOMB spent a significant portion of its time surveying at least some of the challenges that jurisdictions in California face when trying to effectively manage adult sex offenders, and the list is far from complete. Despite the myriad of public safety concerns associated with sex crimes, the CASOMB has concluded that the high, and still escalating, rate of homelessness among sex offenders in California is one of the most serious issues facing the field of sex offender management.

Where, and how, sex offenders should live has become the central crisis of sex offender management in California. No other emerging issue has demonstrated the same potential to fray community re-entry collaborations, complicate supervision, and undermine the offender's long-term stability. The CASOMB believes strongly that one of the most fundamental questions in public safety is not where sex offenders shouldn't live, but where should they live safely.

Despite the myriad of public safety concerns associated with sex crimes, the CASOMB has concluded that the significant increase in the rate of homelessness among sex offenders and lack of appropriate housing in California is the most serious issue facing the field of sex offender management.

The question of housing is not simply the domain of civil libertarians or those driven by humane concern. Appropriate housing, homelessness and the instability created by transience are public safety concerns.

Every child, woman and man in California deserves to be safe from sexual violence. Even though a known sex offender living near a park may seem like the most obvious threat, far more Californians will be sexually victimized in their own homes by acquaintances or family members. The lack of significant in-home intervention and prevention resources is symptomatic of an approach that fundamentally misunderstands the complete extent and nature of sexual violence. The CASOMB acknowledges this broader context of sexual victimization, and recognizes the limitations of our mandate that is focused on already identified offenders.

No two sex offenders pose the same level of risk, nor can they be managed or supervised in identical ways. Laws and policies that fail to take into account the real differences in risk that individual offenders might pose will misallocate valuable resources and misunderstand potential threats. The ultimate success of California's sex offender management system will depend on its ability to understand the myriad of ways that sexual offending occurs and then adjust to intervene and manage that risk.

Similarly, policymakers and the public should be suspicious of any one technology or strategy which promises to solve the problem of sex offenders. Sexual offending is a

complex problem that will require a thoughtful, multifaceted approach to effectively address and, ultimately, prevent.

Some of our most public and tragic sex offender management failures have demonstrated the importance of qualified, trained professionals working in concert with other disciplines to identify emergent risks. Tragedies are not averted because of a single data point or tool, they are averted because qualified professionals know how to interpret that data in context, communicate with each other and respond accordingly.

In a time of scarce resources, board members agree that approaches that can demonstrate success should take priority over those that are untested. Furthermore, policymakers should insist on ongoing evaluation of sex offender management strategies to ensure that quality is maintained and that new approaches are effective.

In light of the serious stakes, huge challenges and potentially dire consequences, it has been important to identify principles that can guide California's communities. The detailed recommendations contained in this report fall under several larger themes:

Victims and potential victims of sexual assault should inform and inspire all approaches to sex offender management. The chances of positively impacting public safety are improved when victims feel encouraged to report their experiences and are able to actively engage in the criminal legal process. The long-term health and healing of victims is aided by ensuring that victims can access supportive services and restitution.

There are still too many gaps in California's sex offender data collection. This state has one of the largest identified sex offender populations in the world yet little has been done to ensure that policymakers and public safety professionals have state-specific information that could guide their decision-making.

Three fundamental principles should inform sex offender management strategy: risk, need, responsivity.

The "risk" principle says that the greatest resources and efforts should be directed toward those individuals with the highest risk of reoffending. Changes in California's risk assessment practices have gone a long way to improving the quality and accuracy of offender assessment. Similarly, important statewide efforts such as the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) review committee continue to help California conform to evidence-based practices.

The “need” principle says that the focus of intervention should be on those characteristics of offenders that are shown to be associated with the propensity to reoffend and that have the potential to be changed through targeted interventions.

Finally, the “responsivity” principle states that interventions must be delivered in ways that best match the learning capacities of the offenders. These principles apply primarily to correctional programming but can also be used to guide various other community safety endeavors.

Therefore, in addition to “risk,” successful sex offender management approaches must include an assessment of offender “needs” and the identification of strategies that can maximize an offender’s “responsivity” to behavior change. Essential to this process is the use of sex offender treatment professionals. There is an extensive body of evidence and research that document the positive public safety impact of sex offender treatment, particularly when coupled with supervision and management strategies.

Coordinated responses will always be more effective than the work of a single agency or supervisor. Effectively understanding offender risk and implementing effective community management strategies require a host of skills and resources.

For the management of individual offenders, coordinated efforts such as the “Containment Model” and Sexual Assault Felony Enforcement (SAFE) teams emphasize the success of collaborative information sharing, enforcement, treatment, and supervision activities.

Local and statewide systems can benefit from coordinated teams such as sex offender management councils to promote interagency communication and policy improvement. Efforts like those in San Diego and San Francisco County have had lasting and important impacts on community response and could provide similar benefits if implemented elsewhere.

Management activities are only as good as the skills of those who are tasked with performing them. The complexity of both the nature of sexual offending and interventions require a specialized body of knowledge and skills. Investments in skilled personnel who perform investigation, adjudication, disposition, supervision, treatment and monitoring activities will enhance the overall capacity of the system to appropriately manage offenders.

Effective re-entry is an important first step. The period of time immediately after an offender’s release from prison or jail is an important indicator of that offender’s ultimate success in the community. Maximizing effective supervision and supportive resources (such as housing, treatment, and appropriate employment) during this time can maximize the potential for some offenders to refrain from reoffending.

We are all members of a community safety team. The public will also have to examine its relationship with and understanding of sex offender management practices.

Community education is key. Policies that reduce the risk of reoffending by managing sex offenders must have a goal that promotes the success of sex offenders. Successful re-entry includes a life without re-offending.

Public education efforts that dispel misunderstanding and promote information sharing can enhance the capacity of a community to manage identified offenders, as well as assist in a response to new incidents and ultimately prevent future victimization. Similarly, community-based efforts such as Circles of Support and Accountability (COSA) focus on ways that a community can support offenders to remain offense-free.

With these principles in mind, the CASOMB has organized its work into a number of areas of inquiry:

- Victim Services
- Investigation, Prosecution and Disposition
- Treatment
- Re-entry, Supervision and Housing
- Registration and Notification

The following sections of this report provide a more extensive examination of California's current status in each of these focus areas and offer important recommendations about future directions.

Research Gaps

As the CASOMB has begun to move forward in its attempts to bring coherence to and maximize the effectiveness of California's efforts to manage the state's sex offenders, it has become increasingly clear that important information tools to understand and improve the extremely complex system are lacking.

One of CASOMB's grounding principles is that sex offender management strategies should be based on reliable information and on the findings of solid research regarding the effectiveness of various approaches. Such an evidence-based perspective cannot make the desired progress if the evidence that is sought is too difficult to obtain or is simply not available.

The CASOMB invested considerable effort into developing a "Dashboard" to track and report key data on California sex offender management topics. It has proved very difficult to obtain and maintain the data needed to keep this reporting system updated.

The CASOMB believes that one foundational task is to determine the effectiveness and cost effectiveness of any effort undertaken to manage sex offenders. The availability of key data is crucial to answering questions about the effectiveness – and, subsequently, the cost effectiveness - of various management approaches.

It is anticipated that the revision of the Department of Justice systems for maintaining the Megan's Law website – an effort now underway – will eventually be of help in making a wider array of important information about registered sex offenders available to researchers.

Following is an enumeration of some areas where the CASOMB believes that the availability of accurate information would support better policy decision making. This list is not intended to be exhaustive. The order and numbering in the following list are not intended to reflect order of importance.

1. California needs to make a determination of the number of convicted sex offenders being handled at the county level, particularly the number on county probation but also the number serving post-conviction time in county jails.
2. California should conduct an analysis of the true recidivism rate (arrest or conviction) for sex offenders released from custody after serving a sentence in a CDCR prison. Such an analysis could look at recidivism over three-year, five-year and ten-year periods. To be meaningful, it would need to account for actual time at risk in the community and not include time when the individual had been returned to custody and so was not actually at risk to re-offend – a method of analysis not readily accomplished with data currently available. The presence or absence of certain management practices should be noted as well, including supervision, Containment, treatment, GPS tracking and others.
3. A similar analysis is needed for the recidivism of sex offenders sentenced to county probation.
4. Since the state is expending substantial resources on GPS for sex offenders, a large scale outcome evaluation and cost effectiveness analysis of GPS should be conducted. Such a study should include both CDCR and county probation and should take into account the risk level of the sex offenders included in the study.
5. The assumption that residence restrictions actually contribute to public safety should be evaluated. It seems clear that residence restrictions are driving up the numbers of homeless sex offenders and so the recidivism of transient versus those who have stable housing should be compared. Research strategies should be developed to answer the challenging question of whether residence restrictions actually increase public safety.
6. California should develop an accurate analysis of the projected total costs for GPS tracking if lifetime supervision were implemented.
7. If California were to come into compliance with the federal Adam Walsh Act there would be substantial implementation costs. Although estimates have been generated with regard to some of the AWA requirements, an accurate forecast should be developed to clarify the actual anticipated costs for all aspects of the new AWA requirements.

8. Under changes required by Proposition 83, increasing numbers of individuals now must be screened and evaluated to determine whether they meet the criteria for civil commitment as a “sexually violent predator.” These evaluations are very costly. Some careful analysis is needed to determine whether the benefits of such an extensive use of full SVP evaluations are justified by their benefit to community safety or whether there are other, less costly ways to preliminarily screen and determine whether a particular candidate is likely to meet the criteria for commitment.

9. There is a need to determine the full costs for requiring lifetime registration and notification for all PC290 registrants. Elsewhere in this report it is recommended that California revise its requirements for lifetime registration. A better knowledge of the full cost to the state and to local jurisdictions for maintaining and enforcing the lifetime requirement for all sex offenders, no matter what their risk level or how long they have lived crime free would further clarify the best future direction for California registration requirements.

10. Proposition 83 empowered cities and counties to enact their own residence restrictions for sex offenders. Not only is there no provision for keeping track of the proliferation of these regulations, but their impact is unknown. Research is needed to determine the impact of local ordinances on the housing of sex offenders, their degree of transience and their movement across jurisdictional boundaries as a result of such restrictions.

11. California should gather data tracking of the flow of sex offender cases from initial police report to arrest to conviction to disposition (including length of stay in prison) to supervision period to the post-supervision period. Such data would give a much clearer picture of how the larger system works and what impact various changes, such as longer sentences, have had. It would, for example, help planners determine whether the 25-years-to-life sentences are going to stem the flow into the civil commitment program.

12. Information should be gathered regarding how many sex offenders enter treatment programs and how many never do and whether that makes a difference in recidivism - inasmuch as research seems to suggest it may be the only intervention that does. Such research should also include information about the nature, length and quality of treatment programs.

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Several local and statewide public safety efforts over the last five years have helped inform and frame our work. These include the sex offender management teams in San Diego and San Francisco, Governor Schwarzenegger's 2006 High Risk Sex Offender Task Force, and the California Sex Offender Management Task Force facilitated by the Center for Sex Offender Management.

Victim Services

Effects of Sexual Assault and Victim Assistance

Sexual assaults are exceptionally threatening traumatic events outside the range of usual human experience. While some victims exhibit a greater ability to adapt and a higher resiliency, generally, victims of sexual offenses are markedly distressed. Whether the effects of sexual offenses are easily visible or not, the stress reaction is generally understood to be a shattered worldview, which leads to profound feelings of

VICTIM SERVICES RECOMMENDATIONS:

- **Funding for victim service programs should be sufficient and stable so as not to erode victim rights, services, and ability to participate in offender management systems.**
- **There should be a restitution specialist position that ensures direct victim restitution orders are obtained from the court in a determined amount.**
- **Multidisciplinary teams should be institutionalized at the state policy level.**
- **Agencies that work with and represent people with disabilities should be a part of and participate routinely in multidisciplinary teams. Policies and procedures should be in place to ensure the ability to respond sensitively and effectively to victims with disabilities.**

distrust. A sexual offense shatters the victim's assumptions about the world because the world is experienced—that is, after the offense—as unsafe and unjust, which causes a sense of isolation and estrangement from others. Victims may suffer psychological reactions including a disassociation and an intense fear for their lives. When the offense is perpetrated by an acquaintance, friend or lover, violation of trust can be a life-altering issue for the victim. A victim may lose his or her sense of community and belonging as a result of intense feelings of guilt and devaluation. The traumatic effects of sexual assaults involving child victims can have a lasting impact on the child's physical and mental health, overwhelming the child's coping and ego defense mechanisms and threatening the child's physical integrity. Beyond the immediate consequences of a sexual assault, the residual effects present problem behaviors in adolescence and adulthood. Childhood victimization is a significant predictor of adult arrests for alcohol and/or drug-related offenses.¹ Childhood victimization has been found to be a statistically significant predictor of having at least

¹ National Institute of Justice, U.S. Department of Justice, *Childhood Victimization and Risk for Alcohol and Drug Arrests*, November 1995.

one alcohol-or drug-related arrest in adulthood. The indirect path between childhood victimization and adult substance abuse arrest is well demonstrated. Child victims of sexual offenses are more likely to have an arrest as a juvenile, and those arrested as juveniles are at greater risk for arrests for alcohol or drug offenses as adults. Child victims of sexual assault—female victims, especially—are more likely to be arrested for property, alcohol, drug, and such misdemeanor offenses as disorderly conduct and curfew violations.² The significance of the offense profoundly harms the child's parents as well. Once the offense is discovered, it is common for the child's parents to experience a deep sense of guilt and failure—which provides but a single glimpse of the impact on wider society.

The significance and scope of sexual assault is an important criminal justice issue. The lasting impact of sexual assault and the rights of the victims should be a central concern to the management of adult sex offenders.

VICTIMS' CONSTITUTIONAL AND STATUTORY RIGHTS

At the November 2008 General Election, the people of the state of California adopted by initiative Proposition 9, which became known as the Victims' Bill of Rights Act of 2008: Marsy's Law. The Act of 2008 amends Article 1, section 28 of the California Constitution.

While the rights enumerated in the Victims' Bill of Rights Act of 2008 generally existed in California statute, the passage of Proposition 9 makes the rights part of the constitution.

There are special rights for victims of sexual assault in the California Penal Code, Evidence Code, and Health and Safety Code. For a list of constitutional and statutory rights, please see **Appendix A and Appendix B**.

VICTIM NOTIFICATION

The right to participate in the process of justice is important to victims of crime. However, victims cannot participate unless they are informed of their rights and of the time and place of the relevant proceeding that they may exercise those rights. Without notification, victims of sexual assault are also denied the ability to take precautions for their safety. Therefore, the most fundamental right of a victim is the right to be kept informed. Notifying victims in advance of a proceeding and informing them of their rights to participate in that process are prerequisites to the exercise of the victim's rights. Keeping the victim informed should be an important part of the mission of local and state law enforcement agencies, prosecuting agencies and correctional agencies. It should be reflected in the agency's internal policies and procedures, as well as in the attitudes of agency personnel.

² National Institute of Justice, *An Update on the "Cycle of Violence"*, February 2001.

VICTIM RESTITUTION

Restitution is an important part of an offender's sentence. It is effectively a rehabilitative penalty in that it increases accountability by holding the offender financially responsible for the crime and compensating the victim for the costs caused by the offender's actions. In every case where the sexual offender is convicted, the court imposes a restitution fine. The court may determine the amount of the fine as the product of \$200 multiplied by the number of years of imprisonment the offender is ordered to serve, multiplied by the number of felony counts of which the offender is convicted. Misdemeanor offenses are assessed at a minimum of \$100. The offender's inability to pay is not to be considered a compelling reason not to impose a restitution fine. Inability to pay is considered only in increasing the amount of the restitution fine in excess of the minimum fine.

Wherever the victim has suffered economic loss as a result of the offender's conduct, the court requires the offender make restitution to the victim in an amount established by court order, based on the amount of loss claimed by the victim. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order includes a provision that the amount shall be determined at the direction of the court.

Since a sexual offender's probation may not be revoked for failure to pay restitution unless the offender willfully failed to pay and had the ability to pay, many sexual offenders reach the end of their probation terms without making full restitution.

In March 2006, the California Department of Corrections and Rehabilitation, Office of Victim and Survivor Services published the results of a study relating to adult inmate restitution.³ The study included men and women at state prisons and camps, but did not include community correctional facilities or parolees. The most striking finding included was that only 11 percent of all offenders had direct restitution orders. Of those offenders with direct restitution orders only 19 percent of the victims had requested collection. The study concluded, . . . ***victims' constitutional right to receive restitution from their offenders continues not to be honored or enforced in California at this time.***

Since January 2007, the California State Department of Corrections and Rehabilitation automatically collects from offenders in all victim restitution cases whether or not the victim has ever contacted the department, and in preference to restitution fine collections. This has dramatically increased victim restitution collections, but has also challenged county authorities to provide victim recipients' contact information to the department. Two out of every three cases come to the department without sufficient information to disburse victims' restitution collections.

³ California Department of Corrections and Rehabilitation, Office of Victim and Survivor Services, *Prison Restitution Project, 2004 Survey*, March 2006.

In January 2009, the California Department of Corrections and Rehabilitation was given legislative authority to use the California Franchise Tax Board (FTB) to collect unpaid victim restitution from all offenders who have been under the department's jurisdiction.

It will be necessary to coordinate between agencies, including the Victims Compensation and Government Claims Board to improve restitution collection systems.

VICTIM COMPENSATION FOR ECONOMIC LOSSES

California's Victim Compensation Program is the largest in the nation. The program provides compensation for victims of crimes who are injured or threatened with injury. Eligible family members or other specified persons may also be eligible for compensation under the program. The program pays for services such as medical and dental care, mental health services, lost wages or support, funeral or burial expenses, and emergency relocation. Crime can leave victims and their families with bills for medical, mental health counseling, funeral services, lost wages and with the financial costs associated with a number of other consequences of the crime. The compensation program, which is a claims-based program, supports direct payments to victims and providers for crime-related expenses. However, the program exists to provide help to the victim and family members after all other reimbursement sources have been utilized. In other words, the program is the payer of last resort. Victims are reimbursed only after other available sources have been exhausted.

As part of its 2008 Budget Analysis, the Legislative Analyst's Office estimated the Victim Compensation Program will become insolvent in approximately 2012-13, when it would run a deficit of nearly \$35 million. The Office described the likelihood that expenditures will grow faster than the relatively stable revenues flowing into the fund. The increased expenditures are due to (1) increased awareness of the service provided by the program; (2) various changes in the program's compensation of service providers, and (3); the increased use of the fund in recent years to support other new state programs.

The California Bureau of State Audits presented its audit report concerning the Victim Compensation Program Dec. 9, 2008. The audit report was requested by the Joint Legislative Audit Committee. The report concludes that program compensation payments sustained a 50 percent decrease from fiscal years 2001-02 through 2004-05 as a result of attempts to maintain the fiscal viability of the Restitution Fund. Compensation payments have increased since fiscal year 2004-05, but not to the level they reached in fiscal year 2001-02. Despite the significant decline in payments, the costs incurred to support the program increased. These costs—ranging from 26 percent to 42 percent annually—account for a significant portion of Restitution Fund disbursements. The report went on to say the program has not established a comprehensive outreach plan to assist it in appropriately prioritizing its efforts and focusing on those in need of program services.

As a recipient of Violence Against Women Act funds, California is required to provide medical treatment for sexual assault crimes at no charge to the victim. Further,

California law prescribes that a sexual assault victim cannot be billed, either directly or indirectly, for any treatment as a result of a sexual assault crime. Although case law has determined that the Compensation Program is the payer of last resort, unique to sexual assault is the prohibition of billing a victim, either directly or indirectly, including that victim's insurance. Therefore, in compliance with both federal and state law, the victim of sexual assault shall never be financially responsible paying for treatment arising out of his or her sexual assault victimization.

JUSTICE-BASED AND NON-GOVERNMENTAL VICTIM SERVICES

Formal help sources for victims of sexual assault include justice-based and non-governmental victim service programs, as well as other helping agencies that serve victims as part of their larger mission (e.g., healthcare and mental healthcare facilities). The provision and funding of direct victim services is spread across several state departments and agencies that have little interaction. These include four Cabinet-level agencies, the Governor's office, two other constitutional offices and at least 11 state departments.⁴ The major sources of funding for victim services include the Victim Compensation and Government Claims Board⁵ and the California Emergency Management Agency (CalEMA)⁶. In addition to these entities, other departments play a role in the provision of victim services, including the Attorney General's Office, the Department of Corrections and Rehabilitation, the Department of Social Services and the Department of Mental Health. The lack of a single lead agency at the state level results in limited collaboration, duplication of services, ineffective partnerships and the absence of a statewide strategic approach to funding decisions. Without a statewide strategic approach to funding decisions, or a systematic method for communication and collaboration among the many public and private providers who serve crime victims, collaboration on crosscutting victims' issues is the exception. The collaboration that does take place is generally ad hoc, haphazard and depends on individual personalities and preferences.⁷

Primary among the professional service providers for sexual assault victims are the Victim/Witness Assistance Programs, Rape Crisis Centers and Child Advocacy Centers.

MULTIDISCIPLINARY TEAMS/CHILD ADVOCACY CENTERS

Child Advocacy Centers (CACs) play an increasingly significant role in the response to child sexual abuse and other child maltreatment in the United States. CACs are

⁴ California State and Consumer Services Agency, *Strengthening Victim Services in California, A Proposal for Consolidation, Coordination, and Victim-Centered Leadership*, November 2003.

⁵ information about this program can be found at <http://www.boc.ca.gov/>

⁶ Information about this program can be found at <http://www.oes.ca.gov/> under Law Enforcement and Victim Services Division

⁷ California State and Consumer Services Agency, 2003

designed to reduce the stress on child abuse victims and families created by traditional child abuse investigation and prosecution procedures and to improve the effectiveness of the response. Before the advent of CACs, child victims were subjected to multiple, redundant interviews about their abuse by different agencies, and were questioned by professionals who had no knowledge of children's developmental limitations or experience working with children. Child interviews took place in settings such as police stations that would further stress already frightened children. The multiple agencies involved did not coordinate their investigations, and children's need for services could be neglected.

CACs coordinate multidisciplinary investigation teams in a centralized, child-friendly setting; employ forensic interviewers specially trained to work with children; and assist child victims and families in accessing medical, therapeutic, and advocacy services.

Despite the widespread growth and importance of CACs, however, the model had not been rigorously evaluated until 2001 when the Office of Justice Programs funded a multi-site evaluation of CAC's. The study was conducted by the Crimes Against Children Research Center at the University of New Hampshire in conjunction with research teams at each of the CACs participating in the study. Researchers enrolled cases in the study between December 2001 and December 2002. Data collection continued through December 2004. Data from more than 1,000 cases of sexual abuse were collected from four CACs and from communities without CACs.⁸ What follows is an overview of the effects that CACs have had on child abuse investigations.

- 81 percent of investigations in CACs were joint police and child protective services investigations compared with 52 percent in communities without a CAC.
- 28 percent of CAC cases used team interviewing compared with 6 percent in non-CAC communities.
- 55 percent of CAC interviews involved police compared with 43 percent of non-CAC community interviews.
- 56 percent of CAC cases had multidisciplinary case review, compared with 7 percent in non-CAC communities.
- 83 percent of CACs held interviews in center facilities designed for interviewing children, while 75 percent of interviews in non-CAC communities were conducted in child protective agencies, schools, police stations or children's homes.
- 85 percent of cases in CACs and non-CAC communities involved only one child forensic interview.

⁸ Project Researchers: *University of New Hampshire*: Theodore P. Cross, Lisa M. Jones, Wendy A. Walsh, Monique Simone; *Lowcountry Children's Center*: Arthur Cryns, Polly Sosnowski; *Dallas Children's Advocacy Center*: Tonya Lippert-Luikart, Karen Davison; *National Children's Advocacy Center*: Amy Shadoin, Suzanne Magnuson; *Pittsburgh Children's Advocacy Center*: David Kolko, Joyce Szczepanski.

- Over 70 percent of children disclosed at forensic interviews in both CACs and non-CAC communities, with statistically significant difference between the two.
- 48 percent of children in CAC cases received a forensic medical exam, compared with 21 percent in non-CAC communities.

VICTIM SERVICE PROVIDERS AND SEX OFFENDER MANAGEMENT

Victim service providers work directly with crime victims and come into contact with them on a daily basis. Victim service providers are eminently qualified to assist in managing sex offenders from a victim-focused perspective, due to their history of working with and on behalf of sexual assault victims. Their knowledge of the needs of victims can enhance sex offender management policy development, professional training initiatives, day-to-day practices, and community notification and education efforts. In addition, victim service providers offer services to victims to respond to issues that may arise when their perpetrators are released on probation or parole. Involving victim service providers also assures that community and governmental bodies are responsive to victims' needs and establish policies that condemn and prevent sexual offenses. If offenders disclose crimes with new victims during supervision or treatment, victim service providers can work with supervision agencies and treatment providers to consider ways to offer assistance to these victims. Victim service providers can help victims achieve their personal goals with the criminal justice system, instead of goals defined by prosecutors, judges, probation and parole officers, and sex offender treatment providers.

Traditionally, the involvement of victim service providers has tapered off after sentencing. However, victim safety and well-being must continue to be a priority when convicted offenders are released on probation or parole. Although the concept of involving victim service providers in sex offender management is emerging, the Center for Sex Offender Management, a project of the Office of Justice Programs, U.S. Department of Justice, suggests that victim service providers can assist victims in the following ways once a sex offender is released on probation or parole:⁹

- Explaining the community supervision and treatment program to victims;
- making sure victims are informed of changes in offenders' status and conditions of supervision;
- helping victims develop a safety plan;
- facilitating victim input regarding supervision and treatment plans;
- ensuring that treatment providers view their responsibility to the victim as equal to their responsibility to the offender with who they are working and;
- participating in case review meetings and sharing information that promotes informed case decisions that promote victim protection.

⁹ For a detailed discussion of the victim-centered approach to sex offender management please see: a publication produced by the Center for Sex Offender Management entitled: *Engaging Advocates and Other Victims Service Providers in the Community Management of Sex Offenders* www.csom.org

Furthermore, the Center promotes a more comprehensive victim-centered approach including:

- Educating stakeholders about the benefits of a victim-centered approach;
- identifying promising practices;
- encouraging victim service providers to take a leadership role in advocating for the needs of victims of sex offenders supervised in the community and new victims identified in the process of sex offender management;
- encouraging multi-disciplinary training among supervision agencies, sex offender treatment programs and victim service providers;
- helping agencies build their capacity to collaborate and;
- supporting the establishment of sex offender supervision units that include a role for victim service providers.

Investigation, Prosecution and Disposition

Sexual assault crimes against children, teens and adults are considered some of the most heinous crimes with the potential for lifelong impact on the victims of sexual assault crimes. More than any physical injuries a victim sustains, the violation of trust that accompanies most sexual assault has been shown to dramatically increase the level of trauma the victim suffers. Emotional and psychological injuries cause harm that can last much longer than physical wounds.¹⁰ Without effective investigation, prosecution and disposition, no other elements of sex offender management would be possible.

INVESTIGATION, PROSECUTION AND DISPOSITION RECOMMENDATIONS:

- Communities should employ *best practices* that consider the victim/survivor's health and well-being in addition to maximizing evidence gathering, including utilization of Sexual Assault Response Teams (SART), Child Assault Centers (CAC), Multidisciplinary Interview Teams (MDIT) and Family Justice Centers.
- All law enforcement officers who are tasked with investigating sexual assault crimes should complete a state certified course for the training of specialists in the investigation of adult sexual assault cases, child sexual exploitation cases, and child sexual assault cases.¹¹
- Law enforcement should adopt guidelines and procedures for the investigation of sexual assault cases and cases involving the sexual exploitation or sexual abuse of children, including police response to and treatment of victims of these crimes.¹²
- Law enforcement should employ the *best practice* of specialized Sexual Assault Investigative units.¹³
- Prosecutor Offices should employ the *best practice* of Vertical Prosecution Units and Vertical Prosecutors utilizing true Vertical prosecution.
- The Center for Judicial Education and Research (CJER) should employ the *best practice* of Judicial Education and Training.

¹⁰ For a longer discussion of the effects of sexual violence, please see the January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 35-37 (available at casomb.org) also see the 2007 California Sex Offender Management Task Force Report (available at casomb.org)

¹¹ For suggested training content please see **APPENDIX D**

¹² For suggested guideline elements please see **APPENDIX E**

¹³ For a longer discussion see 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 88 (available at casomb.org)

- Prosecutor Offices should employ the *best practice* of adopting established guidelines that ensure consistency and integrity in filing decisions and, wherever possible, designate an experienced sexual assault prosecutor to make filing decisions.¹⁴
- Prosecutor Offices should employ the *best practice* of establishing case review and filing guidelines that ensure consistency in plea bargains and dispositions.¹⁵
- All Prosecutor Offices should adopt California District Attorneys Association (CDA) Filing Standards, updated and published annually.
- All Prosecutors who are conducting sentencing negotiations and dispositions of sexual assault crimes should attend the CDA Charging and Sentencing Training Seminar within six months of the assignment or as soon as practical.
- Prosecutor Offices should utilize the *best practice* of the Sexual Assault Mentor DA Program.¹⁶
- The Legislature may explore a promising practice of enacting statutes that allow sufficient judicial sentencing discretion in individual cases.
- Recognition should always be given to the reality that sex offenders are a heterogeneous population with different risk profiles and treatment needs.
- Allow sentences, where appropriate, to be commensurate with the level of risk posed by the offender as well as the severity of the offense.
- Ensure that Victim impact statements and restitution requirements be included in the sentencing process, as these statements provide insight regarding the impact of the crime on the individual victim and community at large.
- The Legislature and Courts should adopt the promising practice of sentencing practices which support sex offense-specific treatment and community supervision efforts (“Evidence based sentencing”). “Evidence based Sentencing” should include¹⁷:

Following incarceration, mandates for sex offense specific treatment, sufficient periods of community supervision following incarceration that allow for monitoring, relevant special conditions or restrictions court-leveraged consequences for non-compliance with supervision requirements.

¹⁴ For a longer discussion see 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 87-88 (available at casomb.org)

¹⁵ For a longer discussion see 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 96 (available at casomb.org)

¹⁶ For Mentor DA Program Criteria see **APPENDIX F**

¹⁷ See the 2007 California Sex Offender Management Task Force Report 33 (available at casomb.org)

Sexual assault investigation is a complex endeavor that requires both a collaborative approach and specialized knowledge among those involved in the investigative process. The effective management of sexual assault offenses begins with a thorough and accurate investigation. The need for implementation of *best practices* and the openness to explore *promising practices* in the investigation and prosecution of sexual assault cases are paramount.

There currently exist *best practices* upon which recommendations are based and “promising practices” upon which recommendations are considered. A *best practice* is a continuum of practices/programs ranging from promising to evidence-based. Working with “promising practices” is a type of quality movement promoting the concept of “doing our best.”

Sexual assault victims should always have the choice about when, with whom, and under what conditions they wish to discuss their experiences. It is clear that the victim's recovery will be enhanced if she or he feels believed, supported, protected, and if she or he receives counseling following the disclosure that she or he was assaulted. The criminal justice system exists to protect victims of crime and hold perpetrators accountable. Improvement in the effectiveness and success of the criminal justice system will enhance victims' confidence in those systems, which will result in more participation in the systems and better management of sex offenders. The manner in which the investigation is conducted, the success with which the cases are prosecuted and the respect, dignity and caring for the victim of sexual assault who participates in the criminal justice system can be key contributors to the healing and recovery of the victim. Holding sex offenders accountable for their crimes, including imposing appropriate punishment and eventual management of convicted sex offenders in our communities, will also be key in preventing future sexual assault crimes and sexual assault crime victims.

In previous reports the CASOMB has examined and detailed specific issues, gaps and recommendations related to the investigation and prosecution of sex crimes by adult offenders.¹⁸ This report builds on that information by examining issues related to the disposition of these cases.

Towards the Development of Promising Practices in Disposition

Over the last several years, the Legislature has enacted sentencing laws that have significantly reduced the discretion of the Court in imposing post-conviction sentences. With the enactment of the “one-strike sexual assault law” (PC Sect 667.61), more indeterminate sentences are handed down. Through the enactment of the “three strikes law” (PC Sect. 1170.12), convicted sex offenders are required to serve 85% of their sentences. However, a significant number of offenders who are convicted of child sexual assault crimes are being placed on probation with conditions. The lack of a centralized database that tracks the sentences of all sex offenders inhibits the

¹⁸ January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 85-98 (available at casomb.org)

opportunity to establish *best practices* in sentencing or to develop “evidence-based” sentencing.

“*Promising Practices*” are methods, modes of operation, actions or philosophies that *may* lead to the intended outcome but have yet to be adequately tested. Developing Promising Practices include measurable objectives. These practices are evolving and include constant improvement. Promising Practices generally reflect theories and beliefs, processes and strategies that utilize or reflect relevant evidence. A *Promising Practice* has an evaluation component/plan in place to move towards demonstration of effectiveness. However, it does not yet have evaluation data available to demonstrate positive outcomes. *Promising Practices* continually incorporate lessons learned, feedback, and analysis to lead toward improvement of identified positive outcomes. A *Promising Practice* must depend on the collection of validated data in order to move forward.

While much attention is placed on “evidence-based sentencing,” it remains a *Promising Practice* until the process of testing and identifying the intended outcomes can occur and be reported as successful. Therefore, it is important to create a validated data collection mode for evaluating crimes, convictions, sentencing and successful outcomes of lack of re-offending, protection of the community from future sexual assault crimes and protection of the victim from further victimization.

To begin the process of establishing and evaluating a “*Promising Practice*” the Legislature should create policy based on the recognition that sex offenders are a heterogeneous population with different risk profiles and treatment needs.¹⁹ The Courts, as part of the evaluation of a promising practice, should impose sentences - to the extent possible - that are commensurate with the level of risk posed by the offender, the severity of the offense, and the capacity of the criminal justice system to effectively manage each offender. As the evaluation of a “*promising practice*” often involves the review of the impact on the victim, sentencing should ensure that Victim Impact Statements and restitution requirements are considered in the sentencing process, as these statements provide insight regarding the impact of the crime on the individual victim and community at large.

The Legislature and Courts should explore the “*promising practice*” of adopting sentencing practices which support sex offense-specific treatment and community supervision efforts (“Evidence based sentencing”) following incarceration. “Evidence based sentencing” should include mandates for sex offense specific treatment, sufficient periods of community supervision that allow for monitoring, relevant special conditions or restrictions, and court-leveraged consequences for non-compliance with supervision requirements.

There is no question that effective sentencing, establishing and evaluating “promising practices” with the goal of identifying a *best practice* requires Judges who are engaged in the process. The Judicial Council, the Administrative Office of the Courts and the

¹⁹ 2007 California Sex Offender Management Task Force Report (available at casomb.org) 37

Courts should employ the *best practice* of strongly encouraging judicial education and training in the area of sexual assault. In order to engage an informed and supportive role, it is important that judges be educated on sentencing and the monitoring practices available that enhance positive practices of sex offender management. To date, some judicial educators with expertise related to sex offender management have created some resources and training materials in the area of sexual assault case management, victimology and victim dynamic, offender management and sentencing laws in California²⁰. Those materials should be broadly distributed and used by the Courts throughout California.

²⁰ These resources have been created by the California Judicial Council. More information can be found at: <http://www.courtinfo.ca.gov/jc/>

Treatment

Sex offender specific treatment is an important component of the Containment Model of sexual offender management. Collaboration between treatment providers, parole agents / probation officers, clinical polygraph examiners, and victim advocates is a key element necessary for the successful re-entry and effective supervision of sex offenders, whether they are on parole, probation or other forms of conditional release from a State Hospital or Developmental Center. Sex offender treatment has historically utilized different methods to train the individual to regulate and manage himself or herself, with victim safety and reduction of recidivism being primary treatment goals. Current research has identified that cognitive-behavioral therapy methodologies applied with consideration of the risk, needs and responsivity of participants are the most effective in reducing risk of re-offense.

TREATMENT RECOMMENDATIONS:

- Risk level-appropriate and evidence-based sex offender specific treatment should be routinely required for all adult and juvenile sex offenders under supervision in California.
 - i. The Containment Model should be a mandatory policy and public safety strategy implemented by California policy makers at the State and County levels.
 - ii. Funding should be allocated to implement the prison-based sex offender treatment programming that was previously approved (but left unfunded).
 - iii. The current implementation of the Sexually Violent Predator (SVP) statute should be reviewed and improved.
- To ensure effective treatment, written policies should be developed that describe standards and regulations which should be implemented at the State level for treatment programming for sexual offenders. Separate standards are needed for adult sex offenders, individuals with developmental disabilities and juvenile sex offenders.
 - iv. A database should be maintained to track and monitor approved treatment programs, treatment outcomes including rates of program completion and treatment drop outs, reasons for probation or parole revocations, rates of sexual and other criminal recidivism.
 - v. The California Department of Mental Health should likewise collect data for Mentally Disordered Sex Offender (MDSO) and Sexually Violent Predator (SVP) programs to ensure efficacy of intervention and cost efficiency.

- To ensure effective treatment, written policies and standards should be developed which can be implemented at the State level defining minimum qualifications of education, experience and competence for sex offender specific evaluators, and treatment providers.
 - i. Such credentialing should lead to listing as an approved provider to whom Courts, Probation Departments, Parole Agents, and other case managers will refer sex offenders for therapeutic services.
 - ii. As some rural counties or regions do not have sufficient resources or numbers of offenders to receive community based treatment, provider credentialing exceptions should be implemented with ongoing consultation with appropriately credentialed and approved providers.

To date, there have been significant discussion and extensive recommendations regarding evidence-based *best practices* in the field of sex offender treatment and management in California.²¹ Little has changed since the January, 2008, CASOMB report regarding the status of sex offender treatment in California.

CASOMB recognizes that treatment for sex offenders involves a number of general clinical competencies as well as specialized strategies that are not typically employed in traditional therapy. One example of how sex offender treatment is quite different from traditional therapies is that sex offenders are often mandated to participate and they face more limits on confidentiality. Specifically, within the Containment Model,²² there are a number of additional parties who must know what is occurring in sex offenders' treatment processes, such as probation officers or parole agents. These specialists have mandates from Courts or Parole Boards to ensure that certain offenders are participating in treatment and are following probation or parole conditions. Another unique aspect of sex offender specific treatment within the Containment Model is the frequent use of specialized post-conviction polygraph examinations to verify the veracity of self-report information provided by the offender in treatment and in his communication with his probation officer or parole agent. The distinctive nature of sex offender therapy is also illustrated by the fact that sex offender clients do not

²¹ January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 137-156 (available at casomb.org) and also see the 2007 California Sex Offender Management Task Force Report 49-60 (available at casomb.org) and the 2006 California High Risk Sex Offender Task Force 11 (available at casomb.org)

²² For a discussion of the Containment Model please see the January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 102-104 (available at casomb.org) and 2006 California High Risk Sex Offender Task Force 15-18 (available at casomb.org)

independently determine the course and nature of their own treatment, as do clients in more traditional therapies.

Sex offender specific assessment and treatment require significant clinical skill and experience on the part of a competent therapist and require that the therapist have additional knowledge and techniques that are based in empirical evidence for their use with sex offender clientele. The ultimate goal of treatment is to motivate and enable the offender to develop the ability to self regulate his or her behavior and, by doing so, increase safety for children and other potential victims in the community.

It is difficult to provide information on the quality or quantity of the sex offender treatment that does exist within California.²³ Given that there are not yet statewide criteria or qualifications for psychotherapists who provide treatment services to sex offenders, there is not yet a standard by which to compare providers, services, or outcomes. It is not currently even possible to determine how many providers or programs exist and how many offenders are in treatment at any time.

Other than adult and juvenile prisons, developmental centers, and state hospital facilities, there are currently no locked residential placements for higher risk offenders nor are there residential facilities for sexual offenders with mental health needs (e.g., housing, moderate to intensive treatment, and physical/mental health services). Treatment approaches vary between these facilities. CDCR has recently moved forward with a design for an in-prison treatment program but at the present time funding has not materialized. Such a program, while it would be a significant step forward for California, would address only a small proportion of the approximately 22,500 sex offender inmates in CDCR prisons.

Previous CASOMB reports have noted that a few California counties have developed their own protocols and practices for Probation Department approval of those who seek to provide specialized treatment services to sex offenders; San Diego, Orange, San Luis Obispo, and San Francisco Counties developed their protocols in collaboration with and utilizing funding from the Center for Sex Offender Management (CSOM). Shasta County previously developed its Containment Model system without such funding. While these five counties may have similar expectations for treatment providers, there remain several differences in protocols between them. In short, California has 58 counties whose Probation Departments each have different protocols and practices.²⁴

The Department of Mental Health has a highly-developed cognitive behavioral treatment program for men who are civilly committed as Sexually Violent Predators under WIC 6604 or are detained pending commitment proceedings under WIC 6602. The individuals committed pursuant to the SVP statute are detained at Coalinga State

²³ Additional discussion of this issue can be found in the California Sex Offender Management Task Force Report 56-58 (available at casomb.org)

²⁴ January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 152 (available at casomb.org)

Hospital and are encouraged (though they cannot be forced) to participate in the treatment program. Approximately 25-30% of those admitted under these circumstances are actually participating in treatment in the Sex Offender Commitment Program (SOCP). The SOCP program is based on cognitive and cognitive-behavioral theories as well as the findings of the Sexual Offender Treatment and Evaluation Project (SOTEP) program and other widely accepted research literature. The treatment program includes comprehensive assessments (including penile plethysmography, polygraph examinations, cognitive and psychological assessments), individualized treatment planning and a formal progress review system. The SOCP program also provides a tutorial track for cognitively impaired individuals. The SOCP program has five phases of treatment, of which four phases occur in the institution and the fifth phase occurs as an essential component of the transition back to the community. At this time, very few persons have completed the four institutional phases in order to be released into the community; more have been discharged from the program via court appeal processes. At this point there have been approximately 15 persons conditionally released after completion of the five phase program and approximately 130 persons who did not complete treatment but have been released without any conditions (unconditionally) through the judicial process.²⁵

Due to concerns about the SVP statute expressed by the community and professionals working with sex offenders in CA, the California Coalition on Sexual Offending recently conducted a thorough analysis of the SVP situation, resulting in the publication: *The California SVP Statute: History, Description, and Areas of Improvement*.²⁶ The CCOSO report concluded that several key areas of the implementation of the statute need to be improved. Improving the implementation of the SVP statute must be a high priority for the state of California given that the program is allocated more of the state's resources than any other sex offender services.

RECOMMENDATIONS

The following recommendations are an attempt to address the concerns and shortcomings noted above. Some of the points explain and expand upon the recommendations already stated.

A. Statewide Implementation of the Containment Model

The CASOMB strongly recommends that the sex offender management strategies collectively known as the Containment Model be implemented statewide.²⁷ The Containment Model has been identified by the CASOMB as the *best practice* for community supervision of sex offenders. While the Governor's High-Risk Sex Offender

²⁵ For additional discussion of this issue please see the Special Populations section of this report

²⁶ This publication can be found at the <http://www.ccoso.org>

²⁷ For a discussion of the Containment Model please see the January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 102-104 (available at casomb.org) and 2006 California High Risk Sex Offender Task Force 15-18 (available at casomb.org)

Task Force and the CASOMB have endorsed implementation of the Containment Model, it has not been implemented in any uniform or continuous manner. A few counties have their own version of the Containment Model; most counties do not, nor does CDCR use this model.

The Containment Model calls for a collaborative effort of sex offender specific treatment providers, law enforcement supervising agents such as probation officers or parole agents, polygraphists providing specialized testing as both a treatment and monitoring tool and victim advocacy participants whenever possible. The offender is supervised and overseen within this context. If these aspects of containment are not in place, efficacy is reduced. CDCR does not use the Containment Model; there is no treatment being funded and no polygraph testing being conducted. While CDCR has a significant amount of funds and energies invested in GPS and supervision, this approach is not the full Containment Model²⁸. Supervision alone is not as effective as the full Containment Model. Public safety would be increased if the Containment Model were required throughout the State for all sex offenders, whether on parole or probation.

B. Credentialing and Training Requirements for Treatment Providers

The CASOMB Treatment Committee strongly recommends that the State enact legislation to codify regulations requiring specified training for mental health professionals who provide therapy and treatment services to manage sex offenders in effort to increase public safety while most effectively managing identified sex offenders in the State of California.

Establishing authority & regulating referrals: Those who evaluate and treat sex offenders should meet the following minimum criteria for education, training, and experience. Maintaining and demonstrating evidence of one's scope of practice and scope of competence in working with adult and/or adolescent sex offenders, such as described below, is a legal and ethical responsibility of each licensed psychotherapist in California serving these populations. Bi-annual documentation of these qualifications should be maintained by a statewide body, which places the evaluator's or treatment provider's name on the approved provider listing. Approved provider status should be established separately for those purporting to be competent with evaluation, and treatment of juveniles who have offended, treatment of offenders who have developmental disabilities, and treatment of adult sexual offenders. Courts, Probation Departments, and CDCR Parole should refer only to providers who are listed as approved providers.

With appropriate funding for infrastructure, the CASOMB could potentially serve in this role.

²⁸ CDCR has estimated that implementing containment (specifically treatment and polygraph) for all sex offender parolees would cost approximately \$45M. Using a similar basis for calculation, the implementing containment for HRSO populations only would be approximately \$15M.

Education & Licensure: Licensed psychotherapists, psychologists, or psychiatrists who provide evaluation and assessment services to sexual offenders should have the minimum academic degree in psychology, clinical social work, marriage and family therapy, or psychiatry as well as a California license to practice independently.

Registered interns or psychological assistants may provide sex offender specific evaluation or treatment services when functioning under the supervision of a licensed practitioner who meets the established criteria. Such interns or psychological assistants may apply to the regulatory body for approval and listing.

A one-year provisional approval status level should be offered to those licensed therapists who are pursuing sufficient education, training, and experience and provide a sufficient plan to correct any deficiencies. A provider with provisional approval should not be permitted to supervise interns or psychological assistants in the area of sex offender treatment until becoming qualified as an approved provider. No licensed clinical supervisor should supervise more than four unlicensed interns or licensed therapists with only provisional approval.

Evaluator sex offender specific training: Licensed psychotherapists, psychologists, or psychiatrists who provide evaluation services, including but not limited to pre-sentencing evaluations for the Courts or evaluations for individuals involved in civil commitment processes should provide their credentials and training as evidence of an appropriate scope of practice and competence, including but not limited to training with evidence based assessment procedures such as the STATIC-99, STATIC-2002, MNSOST-R, the Stable 2007, the Acute 2007, Hare Psychopathy Checklist-Revised, penile plethysmography, sexual interest viewing time measures, or others recommended by the California SORATSO committee or such organizations as the Association for the Treatment of Sexual Abusers (ATSA) or the California Coalition on Sexual Offending (CCOSO). Those who evaluate adolescents or persons with intellectual disabilities should document similar training in these specialized areas of evaluation, as defined by the SORATSO Committee or as recommended by ATSA or the CCOSO. Evaluators with less than two years experience should provide the names of persons with whom they will consult when ethically appropriate or required under licensing regulations. Thirty (30) hours of training in these assessment topics bi-annually is considered the minimum amount of training to demonstrate a scope of practice in this area.

Treatment provider sex offender specific training: Psychotherapists who provide therapy or treatment services with adult or adolescent sexual offenders should demonstrate their education and training as evidence of an appropriate scope of practice in each of these areas. Thirty hours of training bi-annually is considered the minimum amount of training to demonstrate a scope of practice in this area.²⁹

Treatment provider sex offender specific experience: Psychotherapists who provide treatment services to adult or adolescent sexual offenders should have a minimum of

²⁹ For specific training content recommendations please see **APPENDIX G**

seven hundred and fifty hours of direct client service experience, inclusive of therapy and case management activity, annually to evidence their scope of practice. Those treating both adolescents and adults should provide documentation of experience with both populations. Registered interns or psychological assistants may accumulate hours of experience under the supervision of a licensed psychotherapist who meets these criteria. Interns or psychological assistants should co-facilitate one hundred hours of direct services with an approved licensee before being eligible for approved provider status. Treatment providers who do not meet the hours of service requirement may apply to be listed as approved providers if there are reasonable limitations on experience hours such as working in rural counties with fewer referrals.

Required Programming Structure and Content

Approved providers should submit program documentation that evidences utilization of evidence based practices.³⁰

C. Mandatory Treatment and Funding

Despite state budgetary fluctuations from year to year, public safety can be increased through implementation of mandatory treatment of sexual offenders under supervision.

Emerging Issue:

CDCR was compelled by the 2008-2009 budget crises to terminate or suspend their contracts for outpatient sex offender treatment services to High Risk Sex Offender parolees. While parolee sex offenders are ordered to have visits to the Parole Outpatient Clinic in their county or region, such services are in no way equivalent to the comprehensive treatment that is

Sex offender specific treatment has been found to reduce re-offenses by up to forty percent.³¹ Since convicted and/or adjudicated sex offenders are a known and accessible risk group, treatment for these individuals should be mandated for all probation and paroled sexual offenders.

Sex offenders who are on probation are ordinarily on a self-pay basis with limited, if any, financial support from county probation departments. There are approximately 10,000 sex offenders on probation at any given time; it is unknown how many of these are current participants in treatment in the community. It is

unknown how many sex crimes are pled to with a stipulation that the offender does not have mandated treatment. CDCR does not currently fund outpatient treatment for the

³⁰ For recommendations related to specific documentation of training content and structure please see **APPENDIX H**

³¹ January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 137-156 (available at casomb.org)

approximately 6,788 sex offenders on parole, nor is there a formal treatment program implemented in any State prison in California.³²

CDCR solicited a prison based treatment program design which has been approved but not funded.³³ Currently, there is no formal sex offender treatment programming implemented in the adult prison system in California yet the State employs post sentence civil commitment on a class of high risk mentally ill sex offenders (CA SVP Act). The CASOMB strongly recommends funding be allocated to implement the prison based program as well as post-institutional treatment within structured re-entry processes throughout the State. Public safety can be enhanced through treatment and use of the Containment Model with the thousands of sex offenders released from California prisons each year.

Programs that respond to victims of sexual assault and programs that assist victims in dealing with the harm and pain of the sexual assault should be fully funded. To protect against further victimization, funding for mandatory treatment, with credentialed and approved treatment providers, should be authorized by state government to assist sex offenders in their participation in treatment. Sex offenders should participate in paying for their own treatment to the greatest extent possible based on ability to pay.

³² It should be noted that 2009 CDCR held a planning summit to examine implementation issues related to establishing an institutional sex offender treatment program.

³³ 2007 California Sex Offender Management Task Force Report (available at casomb.org)

Re-entry, Supervision and Housing

The release of individuals from prisons to communities is a practice that has long been fraught with systemic challenges and one which evokes considerable public concern. It is even more problematic when the issue involves sex offenders returning to communities. Myths surrounding inflated recidivism rates, ineffective treatment, and the publicity surrounding highly publicized cases involving predatory offenders fuel negative public sentiment and exacerbate concerns by policymakers. For the purposes of this report, re-entry is defined as the period of time during which the offender is placed under community supervision. For most sex offenders in California, this is commonly 3-5

RE-ENTRY RECOMMENDATIONS:

- The most important consideration when evaluating the success of a correctional program is whether the community is safer once the offender is released from supervision than it was prior to incarceration and community supervision. Therefore, it is recommended that all correctional programs utilize recidivism reduction as the primary method of measuring performance.
- High risk offenders pose the greatest risk to the community. It is recommended, that the limited resources that are available in this fiscally difficult time be primarily used to monitor and treat the highest risk offenders.
- The risk of re-offense for any type of offender, and especially sex offenders is greatest immediately after release from incarceration. Resources should be front loaded to provide extra monitoring and supervision during this time.
- The only model of supervision that has consistently shown to provide increased public safety is the Containment Model. It is recommended that California follow evidence-based practices and implement a consistent Containment Model at both the state and county level.
- The most recent research into treatment program options for sex offenders, has shown that treating all criminogenic risk and needs factors, and not just concentrating on sex offense risk factors, has had the greatest impact on lowering recidivism rates. It is recommended that all sex offender treatment programs assess and treat criminogenic factors.
- Too often in California, we are spending most of our time and resources increasing surveillance and supervision while neglecting treatment. Research is consistently showing that the lowest recidivism is occurring when both treatment and surveillance are more evenly balanced in an individually developed case plan.

years for both probation and parole.

There is a growing body of correctional research and emerging models for improving reentry outcomes that have recently been developed.³⁴ The National Institute of

³⁴ 2007 California Sex Offender Management Task Force Report 61- 72 (available at casomb.org)

Corrections and the Center for Sex Offender Management under the U.S. Department of Justice are examples of organizations which have published national models for supervision of sex offenders in the community.

Community supervision agencies have utilized several different models when evaluating the effectiveness of their sex offender supervision. The most common method is called a process evaluation. This method entails counting the level of services (drug and alcohol programs, anger management treatment, sex offender treatment) and the numbers of contacts. Outcome evaluations that measure increases in reduction of recidivism and sexual re-offense have been conducted far less frequently. And while all sex offenders need close levels of supervision, limited resources can best be utilized by evaluating which elements and levels of supervision produce the greatest reduction in recidivism.

The risk of sexual re-offense as well as any other type of serious offense is greatest in the first year following release from custody. This is true in national recidivism studies as well as those conducted in California. CDCR data for sex offender recidivism showed that more new offenses occurred in the first year following release than in the next two years combined.³⁵ Therefore, increasing the intensity of supervision and treatment during the first year seem to provide the greatest opportunity for recidivism reduction.

Utilization of a "Containment Approach"³⁶ to community supervision is recognized as a *best practice* approach. This model relies on effective communication between local law enforcement, treatment providers, polygraph examiners, interested citizens and community supervision officers to provide a web of protection for the community.

To date, there has never been a complete estimate about what implementing the Containment Approach in California would cost. The California Department of Corrections and Rehabilitation has estimated that implementing the treatment and polygraph elements of the approach

"Tools such as GPS and parole supervision can fall tragically short when jurisdictions don't work together to develop comprehensive strategies to share information and communicate about supervision practices. This tragic case [Jaycee Dugard] highlights the need for systemic changes that will promote collaboration between agencies and the community at large.

Community safety depends on what we see, what we know and how we talk to each other."

USA Today Editorial
September 3, 2009

³⁵ January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California (available at casomb.org) 74

³⁶ For a discussion of the Containment Model please see the January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 102-104 (available at casomb.org) and 2006 California High Risk Sex Offender Task Force 15-18 (available at casomb.org)

(omitting the community coordination and law enforcement costs) for the parole population would cost approximately \$15,000,000.

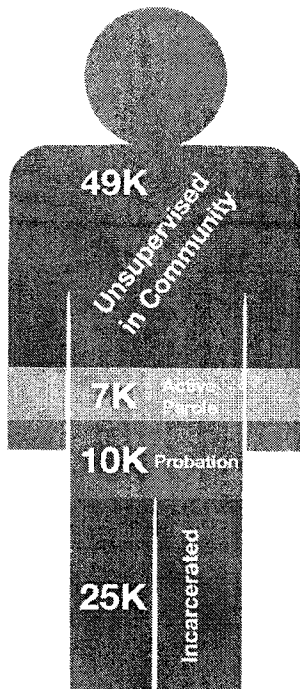
Studies about the California sex offender population shows us that it is more likely that a sex offender will re-offend with some other type of criminal offense than with a new sex offense. Community safety can best be served if supervision officers are able to assess criminogenic risk and develop program goals that include all criminal violations and not just sex offenses.

Community Supervision of Sex Offenders

It is estimated that in the United States, 265,000 adult sex offenders are under some form of supervision in the community. (Greenfield 1997) These offenders represent a very heterogeneous population, and the risks that these offenders pose to the community vary tremendously. While many sex offenders are entering prisons each year, large numbers are also being released. Nationally, between 10,000 and 20,000 are estimated to be returning to communities each year. (Center for Sex Offender Management, 2008)

There are approximately 66,000 registered sex offenders in California. Of that number, approximately 6,700 are on parole and about 10,000 are supervised by county probation. Most offenders who are convicted of one of more sex crimes will be supervised in the community at some point either immediately following sentencing or after a period of incarceration in jail or prison³⁷. These offenders present unique challenges to the probation and parole departments that are primarily responsible for supervising them. Because of the potential volatile community responses to sex offenders and the severe harm that re-offenses would cause potential new victims,

³⁷ For a longer discussion about the distribution of sex offenders in California see the January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 51-66 (available at casomb.org)



Registered Sex Offenders in California

community supervision of sex offenders is of critical importance to criminal justice agencies and the public. (Managing Sex Offenders in the Community: A National Overview, 2001)

The primary goal of managing sex offenders in the community is the prevention of future victimization. In order to accomplish the primary goal, there are several key elements within sex offender management that need to be accomplished.

Collaboration: Collaboration among those agencies initiating and implementing effective supervision and treatment practices, as well as other law enforcement and community organizations is an essential piece to providing increased community safety. Due to the secrecy, manipulation and deception that often accompany sex offending behaviors, it is essential that as many eyes as possible be involved in supporting the goals of effective community supervision and reintegration.

Victim-Centered Approach: Since a primary goal of supervision is the protection of victims and the prevention of future victimization, supervision agencies should work closely with victim advocacy organizations to ensure that their policies

do not re-traumatize victims of sexual assault, or inadvertently jeopardize the safety of others.

Sex Offender Specific Treatment: Mandated specialized treatment as part of probation or parole conditions is an integral and essential component of effective community supervision. The offense specific treatment that research has shown to be most effective holds offenders accountable, is victim-centered, and is limited in its confidentiality. It is based on the notion that when an offender is effectively taught to manage successfully his propensity to sexually abuse, he becomes less of a risk to past and potential future victims.

Clear and Consistent Policies: Clear and consistent policies at all levels (state, local, and agency) are crucial components of community supervision. Clear policy defines how cases will be investigated, prosecuted, and adjudicated. It also defines the method of community supervision, the roles various agencies play in the supervision process, and the response to indications of risk of relapse.

The experiences of probation and parole agencies across the nation indicate that sole reliance on commonly used supervision practices (e.g., scheduled office visits, periodic phone contact, and community service requirements) does not adequately address the unique challenges and risks that sex offenders pose to the community. In order to address these challenges, it is imperative that convicted sex offenders receive, in addition to incarcerative sanctions where appropriate, a period of community

supervision. During this period of supervision, the supervising agency is able to assess an offenders place of residence and employment, restrict contact with minors or other potential victims, select appropriate treatment for the offender, and establish, if necessary, other restrictions that diminish the likelihood of re-offense.

Sex offenders must be monitored intensively during community supervision in order to evaluate their level of commitment to and compliance with all imposed special conditions.³⁸

RE-ENTRY AND SUPERVISION RECOMMENDATIONS:

- Local communities (cities or counties) should be required to identify appropriate, affordable, and compliant housing for sex offenders prior to implementation of, or if they presently have, local restrictions for sex offenders.

Sex Offender Housing

Finding appropriate and affordable housing has always been difficult for sex offenders under community supervision.³⁹ No one is anxious to have sex offenders living in close proximity or anywhere in their neighborhoods. Landlords have also expressed concern about renting apartments or hotel rooms to sex offenders since their addresses now show up on public web sites.⁴⁰

As a result of community safety concerns, many states and communities have recently passed residence restriction laws that limit where sex offenders may live.⁴¹ Most laws and ordinances restrict sex offenders from living in proximity to schools, parks, and other places children congregate. Presently, 32 states, including California, have passed laws and ordinances of this type. As a result, sex offenders now find it much more difficult to find a place to live, and many are now homeless and/or are evading community supervision.

The hypothesis that sex offenders who live in close proximity to schools, parks and other places children congregate have an increased likelihood of sexually reoffending

³⁸ For examples of special conditions of supervision please see **APPENDIX I**

³⁹ See (2008) Homelessness among Registered Sex Offenders in California: The Numbers, The Risks and The Response (casomb.org)

⁴⁰ See the proceedings of the California Summit for Safe Communities available at casomb.org

⁴¹ For more information about the implementation of residence restrictions in California see January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 121-133 (available at casomb.org)

remains unsupported by research.⁴² On the contrary, the studies that have been completed show there is almost no correlation between sex offenders living near restricted areas and where they commit their offenses. Additionally, there is growing evidence that supports that sex offenders who lack a stable living situation are at increased risk of re-offense.

Across the nation, different states have conducted research that brings into focus specific consequences that are the result of residence restrictions. First and foremost, all studies have reported diminished housing options for sex offenders, especially in major metropolitan areas. In Orange County Florida, 95% of all residential properties were located within 1000 ft. of schools, parks, child care centers or school bus stops. (Zandbergen & Hart, 2006) In Colorado, researchers found that in heavily populated areas, residences farther than 1,000 ft. were virtually non-existent. (Colorado Department of Public Safety, 2004) In Newark, New Jersey, 93% of the city's territory is located within 2,500 ft. of a school and would therefore be unavailable to sex offenders. Geographic Information System (GIS) mapping in San Francisco, California has determined that nearly all possible residential locations in the city and county are within 2,000 ft. of a park or school, and therefore unavailable to paroled sex offenders.

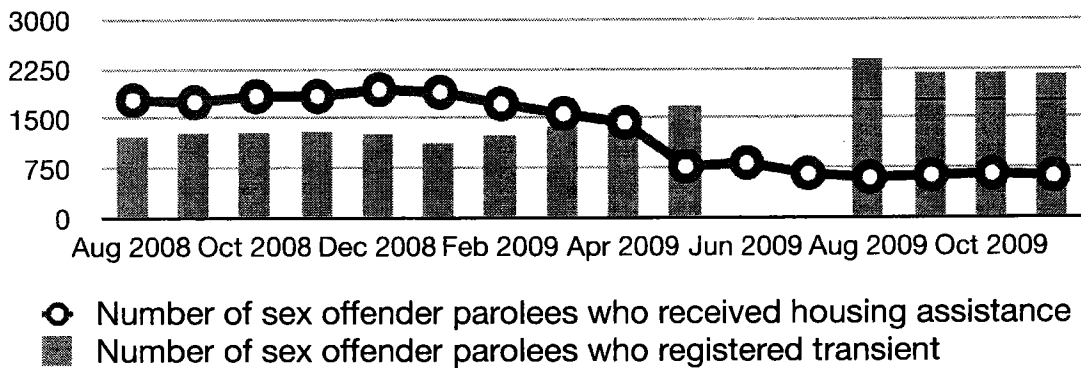
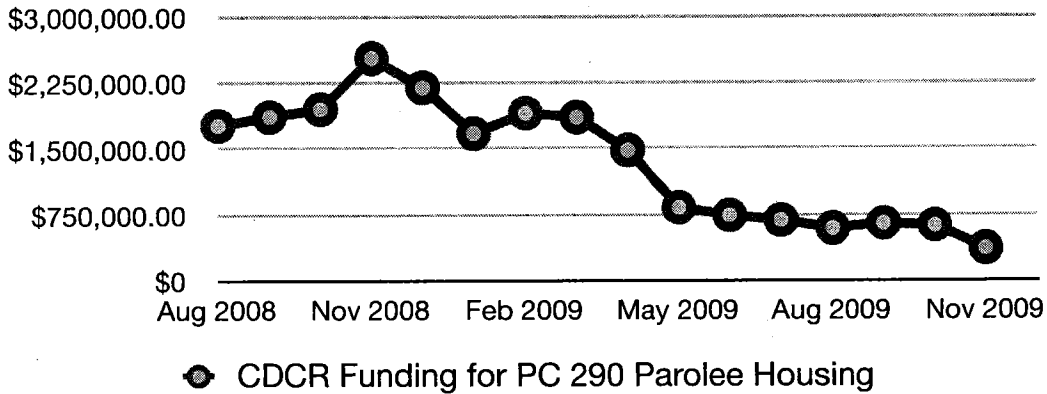
An issue that has been particularly troubling to California cities is the clustering of sex offenders. When residency restrictions were enforced, a large percentage of residential properties became off limits to sex offenders. The percentage of off-limits housing in urban areas was usually estimated as somewhere between 50 - 99%. This resulted in many sex offenders scrambling to find a living situation that was both affordable and compliant with the law. Many times, due to the limited availability of options, sex offenders could only find a small number of available apartment houses, motels, or other living arrangements that were available to them. This caused several apartment complexes or motels to have increased occupancy of sex offenders. When citizens discover that a particular location in their neighborhood has a high density of sex offenders they can become very concerned. Such a situation often results in complaints being filed with police and local media being contacted, in an effort to resolve these concerns.

In the past, in recognition of the importance of stable housing for both community safety and offender stability, CDCR provided some limited subsidies for sex offender parolee housing. Due to the California budget crisis and significant reductions in agency resources the Department issued Policy Number 09-01 in February, 2009, which limited the duration and amount of support available for sex offender housing.

The following graphic representations show the relationship between funding for housing assistance and the increase in transient status (homelessness) among sex

⁴² A Minnesota Department of Corrections study of 329 high risk sex offenders revealed that recidivism occurred in only 13 cases, while none of the offenses occurred in school grounds, two of those occurred in parks. In both of these cases, however, the perpetrators lived miles from the crime scene and drove a vehicle to commit the offense. (Minnesota Department of Corrections, 2003)

offenders on parole. The significant change occurring at the time the new policy went into effect (February 2009) can be noted.



The loss of CDCR housing assistance, when combined with ever-increasing areas of the state that are off-limits for housing seems to have had an adverse impact on offender transience.⁴³ It will be important to examine this trend over time.

Most citizens either do not connect the increased density of sex offenders - “clustering” - with limited housing option, or they just don’t care about the reason. They want to feel safe. Often, the citizens of the neighborhood place pressure on the owner of the motel or apartment complex or on CDCR to solve this problem. The solution usually results in sex offender parolees being required to find another place to live. Since the alternatives are so limited, many of these sex offenders required to move, end up becoming homeless and transient.

⁴³ parolee transient data for June 2009 and July 2009 was unavailable

Sex Offender Transience, Homelessness and Parolees at Large.

As housing options across California became less available after the residence restrictions of Proposition 83 began to be implemented, homelessness of sex offenders increased. In 2007, 88 parolees were homeless.⁴⁴ Now, less than two years later, that number has risen to 2,088 parolees who are registered as transient/homeless, the total number of sex offenders who are officially registered as “transient” (including parolees) has surpassed 5,000.

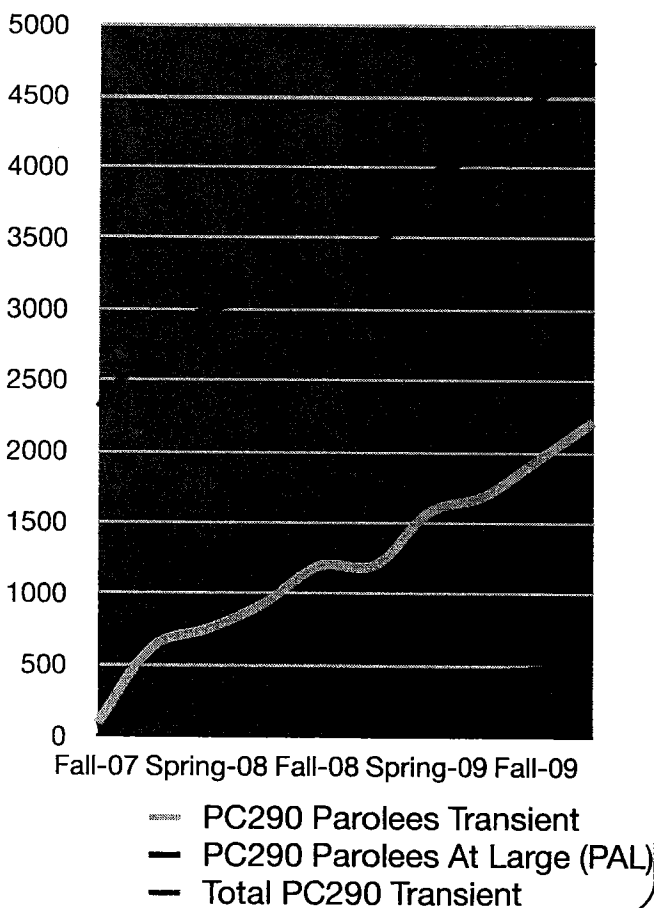
Homelessness, unemployment, and lack of social support may end up being factors facing many sex offenders, both those who are re-entering California communities and those who are continuing registered sex offenders. These factors increase dynamic risk and therefore may increase re-offending behaviors.⁴⁵

Transience poses significant challenges for supervision. Even with GPS monitoring, without a stable residence it is difficult to ensure that offenders are complying with their terms of supervision.

Even though transience among sex offenders in California has increased significantly, the number of Parolees At Large (PAL) has not increased at the same rate. (Note: A parolee at large is one who has failed to report his parole agent and has “disappeared.”) It would seem that despite an escalating rate of homelessness among California parolees, many are still managing to remain in compliance with their parole supervision requirements.

At this time there is no definitive understanding about why PAL numbers in California have not increased at the same

Transience and PAL on the Rise



⁴⁴ 2007 was the first year that CDCR began active enforcement of Proposition 83 residence restrictions

⁴⁵ See (2008) Homelessness among Registered Sex Offenders in California: The Numbers, The Risks and The Response (casomb.org)

rate.⁴⁶ Some speculation points to the somewhat unique nature of California's law that allows offenders to legally register in a transient status. Others point to the state's GPS requirement.

City and County Residence Ordinances

HOUSING RECOMMENDATIONS:

- Cities and counties should not pass sex offender residency ordinances that are in conflict with or exceed state law
- Cities and counties should determine a process for notifying CDCR and/or probation when they have passed a sex offender restriction ordinance
 - In order to mitigate the potential public safety risk of increased offender transience, California should target the use of residence restrictions utilizing a 'hybrid' model of restrictions similar to a 2009 Iowa law:
 - *Residence* restrictions (2000 ft.) apply to the most serious offenders (SVP, repeat sex offenders, and offenders convicted of violent sex offenses) who have committed an offense against a child.
 - *Loitering* restrictions apply to designated Pen. Code, § 290 registrants in places where children congregate (child safe zones)

At least ten states have enacted local residence and/or loitering restrictions for sex offenders. In a few states there are local ordinances but no state laws in this area, while other states, like California, have both. In several states there are over one hundred local ordinances, while others have just a few. What seems to be a common characteristic of these ordinances is that once a community passes a residency/loitering ordinance, surrounding communities feel compelled to pass one also. Policymakers and the public are often fearful that if they do not follow suite, all of the sex offenders will relocate into their community.

In 2008, the National Governors Association noted:

These restrictions are forcing offenders out of urban and suburban centers into isolated rural areas where providing close supervision is much more difficult. A survey of 135 sex offenders in Florida found housing restrictions increased isolation and decreased stability, making it more likely that they would reoffend. The study, published in the International Journal of Offender Therapy and Comparative Criminology, also found that sex offenders reported these restrictions actually increased "triggers for re-offense." These restrictions also may contribute to sex offenders becoming indigent and homeless, making it nearly impossible to monitor them and supervise their behavior.

⁴⁶ In Iowa, one of the first states in the United States to widely implement residence restrictions, within six months of implementation the number of sex offenders who were in violation of that state's registration statute had doubled -Des Moines Register (2006)

Very recently, (May 2009) the New Jersey Supreme Court struck down sex offender residence restrictions in over 100 communities. This was the first time that an appeal of residence restrictions had reached the state Supreme Court level. The Court held that sex offender monitoring fell under the purview of Megan's Law and did not fall to the level of the local communities.

In California, PC 3003.5 (c) allows municipal jurisdictions to enact local ordinances that may further restrict the residence of any person required to register as a sex offender. This Penal Code section was enacted as part of the Jessica's Law statute in 2006. Since that time, approximately 50 California cities and 6 counties have enacted local ordinances. All of them have either expanded the distance of the residence restriction (up to 3000 ft.) or have added additional restricted locations, such as child care centers, libraries, arcades, school bus stops, and other places children might congregate. Some have done both. In addition, several of the ordinances have created what have been called "child safe zones". These are locations where sex offenders may not enter or loiter about within a specified distance, usually about 300 ft. Several of the ordinances have limited the density of sex offender residences. They have prevented more than one sex offender from living in any motel, hotel, mobile home park, or apartment complex. One of the most notable ordinances prohibited a sex offender from residing within 1000 ft. of another sex offender. Most often, failure to adhere to local ordinances is deemed to be a misdemeanor. Even with the rapid expansion of local residence ordinances, very few if any jurisdictions in California are actually enforcing these laws,

leaving community members unclear about the scope and ultimate utility of these approaches.

The California Sex Offender Management Board recommends that the California State Legislature, Governor, and local governments **reconsider residency restrictions** to create an offender housing and supervision solution that balances three essential concerns:

Public safety – Community sex offender management strategies should promote proven public safety strategies. Residency restrictions that preclude or eliminate appropriate offender housing can threaten public safety instead of enhancing it.

Fair Share - Offender populations should, as dictated by statute, return to their county of conviction. No jurisdiction, county or city, should be forced to accommodate a significantly disproportionate number of offenders due to the residency restrictions in adjoining jurisdictions.

Local Control - Local governments, in collaboration with state agencies, should collaboratively identify not only areas where offenders should not reside or loiter but also a sufficient number of areas that are suitable and appropriate for offenders to live.

(CASOMB 2009 Progress Report)

Presently, there has been no protocol for local municipalities to notify CDCR when a local sex offender ordinance has been enacted. Therefore, it has not been possible for CDCR parole agents to proactively support these ordinances once they are passed. Parole agents generally become aware of ordinances when a parolee is in violation of an ordinance and it comes to the attention of local law enforcement or elected officials. Parole agents do warn parolees that there is a chance that a local community has a residence ordinance and that it is each parolee's duty to know the terms of and abide by any local ordinance.

In November 2009, the California Supreme Court heard arguments in the cases of four parolees who claimed the residence restriction enacted in Jessica's Law did not apply to them. The argument was that the law was intended to be prospective only and, since the petitioners were released on parole after Jessica's Law was enacted, it did not apply to them. At the time of this writing, an opinion had not been issued.

Global Position Satellite Tracking and Monitoring

Law enforcement officials, especially probation officers and parole agents, are increasingly utilizing electronic monitoring through the use of Global Positioning Satellites (GPS). This technology is now being utilized in at least 42 states. Many states require certain offenders to be monitored for the length of their probation or parole, while other states designate certain high risk and/or child victim offenders to register for specified amounts of time up to and including lifetime. California is one of only two states that mandates that all registered sex offenders be monitored for life - a requirement created by Jessica's Law.

GPS MONITORING RECOMMENDATIONS:

- Utilize GPS monitoring only in conjunction with some form of community supervision, with the understanding that some high-risk offenders may need to be subject to extended supervision (including lifetime supervision for exceptionally high-risk offenders)
- Prioritize the use of GPS monitoring primarily for serious and high risk sex offenders
- Allow GPS monitoring to be minimized or eliminated after a defined period of time if there have been no new offenses and there has been satisfactory compliance with all terms of registration and parole conditions, to be determined by the supervising

In June, 2005, CDCR Division of Adult Parole Operations (DAPO) launched a pilot GPS program by placing electronic ankle bracelets on 80 high risk sex offenders in San Diego County. Soon after, GPS monitoring programs were begun in Orange County, San Bernardino County, Fresno County and Kern County. All of the funded GPS units were scheduled to be in use by July 1, 2006.

On November 7, 2006 California passed Proposition 83, known as Jessica's Law. This proposition required, among other things, that all registered sex offenders released on parole be monitored for life, by using Global Positioning Satellite (GPS) technology in the form of a satellite-tracked ankle bracelet. The law was passed with little information about how it would be implemented or evidence of whether GPS technology would protect Californians from sex offenders. According to a survey conducted by the Interstate Commission on Adult Supervision in April of 2007, California was already among the most extensive users of GPS for the monitoring of sex offender parolees prior to the passage of Proposition 83. Only Florida and Texas had programs of comparable size. (Turner & Jannetta 2008)

The passage of Proposition 83 has led to over 6,788 sex offender parolees being placed on GPS monitoring. This is by far the largest use of GPS monitoring anywhere in the world. It is conservatively estimated that the use of GPS in the state of California is presently costing approximately \$65,000,000.00 per year.⁴⁷ The effectiveness and cost effectiveness of widespread use of GPS with sex offenders in California has not been evaluated.

To date, it remains unclear what state or local jurisdiction will be responsible for the lifetime post-supervision GPS monitoring described in Proposition 83. In fact, many of the challenges that localities identified in 2007-when the CASOMB examined this issue-exist today. A number of significant questions and concerns have been raised about California's use of GPS with sex offenders. They include the following:

Current supervising authorities (such as CDCR or local probation) maintain that they have neither the jurisdiction nor authority to supervise (or monitor) individuals beyond their term of supervision.

- *Local law enforcement agencies have also been identified as potential monitoring authorities for the post-supervision GPS portion of Proposition 83. While many these agencies have experience and training related to peacekeeping activities, generally few local law enforcement agencies have resources or the infrastructure for GPS monitoring.*
- *Locally based agencies would also face implementation challenges with GPS monitoring post-supervision because of the transitory nature of most post supervision sex offenders. County probation, sheriff's and police chiefs have a proscribed jurisdiction in which they conduct their activities and lack the capacity to monitor offenders if they move between cities, counties and states.*
- *Even if post-supervision GPS monitoring were to be fully funded, local agencies would still face fundamental challenges with managing multi-jurisdictional monitoring and information sharing. Local governments and law enforcement agencies have repeatedly stressed the importance of issues such as: equipment interoperability, compatible mapping platforms for crime scene correlation, and a common understanding of what data will be collected via GPS technology.*
- *It is possible to imagine that a state law enforcement agency might also be tasked with post-supervision GPS. While a state-level law enforcement agency would avoid the multi-jurisdictional challenges that local law enforcement agencies would face with post-supervision GPS, role confusion and a lack of monitoring tools would remain.*
- *All agencies examined (both state and local) have indicated that they lack the financial resources to implement this new program. Agencies at the local level, in particular, stressed the potentially severe economic consequences of adding post-supervision GPS monitoring duties to already stressed workloads (CASOMB Letter to Secretary, 2007).*

⁴⁷ CDCR 2009 testimony to the California Legislature. Additionally, according to CDCR active GPS monitoring costs approximately \$26 per day / per offender (\$9,490 per year). Passive GPS monitoring costs \$17 per day per offender (\$6,025)

Although many states are now reporting the use of GPS technology to monitor sex offenders, there are still very few evaluations of their usefulness in providing public safety and lowering of recidivism rates. There seems to be some anecdotal sentiment that is supportive of the usage of GPS monitoring, but very little statistical data to support its effectiveness in preventing re-offense.

Individual state evaluations have shown mixed results in terms of the ultimate efficacy of GPS on recidivism and criminal behavior.⁴⁸ The consensus of the GPS evaluations seem to be that this tool is most effective when utilized as part of an overall “containment model” of supervision and when used with high risk offenders.⁴⁹

⁴⁸ For a summary of several state GPS evaluation studies see **APPENDIX J**

⁴⁹ For an extended analysis of the efficacy of GPS in the context of supervision see CASOMB GPS letter to Secretary Tilton (casomb.org)

Registration and Notification

California presently has the largest number of registered sex offenders of any state in the United States. The state have about 90, 000 registered sex offenders, about 68,000 of whom are in the community. The rest are currently incarcerated. This large number is due to the large overall population of the state, the length of time California have been registering sex offenders (since 1947, retroactive to 1944), the length of time that registration (lifetime) is required for all registrants, and the large number of offenses that require mandatory sex offender registration.

California is one of the few states that has lifetime registration for all sex offenders. On the positive side, this allows the public to be aware of the majority of sex offenders living in their neighborhoods. On the negative side, the public and local law enforcement agencies have no way of differentiating between higher and lower risk sex offenders. In this one-size-fits-all system of registration, law enforcement cannot concentrate its scarce resources on close supervision of the more dangerous offenders or on those who are at higher risk of committing another sex crime.

Recommendations

- Not all California sex offenders need to register for life in order to safeguard the public and so a risk-based system of differentiated registration requirements should be created
- Focusing resources on registering and monitoring moderate to high risk sex offenders makes a community safer than trying to monitor all offenders for life
- A sex offender's risk of re-offense should be one factor in determining the length of time the person must register as a sex offender and whether to post the offender on the Internet. Other factors which should determine duration of registration and Internet posting include:
 - Whether the sex offense was violent
 - Whether the sex offense was against a child
 - Whether the offender was convicted of a new sex offense or violent offense after the first sex offense conviction
 - Whether the person was civilly committed as a sexually violent predator
- Monitoring of registered sex offenders once they are no longer under any form of formal community supervision is critical to public safety. Therefore, the following recommendations are made regarding local law enforcement.
 - There should be continued and additional funding for Sexual Assault Felony Enforcement (SAFE) teams in California
 - There should be mandated and designated resources which would enable law enforcement to verify the information supplied by the registrant at the time of registration
 - Law enforcement should allocate resources to enforce registration law and actively pursue violations
 - Training should be made available to district attorneys, judges and law enforcement on registration and community notification laws
 - Registering agencies should participate in multi-disciplinary teams and the containment model when monitoring registrants on formal supervision
 - Law enforcement should maximize resources and results by devoting more attention to higher risk offenders

Sex Offender Registration

Risk Assessment

Since it is being recommended that a revised system of registration be developed based largely on risk of reoffending, a review of key information about the history and methods of risk assessment is in order.

A. Risk Assessment in Other States

There are twenty states which were using some form of risk assessment by the end of 2008. (Velasquez, *The Pursuit of Safety: Sex Offender Policy in the United States*, Vera Institute of Justice, Sept. 2008, at Appendix.) Some, but not all, use empirically based risk assessment instruments to determine level of risk. Others use committees to determine risk factors without basing the factors on empirical research to verify that the factors correlate to risk of reoffense. Recent research shows that pure actuarial analysis using empirically based risk assessment instruments is more predictive of re-offense than a combination of unstructured clinical judgment and use of an empirical instrument. (Hanson, K., et al., *The Accuracy of Recidivism Risk Assessments for Sex Offenders: A Meta-Analysis*, p. 10 (2007).

B. Risk Assessment in California

California currently uses a pure actuarial approach to risk assessment for purposes of sentencing, placement on supervision, treatment, and use of GPS monitoring devices. (Pen. Code, § 290.03-08; 1202.8; 1203.) The risk assessment instrument being used both pre-sentencing and prior to release on parole for adult sex offenders is the Static-99. The instrument chosen to assess juvenile sex offenders is the JSORRAT-II. Both instruments were chosen by the California risk assessment committee (SARATSO Committee - see Pen. Code, § 290.03-04).⁵⁰ As of December 2009, the SARATSO Committee had not yet chosen a dynamic risk assessment instrument for California.

However, the assessed risk of re-offense today plays no role under California law in determining the need to register, the duration of registration, or the extent of community notification. California adult offenders must register for life for most sex offenses. (Pen. Code, §§ 290, 290.5.) Nor does risk assessment determine which juvenile sex offenders are required to register. However, it is not within the statutory mandate of this Board to recommend changes to laws pertaining to juvenile sex offenders.

Some sex offenders are eligible to petition the court for a certificate of rehabilitation, usually 10 years after release from custody. Whether a certificate of rehabilitation is

⁵⁰ the SARATSO web site is found at http://www.dmh.ca.gov/Services_and_Programs/Forensic_Services/Sex_Offender_Commitment_Program/SARATSO.asp [<http://www.dmh.ca.gov/>] The web site for the SARATSO Committee is moving to www.cdcr.ca.gov in 2010.

granted is a discretionary decision by a trial court. (Pen. Code, §§ 4852.01, et seq.) Until 1996, registered sex offenders who obtained a certificate of rehabilitation were no longer required to register. In 1996, Penal Code section 290.5 was amended to prohibit most sex offenders, including offenders whose offense was consensual sexual activity with teens age 14-17, from obtaining relief from registration even when a court grants a certificate of rehabilitation. Some sex offenders are barred from applying for certificates of rehabilitation, even if the offense was a consensual one with a peer. (Pen. Code, § 4852.01.) For example, a boy age 18 who has consensual sex with a girl age 13 and who is convicted of lewd and lascivious acts with a child under 14 (Pen. Code, section 288), can never obtain a certificate of rehabilitation, nor can he ever be released from the duty to register as a sex offender (absent a governor's pardon).

The purposes of sex offender registration are to assist law enforcement with investigating new sex crimes and keeping track of the whereabouts of convicted sex offenders as well as to deter individuals from committing new sex offenses. (U.S. DOJ, CSOM, Legislative Trends in Sex Offender Management, Nov. 2008, at p. 4.) Trial courts are given no discretion in most decisions about sex offender registration in California. While courts may, in their discretion, order registration for offenses that are sexually motivated after making specified findings at sentencing (Pen. Code, § 290.006), the same courts may not terminate the duty to register of a sex offender who presents credible proof of rehabilitation 10, 15, or even 25 years later. This is true whether or not the offender is at low risk to re-offend, as determined by empirically based risk assessment.

The fact that there is no less-stringent alternative to the California requirement for lifetime registration may actually decrease court orders for sex offender registration, in cases where registration is discretionary, because there are no options for a lesser duration, which a court may deem fairer to a particular defendant. Lifetime registration may also distort the plea bargaining process. Charges are modified and offenders plead to inappropriate offenses to avoid the consequence of lifetime registration. Distortion of the plea process results in pleas to offenses which do not require sex offender registration, despite the need for at least some period of registration and monitoring. Lack of less-than-lifetime options sometimes also leads to illegal orders shortening the period of registration.

Although the cost of registering and monitoring registered sex offenders statewide has not been quantified, there is a fiscal burden associated with these functions at both the state and local levels. Focusing on lifetime registration for offenders who are higher risk, more violent, or who are repeat offenders allows cost savings while at the same time permitting more intensive monitoring of those offenders most likely to re-offend.

Duration of Registration and Community Notification

A. Duration of Registration in Other States

Other states use varying combinations of years required for registration, often

depending on risk level or offense:

- Half of the states require 10 years for the majority of registrants, and life for the rest, using either risk assessment or offense-based classifications to determine who registers for life.
- Some states allow registrants to petition the courts for termination of registration, often after 10 years of registration.
- Five states require registration for 15 years, 25 years, or life, depending on the offense or tier level.
- Other states use a combination of 15/life; 20/life; 25/life; 5/10/20/life, 10/25/life; 10/15/25/life; or 10/15/20/life, depending on risk or offense classifications.
- Four states (California, Alabama, Florida, and South Carolina) require lifetime registration for all registrants, and one state requires 15 years for all registrants.

Usually, lifetime registration is predicated either on the offense itself being classified as aggravated, the offender being classified as high risk (determined either by empirical risk assessment or offense-based classifications), or a statutorily defined sexual predator, or being classified as a sexual recidivist. In most states, the duration of the registration period is shorter for juveniles and nonviolent sex offenders. (Velasquez, *The Pursuit of Safety: Sex Offender Policy in the United States*, Vera Institute of Justice, Sept. 2008.)

B. Application to California

The majority of sex offenders released on parole in California after 2005 have risk assessment scores under 4 on the Static-99. In December 2009, the California Department of Justice determined that the Static-99 score distribution for the 28,612 registered sex offenders in the DOJ database, whose risk assessments were done prior to release from prison or at pre-sentencing, was as follows:

Percentage of Assessed Offenders in Each Static-99 Score Category:

0	=	12.45%
1	=	18.92%
2	=	19.84%
3	=	17.74%
4	=	13.21%
5	=	7.89%
6+	=	9.96%

The California score distribution is consistent with the percentages of sex offenders found in each score category in the risk assessment study which was the basis for the Static-99 risk assessment tool. (Hanson, Morton, & Harris, "Sexual Offender Recidivism Risk: What We Know and What We Need to Know," *Ann. N.Y. Acc. Sci.* 989:154–166 (2003).)

The CASOMB recommends a three-tier system of registration, which will assign a tier level to each sex offender depending, in part, on individual risk assessment, history of violent convictions, and sexual offense recidivism. It is also recommended, based on the tier determination, that sex offenders in tiers 2 and 3 be posted on the public Megan's Law Internet web site (www.meganslaw.ca.gov).

C. Community Notification

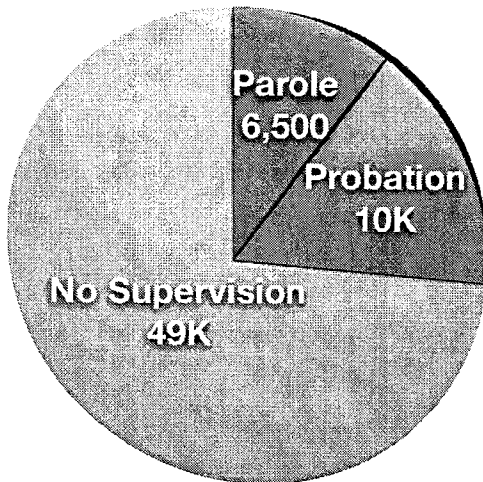
Community notification (Megan's laws) were enacted in the 1990's to raise public awareness of sex offenders in the community. California has two forms of community notification. Notification at the local level is risk-based, although not necessarily informed by empirically based risk assessment. If law enforcement determines that a registered sex offender poses a risk to the public, notification can be made as broadly as necessary to control the risk posed. (Pen. Code, § 290.45, subd. (a).)

However, notification via the state's Megan's Law Internet web site is currently "offense-based," rather than risk-based. Sex offenders with designated offenses are displayed on the site with disclosure of either full home address or only ZIP code, depending on offense. Others are not displayed on the public web site, as the Legislature did not deem their offenses serious enough to merit Internet disclosure. (Pen. Code, § 290.46.) Offense-based classification systems may not target the most dangerous sex offenders or those at highest risk of re-offending.

Of the states that do not post all registered sex offenders on their public web site, fourteen (14) use risk assessments and restrict public Internet access to information about only those offenders determined to pose a risk of re-offending. (Norman-Eady, *Sex Offender Registry*, Sept. 2008, Doc. 2008-R-0500.) Other states post all offenders without regard to risk. Still others post offenders with designated offenses, much like California's current statute. Posting all offenders except those in the CASOMB's recommended⁵¹ Tier 1 would ensure that posting on the Internet relates to risk of re-offense and dangerousness of the offender. The majority of registered sex offenders in California will fall into Tiers 2 and 3, including all offenders convicted of child molestation, so that for the duration of registration (20 years or more for child molesters), they will be posted with full address on the state's Internet web site, as they are under current law.

⁵¹ See Appendix I

Supervised and Unsupervised Sex Offenders



It is a common misconception that all registered sex offenders are under some form of rigorous, formal supervision through either a state level, or local correctional agency. It is also commonly believed that such supervision continues for their entire lifetime term of registration. This is quite untrue and highlights the need for local law enforcement and specialized multi-agency teams (such as the state funded Sexual Assault Felony Enforcement (SAFE) teams) to continue to track and monitor registrants once their term of formal supervision concludes.

Statewide, at any given time, 70-75% of registrants are not under formal supervision. All types of formal supervision last for only a

specified length of time, and then it is up to local jurisdictions to verify registration and pursue registration violation charges when the registrant fails to comply with the law.

Enforcement of sex offender registration laws by California law enforcement agencies varies and is often affected by personnel and resource limitations. Multi-agency teams such as SAFE teams are few, and recently what little funding has been available in the past has been cut. Local law enforcement agencies—which must directly answer to their residents' concerns about community safety—do not receive any type of additional funding to monitor sex offender registrants or enforce registration laws.

Survey of Law Enforcement Agencies

In February, 2009 CASOMB sent a survey regarding sex offender registration and enforcement to 428 law enforcement agencies in California. Included were agencies of all sizes, including campus police departments. The number of registrants within each jurisdiction ranged from none to over 5,200. Statistics requested included the number of registrants in each area, number of those under formal supervision, if the agency had investigators assigned to sex offender tracking and monitoring and if the agency participated in a multi-agency approach to monitoring registrants. Ninety-five agencies (22%) responded to the survey. The responses accounted for 26,014 total registrants. Agencies responding represented a geographic cross section of jurisdictions, including:

- Five large Sheriff's Departments and Police Departments (responsible for 2,000-5,200 registrants each)
- Thirteen agencies with mid-sized registrant populations (250-1400 registrants each)

- Seventy-seven agencies with small registrant populations (under 250 registrants), including seven college campuses

While all local jurisdictions (and college campuses that have a police department) are required to conduct sex offender registration, enforcement of registration law is not mandatory. Of the responding agencies:

- 67% of the agencies had investigators assigned to sex offender registrant tracking and monitoring; most included sworn officers as well as civilian personnel
- 63% of the agencies had filed criminal cases for failure to register in 2007
- 13% received funding allowing them to participate in a Sexual Assault Felony Enforcement (SAFE) task force
- 34% reported utilizing a multi-disciplinary team approach (local law enforcement, parole, probation, treatment providers, victim advocates) to monitoring sex offenders

Regarding address verifications of the whereabouts of registrants:

- 84% of responding agencies went to the registrants' residence locations in order to verify that the registrant actually lived there
- Of the agencies which do the in-person checks, 41% conducted those checks accompanied by parole agents or probation officers when applicable

Regarding public notifications on the presence of registered sex offenders in the community, 39% of responding agencies conducted proactive notifications and supplied information to the community above and beyond what already appears on the public website, www.meganslaw.ca.gov. Six of the agencies which conducted notifications held public meetings in 2007. Other agencies had conducted notifications by distributing flyers at schools or door-to-door, or at community events such as a Halloween event booth. One agency reported using a combination of notification to the media, flyers, and e-mails and notifications to subscribers via their own agency information web site.

Public notifications are often discussed among law enforcement officers who are tasked with registration and registration enforcement. Often cited, especially in areas that have a large number of registrants is "Where to start, and when to stop?" As the majority of offenders have not been administered a risk assessment, law enforcement must evaluate the offender's present risk of re-offending. In addition, the preparation that goes into a notification (including gathering documentation on a registrant's crimes, residence and employment areas, who the registrant is likely to encounter) takes a significant amount of investigative time by law enforcement officers who are already tasked with other duties. In many jurisdictions, law enforcement resources are pushed to the limit in keeping up with registration updates alone. Often, after a public

notification, the offender is likely to move, creating a new question of notification in a new location.

Allocation of Resources

Even though local law enforcement monitoring of sex registrants requires carving a program from existing resources, the necessity remains. In September, 2007, the International Association of Chiefs of Police identified desired objectives for sex offender monitoring which included:

- Registration
- Verify compliance
- Pursue cases of noncompliance
- Public notification and education

Captain Terry, who heads the Sheriff's Department's investigative division, said Contra Costa County has about 1,700 registered sex offenders. His station is responsible for about 350, "349 more than the number of detectives I have dedicated to monitoring these people."

Los Angeles Times
(August 31, 2009)

Departments that have allocated resources to sex offender registration, monitoring and tracking have included the Los Angeles Police Department, which currently fields seven investigative teams to monitor the city's 5,200 registrants. In addition to managing registration and enforcing registration laws, the agency handles enforcement of DNA collection from all sex offender registrants. This effort recently resulted in the identification of a registrant linked to a series of sexual assaults and homicides.

Without local law enforcement's active pursuit of registration compliance and verification of information supplied by registrants, the information that the public sees on the Megan's Law web site is inaccurate. Yet, given the huge number of California registrants and limited resources available, the task is overwhelming. At any given time, thousands of registrants are in violation of registration laws⁵².

⁵² For a county by county list of registration violations see **APPENDIX**

Special Populations

Of the various special population subgroups among California's sex offenders, this report focused its attention on those involved in the state's civil commitment program - sometimes called the sexual violent predator (SVP) program. Less than two percent of the sex offender registrants in California are either presently subject to civil commitment,

SPECIAL POPULATIONS RECOMMENDATIONS

- California should investigate methods of increasing available treatment hours and participation rates for those sex offenders who are committed or detained as inpatients within the Department of Mental Health.
- California should identify a more efficient screening process for determining when parole violations are related to reoffense risk and should be clinically re-evaluated versus parole violations *not* related to risk that should not require an additional costly evaluation for parolees who have been previously evaluated for the Sexually Violent Predator Program.

or have civil commitment proceedings pending against them. However, significant portions of the limited resources devoted to the management of sex offenders in California. Registrants are allocated to civil commitment proceedings and the treatment of civil committees in this "special population."

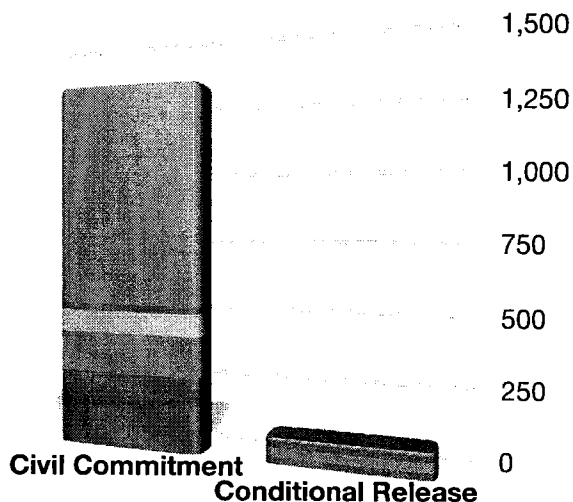
Approximately, 1,300 sex offender registrants are committed or detained as inpatients within the Department of Mental Health,⁵³ and 85 are on conditional release in the community under supervision.⁵⁴ Over 60% of the inpatient population is at Coalinga State Hospital pursuant to the Sexually Violent Predator commitment program at a cost of approximately \$170,000 per year per patient. The remaining 40% are subject to commitment at Atascadero, Metropolitan, Napa and Patton State Hospitals at a cost of approximately \$130,000 per year per patient; 21% are committed as Mentally Disordered Offenders (MDO), 11% are committed as Not Guilty by Reason of Insanity (NGI), 6% are committed as Incompetent to Stand Trial and 2% are committed as Mentally Disordered Sex Offenders (MDSO). Of the sex offender registrants within

⁵³ As of 9/2009

⁵⁴ As of July 25, 2009

conditional release programs, 35% are committed as NGI, 30% MDO, 27% MDSO and 13% SVP.

The most significant policy change in recent years affecting the management of this special population was Jessica’s Law (Proposition 83), enacted in November of 2006. Proposition 83 significantly expanded the registrant population potentially subject to civil commitment under the SVP Act. It increased the number of penal code violations that can qualify a registrant for possible SVP civil commitment, decreased the minimum number of victims from two to one, and perpetuated the indeterminate term of commitment, enacted by SB 1128 on September 20, 2006.⁵⁵



With the enactment of Proposition 83, the number of registrants referred by CDCR to DMH for processing for possible SVP commitment increased 1254%, from 48 on average per month, to 650 per month.⁵⁶ Prior to Jessica’s Law, 48% of the cases referred by CDCR monthly required clinical evaluations to be conducted by DMH (23 per month). After the passage of Proposition 83, only 24% of the cases referred by CDCR required clinical evaluations, but because of the drastic increase in the overall total number of cases referred, there was a 465% increase in the number of cases for which clinical evaluations needed to be conducted (from 23 per month on average, to 156 per month).

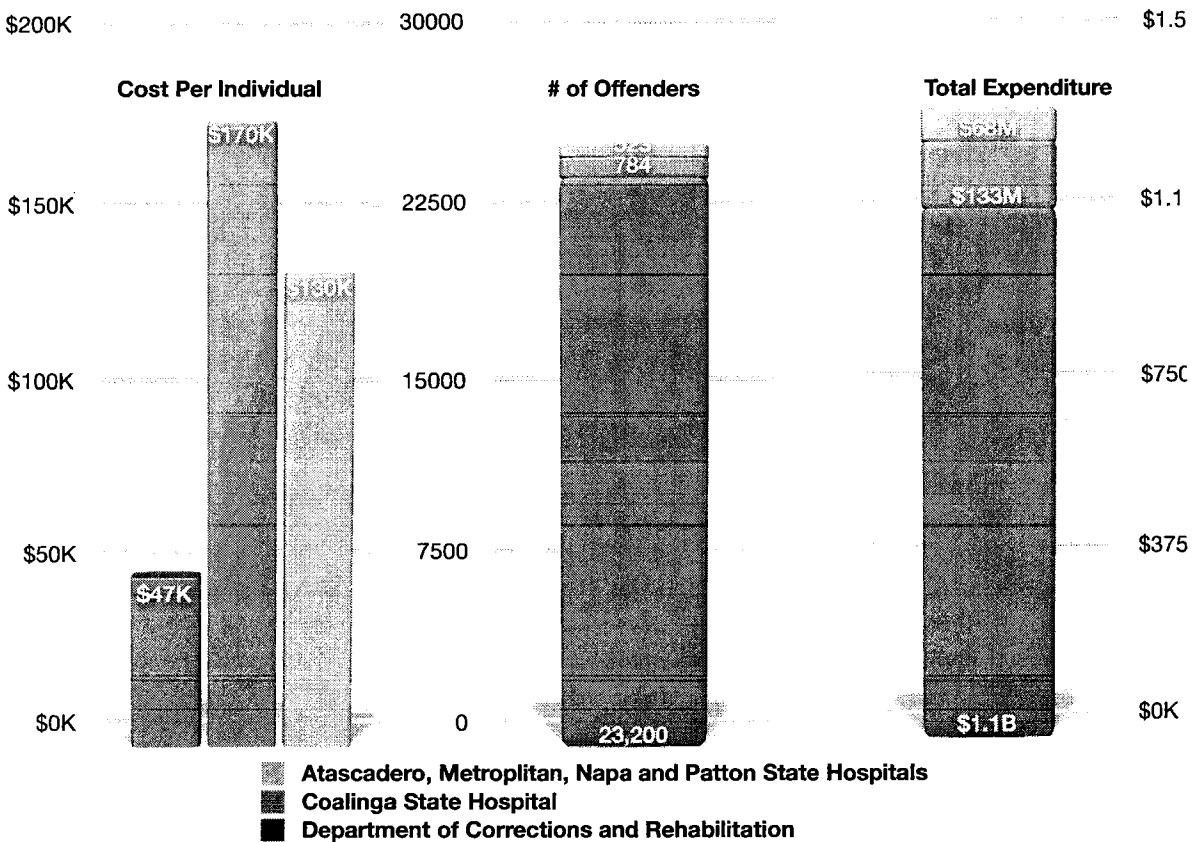
Each person clinically evaluated by DMH costs a minimum of \$7,000, plus travel expenses for the evaluators, and up to \$14,000, plus expenses.⁵⁷ With the number of Pen. Code, § 290 registrants being clinically evaluated for possible SVP commitment by DMH increasing from 23 per month on average to 153 per month, the average cost of clinical evaluations alone increased from \$161,000 to at least \$1,071,000 monthly.

⁵⁵ Prior to SB 1128, an SVP commitment was for two years.

⁵⁶ January 1999 to October 2006, as opposed to November 2006 to June of 2009.

⁵⁷ Welfare & Institutions Code Section 6601(e), if first two evaluators split, two additional evaluations must be conducted.

Prior to Proposition 83, 35% (8 per month) of the cases for which clinical evaluations were conducted resulted in a positive finding by DMH.⁵⁸ By expanding the potential reach of the SVP commitment process, rather than clinically evaluating 15 persons per month, DMH was required to clinically evaluate 142 persons per month. However, after the implementation of Proposition 83, only 7% (11) of the cases for which clinical evaluations were conducted resulted in a “positive finding” by DMH. Between January, 1999, and October, 2006, 7 petitions for commitment under the SVP Act were filed monthly; between November 2006 and June of 2009, 10 petitions for SVP commitment were filed on average per month. Two years and eight months into the implementation of Proposition 83, the number of persons committed on average dropped from approximately 4 per month, to 3 per month.⁵⁹



Essentially by increasing the qualifying convictions for SVP commitment and decreasing the minimum number of victims from two to one, Proposition 83 shifted the winnowing process from the record review stage to the much more costly, clinical evaluation stage. The record review burden upon CDCR and DMH increased drastically following

⁵⁸ A “positive finding” means that DMH may refer to a District Attorney for possible filing of a SVP commitment petition.

⁵⁹ May reflect two year term of commitment being changed to an indeterminate term, to some degree.

Proposition 83,⁶⁰ but far more significant was the increase in the number of persons clinically evaluated, with very little increase in potential committees. The number of people clinically evaluated per month that resulted in negative findings, went from 15 per month to 142 per month on average.

In addition to the significant increase in the number of *initial* SVP screenings there has also been a significant increase in the number of individuals who, after being initially assessed and determined to *not* meet the criteria for SVP, are 're-screened' due to a subsequent parole violation - *whether or not there is any reasons to believe hat the new violation actually contributes to that offender's risk to re-offend*. In order to reduce repetitive, unnecessary re-evaluations and focus resources on evaluating violation behavior related to risk, the Department of Mental Health, the Department of Corrections and Board of Parole Hearings (through the "Three Agency Meeting process) should identify a screening criteria that prioritizes risk-related violations.

It can fairly be inferred that the two victim requirement prior to Proposition 83 correlated with the duration of behavior over at least 6 months, required for purposes of substantiating the requisite paraphillic diagnosis under the SVP Act.

The Sexually Violent Predator Act dictates that DMH has an affirmative obligation to treat the SVP population and to try to obtain the cooperation of the patients in the treatment program.⁶¹ The Sex Offender Commitment Program (SOCP) is a five Phase treatment program. The first four phases are conducted on an inpatient basis at Coalinga State Hospital. Phase 5 is a conditional release program in the community.

In January of 2009, approximately 24% of the patients were participating in the SOCP. As of August 2009, of the 791 patients either committed⁶² or detained pending commitment,⁶³ 211 patients were in Phase II, 30 in Phase III and 4 in Phase IV. Eleven patients were under conditional release supervision,⁶⁴ and five were awaiting placement in conditional release. Since its inception in 1996, only 18 patients have completed Phase IV, and only 2 of those have completed Phase V.

On August 31, 2009, an anonymous, voluntary survey of CSH patients was conducted. Two hundred and six patients participated, of whom 40% were presently in treatment, 10% had previously been in treatment and 50% had never been in treatment. The thrust of the survey was an inquiry as to what it would take to get more patients to participate in treatment and how the treatment program could be improved. The most common response recommended that the program incorporate a definitive time frame so as to establish a viable exit strategy. Another common recommendation was to

⁶⁰ CDCR monthly referrals to DMH went from 48 to 650 per month.

⁶¹ Welfare & Institutions Code Section 6606.

⁶² Welfare & Institutions Code Section 6604.

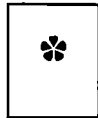
⁶³ Welfare & Institutions Code Section 6602.

⁶⁴ As of August 2009.

increase the hours of treatment per week, from the present 3 hours. Respondents indicated that such an increase would give them increased hope of being able to complete the program and thus increase their motivation to participate.

Summary Gaps from Previous CASOMB Publications

Key:



Item has remained essentially unchanged



there have been improvements in practice, capacity or statute













there have been reductions in capacity or funding

Item	What Report	Status
Investigation, Prosecution Disposition		
A large number of the counties fail to keep the adequate data to allow the evaluation of prosecution practices, particularly in the case of juvenile offenses.	CASOM 2007	✿
Prosecutors handling sexual assault cases do not routinely receive specialized training	CASOM 2007 CASOMB 2008	✿
In the prosecution of both adult and juvenile offenders there is a failure to consult with victims prior to finalizing plea agreements, and a failure to seek and obtain protective orders regarding sensitive materials.	CASOM 2007	✿

Summary Gaps from Previous CASOMB Publications

The failure to have guidelines in place that assist in determining the appropriate plea may lead to inconsistent treatment and sentencing of offenders.	CASOM 2007	✿
Sex offense specific psychological evaluations that can be used to identify relevant risk factors are not generally used to assist in sentencing decisions.	CASOM 2007	✿
Training programs designed to educate judges on how to enhance sex offender management are not widely available.	CASOM 2007	✿
Sex offense specific psychological assessment tools are not generally used in sentencing decisions.	CASOM 2007	✿
Specialized Units are not available in all counties	CASOMB 2008	↓
Only a small number of communities that have developed collaborative teams, such as SARTs, MDICs, FJCs and SAFE Task Forces.	CASOMB 2008	✿
Lack of Funding for Vertical Prosecution and Specialized Units.	CASOMB 2008 CASOMB 2009	↓
ASSESSMENT		
There is no protocol for institutional staff at either the state or county level to conduct a risk assessment during intake, or prior to release to the community.	CASOM 2007	▲
Institutional staff at the state level have not been trained to conduct sex offender risk assessments.	CASOM 2007	▲

Summary Gaps from Previous CASOMB Publications

70% of surveyed counties responded that they did not use empirically validated actuarial tools to conduct risk assessments.	CASOM 2007	
There is no validated risk assessment instrument for use with female offenders.	CASOM 2007	
Very few counties have training and/or experience requirements in place to conduct risk assessments.	CASOM 2007	
There are very few protocols in place at either the state or county level for conducting risk assessments for juvenile sex offenders prior to their release into the community.	CASOM 2007	
Almost no counties are conducting risk assessments with juvenile offenders. Outpatient providers are more likely to use a risk assessment as part of their assessment protocol, but there is no identified standard risk assessment tool.	CASOM 2007	
In most of the counties surveyed, policies or standards do not require the incorporation of a sex offender-specific or psychosexual evaluation that is incorporated into the PSI report.	CASOM 2007	
In most of the counties surveyed, disposition recommendations in PSI reports do not address family reunification issues.	CASOM 2007	
Formal risk assessments are conducted less than 50% of the time during the PSI Report, during classification, and during re-entry.	CASOM 2007	
PSI reports are infrequently shared with or provided to victim advocates in cases where victims are actively involved in the sex offender management process.	CASOM 2007	
In only 50% of the counties surveyed do community supervision officers assess the dynamic risk factors and ongoing criminogenic factors.	CASOM 2007	

Summary Gaps from Previous CASOMB Publications

Adult and juvenile re-entry plans are not currently in place for sex offenders at the county level.	CASOM 2007	✿
Adult sex offenders in the CDCR do not receive a sex offender specific clinical assessment during intake/classification.	CASOM 2007	✿
Most adult sex offenders do not receive a sex offender specific clinical assessment/evaluation during their period of incarceration.	CASOM 2007	✿
The CDCR does not utilize any psychophysiological instruments in their adult institutions.	CASOM 2007	✿
Most adult offenders do not receive a sex offender-specific evaluation prior to their placement in community-based sex offender treatment programs.	CASOM 2007	✿
Most of the surveyed counties do not utilize any tool to assess for the presence of (and changes in) offender risk or criminogenic factors.	CASOM 2007	✿
Although some counties assess for changes in risk, this information is rarely shared with other representatives of the supervision system.	CASOM 2007	✿
TREATMENT		
Assessment components are not uniformly defined across programs.	CASOM 2007	✿
Not all programs use the same assessment or data collection procedures. Programs are also not evaluated.	CASOM 2007 CASOMB 2008	✿

Summary Gaps from Previous CASOMB Publications

Few programs use polygraphy in the course of treatment and supervision, indicating a weakened application of the containment model.	CASOM 2007 CASOMB 2008	✿
Program completion rates vary widely from program to program.	CASOM 2007	✿
Most counties do not have sex offender treatment programming available for sex offenders who are in custody, i.e. juvenile hall.	CASOM 2007	✿
Documentation practices are inconsistent from program to program and may not meet federal HIPAA requirements.	CASOM 2007	✿
Not all programs have structures in place to ensure that collaboration occurs between treatment providers and probation officers.	CASOM 2007	✿
Victim advocates are conspicuously absent from the list of collaborators in sex offender management teams.	CASOM 2007	✿
Community stakeholders, including law enforcement and victim advocacy organizations are not sufficiently informed about the nature, quality and existence of sex offender treatment resources in the community.	CASOM 2007	✿
California does not have a sex offender treatment provider or program certification process.	CASOM 2007 CASOMB 2008	✿
Many counties either do not have known treatment providers who are members of the professional associations that focus on sex offender treatment and management, or do not have enough treatment providers to treat those who are on probation.	CASOMB 2008	✿










Summary Gaps from Previous CASOMB Publications

No sex offender treatment is available for the over 23,000 sex offenders incarcerated in CDCR institutions. California is one of few states that does not provide any sex offender treatment in prison.	CASOMB 2008	✿
REENTRY / SUPERVISION		
Sex offender specific treatment is not being provided to adult sex offenders held at either the state or county level.	CASOM 2007	↓
Discretionary release is not an available option for adult sex offenders held by the state.	CASOM 2007	✿
Pre-release plans are not prepared for adult sex offenders by either the state or the county.	CASOM 2007 HRSO 2006	▲
Supervision officers are rarely involved in release planning for adult sex offenders at both the state and county level.	CASOM 2007 HRSO 2006	▲
Half of counties surveyed do not review sex offender registration and community notification requirements with adult sex offenders prior to release.	CASOM 2007	✿
On both the state and local level there are no policies and practices for identifying suitable housing for adult sex offenders.	CASOM 2007	↓
Transitional housing services are not available upon release from state or local institutions.	CASOM 2007 CASOMB 2008	↓

Summary Gaps from Previous CASOMB Publications

No funds are appropriated for adult sex offender housing on the state level.	CASOM 2007	↓
Most counties do not have supervision officers maintain contact with the employers of adult sex offenders.	CASOM 2007	↓
Most of the counties releasing adult sex offenders do not have a process in place to provide them with identification prior to release.	CASOM 2007	✿
On the local level there is almost no funding, with the exception of one county, to meet the housing needs of indigent adult offenders.	CASOM 2007	↓
Specialized supervision strategies such as the polygraph are seldom used in the supervision of sex offenders.	CASOM 2007 CASOMB 2008	↓
The use of multidisciplinary sex offender management teams is not common practice for the supervision of either adult or juvenile sex offenders.	CASOM 2007	✿
There is an absence of specialized case loads for supervision of both adult and juvenile sex offenders at the county level.	CASOM 2007, CASOMB 2008	▲
On both the state and local levels there is a dearth of policies and practices that involve community support networks in the adult sex offender reentry process.	CASOM 2007	↓
Training in utilization of GPS and enforcement of residency restrictions has replaced specialized sex offender management training.	CASOMB 2008	↓

Summary Gaps from Previous CASOMB Publications

Each county probation department appears to have different resources and methods for supervising sex offenders. One uniform model throughout the state would be the most evidence-based method of ensuring that the containment model was practiced in a consistent manner	CASOMB 2008	
Offenders registering as "transient" may have other options than being homeless. The offender may stay sporadically in an exclusion zone while on transient status, performing functions normally associated with a residence. The law limits "where they live", not "where they go."	CASOMB 2008	
The number of affected sex offenders statewide, and parolees in particular who declared themselves as transient since the implementation of Jessica's Law has increased dramatically	CASOMB 2008	
The effect of residency restrictions on probationers is unknown, due to lack of implementation and no central data collection process.	CASOMB 2008	
Jessica's Law does not identify who is responsible for enforcing residency restrictions after the sex offender is released from probation or parole, and provides no funding for it.	CASOMB 2008	
Proposition 83 does not impose a penalty for violators of residency restrictions who have been released from probation or parole.	CASOMB 2008	
VICTIMS		
A significant number counties do not inform victims of either adult and juvenile sex offenders as to when the offender is released from county institutions.	CASOM 2007	
Most counties do not provide referrals for services to family members and victims if the offense occurred within the home.	CASOM 2007	
Lack of a statewide strategic plan for victim assistance resulting in inadequate planning for victim services and fragmented funding.	CASOMB 2008	

Summary Gaps from Previous CASOMB Publications

Lack of funding for a victim advocate as part of Vertical Prosecution team.	CASOMB 2008	✿
Lack of coordination among government agencies resulting in conflicting and duplicative policies.	CASOMB 2008	✿
Lack of communication with and among service providers on significant policy issues	CASOMB 2008	✿
Uncertainty in funding from year-to-year.	CASOMB 2008	↓
COMMUNITY EDUCATION		
Currently there is no public education and outreach work going on to prepare communities for the return of sex offenders after their period of incarceration.	CASOM 2007	✿
The Megan's Law web site is available to educate the public about sex offender recidivism, including statistics on age/gender, but is underutilized for this purpose. The web site should be utilized as an educational tool and the educational materials should be required reading for the public before allowing them to enter the search screens.	CASOM 2007	✿
The registration law is not easily understood by the public or translated into common language.	CASOM 2007	✿
REGISTRATION / NOTIFICATION		
Length of registration period is not currently linked to individual risk assessment, only to the type of offense (Under current California law, length of registration is life for all offenses without regard to an offender's assessed risk. About 20% of registrants are eligible, based on their convicted sex offense, to apply for a certificate of rehabilitation).	CASOM 2007	✿








Summary Gaps from Previous CASOMB Publications

Registration for consensual sex offenses where there is less than a 10-year age difference between offender and victim is currently not tied to whether or not the court finds that the offender poses a risk of re-offending or is sexually dangerous. Courts need discretion to impose less-than-lifetime registration terms in these cases.	CASOM 2007	✿
Although the Adam Walsh Act requires registration for kidnapping of children (non-parental) without required findings of sexual intent, this is not required by current California law.	CASOM 2007	✿
The risk assessment which determines whether the registrant poses a risk of recidivism is not used to determine the duration of the duty to register.	CASOM 2007	✿
The statute does not provide a court hearing regarding whether registration should continue after 10-20 years for offenders with low risk assessment scores.	CASOM 2007	✿
Driver's licenses suspension and other relevant restrictions are not currently implemented in response to noncompliant registrants.	CASOM 2007	✿
Current California law requires the prosecution to prove a willful violation of the registration laws, which entails proving the offender had actual knowledge of the provision of the registration law he violated. The statute should be changed to provide that an offender who is notified of his registration duty and fails to comply is held accountable.	CASOM 2007	✿
The goal of investigations of registrants who fail to register should be to arrest violators.	CASOM 2007	✿
Extending the registration period (by lengthening the waiting period for a certificate of rehabilitation) by 3-5 years is not currently required for each conviction for violation of the registration laws.	CASOM 2007	✿






Summary Gaps from Previous CASOMB Publications

<p>There is no state mandate for establishing regional sex offender management teams that work closely together on the management of specific cases under community supervision. (Current California law provides limiting funding, on a grant basis, for SAFE teams, but such teams are not mandatory. Ongoing funding is necessary for such teams to function effectively.)</p>	CASOM 2007	✿
<p>There is no mandated training for law enforcement, District Attorneys or judges on registration and community notification laws; such training should be mandatory and the law should require Peace Officers Standards Training (POST) reimbursement for such training.</p>	CASOM 2007	✿
<p>Currently there is no required time line for entry of registration data by local law enforcement into sex offender registration database (e.g., 3 days).</p>	CASOM 2007	✿
<p>Current California law requires the courts, DOJ, and district attorneys to retain files on registered sex offenders, but does not require law enforcement, probation or parole to maintain sex offender registration records, leading to problems in obtaining documents vital to proving knowledge of the duty to register (and obtaining convictions for violations of the registration laws).</p>	CASOM 2007	✿
<p>There is no law requiring law enforcement agencies to verify the offender's registered address, utilizing field compliance and mail-in verifications on an ongoing basis.</p>	CASOM 2007	✿
<p>Courts which reverse, vacate or dismiss a sex offense conviction are not required to notify the DOJ Sex Offender Tracking Program in writing. The only notification goes to DOJ's Automated Criminal History System (these two software systems have no interface, so reversals may not be communicated to the sex offender registration database).</p>	CASOM 2007	✿
<p>There is no system which enables local law enforcement to coordinate monitoring registrants with parole/probation.</p>	CASOM 2007	▲
<p>There is no law requiring or encouraging vertical prosecution or the use of Penal Code section 290 prosecution teams in District Attorney's offices for prosecution of misdemeanor or felony 290 cases.</p>	CASOM 2007	✿

Summary Gaps from Previous CASOMB Publications

<p>The law authorizing active and passive notification does not require consideration of the offender's assessed risk level to determine the appropriateness and scope of notification.</p>	<p>CASOM 2007 CASOMB 2008</p>	
<p>No state law provides for a court hearing, upon registrant request, to determine whether the risk posed to public safety by the registrant should continue to require Internet posting after 10-25 years. Current California law permitting exclusion from the Megan's Law Internet web site is very limited; it permits exclusion from the Internet for persons convicted of felony sexual battery, misdemeanor child molestation, and certain incest offenses against a child which did not involve penetration/oral copulation, without regard to length of time since release or the assessed sex offender's risk of recidivism (Pen. Code, § 290.46, subd. (e)). Additionally, 20% of California registered sex offenders are not posted on the Internet web site, because the Legislature deemed the offenses not serious enough to be so disclosed—without regard to the assessed risk of the individual offender.</p>	<p>CASOM 2007</p>	
<p>Current California law does not require notification of a victim [who could be authorized by statute to elect such notification] before a local registering law enforcement agency actively discloses information about a sex offender to the community.</p>	<p>CASOM 2007</p>	
<p>Although it is mandated that an individual risk assessment be completed by parole, probation and possibly local law enforcement agencies (the law is unclear on who will assess registrants no longer on supervision), no direct oversight for quality review of the agencies performing the risk assessments has been established.</p>	<p>CASOM 2007</p>	
<p>No law authorizes offenders to request re-assessment of risk after specified time periods (e.g., once every 5-10 years).</p>	<p>CASOM 2007</p>	
<p>There is no current requirement for counties to establish collaborative teams and allocate funding for actively monitoring registrants and reviewing community notification decisions. Laws should require including law enforcement, parole, probation, DA's offices, DOJ SPAT teams, treatment providers, and victim advocates on such teams.</p>	<p>CASOM 2007</p>	
<p>There is no established state curriculum for community meetings which could be used in conjunction with active notification about registered sex offenders.</p>	<p>CASOM 2007</p>	


Summary Gaps from Previous CASOMB Publications

<p>There is no required time line for entry of registration data by local law enforcement into the state's sex offender registration database.</p>	<p>CASOMB 2008</p>	
<p>There is no law requiring law enforcement agencies to verify the offender's registered address, either by utilizing field compliance and/or mail-in verifications on an ongoing basis. Law enforcement agencies that currently have registration verification and enforcement teams are generally unfunded and are pulled together from existing, limited resources.</p>	<p>CASOMB 2008</p>	
<p>NUMBERS</p>		
<p>No entity in California – whether state agency, academic institution or other – has assumed or been appointed to provide leadership responsibility for conducting key research on topics related to the management of the state's sex offenders. California has consistently been a “consumer” of policy research and other research materials produced elsewhere, frequently by much smaller states, agencies, and/or foreign countries.</p>		
<p>CDCR does not have a system of electronic record keeping (case files) for those under its authority and so is unable to provide much flexibility in assembling new sets of data or retrieving information from older records.</p>		
<p>Data collection regarding sex offenders on county probation varies considerably from county to county. Consistency is needed to allow the information to be gathered and analyzed at a statewide level. Some counties have been unable to provide data needed even for the basic overview provided in this section of the Report.</p>		

Summary Gaps from Previous CASOMB Publications

<p>The “metrics” used to classify sex offenders, sex offenses, recidivism and similar important dimensions are not consistent across systems, making it hard to reach and state clear conclusions.</p>		✿
<p>RECIDIVISM</p>		
<p>There is no broadly researched and replicated body of data about the recidivism of California sex offenders that would provide baseline measures to guide policy and evaluate the success of any new efforts to reduce recidivism</p>		✿
<p>No information is available at this time regarding sexual recidivism for sex offenders on probation in California.</p>		✿
<p>Policy makers have insufficient resources for obtaining reliable information about recidivism nor do they have ready access to expert assistance in interpreting the complex recidivism data available from multiple sources.</p>		✿
<p>The operational definition of “sex offender recidivism” used in any future California recidivism studies needs to be standardized to improve the accuracy and comparability of the data.</p>		✿
<p>Little is known about the extent to which recidivism rates climb after the period of formal supervision and control under the authority of the criminal justice system (parole and probation) ends and sex offenders are simply living in the community as “free” citizens. Research about postsupervision recidivism should be undertaken.</p>		✿
<p>SPECIAL POPULATIONS</p>		

Summary Gaps from Previous CASOMB Publications

<p>The state hospitals provide the Sex Offender Commitment Program to all sex offenders but only 20-30% participate in this treatment program. Many more offenders participate in general treatment groups and vocational offerings.</p>		
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Summary Recommendations from Previous CASOMB Reports

Key:




Item has remained essentially unchanged



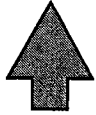




there have been improvements in practice, capacity or statute











there have been reductions in capacity or funding

Recommendation	Report	Status
The State of California should have a uniform definition for an HRSO as follows: An HRSO is a convicted sex offender who has been deemed by the CDCR to pose a higher risk to commit a new sex offense in the community. A PC 290 parolee will be designated as an HRSO for purposes of adult parole based on the score from a validated risk assessment tool(s), and/or the known criminal history, and/or other relevant criteria established by the CDCR.	HRSO I	
All California adult PC 290 sex offender registrants under the jurisdiction of the CDCR must be assessed to determine whether based on validated risk assessment tool(s) and/or known criminal history, and/or other relevant criteria, they should be designated as HRSOs. The assessment shall take place as soon as practical, but no later than 120 days prior to release on parole with continued assessments while on parole.	HRSO I CASOM 2007	✿
All California inmates required to register as sex offenders that are designated as HRSOs should be required to receive appropriate specialized sex offender treatment as warranted while incarcerated.	HRSO I	✿

Summary Recommendations from Previous CASOMB Reports

<p>Notification of Release of HRSOs• The Task Force recommends that CDCR be required to notify victims 90 days prior to the anticipated release of an HRSO in relation toPC 3003(c). Victims should have a minimum of 21 days to challenge the HRSO residential placement in accordance with established CDCR procedures.• The CDCR should be required to provide notice of the release and recommended placement ofHRSOs at least 60 days before release using mail service as required by law and an additional reliable method such as email, fax, or telephone to a list of designated law enforcement recipients.• Local law enforcement should be required to provide timely and sufficient notice to the receiving communities of the residential placement of HRSOs.</p>	<p>HRSO I</p>	
<p>The parole supervision of HRSOs should follow the“Containment Model,” which recognizes the risk that sex offenders pose to the community, and thus provides a focus on “containing” offenders in a tight supervision and treatment network with active monitoring and enforcement of rules. This‘Containment Model’ is formed by four components:The supervision components led by the specialized parole agent and his team; the treatment component directed by a qualified therapist who uses an evidence-based approach in conformity with recognized guidelines and standards; the polygraph component to be performed by qualified postconviction polygrapher(s); and the victim advocacy component focused on what is best for the victim.In addition, all HRSOs should be placed on GPS monitoring (the Task Force recognized the value of more intensive supervision and GPS monitoring for all paroled sex offenders, but acknowledge that it is beyond the scope of the Executive Order).</p>	<p>HRSO I Progress Report 2009 CASOMB 2008</p>	
<p>The CDCR and local law enforcement should partner to create a viable program for community education and communication specific to HRSO issues.</p>	<p>HRSO I</p>	
<p>The Task Force recommends legislative changes to the Megan’s Law Website to specifically identify HRSOs who are on parole and those that are being monitored by GPS.</p>	<p>HRSO I</p>	
<p>The CDCR should be required to assess the fiscal and programmatic impact of the Task Force recommendations within 90 days and work with theAdministration and the Legislature to secure funding and/or legislative changes in order to implement recommendations. In the event the CDCR cannot meet the timeframe on any recommendation,a public letter should be sent to the Governor explaining the reasons why the Department cannot comply with the recommendations.</p>	<p>HRSO I</p>	

Summary Recommendations from Previous CASOMB Reports

<p>The CDCR should be required to establish a permanent Sex Offender Management Board that will review practices of the CDCR regarding the stated goals of the California High Risk Sex Offender TaskForce. Stakeholders such as sheriffs and police chiefs, district attorneys, county probation chiefs and line parole officers should have permanent positions on this Board.</p>	<p>HRSO I</p>	
<p>The CDCR should be required to continue working with local law enforcement and local government to find appropriate and equitable housing solutions for placement of HRSOs. The Task Force recommends that a committee of appropriate stakeholders, such as this Task Force, continue to convene to address these critical issues.</p>	<p>HRSO I</p>	
<p>INVESTIGATION PROSECUTION DISPOSITION</p>		
<p>Specialized training should be provided to all individuals responsible for the investigation, prosecution and disposition of sexual offenses with a particular focus on cultural differences, and differences between adult and juveniles, both as victims and as offenders.</p>	<p>CASOM 2007 Progress Report 2009</p>	
<p>All sexual assault cases, adult and juvenile, should be handled by specially trained prosecutors assigned to a vertical prosecution unit.</p>	<p>CASOM 2007 Progress Report 2009</p>	
<p>Every jurisdiction should have a Multidisciplinary Team (MDT) to facilitate the investigation and prosecution of sexual offenses.</p>	<p>CASOM 2007 Progress Report 2009</p>	
<p>Statewide protocols should be developed for the investigation of sexual offenses, including protocols for the collection, packaging and preservation of evidence.</p>	<p>CASOM 2007</p>	
<p>California should establish filing guidelines that ensure consistency and integrity in filing decisions and, wherever possible, designate one experienced prosecutor to make filing decisions.</p>	<p>CASOM 2007</p>	
<p>California should establish guidelines to ensure consistency in plea bargains and dispositions.</p>	<p>CASOM 2007</p>	

Summary Recommendations from Previous CASOMB Reports

<p>Judicial officers need access to training on sentencing alternatives that enhance sex offender management to ensure that they understand the dynamics of sexual offenses, the heterogeneity of the sexual offender population, research on recidivism and the impact of offenses on victims. The training should be multi-disciplinary and involve a collaboration between the Center for Judicial Education and Research and the National Center for Sex Offender Management.</p>	CASOM 2007	✿
<p>Investigation and prosecution of sexual offenses should consider the needs of victims including such issues as fair access to the judicial process, early notification regarding victim rights, assignment of a victim advocate, protection of sensitive information, and communication with victims at all stages regarding the progress of the investigation, prosecution and disposition</p>	CASOM 2007	✿
<p>District attorney offices, in collaboration with law enforcement, should prepare and distribute a brochure to inform the sexual assault victim of his/her rights, and compile a checklist of the steps that can be taken to protect those rights. These brochures should also be distributed by victim advocate organizations and medical providers.</p>	CASOM 2007	↑
<p>TREATMENT / ASSESSMENT</p>		
<p>Written policies should be developed for the assessment of sex offenders including specific guidelines regarding the components of the assessment as well as policies regarding the frequency and timing of such assessments during investigation, incarceration and the period of community supervision.</p>	CASOM 2007	✿
<p>Appropriate and evidence based treatment should be routinely offered to all adult and juvenile sex offenders in California. There should be a continuum of care that guarantees availability of appropriate treatment at all stages of the criminal justice process through arrest, incarceration, community supervision, and beyond.</p>	CASOM 2007	↓
<p>Written policies should be developed for the treatment of sex offenders including specific guidelines regarding appropriate treatment protocols that follow evidence-based standards of care and implementation of the containment model.</p>	CASOM 2007	✿






Summary Recommendations from Previous CASOMB Reports

Written policies should be developed regarding the minimum qualifications, experience and certification of professionals authorized to conduct the treatment of sex offenders in California.	CASOM 2007	✿
Further research is needed to ascertain the availability of qualified offender-specific treatment providers in California. This is necessary to ensure development of sufficient numbers of qualified treatment providers and programs throughout California.	CASOM 2007	✿
In regions where there are currently inadequate or limited resources for the treatment of sex offenders, available treatment should be targeted towards the highest risk sex offenders.	CASOM 2007	✿
California should maintain a data base to monitor treatment outcomes and rates of sexual and general recidivism of sex offenders who complete treatment programs.	CASOM 2007	✿
There should be adequate funding to ensure that all sex offenders in California have the option of receiving appropriate sex offender treatment	CASOM 2007	↓
Policies should be developed regarding in-custody segregation and therapeutic communities. Treatment should be provided in environments that assure physical and emotional safety, whether in institutional or community based settings.	CASOM 2007	✿
REENTRY		
Case management plans based on a comprehensive needs assessment should be developed early in the confinement period focusing on treatment, with the specific objective of preparing the offender for release and addressing those issues that research has demonstrated to be associated with future criminal behavior.	CASOM 2007	✿
Policies should be developed regarding the need for a written re-entry plan that is based on clinical assessment, response to treatment and institutional services, and includes input from the community supervision officer. This collaboratively developed plan should be finalized at least 6 months prior to release and should explicitly address housing and other community stabilization needs, as well as victim issues, including procedures that enable victims to exercise their rights around placement	CASOM 2007	↓


Summary Recommendations from Previous CASOMB Reports

<p>The written re-entry plan should follow the sex offender through the different phases of the period of confinement and at the time of release into the community so as to facilitate continuity of care and enhanced public safety.</p>	CASOM 2007	✿
<p>Every community has an obligation to identify permanent, stable housing for sex offenders, to facilitate reintegration and reduce the likelihood of recidivism.</p>	CASOM 2007	↓
<p>The California Sex Offender Management Board recommends that the California State Legislature, Governor, and local governments reconsider residency restrictions to create an offender housing and supervision solution that balances three essential concerns:</p> <p>Public safety – Community sex offender management strategies should promote proven public safety strategies. Residency restrictions that preclude or eliminate appropriate offender housing can threaten public safety instead of enhancing it.</p> <p>Fair Share - Offender populations should, as dictated by statute, return to their county of conviction. No jurisdiction, county or city, should be forced to accommodate a significantly disproportionate number of offenders due to the residency restrictions in adjoining jurisdictions.</p> <p>Local Control - local governments, in collaboration with state agencies, should collaboratively identify not only areas where offenders should not reside or loiter but also a sufficient number of areas that are suitable and appropriate for offenders to live.</p>		↓
<p>PUBLIC EDUCATION</p>		
<p>public education and outreach campaign should be implemented to educate and prepare communities for the return of sex offenders following incarceration.</p>	CASOM 2007	✿
<p>SUPERVISION</p>		
<p>Effective, written evidence-based practice parameters should be developed to guide the community supervision of sex offenders in California.</p>	CASOM 2007	✿

Summary Recommendations from Previous CASOMB Reports

<p>Community supervision policies should adopt a containment model that also incorporates a collaborative team-based approach.</p>	<p>CASOM 2007</p>	
<p>Case loads for community supervision should be specialized and adopt recognized guidelines regarding the maximum number of cases that can be effectively supervised by one individual.</p>	<p>CASOM 2007</p>	
<p>Intensity of community supervision and allocation of resources should be guided by the sex offender risk assessment and specific needs of the individual offender.</p>	<p>CASOM 2007</p>	
<p>REGISTRATION / COMMUNITY NOTIFICATION</p>		
<p>Low to moderate risk sex offenders should be provided with the opportunity to petition for a hearing, after 10 years of compliance with the registration law, for termination of the duty to register. At the hearing, the sex offender should be required to show by a preponderance of evidence that he or she is not likely to pose a threat to public safety and has not been convicted of a new sex offense. Courts should be given discretion to reduce lifetime registration requirements in certain cases based on the lower assessed risk of individual sex offenders.</p>	<p>CASOM 2007</p>	
<p>California should mandate ongoing state funding for multidisciplinary regional sex offender management teams, including for enforcement and compliance work by those teams, and provide ongoing state funding to establish mandated training for such multidisciplinary sex offender management team members. California should also require Peace Officer Standards and Training (POST) reimbursement for such training.</p>	<p>CASOM 2007</p>	

Summary Recommendations from Previous CASOMB Reports

Law enforcement agencies should be required to consider, as one factor, the sex offender's risk assessment score or scores to determine the appropriateness and scope of notification.	CASOM 2007	
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Appendices

APPENDIX A—ADDITIONAL RIGHTS FOR SEXUAL ASSAULT VICTIMS

- Evidence Code section 352.1—Exclusion of rape victim's address and telephone number.
- Evidence Code section 782—Procedure to determine relevance of sexual conduct evidence proposed to attack credibility of complaining witness.
- Health & Safety Code section 1491—Examinations without charge, testing for venereal disease and pregnancy.
- Health & Safety Code section 1492—Indemnification of Victims; Information; Victim Compensation Claim Forms
- Penal Code section 264.2—Right to have a Crisis Center notified before medical examination.
- Penal Code section 293—Notice to sex offense victim that victim's name will become public record unless victim requests otherwise; disclosure of victim's address prohibited.
- Penal Code section 293.5—Identity of sex offense victim; court may grant anonymity.
- Penal Code section 679.04—Right to have an advocate present at examination or interview; "advocate" defined.
- Penal Code section 1127d—Jury instructions regarding rape victim's previous consensual intercourse with defendant.
- Penal Code section 1203.1g—Restitution for medical or psychological treatment of minor sexual assault victim.
- Penal Code section 1347—Use of closed-circuit television to communicate testimony if victim of certain sexual offenses is age 13 or less.
- Penal Code section 13823.95—Costs incurred by emergency medical facilities for examination of sexual assault victims.
- Penal Code section 637.4—Prohibition on use of polygraph examination as prerequisite to accusatory pleading.
- Penal Code section 1112—No psychiatric examination necessary for sexual assault victim.
- Penal Code section 680—Sexual assault victims' DNA Bill of Rights.
- Penal Code section 667.6(f)—Provides that the court may impose a fine not to exceed twenty thousand dollars (\$20,000) for anyone sentenced for the following offenses:
 - Rape
 - Spousal rape
 - Rape, spousal rape, or sexual penetration, in concert

Sodomy

Lewd or lascivious act

Continuous sexual abuse of a child

Oral copulation

Sexual penetration

APPENDIX B – VICTIMS' BILL OF RIGHTS ACT OF 2008

- To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.
- To be reasonably protected from the defendant and persons acting on behalf of the defendant.
- To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.
- To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.
- To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
- To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of an informed before any pretrial disposition of the case.
- To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.

- To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue to a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.
- To provide information to probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.
- To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.
- To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.
- To restitution.
 - A. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.
 - B. Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.
 - C. All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.
- To the prompt return of property when no longer needed as evidence.
- To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.
- To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made

APPENDIX C

- Training should include modern investigative procedures, proper methods for interviewing victims, witnesses, and suspects;
- Training should include:
 - The impact of sexual assault crimes on victims;
 - Meeting the mental health needs of sexual assault victims in the criminal justice system;
 - The effective role of multi-discipline centers, especially for interviewing victims of suspected sexual assault crimes;
 - The effective role of Sexual Assault Response Teams (SART);
 - The effective, comprehensive and collaborative Family Justice Centers created in communities throughout the state as a *best practice* in the response, investigation, prosecution and prevention of sexual assault;
 - The development of forensic, scientific tools, most significantly in DNA, the evolution of criminal justice databases, particularly CODIS and the Department of Justice (DOJ) DNA database ~ cold hit program;
 - Changes in the law that require those arrested for felony crimes to submit biological samples~DNA profiles to DOJ;
 - Recent developments and updates in the law and *best practices*.

APPENDIX D - Suggested Guidelines Criteria

- The responsibility of the law enforcement personnel receiving the initial report of an offense.
- The responsibility of the responding officer.
- Evidence documentation and collection procedures, particularly for DNA and/or drug facilitated analysis.
- Sexual Assault Response Teams (SARTs) and other “team” response structures.
- Crime scene preservation.
- Victim notification regarding investigative procedures
- Confidential Communication protections.

- Victim interviewing.
- Suspect interview / interrogation.
- Mandatory notifications.
- Follow-up investigative procedures.
- Case management.
- Officer wellness;

APPENDIX E - Mentor DA program criteria

- Identify Expert Sexual Assault Prosecutors;
- Commit to 1 year (at a minimum) as a Mentor;
- Identify area(s) of expertise;
- Identify methods of mentoring;
- General Mentor available for consultation and technical assistance;
- Provide individualized & directed training to an office or group of prosecutors;
- Provide one-on-one Mentoring during a trial.

APPENDIX F - Suggested treatment provider training content

Documentation of training obtained should include, but not be limited to, the following topics of training.

- Assessment and treatment of deviant sexual arousal, interest, or behavior
- Overcoming denial or minimization by offenders
- Identifying and correcting cognitive distortions used by sexual offenders
- Effects of abuse on victims and enhancing victim empathy
- Understanding how to address the effects of the offenders' own childhood victimization experiences as a research based method to enhance offender empathy for their victims
- Identifying antecedent patterns or offense cycles

- Developing self monitoring and relapse prevention skills
- Accountability strategies including use of polygraphy, global positioning satellite systems, monitoring community involvement, offender registration requirements, alcohol and other drug testing within the context of sex offender treatment
- Enhancing pro-social skills i.e. assertiveness training, relationship skills, anger management, affect regulation skills, pro-social goal attainment strategies
- Treatment of mental illness and/or substance abuse within the context of sex offender treatment
- Evidence based practices applied to sex offender treatment, such as the risk, needs, and treatment responsivity strategies and cognitive behavioral therapies
- Age, gender, or developmental level appropriate interventions, e.g. for adolescents, learning disabled, female, or persons with intellectual disabilities
- Neurodevelopmental aspects of human development and sexuality
- Use of psychotropic medications in treatment of sexual deviance or dysfunction
- Collaboration with other Containment Model professionals including probation or parole, victim advocates, polygraph examiners, and circle of support and accountability members
- Interaction with the criminal justice system
- Mandatory reporting of suspected child or dependent/elder abuse
- Other topics related to sex offender treatment and management

APPENDIX G - Suggested Treatment documentation and structure

Such documentation should include, but are not limited to, the following:

- A statement of the programs' philosophy of change, potential risks & benefits from participation in sex offender specific treatment, and what strategies will be used in support of the change process,
- Discussion of assessment tools and evaluative processes to be implemented including defining how re-offense risk level, criminogenic

needs, and treatment responsivity will be considered in designing treatment, case management, and completion plans for individual participants,

- A description of the cognitive-behavioral rationale and methodologies to be utilized including but not limited to accepting responsibility for the criminal acts, cognitive restructuring, relapse prevention training, self regulation and affect regulation training, and life skills that may improve the offenders likelihood of successful living with no more victims,
- Model informed consent forms for treatment, testing, release of information, and treatment contract that defines the limitations of confidentiality, the nature of the treatment providers' relationship with Probation or Parole, i.e. the Containment Model, the rules and expectations of the program, and how records will be secured,
- Discuss methods of offender accountability including, but not limited to, use of polygraphy, self-report methods, drug testing, and community supervision by Probation Officers and/or Parole agents,
- How violations of treatment program, Probation, or Parole rules and conditions will be handled as well as how client data is protected, used in research, or secured,
- Discuss how decisions will be made regarding modalities of treatment, i.e. individual therapy, group therapy, a combination of therapies, and use of adjunct services such as twelve step programs or use of psychotropic medications, and
- Discussion of the Program Director's training, education, and experience, status of CASOMB approval, and that of staff therapists who may work with the offender.

APPENDIX G- Special Conditions of Supervision

This supervision typically should include:

- Ensuring that the offender is actively engaged in and consistently attending an approved community-based treatment program;
- Verifying the suitability of the offender's residence and place of employment;
- Monitoring the offender's activities by conducting frequent, unannounced field visits at the offender's home, at his place of employment, and during his leisure time (e.g., is he engaging in inappropriate, high risk behavior such as collecting items that depict or are attractive to children?); and
- Helping the offender to develop a community support system-including friends, family members, and employers who are aware of the offenders

criminal history, are supportive of the community supervision plan, and can recognize the sex offenders risk factors.

APPENDIX H - Summary of GPS Studies

Listed below are the states who have conducted some level of evaluation of their GPS programs:

California

The University of California, Irvine, Center for Evidence-Based Corrections completed an evaluation of CDCR sex offender parolees. This evaluation covered the time period of June – November, 2005. In this study, 94 parolees comprised the experimental group and 91 parolees were in the control group. The results and/or recommendations were as follows:

Parole Agents found the GPS program very time consuming. Reviewing the GPS tracks as well as responding to false alarms took up a great deal of time.

Sharing of data with police departments in order to solve sex offense crimes proved to be more difficult than expected.

GPS parole agents had significantly higher individual parolee contacts than HRSO parole agents with out GPS.

GPS monitoring had little effect on parolee recidivism. The only significant difference between the experimental and control groups was on rates of absconding. GPS parolees were less likely to be found guilty of a parole violation for this behavior.

Just over 50 % of both the experimental and control groups had a parole violation during the evaluation period. Most were for technical violations.

Tennessee

In July, 2004, Tennessee enacted the Serious and Violent Sex Offender Monitoring Pilot Project Act. This authorized the Tennessee Board of Probation and Parole (BOPP) to monitor sex offenders using Global positioning systems technology on a pilot basis. The statute specifically enabled BOPP to use GPS as a mandatory condition of release for certain offenders, as deemed appropriate by BOPP.

Middle Tennessee State University (MTSU) evaluated the results of the pilot program (based on an experimental group of 493 sex offenders) and came to the following conclusions:

When the treatment and control groups were statistically compared by their first year of supervision and by the same year of supervision, no statistically significant differences were found in the number of violations, new charges, or in the number of days before the first violation.

Although the empirical analysis did not yield definitive support for satellite-based monitoring, BOPP's pilot project indicates that GPS provides officers with a unique supervision tool and has potential in aiding officers.

New Jersey

New Jersey's Sex Offender Monitoring Pilot Project Act became law in 2005 and authorized the New Jersey State Parole Board to subject up to 250 of the State's most dangerous sex offenders to round-the-clock Global Positioning System (GPS) monitoring.

The project was evaluated by the State Parole Board with the following conclusions:

The use of GPS technology was an essential tool when being utilized as a component of the "containment model" being utilized in New Jersey. The use of intensive supervision, law enforcement information sharing, and sex offender specific treatment are targeted to most effectively use external law enforcement controls and internal psychological controls, to prevent further sexual victimization.

The State Parole Boards GPS monitoring has contributed (when used with the rest of the containment model) to a significantly lower recidivism rate than nationwide data indicates for high-risk sex offenders. The monitoring also provides an invaluable resource for investigations, by providing data that can be compared with the times and place of new sex crimes.

North Carolina

North Carolina completed a short term evaluation of the sex offenders being monitored by GPS. This evaluation covered a 6 month period of time and included 83 offenders who were being monitored at some point during the evaluation period.

The evaluation reported lower than normal violations and revocations.

They also had no new criminal offenses reported during the reporting period.

Maryland

The Maryland Task Force to Study Criminal Offender Monitoring by Global Positioning Systems completed an evaluation of the efficacy of using GPS

monitoring in Maryland and made recommendations to the Governor. Among those recommendations were:

Authority for the usage of GPS for monitoring offenders would be given to the Division of Probation and Parole. Extensions of probation and parole should be given to appropriate offenders.

GPS monitoring should be utilized on high risk offenders when location is a primary concern.

GPS monitoring should be part of comprehensive case planning, which may include treatment, intensive supervision, polygraph exams and other elements.

GPS monitoring should be part of a supervision modality using standardized risk assessment instruments. GPS, like other supervision tools, should not be applied en mass to all offenders or categories of offenders.

Appendix I

Recommended Changes to California Law On Sex Offender Registration and Internet Notification

It's recommended that California amend its law on duration of registration, which should depend on individual risk assessment, history of violent convictions, and sex offense recidivism

The proposed changes to California law take into consideration the seriousness of the offender's criminal history, the empirically assessed risk level of the offender, and whether the offender is a recidivist or has violated California's sex offender registration law. Duration of registration would range from ten (10) years to lifetime (10/20/life). For purposes of the tiering scheme, Penal Code section 667.5 lists violent offenses, including violent sexual offenses. (Appendix B).

Tier 1: Register for 10 years

Low to moderate risk score on the Static-99 (score 0-3); sex offense was not a violent offense or a violation of Penal Code section 647.6; no new sex offense or any violent offense was committed within 10 years of release from custody or after release on probation on the registrable sex offense; no conviction for violation of the Sex Offender Registration Act ("SORA" - Pen. Code, §§ 290-290.023).

Tier 2: Register for 20 years

Moderate to high risk (score 4-5), or person who committed a violent sex offense or violation of Penal Code section 647.6, and has been released from custody or released on probation for 20 years; no new violent sex offense was committed within 20 years of release from custody or release on probation on the registrable offense; no conviction for violation of the Sex Offender Registration Act ("SORA" - Pen. Code, §§ 290-290.023).

Tier 3: Register for Life

High risk score on the Static-99 (6 and above), or a person who is a recidivist, defined as a person who has two or more convictions, brought and tried separately, for violent sex offenses; or a person who was ever committed as a sexually violent predator pursuant to Welfare and Institutions Code section 6600, et seq.

Petition for Tier 1 Status for Romeo and Juliet Offenders

Low to moderate risk offenders (Static-99 scores 0-3) convicted of registrable sex offenses against no more than one minor victim age 13-17, who were no more than seven (7) years older than the minor at the time of the offenses, can petition the court for tier 1 status. The offender must show that the offense was consensual in order to be granted tier 1 status.

NOTE: S.B. 325, pending in the 2009 legislative session, would allow registered sex offenders to request a Static-99 score by submitting a request to the registering agency. The score must either be determined by Probation, or by qualified law enforcement personnel who have received training from a SARATSO trainer.

Risk assessment research on sex offenders tells us that successful completion of a specific sex offender treatment program indicates the offender is at lower risk to re-offend; and cooperation on supervision is a dynamic risk assessment factor indicating less risk of re-offense. However, today there is no sex offender treatment being offered in California prisons, and there are differing opportunities for treatment for offenders on probation and parole. Fiscal problems have ended a number of treatment options at the time of this report. Further, at this time California has no statute requiring credentialing of sex offender treatment providers, meaning that when treatment is offered the state has no way of verifying that the treatment methods used are appropriate and the treatment provider is competent and well-trained.

At some future date, when California offers sex offender treatment to all sex offenders, and when sex offender treatment providers are required to be credentialed by the state, policy makers may want to consider making successful completion of treatment a factor in determining duration of registration. Similarly, if information on supervision cooperation is incorporated in the state sex offender registry at some future date, policy makers may want to consider whether

successful completion of probation or parole should also factor into the duration of registration requirements.

The committee recommends that changes to California law on registration apply prospectively. Probation did not begin to score all sex offenders pre-sentencing until July 1, 2008. Parole began to score all sex offenders prior to release from prison in 2006. For purposes of tier determinations, the pre-sentencing Static-99 score must be used—re-scoring will not be available. However, registrants who do not have Static-99 score which was computed pre-sentencing on or after July 1, 2008, may use a Static-99 score which was done by Parole prior to release from prison on or after January 1, 2006. Other registered sex offenders, who do not have a pre-sentencing score or a score done prior to release on Parole after 2005, may request to be scored through their registering law enforcement agency for purposes of determining tier level. Those offenders who were not scored pre-sentencing or on release from prison in 2006 or afterward, and who do not request a score, will remain in the lifetime registration tier. Since no SARATSO instrument is currently available for scoring female sex offenders, tier level will be determined by utilizing the other factors in each tier, without regard to risk assessment scores.

We also recommend posting all offenders in Tiers 2 and 3 on the public Megan's Law Internet web site, and that California eliminate its current law permitting designated sex offenders to apply for exclusion from the Internet web site (Pen. Code, § 290.46, subd. (e).)

Appendix J

Violent Offenses

The following are the offenses which are deemed violent for purposes of this proposed legislation, as defined in Penal Code section 667.5:

- (1) Murder or voluntary manslaughter
- (2) Mayhem
- (3) Rape (Pen. Code, section 261(a)(2), (6); 262(a)(1), (4))
- (4) Sodomy (Pen. Code section 286(c), (d))
- (5) Oral copulation (Pen. Code, section 288a(c), (d))
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288
- (7) Any felony punishable by death or imprisonment in the state prison for life
- (8) Any felony in which the defendant inflicts great bodily injury, as defined

- (9) Robbery
- (10) Arson (Pen. Code, section 451(a), (b))
- (11) Foreign object penetration (Pen. Code, section 289(a), (j))
- (12) Attempted murder
- (13) Explosion to commit murder, mayhem, or great bodily injury (Pen. Code, §12308, 12309, 12310)
- (14) Kidnapping
- (15) Assault with intent to commit a felony (Pen. Code, section 220)
- (16) Continuous sexual abuse of a child (Pen. Code, section 288.5)
- (17) Carjacking (Pen. Code, section 215(a))
- (18) Rape, spousal rape, or sexual penetration, in concert, (Pen. Code, section 264.1)
- (19) Extortion (Pen. Code, section 518)
- (20) Threats to victims or witnesses (Pen. Code, section 136.1)
- (21) First degree burglary where it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary (Pen. Code, section 460(a))
- (22) Use of a firearm in the commission of specified serious felonies (Pen. Code, section 12022.53)
- (23) Sending or possession of weapons of mass destruction (Pen. Code, section 11418)

Appendix K

Summary of Laws in Risk Assessment States

Arizona

Levels 1-3, as determined by the Department of Public Safety. A risk assessment screening profile is completed for each sex offender. This instrument evaluates 19 criteria that are considered to be significant factors contributing to sex offender recidivism. Each criterion is given a score, which is then totaled to arrive at the recommended risk level. All criminal justice agencies must use the standardized Arizona Risk Assessment; however, occasionally law enforcement discovers

information which can affect an offender's risk level. As such, law enforcement is given the discretion to either accept the recommended risk level or complete another risk assessment.

Notification: Based on level of risk. Mandatory local notification and Internet notification on levels 2-3.

Review: Offender can request court review of risk level; courts have discretion to terminate registration in some circumstances. Unclear if circs. are statutorily defined.

Duration: 1st offense, 10 years; 2d offense, life.

Comments: Unclear if 19-factor assessment instrument is empirically based.

Arkansas

Levels 1-3, determined by Sex Offender Assessment Committee. Guidelines in statutes and Committee's policies and procedures. Level 1, no prior history; level 2, history of offending and notification inside home is insufficient; level 3, violent, predatory, antisocial offenders. All offenders are required to submit to a risk assessment to be completed by the Department of Correction Sex Offender Screening and Risk Assessment Program (SOSRA). The offender is notified by certified mail of the location, date and time of the assessment. It is a Class C Felony to fail to appear for assessment or to not fully submit to the assessment process. The offender is assessed as a default Level 3 should this occur.

Community Notification Assessments may include, but are not limited to, the following:

- A review of the sex offender's criminal history, with particular attention given to any offense that was sexual or violent in nature.
- An interview of the sex offender completed by SOSRA staff.
- A polygraph examination or a Voice Stress Analysis in cases in which SOSRA staff do not believe that they have adequate information to accurately assess the offender.
- A thorough review of any mental health records available to SOSRA staff at the time of assessment that may be relevant to the offender's risk to the community.
- Psychological testing when deemed necessary by SOSRA psychologists.
- Other information that is relevant to the offender's offense history and/or pattern.

- Completion of appropriate actuarial instruments designed to assess individuals convicted of sexual offenses.

At the SOSRA assessment, state law protects any admissions made by the offender during the assessment interview from use in a criminal proceeding. In this way, the individual's Fifth Amendment rights are protected. Therefore, the offender may not avoid answering questions by claiming protection under the 5th Amendment right to avoid self-incrimination. The interviewer completes the actuarial instruments deemed appropriate by SOSRA psychologists. The actuarial instruments are only one component of the assessment (see above).

(See Arkansas Sex Offender Assessment Committee Guidelines and Procedures 2007, <http://www.acic.org/Registration/SOAC%20GL%202007.pdf>.)

Notification: Guidelines in statute and policies and procedures govern community notification assessments to determine appropriate level of notification. Internet: Determined by level of risk assessed and if offender was over 18, and victim was age 14 or less.

Juveniles: registration is based on adjudication for certain more serious offenses.

Duration: Sexually violent predator, aggravated, recidivist: Lifetime. Others: 15 years, after which application for termination from registry can be made.

Notification: Based on risk level.

Registration: Offense based: courts must designate whether an offense qualifies as an "aggravated sex offense," depending on defined circumstances; triggers lifetime registration.

Review: Yes, appealable to the SOAC, on grounds that procedures of SOSRA were not properly followed; or documents or information was not available at the time of the assessment that are relevant to risk; or assessment is not supported by substantial evidence. Reviewing member of SOAC decides whether to submit to full committee to modify the notification level; majority vote of SOAC required to change level. Offender may appeal administrative decision denying modification of notification level.

Overrides to empirical risk assessment:

Increased notification level:

Prior juvenile or adult sex offenses; multiple victims or offenses, even if not resulting in conviction. Can use known or self-admitted molestations, offenses that were reported and investigated, even if not prosecuted, and offenses primarily sexual in nature but pled down to non-sexual offenses.

Historical data or offender statements suggesting psychological abnormalities predisposing offender to sexual offending; addiction or other issues reducing ability to control sexual impulses, or increases potential for sexual violence; other data suggesting higher risk than the actuarial model predicts.

If offense involved great bodily injury or death, no less than a level 3 may be assigned.

If the offender has provided information on the record or in the interview that he is likely to commit subsequent sex offenses, no less than level 3 may be assigned; and may want to consider for level 4 evaluation (SVP).

Offender's offense history, behavior or victim characteristics (e.g., very young victim, stranger victim, extra-familial victim) suggests higher notification level than actuarial risk level would support.

Decreased notification level:

Offender demonstrates, after treatment, significantly enhanced impulse control ability and decreased predisposition to reoffend. (not applied to level 4's)

If evidence offense was temporary aberration or unlikely to recur, may lower community notification level from risk level set by actuarial instrument.

Victim recantations may permit adjustment of risk level used for notification. (Editorial comment: this is not a good idea unless a court found the recantation credible).

Statutory sex offenses not involving violence, deviance, or coercion, as long as there is no pattern of such offenses, may justify a lower level of community notification than suggested by the actuarial instruments.

Colorado

The Colorado Sex Offender Management Board does risk assessment to determine sentencing and treatment; risk level does not affect registration or notification obligations. Unclear what risk assessment instrument(s) are used.

Probation does a pre-sentencing risk assessment on sex offenders. Probation officers assessing sex offenders during the pre-sentence investigation must have successfully completed required training. A pre-sentence investigation must address the following:

Criminal history

Education/employment

Financial status

Residence

Leisure/recreation

Companions

Alcohol/drug problems

Victim impact

Emotional/personal problems

Attitude/orientation

Family, marital and relationship issues

Offense patterns and victim grooming behaviors

Sex offense-specific evaluation report

Risk factors, risk level, and amenability to treatment

The potential impact of the sentencing recommendation on the victim

Sexually Violent Predator (SVP) assessment

When referring an offender for a sex offense-specific evaluation, pre-sentence investigators should send to the evaluator, as part of the referral packet:

Police reports

The victim impact statement

Child protection reports

A criminal history

Any available risk assessment materials

Prior evaluations and treatment reports

Prior supervision records, if available

Any other information requested by the evaluator

Duration: Depends on offense, 20 years for some, 10 years for less serious; 5 years for misdemeanors, life for specified offenses. All offenders can petition court for termination after a minimum period for their offense, except those required for life.

Notification: Offense-based, not risk-based.

Connecticut

Risk Assessment Board determines risk levels, but these do not affect registration or notification requirements.

Duration: 10 years; persons under 19 at time of offense or who committed a nonviolent offense can apply for exemption, following victim notification and comment, and a determination that registration is not required for public safety.

Delaware

Sex Offender Management Board determines risk tier levels I-III. These apply to registration and community notification. By Jan. 2009 the Board was to approve a risk assessment instrument to assist any sentencing authority in determining risk of recidivism. Board was to consider risk assessment research in carrying out this duty. This was changing the system from an offense-based to a risk-based system. Current tiers are offense-based though.

Duration: Life for Tier III and other tiers if recidivists. Tier II- 25 years. Tier I - 15 years.

Notification: Depends on tier level.

Georgia

Sexual Offender Registration Review Board determines likelihood offender will re-offend against a child or with a sexually dangerous offense.

Levels 1-3: unclear if risk based or offense based.

Duration: Life

Notification: All.

Idaho

Sex Offender Classification Bd. determines who is a high risk offender or sexual predatory; criteria unclear.

Duration: 10 years, after which offenders who qualify for this registration period can apply for termination; recidivist, violent or aggravated offenders register for life. Aggravated offenses are offense-based classification.

Iowa

Risk assessment determines whether there is community notification; Iowa uses low-high risk levels, but it is unclear if the levels are offense or risk-based. Internet displays moderate and high risk offenders; at neighborhood meetings, law enforcement can disclose on high risk offenders.

Massachusetts

Sex Offender Registry Board assesses levels 1-3. Criteria are unclear.

Notification on request on levels 2 & 3; based on whether a citizen is likely to encounter the offender, disclosure is permitted as to level 3's only; Internet site displays level 3's only.

Minnesota

Dept. of Corrections assesses Levels I-III. The Department of Corrections was required to consult with others to develop a risk assessment scale. The state developed and uses the MnSOST-R, a risk assessment tool normed on a Minnesota sex offender-*/ population. Duration of registration depends on whether the offender is deemed recidivist, murdered the victim, or is a sexual psychopath or sexually dangerous person. Registration is for 10 years, or life if recidivist, etc.

Notification: Internet, tier III only; for groups deemed likely to be victimized, notification on tiers II or III are permitted to groups or individuals; for a person likely to encounter - can disclose on tier III only.

Montana

Dept. of Corrections assigns risk levels, which apply to registration and notification provisions. Dept. or evaluator provides court with sexual offender evaluation report recommending a tier level.

Notification: Internet, level 3 only; other types of notification depends on offense and tier level.

Nebraska

Psych. Dept. of Univ. of Neb. developed risk assessment tool, used by Nebraska State Patrol to classify sex offenders.

Notification: Level 2's in certain circumstances; Level 3 on Internet.

New Jersey

Attorney General (AG) classifies risk level in consultation with Notification Advisory Council. Tiers I-III. AG guidelines for factors relevant to reoffense. Notification based on AG procedures and degree of risk of reoffense.

Notification is tier II for organizations/people likely to encounter the SO, and Tier III for Internet posting.

New York

Board of Examiners of Sex Offenders and Sentencing Court assesses level 1-3; Board develops guidelines and procedures to assess risk and makes recommendation to sentencing court as to whether the offender is a sexual predator, sexually violent offender, or predicate sex offender, and on what risk level to assign.

Notification: Internet, levels 2-3 only. Discretionary community notification on level 1, can't post or disseminate exact address.

North Dakota

Risk assessment by AG's office, in conjunction with Corrections, LEAs, victims' services, juvenile services, and other professionals. Review criminal history, evaluations, and other pertinent documents. High, moderate and low risk, scored on actuarial tools.

Notification: Internet: all offenders; mandatory community notification, on moderate and high risk offenders to agencies serving children and vulnerable populations.

Oklahoma

Committee selects an existing sex offender screening tool, which must use an objective point system under which a person is assigned a designated number of points for each of the various factors and the offense for which the person is convicted. Low -high (1-3).

Notification: Internet- all. Local: anyone deemed appropriate can be notified about habitual or aggravated offenders.

Rhode Island

Risk Assessment Board of Review selects instruments for determining risk, and assigns low, moderate or high risk level. Only those found SVPs, i.e., likely to reoffend by looking at offense, risk assessment tool, and psych. eval. are subject to notification. Internet: levels II, III, and notification to schools, day care on these levels; others discretionary if necessary for public safety.

Texas

Risk Assessment Review Committee, w/n Dept. of Crim. Justice, selects risk assessment tool or develops own. No appeal of risk level. Levels 1-3.

Texas uses the Static-99, the Stable/Acute 2007, the Level of Service Inventory - R (LSI-R), and the Hare Psychopathy Checklist Revised (PCL-R) to complete a risk needs assessment on sex offenders sent to prison. There is a records review and interview by a licensed sex offender treatment provider within the Department of Corrections, which is done prior to release from prison. The risk levels assigned depend on the combination of scores the offender has on the Static-99, LSI-R, and PCL-R. Then a release plan is formulated by the treatment provider for community supervision and treatment. The provider identifies the inmate's risk level; specifies the community treatment corresponding to the risk level; specifies which dynamic needs are to receive priority in supervision; and specifies a level of polygraph services that corresponds to the risk level. Low risk offenders report to parole or probation once a month; medium risk, to a more frequent schedule for sex offenders; and high risk, to an intensive schedule that includes GPS monitoring.

Additionally, probation officers participated in a 5-year pilot project to assess offenders who had 5-10 years probation terms. Probation officers were trained to conduct the PCL-R, Static, and LSI-R. Treatment providers conduct the PPGs and VRT and polygraph examiners provide the sexual history polygraph. The offender must pay for all risk assessment on probation, unless indigent. The goal in Texas is to eventually do risk assessment pre-sentencing on all sex offenders, to save costs to the state. By identifying high risk sex offenders by risk assessment, it saves the state money (i.e. \$2.17/day for probation vs. \$47/day in prison in Texas).

Notification: Internet: All. Discretionary: level 3.

Vermont

Combines use of risk assessment tools and clinical assessments.

Internet: High risk sex offenders, recidivists, those w/ offenses for aggravated sexual assault, those in violation; no one under 18. Community notification if necessary for public safety, on any.

Washington

End of Sentence Review Committee assigns risk levels, Tiers I-III, reviews release plans.

Notification depends on tier levels. Internet: Tiers II-III, and Tier I if out of compliance.

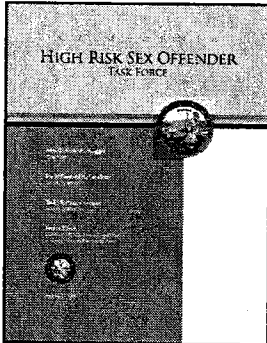
APPENDIX J - Registration Violations

California's Sex Offender Registrants: In Violation, by County, as of November 2009

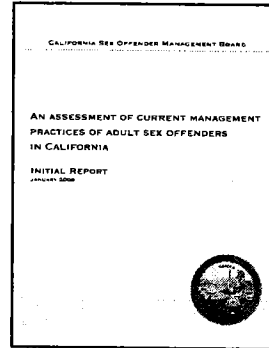
COUNTY	TOTAL IN THE COMMUNITY	TOTAL IN VIOLATION	PERCENT IN VIOLATION
ALAMEDA	2373	640	27.0%
ALPINE	2	1	50.0%
AMADOR	62	4	6.5%
BUTTE	719	57	7.9%
CALAVERAS	100	10	10.0%
COLUSA	45	14	31.1%
CONTRA COSTA	1357	197	14.5%
DEL NORTE	143	22	15.4%
EL DORADO	343	33	9.6%
FRESNO	2367	314	13.3%
GLENN	74	4	5.4%
HUMBOLDT	481	42	8.7%
IMPERIAL	222	74	33.3%
INYO	53	10	18.9%
KERN	2148	376	17.5%
KINGS	350	60	17.1%
LAKE	267	9	3.4%
LASSEN	81	13	16.0%
LOS ANGELES	15461	4263	27.6%
MADERA	376	46	12.2%
MARIN	157	14	8.9%
MARIPOSA	65	3	4.6%
MENDOCINO	262	17	6.5%
MERCED	727	135	18.6%
MODOC	47	3	6.4%
MONO	14	3	21.4%
MONTEREY	692	137	19.8%
NAPA	202	19	9.4%
NEVADA	181	11	6.1%
ORANGE	2987	512	17.1%
PLACER	543	43	7.9%
PLUMAS	42	8	19.0%
RIVERSIDE	3367	237	7.0%
SACRAMENTO	5176	1649	31.9%
SAN BENITO	112	10	8.9%
SAN BERNARDINO	3816	304	8.0%
SAN DIEGO	3887	201	5.2%
SAN FRANCISCO	1092	170	15.6%

SAN JOAQUIN	1790	251	14.0%
SAN LUIS OBISPO	438	27	6.2%
SAN MATEO	805	131	16.3%
SANTA BARBARA	636	89	14.0%
SANTA CLARA	3517	594	16.9%
SANTA CRUZ	425	46	10.8%
SHASTA	771	35	4.5%
SIERRA	10	0	0.0%
SISKIYOU	194	21	10.8%
SOLANO	843	89	10.6%
SONOMA	810	68	8.4%
STANISLAUS	1307	177	13.5%
SUTTER	245	28	11.4%
TEHAMA	271	11	4.1%
TRINITY	62	4	6.5%
TULARE	1071	185	17.3%
TUOLUMNE	156	12	7.7%
VENTURA	1126	193	17.1%
YOLO	411	53	12.9%
YUBA	289	42	14.5%
TOTAL	65570	11721	17.9%

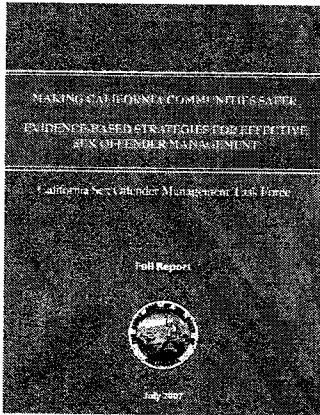
Publications Available at www.casomb.org



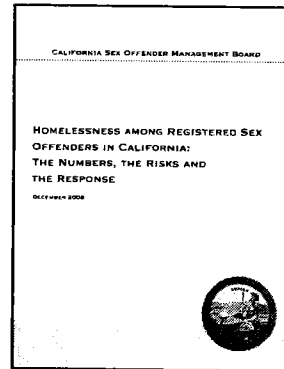
High Risk Sex Offender Task Force 2006



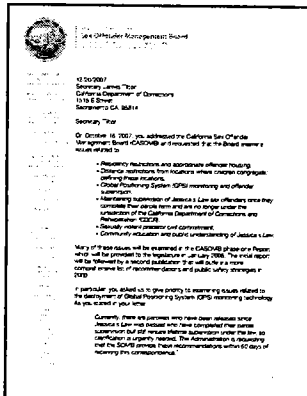
CASOMB Assessment 2008



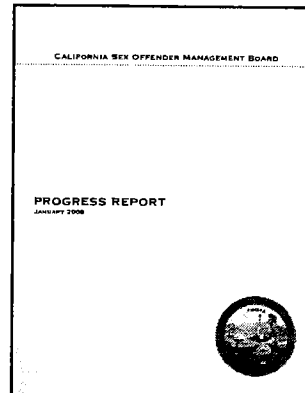
California Sex Offender Management Task Force 2007



CASOMB Housing Paper 2009



GPS Letter to Secretary Tilton 2008



CAOMB Progress Report 2009

Document 3

The August 2011 publication of the CASOMB entitled
Homelessness Among California Registered Sex Offenders,
An Update

CALIFORNIA

SEX OFFENDER MANAGEMENT BOARD

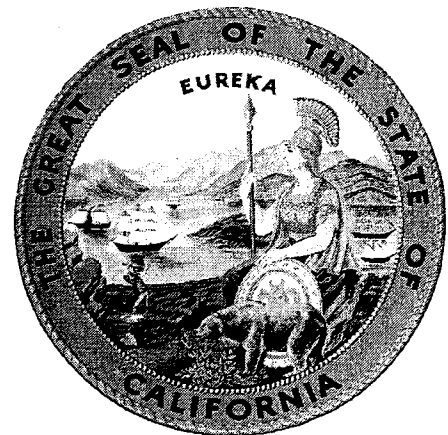
HOMELESSNESS

Among California's
Registered Sex Offenders

An Update



August 2011



“Collateral consequence statutes and policies impose additional burdens on people who have served their sentences, including denial of employment and housing opportunities, without increasing public safety in essential ways.

However, [...] research reveals that gainful employment and stable housing are key factors that enable people with criminal convictions to avoid future arrests and incarceration. I encourage you to evaluate the collateral consequences in your state - and to determine whether those that impose burdens on individuals convicted of crimes without increasing public safety should be eliminated.

Public safety requires us to carefully tailor laws and policies to genuine risks while reducing or eliminating those that impede successful reentry without community benefit.

Failed reentry policies impose high social and economic costs including increased crime, increased victimization, increased family distress, and increased pressure on already-strained state and municipal budgets.”

U.S. Attorney General Eric Holder

Letter to all state Governors and Attorney Generals

April 18, 2011

“Should you think that I am soft on violent and sexual crime, let me assure you that there is a dark painful part of my soul that wants people who hurt other people to never take another comfortable breath. However let us be intelligent. Given that we are a society of law, let us demand that the laws we do enact achieve their intended mission. Let us stop creating a false sense of security and wasting our precious resources on laws that simply do not work.”

Andrea Casanova

Founding Director of the ALLY Foundation

Mother of Alexandra (Ally) Zapp, who was sexually assaulted and murdered

<http://www.theallyfoundation.org/>

RECONSIDERING CALIFORNIA'S SEX OFFENDER RESIDENCE RESTRICTIONS POLICIES

EXECUTIVE SUMMARY

The California Sex Offender Management Board (CASOMB) has, after reviewing the evidence, once again come to the conclusion that the reality reflected by the high and still escalating rate of homelessness among registered sex offenders in California is the single greatest obstacle to the effective management of sex offenders in California. ***The Board believes that the rise in homelessness among sex offenders needs attention because it is so closely associated with an increased level of threat to community safety.*** CASOMB continues to believe that the issue is primarily about where sex offenders should live in our communities and under what conditions - concerns that are not addressed by dictating where they may not live. While there are numerous opinions and many impassioned arguments, pro and con, regarding the value, importance and efficacy of residence restrictions, the arguments offered in this paper will be primarily based upon the best available scientific research evidence rather than relying on emotion-based arguments.

The four central questions addressing this issue are:

- **What is the current California reality with respect to the impact of residence restrictions for sex offenders?**
- **Is there any evidence to support the belief that residence restrictions increase community safety?**
- **Is there any evidence which suggests that residence restrictions are actually counterproductive with regard to increasing community safety?**
- **Finally, are there any other considerations worth noting in evaluating the effectiveness of California's current residence restrictions and the validity of the assumptions upon which these policies appear to be based?**

The answers provided in the following report to these four questions will only represent summaries of the available knowledge in the field of sex offender management and not a comprehensive review of all the available information.

Based on all that is known about sex offender recidivism and about the nature of most sex offenses involving children, there is no evidence that residence restrictions are related to preventing or deterring sex crimes against children. To the contrary, the evidence strongly suggests that residence restrictions are likely to have the unintended effect of increasing the likelihood of sexual re-offense.

Analysis of the situation in California shows that residence restrictions have led to dramatically escalating levels of homelessness among sex offenders, particularly those on parole, of whom nearly one in three are now homeless. In addition, sex offender homelessness is likely to be exacerbated by local ordinances, which continue to proliferate. It is extremely difficult to keep track of these ordinances and to evaluate their contribution to the problem.

In conclusion, CASOMB strongly recommends, once again, that policy makers take action to review this situation and revise the state's residence restriction policies.

RECONSIDERING CALIFORNIA'S SEX OFFENDER RESIDENCE RESTRICTION POLICIES

Introduction

In its Recommendations Report, issued in January of 2010, the California Sex Offender Management Board (CASOMB) stated the following:

CASOMB has concluded that the high, and still escalating, rate of homelessness among sex offenders in California is one of the most serious issues facing the field of sex offender management. Where, and how, sex offenders should live has become the central crisis of sex offender management in California. No other emerging issue has demonstrated the same potential to fray community re-entry collaborations, complicate supervision, and undermine the offender's long-term stability... Appropriate housing, homelessness and the instability created by transience are public safety concerns.

Despite the myriad of public safety concerns associated with sex crimes, the CASOMB has concluded that the significant increase in the rate of homelessness among sex offenders and lack of appropriate housing in California is the most serious issue facing the field of sex offender management. (p. 9)

In December of 2008, CASOMB published a Report: Homelessness Among Registered Sex Offenders in California – The Numbers, the Risks and the Response. This Report reviewed the situation in California at that time and stated: "The Board believes that the rise in homelessness among sex offenders needs attention because it is so closely associated with an increased level of threat to community safety." (p 2)

In the Fall of 2010, as it became apparent that conditions were worsening, CASOMB decided that it was necessary to prepare and issue another update on the status of homelessness among sex offenders in California and to review the reasons why the Board is so concerned. The present paper represents such an update.

Although the focus here is primarily the worsening situation in California, the larger question, CASOMB continues to believe, is not about where in California communities sex offenders should not live. Rather it is about where in our communities they should live and under what conditions.

The following sections of this Report will pose and answer four broad questions which are central to the issue at hand. That issue is the impact of sex offender residence restrictions in California and the sources of CASOMB's concern that

they make California citizens actually less safe. The answers provided to the four questions will only represent summaries of the available knowledge. In every case, much more could be stated and explained about each topic addressed and additional supporting resources could be cited. While there are numerous opinions and many impassioned arguments, pro and con, regarding the value, importance and efficacy of residence restrictions, the arguments offered here will be primarily based upon the best available scientific research evidence rather than relying in any substantial way on emotion-based arguments, on the statements of various types of commentators and stakeholders or on *ad hominem* argumentation.

THE FOUR CENTRAL QUESTIONS ARE AS FOLLOWS:

QUESTION ONE:

What is the current California reality with respect to the impact of residence restrictions for sex offenders?

QUESTION TWO:

Is there any evidence to support the belief that residence restrictions increase community safety?

QUESTION THREE:

Is there any evidence which suggests that residence restrictions are actually counterproductive with regard to increasing community safety?

QUESTION FOUR:

Are there any other considerations worth noting in evaluating the effectiveness of California's current residence restrictions and the validity of the assumptions upon which these policies appear to be based?

EACH QUESTION WILL BE ADDRESSED IN TURN

QUESTION ONE:

What is the current California reality with respect to residence restrictions for sex offenders?

This Report will not attempt to provide an exhaustive review of the current situation in California regarding residence restrictions for sex offenders. (More complete information is available in previous CASOMB publications.) Some of the more salient and more recent and, perhaps, less well-known information will be reviewed here.

Although there are a number of laws and policies which control where convicted sex offenders may live in this state, by far the greatest impact to date has come from the residence restrictions imposed by Proposition 83 (Jessica's Law). This extensive measure, which addressed many issues in addition to residence

restrictions, was passed as a Ballot Initiative and became effective on the date it was adopted by the voters - November 7, 2006. The requirements of the new law were gradually implemented through agency policies in the following months. The restriction forbids those affected from living within 2000 feet of any public or private school or park where children regularly gather. The language of Prop 83 was very unclear with regard to which sex offenders fall under the jurisdiction of the law – all 66,000 registered sex offenders living in California communities, no matter when they were convicted, or only certain subgroups, such as those on state parole or only those convicted after a certain date.

Although the question concerning which categories of sex offenders are affected by the law has remained without a definitive answer, it has been applied most directly to PC290 Registrants who are on state parole and who were released (or re-released) from custody subsequent to the date that Proposition 83 became state law – a number that gradually grew and that now represents nearly all parolees. Individuals on state parole make up approximately 6,600 of the roughly 70,000 registered sex offenders living in California communities. The other primary categories of registered sex offenders not currently in some form of custody are the estimated 10,000 on county probation and the approximately 50,000+ who are no longer under any formal criminal justice system supervision. Data is not available to indicate whether, and to what extent, each of these categories, considered separately, is affected by the residence restrictions. While some county probation departments are enforcing the restrictions, other counties are partially enforcing them, and other counties appear to be waiting for clarification and direction through the courts or some other authority before they start implementing residency restrictions.

The most reliable data on the consequences of enforcing residence restrictions is that made available regarding parolees. Statistics reported by the California Department of Corrections and Rehabilitation (CDCR) at the monthly meetings of CASOMB indicate that as of March, 2011, there were 6,376 sex offenders on active parole in the community. Of those, 1,986 were listed as transient (homeless).

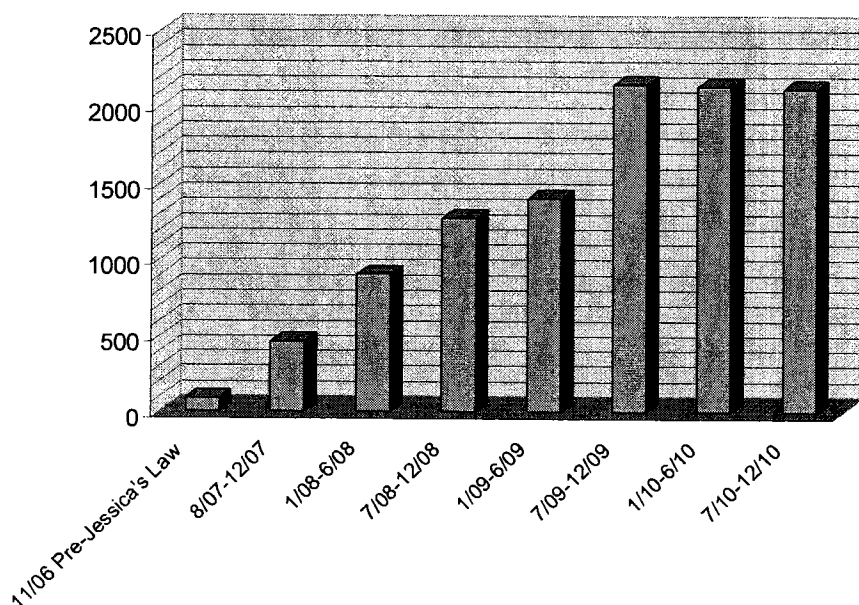
Nearly 32%, almost one-third, of sex offenders on parole are homeless due to Jessica's Law.

When Proposition 83 was passed on November 7, 2006, there were only 88 sex offenders on parole statewide who were registered as transient. In August of 2007, CDCR put in place a set of policies to implement the provisions of the law as they applied to parolee living locations. In September of 2007, about the time that the residence restrictions of Prop 83 began to be enforced by the Parole Division of CDCR and the grace period for finding compliant housing was ending, there were 178 paroled sex offenders identified as transient. The law was interpreted as applying to parolees released from prison after November 7, 2006. The number of sex offenders released on parole after that date has, of course, gradually grown so

that now nearly all paroled sex offenders are subject to the residence restrictions.¹ As the number has grown, so has the proportion of transient/homeless sex offender parolees. Thus in December of 2007 there were 750. In September of 2008, one year after enforcement began, there were 1,279. The steady increase resulted in 2,178 in September of 2009. The Report of the CDCR Sex Offender Supervision and GPS Monitoring Task Force, released on November 12, 2010, stated the following with respect to what has happened since Proposition 83 began to be enforced: "Now, almost three years later, over 2,100 parolees are registered as transient. That is an increase by approximately 24 times."

(p. 17)

Mean Number of Transient Sex Offender Parolees Per Six-Month Period



It is quite clear that the Department of Corrections and Rehabilitation is actively enforcing the residence restrictions enacted by Proposition 83 and it is clear what the impact is on homelessness among parolees.

No information has been collected regarding the impact on the rates of homelessness of sex offenders on probation who have been the targets of such enforcement. As noted, it is not even clear to what extent California's 58 county adult probation departments are enforcing these restrictions on the sex offenders they supervise.

¹ The transient registration figures may have been affected by court decisions in several counties, including San Diego and Los Angeles. In San Diego County the court stayed application of the residency restriction pending litigation, and on February 18, 2011, ruled that enforcement of the residency restriction in San Diego County is unconstitutional. In Los Angeles County the court stayed the residency restriction pending litigation, although the stay order was reversed on May 16, 2011 in *In re Pham* (2 DCA 2011)_Cal.App._. CDCR data shows that the drop in the numbers of transient parolees is, in fact, accounted for by decreases in the Parole Regions where these court decisions took effect.

The terms “transient” and “homeless” are used interchangeably in this Report. “Transient” refers more accurately to the legal classification under which homeless sex offenders are required to register under Megan’s Law. “Homeless” better reflects the lived reality. Some “transient” sex offenders may be using an RV or van as their “home.” Some sex offenders may be living in an RV or van but may not be required to register as “transient” because they regularly park at an identifiable street location and are permitted to register using that address.

It is also of interest to note the increase in the numbers of those sex offenders who may or may not be currently on parole or probation but who are required to register under the provisions of Penal Code 290 and whose registration information is tracked by the California Department of Justice in conjunction with DOJ’s management of the Megan’s Law website. Although the following data includes parolees, it clearly indicates a rise in homelessness among sex offenders considerably beyond what can be accounted for by the parolee numbers.

There are currently 71,803 PC290 registered sex offenders living in California communities. As of April, 2011, 6,012 of the 71,803 PC290 registrants are currently registered as “Transient.” It is noteworthy that approximately 1,211 of these “transient” individuals were in violation of their Registration requirements in some way – usually because of a failure to renew their registration in a timely manner. When tracked over the last few years, these transient numbers reflect the following changes:

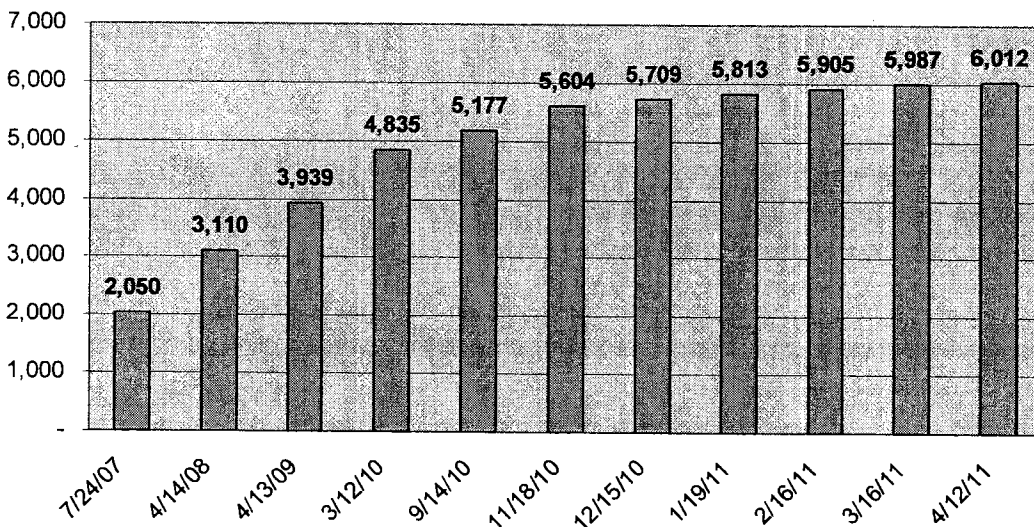
- 8.25% increase in transience since September 2010
- 22% increase since November of 2009
- 66% increase since November 2008
- 101% increase since November of 2007 – a point about one year after Prop 83 was passed.

Although a considerable proportion of these registrants are parolees. (n = 2,080), there are clearly many other transient sex offenders who are not on parole.

The claim has been made that, if they only tried hard enough, many of the homeless parolees could find a place to live which would comply with the residence restrictions. This is clearly not the case.

That an eagerness to deliberately choose transient status has grown exponentially just at the time residence restrictions became law is simply incredible.

Total Number of Transient Registered Sex Offenders in California by Month



A number of metropolitan areas have developed maps showing the areas where, according to the language of Prop 83, affected sex offenders may not live. Observers agree that the vast majority of potential housing locations in urban areas are now included in the off-limits territory. San Francisco, for example, has virtually no realistic places where a paroled sex offender may legally live. Other dense urban areas in the state present a similar picture. State law requires, with a few specific exceptions, that CDCR inmates, when released from prison, be returned to the county of last legal residence, so there is no option to have affected parolees, who might be forced to be transient because there is little or no available housing in the county to which they have been released on parole, relocate and live elsewhere.

Other counties have done similar analyses. San Diego County, for example, appears to have about 28% of its territory available for compliant housing. Of course a question must also be asked about how many actually available residence locations there are where a paroled sex offender could reasonably afford to live and would be accepted as a tenant. Most housing that would be realistic for these individuals is likely to be in more densely populated areas and therefore unlikely to be compliant because of the accompanying density of schools and parks. A research project, reported in a February 18, 2011 San Diego Superior Court decision, attempted to answer this question for San Diego County. The research determined that only 3% of the residential parcels in the county which were outside of the 2000 foot zones were “residential multi-family” parcels. All other properties were single family homes – settings that would not be within the price range of almost any parolee to purchase or rent.

The subsequent issue addressed was whether any of this compliant multi-family housing could actually be rented by an affected parolee. An exhaustive door-to-door research effort concluded that only a handful of locations were financially feasible, did not require a background criminal check and did not automatically exclude parolees. After these criteria were applied, only five possible rental units remained. Not one of them was actually vacant and available to rent. There is little reason to believe that similar research efforts in other urban areas would, if conducted, have substantially different outcomes.

The claim has been made that, if they only tried hard enough, many of the transient (homeless) parolees could find a place to live which would comply with the residence restrictions. This is clearly not the case in San Diego County. In addition, those closer to the reality believe that this is not so. That a steadily increasing number of paroled sex offenders would choose to live on the streets and submit to the increased check-in and other onerous requirements with parole agents when there is the possibility of having a place to live and sleep is simply an incredible claim and is at variance with the reports of parole agents and others. That an eagerness to deliberately choose transient status has arisen and grown exponentially just at the time residence restrictions became law and began to be enforced is simply incredible.

The overall impact of residence restrictions in California is delivered not only by the 2000 foot limit set directly by Proposition 83 but also as a result of its *carte blanche* invitation to local jurisdictions to add their own restrictions. Consequently, another aspect of the current residence restriction reality in California is local ordinances. Prop 83 gave explicit permission for local jurisdictions to create additional restrictions on where sex offenders may live – restrictions that go beyond the restrictions imposed in the language of the Proposition itself. Unfortunately, but not surprisingly, no one really seems to have an authoritative picture of how many such ordinances there are, what they say, who they apply to or to what extent they are enforced. CDCR makes efforts to track the new restrictions through web searches, which often lead to reports of new ordinances in the local popular press. At present, such an approach appears to be the best – perhaps the only – way to obtain the desired information. As of late 2010, this effort had identified at least 87 separate city or county ordinances across the state – each of which uses different definitions, distances and exclusion targets. A recent effort by the Los Angeles County Public Defender's office identified 37 different local ordinances within Los Angeles County, all with different requirements. Some, for example, do not permit a sex offender to live within 1,000 feet of another sex offender. Among the few things that are clear about local ordinances are the following: they appear to frequently trigger "self-defensive" responses in the form of similar ordinances from adjacent communities; they are very difficult to understand and abide by; they are likely to continue to be enacted and to proliferate; they are not easy to learn about and, most important for this statement, they are, consequently, likely to add considerably to the growing level of homelessness among sex offenders.

The future picture is impossible to predict. Given the political realities discussed later in this Report, it is hard to imagine what could ever set a limit to the local ordinances and restrictions or bring an end to their proliferation.

QUESTION TWO:

Is there any evidence to support the belief that residence restrictions increase community safety?

The most direct and succinct answer that can be made to Question Two is the following: No, there is no evidence to support the assumption that residence restrictions are or would be effective in reducing sexual offending and thereby making communities actually safer.

There is no evidence to support that residence restrictions are effective in reducing sexual offending [or] making communities safer.

There does not seem to have ever been any attempt on the part of those who advocate for and create policies establishing residence restrictions to identify, conduct, sponsor, fund, promote or in any way establish a scientific research basis for such policies.

An absence of scientific support for residence restriction policies does not seem to have hampered their creation and proliferation. The general fear, misunderstanding, and antipathy toward sex offenders makes it easy to persuade the general public that things must be done to protect children from their attacks. In such a cultural climate, the question about whether there is sufficient reason to believe that such “things” will accomplish the task is seldom seriously asked, much less answered.

The focus of residence restrictions is on the sexual abuse of children. No one seems to make a claim that residence restrictions will do anything to reduce sexual assault against adults. The belief that residence restrictions would be effective in reducing the sexual victimization of children seems to be based on a set of underlying beliefs and assumptions about how sexual offenses against children occur. These assumptions include:

1. The belief that lurking strangers, who are scheming to assault children whom they grab near schools or in parks, are the perpetrators of many sexual assaults. This concept is sometimes referred to as “stranger danger.”
2. The belief that already identified (i.e. convicted and “registered”) sex offenders are the greatest danger to children because they commit most of the new sex crimes that occur and because they can’t be “cured” and so will always re-offend.

-
3. The belief that sex offenses frequently occur in some sort of public place where there is access to children.
 4. The belief that registered sex offenders will deliberately try to find a place to live that is near a school or park. It is assumed that, if they will only choose to, they can just find somewhere else to live that is at least 2000 feet from schools or parks. If they choose to live closer, they do so to create opportunities to find potential new victims against whom to commit new offenses.
 5. The belief that all registered sex offenders are alike and all pose the same degree and type of risk and should, therefore, all be treated alike.

Each of these assumptions is far from an accurate representation of the reality. Each will be addressed in turn.

1. **Stranger-danger represents the major threat to children.** The extent of “stranger danger” is much less than is often believed. The US Bureau of Justice Statistics stated that only 7% of perpetrators of sexual assault against juveniles were identified as strangers to the victim. In fact, 25% of the offenders were family members and an additional 60% were acquaintances already known to the victim.
2. **Registered sex offenders commit most of the new sex crimes.** With respect to sex offender recidivism, the apparent assumptions about high levels of recidivism are simply inaccurate. Although there is a wide range of risk among identified sex offenders and some may indeed be at high risk of re-offending, the general rate of sex offender recidivism is lower than that for any other crime, with the exception of murder. A recent report on parolee recidivism from the California Department of Corrections and Rehabilitation indicates that only 3.25% of paroled sex offenders are convicted of a new sex offense while on parole. And it is not true that previously identified sex offenders are responsible for anywhere near a substantial portion of new sex crimes. A US Bureau of Justice Statistics Report published in 2003 declared that after analyzing the records of nearly 10,000 convicted sex offenders, only 4.6% of them were found to have had a previous conviction involving a sex crime against a child victim. Thus over 95% of new sex crimes against children are committed by someone who has no previous record of being convicted of a sex offense against a child. The vast preponderance of risk comes from individuals in the community at large, not from previously identified sex offenders, including individuals on parole. The same research recognizes that sex offenders who re-offend do so by committing a subsequent sex crime more often than other types of offenders re-offend by committing a sex crime.

This unsurprising finding is sometimes misinterpreted to say that sex offenders have the highest re-offense rates – which is simply not what this research and other research has found. What is true is that those few sex offenders who do commit a new sex crime are very likely to make headline news. And the popular press is often the primary source for generating and sustaining assumptions about sexual offending – both for the general population and for some of those who make public policy in this realm.

3. **Sex offenses are commonly committed or initiated in public places.**

Although there is a belief that children are most at risk when they are in public places such as schools or parks, this is not the case. Sex offenders make initial contact with their victims or actually commit the offense in “public places” such as around schools or parks relatively infrequently. A 2009 study looked at the location of sex offenses and found that, consistent with similar previous research, only 6.8% of offenders met their victim in some public location which would have been included in most residence restriction laws. Of the total, in 3.6% of the cases the initial contact between the victim and the perpetrator occurred at a school and 2.0% in a park. These can be compared with a 2.4% figure for a bar or restaurant and a 12.1% figure for a first meeting on a street or in a neighborhood and a 67.2% figure for meetings in a home or residential area. (Even this finding, of course, does not address the issue of whether there was any relationship between where the offender lived and where he or she met the victim. And analysis found that some of the offenders who met the victim at a school had a reason to be there, such as employment at the school.) The study also found that just over 82% of all sex offenses took place in a “private” setting. In fact, over 73% of sex offenses studied occurred in the home of the offender, the home of the victim or a home shared by both. Only 1.2% of the offenses occurred at a park or playground and only 1% actually occurred at a school. The study concludes, unsurprisingly, that “sex offenders do not meet or perpetrate offenses in public or semi-public locations with great frequency.”

Given these realities, it is not surprising that the previously-cited recent Report of the CDCR Sex Offender Supervision and GPS Monitoring Task Force states: “Blanket residence restrictions have not improved public safety and have compromised the effective monitoring and supervision of sex offender parolees.” (p. 17)

“Blanket residence restrictions have not improved public safety and have compromised the effective monitoring and supervision of sex offender parolees.” – CDCR Sex Offender Supervision & GPS Monitoring Task Force

Many of those who contributed to developing the CDCR report were in-the-field parole agents or law enforcement officials who work daily with sex offenders and see first-hand the fallout of residence restrictions.

Descriptive data about the patterns seen in the crimes that involve the sexual victimization of children offer very little reason to think that blanket restrictions on where registered sex offenders live would be at all likely to reduce future victimization.

The design of a study that might shed light on this subject and provide support for the belief that where a sex offender lives is important would involve a research strategy that looks at the actual recidivistic sex crimes of convicted sex offenders released to the community and then asks whether there is some relationship between where that offender lived and the new offense he or she committed. If some hypothetical set of residence restrictions would have deterred a significant number of such new crimes, then such restrictions might be seen to make the community safer. Such a study would offer some scientific research support for enacting residence restrictions.

There is, in fact, one study which meets that description. It was conducted by the Minnesota Department of Corrections in 2007 and looked at the sexual recidivism of 224 sex offenders released from prison between 1990 and 2005. After analysis of each case, the study concluded that not one of the re-offenses would have been prevented by residence restrictions. Only 12% of the offenders established contact with the victim within one mile of the offender's home and in none of the crimes was contact established near a school, park or playground. The research provides absolutely no support for the efficacy of residence restrictions. To the contrary, it strongly supports the position that they are ineffective in preventing recidivistic sex offenses.

Of 224 sex offenders released from prison over a 15 year period in Minnesota who re-offended, not one of the re-offenses would have been prevented by residence restrictions.

A very similar study was conducted in 2008 under the auspices of the California Sex Offender Management Board. This study has yet to be officially completed and published due to lack of funding. Nevertheless, the data indicate that of the 190 sex offenders who had been released from California state prisons and who committed a new – recidivistic - sex offense (and who could, therefore, be included in the study), only one met his victim at a park. And that park was more than 2,000 feet from where he resided. Again, there is absolutely no support for the belief that residence restrictions, had they been in place at the time, would have reduced the risk of sex offending among known sex offenders and would have made California communities one bit more safe.

Of the 190 sex offenders who have been released from California state prisons and who committed a new – recidivistic – sex offense, only one met his victim at a park, and that park was more than 2,000 feet from where he resided.

4. **All sex offenders are alike and so should be treated the same.** One of the foundational principles of correctional programming and sex offender management is the “risk principle,” which states that a greater proportion of resources and attention should be focused on those individuals who pose the higher risk of reoffending. It has become increasingly possible to differentiate sex offenders and separate them into various risk categories and California has been legislatively mandated to determine the best ways to do so and has made considerable progress under the direction of the California “State Authorized Risk Assessment Tool for Sex Offenders” (SARATSO) committee. This risk-level approach is similar to strategies used by life insurance and automobile insurance companies to determine what makes individuals higher and lower risk and to then adjust insurance costs accordingly.

Putting aside the question of whether residence restrictions actually achieve any desirable goals, it would be much more productive to impose them on those individuals whose risk levels and previous offense patterns indicated that they posed greater risks and whose victims had been children. However, that is not the approach taken by Prop 83, which imposes the same restrictions on all sex offenders, no matter how long ago their offense occurred, no matter what risk level they have been assessed to be, no matter whether their offense victimized a child or an adult and no matter what individual conditions – including medical status – they might be experiencing.

Seldom acknowledged in discussions about residence restrictions resulting from Prop 83 is the fact that even before its passage, California already had laws on the books that prevented parolees with child victims from living within a considerable distances of schools and parks.

Prior to the passage of Proposition 83, California already had laws that prevented sex offenders with child victims from living within either ¼ or ½ mile (depending on risk) from schools and parks.

Treating all sex offenders alike ignores the reality that they are very different in many important ways and almost inevitably results in unhelpful policies.

QUESTION THREE:

Is there any evidence which suggests that residence restrictions are actually counterproductive with regard to increasing community safety?

There is compelling evidence which suggests that residence restrictions are actually counterproductive with regard to increasing community safety.

To begin with, a substantial body of research now links criminality to life stability – an inverse relationship. An unstable life leads to increased problems with the law and with increased criminal recidivism. Of course life instability is unavoidably linked with housing instability.

“Numerous studies show that a parolee who finds and maintains a steady job – and who also has stable housing and avoids substance abuse – is less likely to re-offend.” - Governor’s Rehabilitation Strike Team, Meeting the Challenges of Rehabilitation in California’s Prison and Parole System, 2007

A concise statement about the relationship between stable housing and criminal recidivism for general prison inmates was provided in a report on the issue from Massachusetts:

“For the returning prisoner, the search for permanent, sustainable housing is more than simply a disagreeable experience. It is a daunting challenge - one that portends success or failure for the entire reintegration process. Housing is the linchpin that holds the reintegration process together. Without a stable residence, continuity in substance abuse and mental health treatment is compromised. Employment is often contingent upon a fixed living arrangement. And, in the end, a polity that does not concern itself with the housing needs of returning prisoners finds that it has done so at the expense of its own public safety.” (2001 Massachusetts Report, as cited in Petersilia: When Prisoners Come Home. 2003)

U.S. Attorney General Eric Holder has stated: “People who have been incarcerated are often barred from housing, shunned by potential employers and surrounded by others in similar circumstances. This is a recipe for high recidivism.” (Corrections Forum, July/August 2010)

Almost every one of the scholarly papers published recently about sex offender residence restrictions emphasizes this very point: the general criminology research is unanimous in associating criminal recidivism with an unstable lifestyle that includes housing instability or homelessness along with accompanying unemployment. The combination represents a major risk factor for re-offending.

Helping people released from prisons or jails to find safe places to live is critical to reducing homelessness and recidivism and to ensuring stable housing situations for the children, families, and communities.

Research has shown that people who do not find stable housing in the community are at higher risk to recidivate.

According to a qualitative study by the Vera Institute of Justice, people released from prison and jail to parole that entered homeless shelters in New York City were seven times more likely to abscond during the first month after release than those who had some form of housing.

- nationalreentryresourcecenter.org

A project of the Council of State Governments Justice Center

It is also true that, to date, there is no specific study that looks exclusively at sex offenders and studies the association between sex offender homelessness and sex crime recidivism. One of the factors that makes this a formidable research undertaking is that sex offender recidivism for a new sex crime is quite low – lower for any other type of crime except murder. As a result, such a study would need to look at thousands of offenders over a period of many years to have any confidence in producing outcomes that were statistically significant and scientifically well-founded. (An example of how low the recidivism rate for sex offenders actually is can be seen in recent research from the California Department of Corrections and Rehabilitation which determined that the sex crime recidivism of sex offenders on parole in California is approximately 3.25% during the period of parole.)

There is one study which shows that criminal justice system “case planning” to increase the likelihood that individual sex offenders would be able to find suitable housing after release from prison did actually result in lower recidivism rates than the comparable rates for inmates who did not have such planning assistance. This study posed an interesting question whose answer would shed light on the role of appropriate housing versus homelessness for sex offenders, namely: Do sex offenders who are helped to obtain appropriate housing re-offend less than those who do not receive such assistance? Two comparable, carefully matched groups of child sex offenders were tracked. One group had received a significant amount of assistance in developing a prison release plan which included finding appropriate housing accommodations. The other group had not received such assistance. There was a significantly higher level of recidivism among the group that had received no assistance and the “accommodations” factor was a major contributor to the differences. This study is unusual in that it actually gave some focus to the housing issue and, in its outcomes, lends strong support to the hypothesis that the ability of sex offenders to secure stable housing for is a factor which contributes to lowering the risk of recidivism.

The study did not look at the actual housing situations in which the offenders eventually lived. And there were no residence restrictions in the jurisdiction where the study was done.

The only intervention in use for the community management of sex offenders that has been demonstrated by research to be effective in reducing sex offender recidivism is sex offender-specific treatment.

Sex offender-specific treatment is the only intervention currently in use for the community management of sex offenders that has been demonstrated by research to be effective in reducing sex offender recidivism.

This piece of information is introduced here because there is a relationship between the ability of sex offenders to participate meaningfully in specialized treatment programs and their ability to, first, remain in the community and, second, bring to treatment the focus, effort and attention needed for meaningful participation. Paroled sex offenders who are being repeatedly returned to custody for various reasons – reasons that are often directly related to their homeless status and associated life instability – cannot maintain continuity of participation in the specialized treatment programs (when these are available to them). The Governor’s CDCR Rehabilitation Strike Team (RST), referring to all types of parolees, stated:

“Moreover, parolees who were enrolled in treatment programs, are constantly having that treatment disrupted for what, in many treatment providers’ views, are predictable and minor rule violations.... The RST heard much frustration from treatment providers who say that parolees are often yanked out of programs, sent back to prison for a few weeks or months, and then re-released - and CDCR expects treatment providers to adapt to these constant breaks in the treatment regimen.”

CDCR has yet to analyze data to determine whether homeless sex offenders are more likely to be returned to custody for infractions than those who have stable housing, but many observers believe this is the case.

With respect to readiness to participate meaningfully in specialized treatment, those treatment providers who work with homeless sex offenders confirm the predictable reality that these individuals are unable to focus on treatment, are preoccupied with issues of survival on the streets, often cannot stay awake during treatment sessions, have no place to save handouts or do homework assignments, sometimes hamper the efforts of other group members to address significant issues and, overall, are handicapped by their homeless status in ways that severely interfere with the one meaningful intervention that has been shown to reduce recidivism risk.

The goal of sex offender management policies is to reduce the risk that identified sex offenders will re-offend. Sex offender treatment does this by addressing and promoting change in areas of cognitive and interpersonal functioning that have been identified as correlated with reoffending. Over the last ten or fifteen years, a substantial body of research has been developed to accurately assign risk levels to known sex offenders. A significant driver for the development of instruments to assess risk has been the need for states, such as California, which operate Civil Commitment programs for sex offenders, to provide evidence to judges and juries that a particular offender is “more likely than not” or “likely” to commit another sex offense. The utilization of research-based instruments to determine risk level proceeds somewhat like the methods used by actuaries to assign “risk of death” for life insurance companies or “risk of accident” by automobile insurance providers. Actuaries mathematically evaluate the relative likelihood of future events. Studies of large numbers of individuals are conducted to sort out which factors are associated with particular outcomes. These factors are called risk factors and the approach is called *actuarially-based risk assessment*. Over the last ten or so years, these methods have been increasingly applied to sex offenders.

Two types of risk factors are now able to be identified and quantified. One is called a “static” risk factor because it is based on past history and, for the most part, does not change. The number of past sex offense convictions might be a good example of a static risk factor. Though that number could possibly increase, it will never decrease. California has adopted, as the static “State Authorized Risk Assessment Tool for Sex Offenders” (SARATSO), a ten-item instrument called the “Static 99.”

Another type of risk factor, as differentiated from a static factor, is the dynamic risk factor. These are also factors or characteristics of a particular sex offender which have been shown to be associated with the risk for future sex offending. What is different about dynamic factors is that they can change over time. Examples of dynamic factors would be social isolation, attitudes toward women or chronic anger. There are a number of instruments that have been shown by research to be effective in identifying the key dynamic risk factors and California is now in the process of selecting one among the top three of these to be the “State Authorized Risk Assessment Tool for Sex Offenders” (SARATSO) for assessing dynamic risk. The selected instrument will be required for doing risk assessments for all California sex offenders.² Not only is a dynamic risk instrument useful, along with the static instrument, in determining risk level for re-offense, it is also a very useful tool for community management, including treatment and supervision. Research shows that sex offenders whose dynamic risk factors change in desired directions as a result of treatment or other interventions have reduced risk of re-offending.

² Shortly before the publication of this Report, the SARATSO committee announced that the Structured Risk Assessment – Forensic Version (SRA-FV) had been selected as the dynamic risk instrument to be used in California.

Reducing such risk is, of course, the hoped-for outcome of all sex offender management interventions.

Research on the “dynamic risk factors” which have been shown to be associated with increases in recidivism levels among sex offenders brings another important perspective to the discussion of the ways in which sex offender homelessness decreases community safety.

Many studies have demonstrated that sex offender specific treatment is effective in reducing re-offending to the extent that it addresses and brings about changes in key dynamic risk factors for each offender. Thus the identified dynamic risk factors – sometimes also referred to as “criminogenic need factors” – are the targets for treatment. If they can be changed in the desired direction, risk of re-offending will be lowered.

Two additional questions must be raised and answered in order to provide a meaningful connection to the question about the potential counter productivity of residence restrictions. The first question is: What are the relevant dynamic risk factors of interest? The second question is: Are these factors likely to be improved or exacerbated by the previously-noted effects of residence restrictions – the dramatically increasing rate of homelessness among paroled California sex offenders as a result of the enactment and enforcement of Proposition 83?

Each of the three leading research-supported dynamic risk assessment instruments for sex offenders contains a dozen or more dimensions or factors. Among these, many appear to be related to the condition of homelessness. The ones that seem to be related, such that homelessness seems likely to cause them to be exacerbated, are noted and briefly described in the following paragraphs. (A more extensive listing of the factors is provided at the end of this paper.)

The cluster of dynamic risk factors which appears to be most evidently linked with homelessness has been labeled “**Social Engagement and Lifestyle Stability Factors.**” The research clearly shows that offenders who have more “**positive**” **social influences** in their lives and more **engagement with pro-social adults** are less likely to re-offend. Treatment efforts necessarily address and attempt to remedy the ways in which offenders lack the skills to develop and maintain such relationships and lack the resources to find opportunities in their lives to do so.

A closely associated factor is the experience of **general social rejection** – feeling like an outcast. What is true about the importance of broader social interactions is also true for emotionally intimate interactions and relationships. **Chronic isolation** and **emotional loneliness** are associated with re-offending. **Intimacy deficits** and an **impaired capacity for relationship stability** are important treatment targets for this reason.

A factor closely related to social instability is **employment instability**. No one would contest the assertion that being homeless substantially decreases the ability of an individual to find and retain employment.

Not everyone who is unemployed is homeless, but persons who are homeless are almost certain to be unemployed and to have very low chances of becoming employed, particularly at a time when jobs are very difficult to find and competition for them is intense. Being able to show up consistently, be appropriately groomed, be awake and alert and be able to focus on the assigned tasks are nearly insurmountable challenges for someone who has nowhere to sleep or take care of personal needs.

It is inconceivable to imagine that a condition of homelessness would not exacerbate many or all of these “Lifestyle Stability” factors – the very factors that, when addressed and ameliorated by effective treatment – have been shown to actually reduce risk and recidivism. It hardly seems necessary to spell out how homelessness would move each of these factors in a direction that is the opposite of what is needed and desired to reduce the risk of reoffending and thereby enhance community safety.

A second cluster of dynamic risk factors for sex offenders includes factors which have to do with “**Self-Regulation Impairments**.” These include factors such as inclinations toward **impulsivity** and **recklessness**. Also included in this cluster are the dimensions of **poor coping** and **poor problem solving skills**. Poor coping specifically includes attention to a tendency to make use of “**sexualized coping**” – using sexual fantasies and behaviors as a means of escape from unpleasant realities. Such escape can certainly be one of the desired benefits of sexual activity for any individual, but can become a problem when used in excess. It is not hard to imagine that a homeless and destitute sex offender, bereft of most other sources of self-soothing available to those with a place to live, a job, a social network and a relatively stable lifestyle, would return to patterns of using sex as a means to escape his unpleasant reality. First would come fantasies, reinforced by masturbation and followed, in some cases, by actual victimizing behaviors. While treatment seeks to reduce the chronic and inappropriate use of “sex as coping,” a condition of homelessness could only be seen as likely to increase it.

Finally, also included in this cluster, are three factors which are clearly associated with being homeless: **negative emotionality**, **dysfunctional self-evaluation** and **substance abuse**. Once again, these are characteristics or behaviors which, when improved by treatment, lead to reduced risk but which, when made worse by homelessness, lead to increased risk.

A third cluster which must be included in the list is termed “**Offense-Supporting Attitudes, Beliefs and Cognitive Distortions**.” Within this group are included dimensions such as **lack of concern for others** and **general callousness**. These mental states are known to be associated with tendencies toward interpersonal aggression, which could certainly include an inclination toward

aggressive sexual behaviors. Treatment works at changing these perspectives on the world. Forced homelessness can only be seen as likely to deepen and confirm them.

Also grouped here are factors described as **grievance thinking** and **pervasive hostility toward others**. Treatment aims to reduce them; homelessness would be likely to amplify them.

The final cluster of dynamic risk factors which deserves attention here is described as “**Resistance to Rules including Supervision and Treatment Non-cooperation.**” While treatment attempts to support values related to compliance with community norms, chronic homelessness would hardly lead to pro-social values and attitudes. For a sex offender on parole, compliance with the parole conditions required for community supervision is the most obvious manifestation of such attitudes. For many, homelessness would be unlikely to work in favor of supporting such compliance but rather is likely to make it increasingly difficult. Compliance with treatment requirements, including consistent attendance and diligence about homework assignments, is also likely to suffer for an individual with nowhere to live.

One final identified dynamic risk factor which does not fit readily into any of the above clusters and which is more a characteristic of an offender’s situation than of his inner qualities – but which is known to be associated with sex offender re-offending – is labeled “**Release to high risk situations.**” Given what has been noted elsewhere about the importance of residential and lifestyle stability for desistance, it is hard to characterize homelessness as anything but such a release to a high risk situation.

The research and the science, then, tell us which characteristics of sex offenders need to change in order for risk to be reduced. “External” societal-imposed controls are important, but only the development of “internal” controls will ultimately lead to changed behaviors in the long term. Residence restrictions lead to homelessness. Homelessness leads to an exacerbation of many of the very “internal control” factors which are known to be associated with increased risk for re-offending. It is impossible to escape the conclusion that residence restrictions are actually counterproductive with regard to increasing community safety. It is correspondingly difficult to see how anyone who values scientific knowledge could claim that there is any reasonable basis for thinking that a policy which, according to the evidence, is almost certain to create increased risk is congruent with its presumed purpose of making communities safer.

<p>It is impossible to escape the conclusion that residence restrictions are actually counterproductive with regard to increasing community safety.</p>
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QUESTION FOUR:

Are there any other considerations worth noting in evaluating the effectiveness and value of California's current residence restrictions?

CONSIDERATION ONE: Sex Offenders Re-Offend at a Lower Rate Than Other Types of Offenders.

Residence restrictions purport to reduce sexual victimization by limiting where previously convicted sex offenders may live. Clarity about the actual risk posed by these individuals relative to the overall risk of sexual abuse and assault is important. The evidence is clear that the majority of previously convicted sex offenders do not go on to commit a new sex offense. Headline stories calling attention to sex offenders who have long histories of offending and multiple victims – exemplified recently by the media attention to pedophile priests with chronic offending histories – help perpetuate such false beliefs. Certainly some sex offenders are quite dangerous and at considerable risk to re-offend. But most are not. A recently published report from the California Department of Corrections and Rehabilitation (2010 Adult Institutions Outcome Evaluation Report) indicates that sex offenders released on parole are sent back to prison at a rate that is actually lower than that of other parolees. The study finds that 65% are returned to prison before they complete parole as opposed to a 68% rate for non-sex offender parolees. And this is despite that fact that sex offenders are generally supervised more intensively, held to a higher standard, regulated by more requirements and conditions (including maintaining their GPS systems) and violated for even minor infractions. Of those returned to custody, only 5% are returned for a new sex crime, while 9% are returned for some other crime and 86% are returned as the result of a parole violation. (pages 24-25).

CONSIDERATION TWO: Most Professional Organizations Who Study the Issue of Residence Restrictions Do Not Support Them.

The views of professionals who work in the field of sex offender management and who value and help produce the body of scientific knowledge which should be used to guide public policy are certainly worth noting here. The largest and most respected international organization of professionals who conduct research on and provide treatment and other management services to sex offenders, the Association for the Treatment of Sexual Abusers (ATSA) has issued a policy statement on the subject of residence restrictions. It reads, in part, as follows:

“The Association for the Treatment of Sexual Abusers (ATSA) believes that whenever possible, development and implementation of social policies should be based on research. It should be noted that to date, few research studies about the effectiveness of residence restrictions have been conducted. The research that has been completed does not support the hypothesis that sex offenders living in closer proximity to places where children congregate are more likely to re-offend.” “There is no research to support that adult sex offenders’ proximity to schools or

parks leads to recidivism.” (Sexual Offender Residence Restrictions - Adopted by the ATSA Executive Board of Directors on April 5, 2010)

The “National Alliance to End Sexual Assault” an organization whose purpose is to work to end sexual violence and ensure services for victims, had this to say about residence restrictions in their 2011 Newsletter.

“In fact, those states that have studied the issue carefully have found no relationship between sex offense recidivism and sex offenders’ proximity to schools or other places children congregate”. “Moreover, residency restrictions are having the unintended consequences that decrease public safety. Sex Offenders who continually move or become homeless as a result of residency restrictions are more difficult to supervise and monitor, thereby increasing risk of re-offense. Research has shown that sex offenders with domestic stability (stable housing and social support) are less likely to commit new sex offenses compared to those offenders who lack stability. Because residency restrictions cause instability, which may increase the risk of re-offense, the NAESV opposes residency restrictions”.

Because residency restrictions cause instability which may increase the risk re-offense, the National Alliance to End Sexual Assault opposes residency restrictions.

- The National Alliance to End Sexual Violence

CONSIDERATION THREE: Politicians Who Oppose any Laws That Create Restrictions On Sex Offenders Run the Risk Of Being Labeled “Soft On Crime”.

Some observers who have reflected on the situation created by residence restriction laws and other problematic sex offender management policies have noted that, as a result of the intensity of public sentiment about these issues, many elected officials and policy makers feel paralyzed and unable to take any action that might be viewed by constituents or portrayed by rivals as “soft on sex offenders.” The consequence is that sex offender laws and policies can only “ratchet up” and can never be reconsidered or eased, even when such action makes good sense. Any elected official who steps forward and expresses a desire to reconsider any of these policies runs the distinct risk of seeing himself or herself targeted for that action in every subsequent election campaign. The Iowa legislature, pressured by the state’s prosecutors and law enforcement agencies, finally took action and repealed their residence restrictions. As it turned out, the legislature’s decision to undo the residence restrictions was almost – but not quite – unanimous and bipartisan. The vote was 93 to 3.

In California, a Ballot Initiative passed by the voters can only be changed by returning to the voters, in which case a simple majority is required, or by the legislature with a two-thirds majority.

CONSIDERATION FOUR: Residence Restrictions Tend to Drive Sex Offenders Into Rural Areas, Where Services and Treatment are More Difficult to Obtain.

Residence restrictions tend to make the most densely populated areas – which are, of course, the state’s urban areas where most of the population lives – off limits for sex offender housing. Usually these are the areas where low cost housing is more readily available. The less dense suburban areas are frequently unavailable because of housing costs and availability. Therefore it is a county’s rural areas where sex offenders – at least those who can find and afford housing – are more likely to find unrestricted housing opportunities. But these areas tend to have fewer services and little public transportation. So the urban areas have pushed their unwanted sex offenders into rural areas and, in doing so, have - if the touted dangers of proximity are to be believed - disproportionately increased the risk for the children in these areas. In addition, the one management approach for reducing risk shown to be effective – specialized sex offender treatment programming – tends to be not readily available or nonexistent in such areas.

CONSIDERATION FIVE: Other States are Either Voluntarily or Being Ordered by the Courts to Limit Residence Restrictions.

It should be noted that the state of Iowa, one of the earliest to adopt residence restrictions, found that their law created a chaotic and counterproductive situation endangering public safety. After prolonged problems and under considerable pressure from the state’s prosecutors and law enforcement officials, the Iowa policy makers took steps to roll back their restrictions. More recently, the state of Georgia, reportedly responding to an anticipated court decision invalidating their onerous residence restriction policies and the untenable situation that ensued, took a similar retrenching action.

CONSIDERATION SIX: There are Direct and Indirect Costs That Come as a Result of California’s Current Form of Residence Restrictions.

Housing costs are incurred by CDCR because parolees cannot live with family or in places that would otherwise be available to them. Over many years, CDCR has consistently made efforts to avoid a situation of having transient parolee sex offenders by paying some or all of the housing costs, but has not been able to continue to do so. Now the housing payments are limited to a 60 day period after release. The laws of supply and demand have driven up the costs of the few legally compliant housing facilities still available.

Transient parolees must report in to their parole agents more frequently and must re-register as PC290 sex offenders more frequently, burdening both CDCR personnel and law enforcement staff with additional duties. Transient parolees and other transient sex offenders appear to be out of compliance with registration

requirements (i.e. missing) at an increasing rate, thereby incurring costs related to locating them and returning them to court and to prison if they are located.

The substantial expenses now being incurred and anticipated as the result of hundreds of cases seeking redress through the courts with respect to some legally questionable aspect of residence restrictions must be added to the list.

Some unknown number of paroled sex offenders might have been able to obtain employment and become contributors to society and taxpayers were they not homeless. Instead, many of them and, in some cases, the families whom they are unable to support, need to seek public and private-sector assistance and financial support.

There are undoubtedly additional costs not specifically noted here. No one seems to be tracking the cumulative costs of implementing this policy.

CONSIDERATION SEVEN: Residence Restrictions Have Created the “Clustering” of Sex Offenders into Those Few Urban Areas Where Compliant Housing is Located.

Many local communities became very alarmed when they realized that some apartment complexes and hotels/motels had large numbers of sex offenders living there. The surrounding neighborhoods were concerned both about the safety of their children as well as potential declining property values. They became incensed that CDCR had allowed this to occur. What they failed to realize is that the real culprit (residence restrictions) had made most multi-family units ineligible to house sex offenders. Therefore, the sex offenders had gravitated to the only housing that was both affordable and compliant with the law.

The response of most communities to this problem was to pass local ordinances which limited the number of sex offenders who could reside in apartment complexes and motels/hotels. Many jurisdictions prohibit more than one sex offender from living in a multi-family building or complex. Other jurisdictions use some type of percentage formula to prevent clustering. In either case, these attempted solutions have increased homelessness among sex offenders, due to decreasing housing availability.

CONSIDERATION EIGHT: There is No Scientific Evidence to Support Residence Restrictions.

When what is put forward as “common sense” is in conflict with the findings of scientific inquiry, an enlightened policy will follow the scientific knowledge. It would not be reasonable to create policies based on, for example, the long-held “common sense” observations that the earth is flat or that the sun revolves around the earth or that illness comes from “humours” or from the “evil eye.” No evidence-based arguments have ever been put forward to support residence restrictions as a means of reducing sex offender recidivism. However, once such policies have been introduced as a plausible way for policy makers and elected officials to “do

something” to protect children, they spread from jurisdiction to jurisdiction with little visible resistance or debate. Opposing them has been and continues to be perceived as simply too politically dangerous.

CONSIDERATION NINE: There is No Rational Basis that Supports 2000 Feet as a Distance Measure that Increases the Safety of Children.

While it may be quite true that certain sex offenders should not live in a place where they can readily observe a school or a playground from their home, setting a distance of 2,000 feet cannot be said to be based on any available evidence or logic. It takes a normal, physically-fit adult just over seven minutes to walk 2,000 feet without any stops or delays. 2,000 feet is the length of 6.6 football fields. Even if there were an unbroken line of sight, a 2,000 foot distance is too great to be able to see anything or anyone in a meaningful way. Sometimes the rhetoric associated with residence restrictions takes the form of outrage about thinking of a child molester “living across the street from a grade school” or a rapist living “next door to” a high school or college. This is a distorted characterization of the reality actually brought into existence by a 2,000 foot residence restriction, which extends the limit so far beyond “across the street” that the emotional argument becomes – or should become - meaningless.

CONSIDERATION TEN: Exclusion Zones are a Better Alternative Than Residence Restrictions.

A much more rational and non-counterproductive alternative to residence restrictions is possible, one which addresses the “across the street” concerns. The creation of what are called “exclusion zones” from which sex offenders are banned at all times unless granted a specific exception makes much more sense and has been proposed by the California Sex Offender Management Board as an alternative to residence restrictions which would make a great deal more policy sense. A set of much more limited exclusion zones around schools and some parks make considerably more policy sense than restrictions on where someone can sleep – presumably at night, a time when schools are closed and no children are present anyway. CASOMB has been quite clear in recommending strongly that “exclusion zones,” if adopted, should not be imposed in addition to residence restrictions but should be an alternative approach which would replace the 2000 foot restrictions imposed by Prop 83. CASOMB does not claim that exclusion zones have any solid research support, simply that implementing them may offer a viable way to replace a form of external control which clearly is ineffective and counterproductive with one which, while it may not be effective, would not create an increased risk to community safety as do the current residence restrictions.

CONSIDERATION ELEVEN: Solutions May Have to Be Court Ordered.

Some believe that the inevitable and even preferable resolution to the problems created by residence restrictions can and should and will come through the courts. The California Supreme Court has heard a case which some observers thought might have resulted in a definitive decision about residence restrictions. However the actual decision only went so far as to affirm that there could be merit in the

objections of individual petitioners with respect to residence restrictions but that each case would need to be decided on its own merits. At this point, as a result, hundreds of petitions have been filed and local courts face an immense burden in responding to the situation. The costs that taxpayers incur as the result of these many legal actions are not easily estimated but undoubtedly have already been substantial and are likely to continue to mount.

CONCLUSIONS

Based on all that is known about sex offender recidivism and the nature of most sex offenses involving children, there is no evidence that residence restrictions are related to preventing or deterring sex crimes against children. To the contrary, the evidence strongly suggests that residence restrictions are likely to have the unintended effect of increasing the likelihood of sexual re-offense. Such increase in risk level is due to the destabilizing effect residence restrictions have on offenders and the way they are likely to exacerbate rather than reduce the psychological states which are known to be associated with re-offending. Analysis of the situation in California shows that residence restrictions have led to dramatically escalating levels of homelessness among sex offenders, particularly those on parole. In addition, sex offender homelessness is likely to be exacerbated by local ordinances, which continue to proliferate. It is extremely difficult to keep track of these ordinances and to evaluate their contribution to the problem.

The California Sex Offender Management Board must strongly recommend, once again, that policy makers review this situation and take action to revise the state's residence restriction policies.

**LIST OF SELECTED DYNAMIC RISK FACTORS DEEMED RELEVANT TO
THIS REPORT - CLUSTERED BY GENERAL TOPIC AND SOURCES**

1. Offense-Supporting Attitudes, Beliefs and Cognitive Distortions

- Lack of Concern for Others (STABLE 07); Callousness/lack concern for others (MHT-SRA)
- Interpersonal aggression (VRS-SO); Adversarial Sexual Attitudes (SRA)
- Externalizing (MHT)
- Grievance/hostility (MHT); Grievance Thinking (SRA)

2. Self-Regulation Impairments

- Lifestyle Impulsiveness (SRA); Impulsivity (VRS-SO); Impulsive (STABLE 07); Impulsivity, recklessness (MHT)
- Dysfunctional coping (MHT); Dysfunctional Coping (SRA); Sexualized coping (MHT); Sex as Coping (STABLE 07)
- Poor Problem Solving Skills (STABLE 07); Poor cognitive problem solving (MHT)
- Emotional control (VRS-SO)
- Negative Emotionality (STABLE 07); Dysfunctional Self-Evaluation (SRA)
- Substance abuse (VRS-SO)

3. Sexual Propensities and Sexual Deviance

- Sexual Preoccupation (SRA); Sexual compulsivity (VRS-SO); Sexual preoccupation (MHT)
- Sex Drive - Sex Preoccupation (STABLE 07);

4. Social Engagement and Lifestyle Stability

- Significant Social Influences (STABLE 07); DIO Community support (VRS-SO); Relationships with Adults (SRA); Negative social influences (MHT); General Social Rejection (STABLE 07)
- Lack of Emotionally Intimate Relationships with Adults "LEIRA" (SRA); Lack of emotionally intimate relationships with adults (MHT); Intimacy deficits (VRS-SO); Capacity for Relationship Stability (STABLE 07)
- Employment Instability (MHT)

5. Resistance to Rules including Supervision and Treatment Non-cooperation

- Co-operation with Supervision (STABLE 07); Compliance with community supervision (VRS-SO); Resistance to rules and supervision (MHT); Treatment compliance (VRS-SO)

[Does not fit major categories: Release to high risk situations (VRS-SO)]

SOURCES

STABLE 07 refers to the **Stable 2007**, a dynamic risk assessment instrument for sex offenders

SRA refers to the **Structured Risk Assessment**, a dynamic risk assessment instrument for sex offenders

VRS-SO refers to the **Violence Risk Scale – Sex Offender** version, a dynamic risk assessment instrument for sex offenders

* "MHT" Refers to a major dynamic risk factor review article by Mann, Hanson and Thornton published in 2010 in **Sexual Abuse: A Journal of Research and Treatment**

Document 4

The February 18, 2011, Statement of Decision by the San
Diego County Superior Court in *In re Briley, et al.*,
HC 19612

F I L E D
Clerk of the Superior Court

FEB 18 2011

By: D. ZOLEZZI, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

In re:

JULIE BRILEY
JEFFREY GLYNN
WILLIAM TAYLOR
STEPHEN TODD,

Petitioners.

) HC 19612
) HC 19731
) HC 19742
) HC 19743

On Habeas Corpus

) STATEMENT OF DECISION

I. STATEMENT OF THE CASE

These petitioners are four of well over a hundred who have filed petitions for writs of habeas corpus in this court in the wake of the California Supreme Court's decision in *In re E.J.* (2010) 47 C4th 1258. That case featured a broad-based attack on Penal Code section 3003.5(b),¹ one of several statutory changes enacted November 8, 2006, by Proposition 83, otherwise known as Jessica's Law.

Section 3003.5(b) provides, "Notwithstanding any other provision of law, it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2000 feet of any public or private school, or park where children regularly gather." The California Department of Corrections and Rehabilitation (CDCR) and the Division of Adult Parole Operations (DAPO) have issued policy statements (Policy

¹ All statutory references will be to the Penal Code unless otherwise stated.

1 Nos. 07-36, 07-48, 09-11) and revised the California Code of Regulations (section 2626
2 of title 15) to implement Penal Code section 3003.5(b) as a parole condition.

3 In *E.J.*, four parolees alleged that section 3003.5(b) is an impermissibly
4 retroactive statute that violates the ex post facto clauses of both the United States and
5 California Constitutions. They also argued that it is "an unreasonable, vague, and
6 overbroad parole condition that infringes on various federal and state constitutional
7 rights including their privacy rights, property rights, right to intrastate travel, and
8 substantive due process rights under the federal constitution." (*In re E.J. supra*,
9 at 1264.) While the Supreme Court ruled against petitioners on the retroactivity and ex
10 post facto issues, it did not decide the remaining claims. Calling them "as applied"
11 challenges, the court remanded the remaining issues to the trial courts to hold
12 evidentiary hearings that could establish a factual basis for rulings. Two of the
13 petitioners in that case (J.S., S157633, and K.T., S157634) were parolees from San
14 Diego and were remanded to this court for further proceedings.

15 As the news of the issues in *E.J.* spread among parolees in San Diego County,
16 additional parolees began filing petitions for relief making the same allegations and
17 requesting temporary stays of the enforcement of section 3003.5(a) pending final
18 disposition, such as had been granted by the Supreme Court to petitioners in *E.J.* The
19 San Diego County Public Defender assumed responsibility for all indigent petitioners
20 raising these issues and the Attorney General has been counsel for respondent
21 Matthew Cate, Secretary of the California Department of Corrections and Rehabilitation.
22 All of these related cases have been assigned to a single judge for coordinated
23 resolution.

24 On May 12, 2010, an agreement was reached between the parties for the
25 management of these cases. The two cases actually remanded from the Supreme
26 Court (*In re J.S.*, S157633, and *In re K.T.*, S157634) had become moot by virtue of the
27 petitioners having been discharged from parole. Those petitions were dismissed on the
28 petitioners' motion. The present four cases were selected to be the "lead" cases and to

1 be the subjects of an evidentiary hearing addressing the issues left unanswered in *E.J.*
2 Orders to Show Cause were issued for each of the four lead cases and it was agreed
3 that all other petitions raising these issues would be stayed pending hearing and
4 decision on the lead cases. Understanding that the purpose of the lead cases was to
5 establish a factual basis for ruling on these issues, it was also agreed that the record
6 created by the lead cases would be admissible as to all of the stayed cases, augmented
7 by whatever additional relevant evidence may be offered when they are heard.

8 With regard to the requests for emergency injunctive relief from the application of
9 section 3003.5(b), it was agreed that the court would rule *ex parte* on the applications
10 as they were filed, with Respondent having the opportunity, within two weeks of any
11 such order, to object and set the matter for hearing. As of the time of the evidentiary
12 hearing in these cases, it was stipulated that the court has granted stays in 132 pending
13 cases. Injunctive relief has been denied in a handful of cases where the showing was
14 deemed inadequate. A request for a countywide blanket stay of the application of
15 section 3003.5(b) was heard and denied by this court on December 17, 2010.

16 II. FINDINGS OF FACT

17 Evidentiary hearings were conducted on these lead cases over eight days
18 between January 25, 2011, and February 3, 2011. The principal objectives of the
19 hearings were the issues set out by the California Supreme Court in *In re E.J.*, that is (1)
20 the current parole status of each petitioner, (2) each petitioner's current residence and
21 its proximity to any "school" or "park where children regularly gather," (3) a factual
22 assessment of the housing available to registered sex offender parolees in San Diego
23 County, (4) an assessment of the way the 2000 foot residency restriction is being
24 enforced in San Diego County, and (5) a complete record of the protocol CDCR is
25 currently following to enforce the residency restriction in San Diego County.

26 A. The Status of the Lead Petitioners

27 With the exception of Stephen Todd, each petitioner is currently on parole. Mr.
28 Todd has been returned to prison for a new drug conviction. However, in light of the

1 original agreement to hear all four cases as a representative range of cases, the parties
2 have agreed that his petition should not be dismissed as moot. The court has agreed to
3 accept evidence and rule in his case along with the others.

4 All petitioners had temporary injunctions granted, temporarily barring the
5 application of section 3003.5(b) against them. Each has secured housing. According to
6 the uncontradicted evidence, their status is as follows.

7 Petitioner Briley is on parole after being convicted of failing to register as a sex
8 offender. She is required to register as a result of her 1988 conviction under Penal
9 Code section 288(a), a crime committed in her own home against her natural daughter.
10 She has been convicted of no additional sex offenses of any kind since then. On
11 release from prison and subject to the residency restriction, she was homeless for
12 approximately a year and a half, sleeping in the alley behind the parole office.
13 Opportunities to live with her sister or in a women's shelter were denied her as
14 noncompliant with the housing restriction. Fifteen to twenty others slept in the alley with
15 her, plus approximately fifteen others sleeping in their cars nearby. She is 53 years old,
16 has hepatitis C, high blood pressure, thyroid problems and osteoarthritis which is
17 exacerbated by exposure to the cold. She was granted a temporary injunction in
18 July 2009, but for financial reasons was unable to find housing, even in a noncompliant
19 location, until November 2010. She now lives in a recreational vehicle in a
20 noncompliant location in return for five hours of work each week. She currently has two
21 other part-time jobs which pay her approximately \$250 a month in total.

22 Petitioner Glynn is on parole following his conviction in a theft related case. He
23 has been in and out of county jail and state prison since 1997 on a variety of theft, drug
24 and Vehicle Code violations. He is required to register as a sex offender because of
25 his 1989 conviction of misdemeanor sexual battery committed against an adult woman
26 he was dating at the time. At the time of his plea to that charge, it did not carry a
27 requirement that he register as a sex offender, but later revisions to the Penal Code
28 applied the requirement to him. He has been convicted of no other sexual offenses of

1 any kind. He had been paroled several times before the passage of Jessica's Law
2 without any residential restrictions, but when he was paroled in 1988, the 2000 foot
3 restriction of section 3003.5(b) was imposed. He has been married for twelve years and
4 has three children. He intended to return to his family, but the family apartment was
5 noncompliant. Unwilling to move his children to a new school or his wife from proximity
6 to her job and parents, and unable to find compliant housing in the area, he bought a
7 van and lived in it as a transient. He applied for and obtained a temporary injunction
8 against the housing restriction in December 2009. Unfortunately, this was just a week
9 after he committed a burglary that ultimately sent him back to prison. Paroled again in
10 August 2010, and by virtue of the previously issued injunction, he is now living with his
11 wife and children in their noncompliant apartment.

12 Petitioner Taylor is on parole following his conviction for failing to register as a
13 sex offender. He is required to register as a sex offender by virtue of his 1991
14 conviction in Arizona of kidnapping for the purpose of sexual assault in an incident
15 involving an adult woman. He has never been convicted of a sex crime involving
16 children. He suffers from a long list of medical and psychiatric conditions: AIDS, throat
17 cancer, paranoid schizophrenia, scleroderma, peripheral neuropathy, type 1 diabetes,
18 chronic hypertension, sciatica, a torn anterior cruciate ligament, kidney stones,
19 glaucoma and sleep apnea. He has had three strokes and one heart attack. He has no
20 ability to pay for housing. He had intended to live with his nephew, whose wife is a
21 health care professional. He was invited to do so by them, but their home is
22 noncompliant. For a month, he slept outside near the parole office in a place pointed
23 out to him by his parole officer, but he was arrested for cocaine use and sent back to
24 prison. He has been addicted to cocaine for ten years. Re-released on parole, he
25 gained admission to a drug treatment program known as the Etheridge Center which is
26 affiliated with a respected AIDS clinic. It was noncompliant, but he was allowed to stay
27 there pending his effort to get a waiver of the 2000 foot restriction. His request for a
28 waiver was denied and he was ordered to vacate the Etheridge Center. He then

1 obtained an injunction from this court allowing him to stay, but was then suspended by
2 the Etheridge Center and returned to prison. Paroled again, he was placed in a
3 boarding house in the city of Vista in northern San Diego County, paid for by CDCR.
4 That location was three hours or more by bus from the parole office and outpatient clinic
5 he must attend, as well as other essential locations, such as the clinic that has agreed
6 to provide his medical care. In the Vista facility, he collapsed twice and was
7 hospitalized. While in the intensive care unit of the hospital, he was warned that,
8 pursuant to section 290, he would have to change his registered address to the hospital
9 within five days or he would be revoked and returned to prison. Ultimately he was
10 returned to prison, in part for failing to re-register at the hospital and in part for
11 possession of drug paraphernalia. On re-release on parole, petitioner is now in a
12 compliant hotel, paid for by CDCR for 60 days. At the end of that period he will be
13 homeless.

14 Petitioner Todd is in prison on a drug conviction. He has been in and out of
15 prison since 1981. He must register as a sex offender as a result of a Juvenile Court
16 true finding when he was fifteen years old that he violated Penal Code section 288(a)
17 with his ten-year-old sister. At the time he committed the crime, the law required him to
18 register only until his twenty-fifth birthday, but the law was subsequently changed to
19 require lifetime registration. He is now forty-four years old and has not been convicted
20 of any other sex crimes of any kind. He has been diagnosed with bipolar disorder since
21 he was fifteen years old. He is also diabetic and subject to seizures which are worse
22 when he is homeless. During previous periods on parole and subject to the 2000 foot
23 residency restriction, petitioner was unable to find compliant housing and, on the
24 suggestion of his parole agent, lived in the San Diego river bed, earning money
25 "illegally." He has had spinal surgery as a consequence of injuries twice. After one of
26 these operations, following release from the hospital, he received financial assistance
27 from DAPO allowing him to spend 10 nights in a hotel. He subsequently obtained a
28 temporary injunction from this court allowing him to live in noncompliant housing, but his

1 parole was revoked and he was returned to prison before he could move into available
2 housing. When released on parole again, he moved in with a friend in noncompliant
3 housing, during which time he went to school and stayed drug-free for an extended
4 period – until being convicted for his current drug offense.

6 **B. Compliant Housing Available to Petitioners in San Diego County**

7 At the heart of the constitutional claims in this case is the argument that
8 section 3003.5(b) is constitutionally unreasonable as a parole condition because it
9 reduces the supply of available housing to the point that it is practically impossible for
10 parolees to find. It is argued that this forces parolees into homelessness under
11 circumstances which are the practical equivalent of banishment, in violation of various
12 state and federal constitutional rights. As will be seen, getting a precise picture of San
13 Diego County's inventory of housing available to parolees required to register under
14 section 290 is not an easy proposition.

15 Petitioners have employed multiple strategies in attempting to paint a realistic
16 picture of the housing market available to parolees. While each individual method is
17 subject to criticism that it is imprecise in several specific ways, the court is satisfied that
18 when all are viewed together, a reasonably accurate approximation of the relevant
19 housing market can be seen.

20 The first method employed was to create an extraordinarily detailed map with the
21 intention of tracking the impact of the exclusion zones on available housing. The map,
22 which was admitted into evidence as Exhibit 4², is in a book format which, at least
23 superficially, looks like the ubiquitous Thomas Brothers maps widely available
24 throughout California. The map covers all of San Diego County in 288 pages and has
25 an extensive index. It was prepared under the supervision of Julie Wartell, a contract
26 crime analyst for the County of San Diego, who worked cooperatively with both the San

27
28 ² Unless otherwise specified, references to exhibits in this opinion refer to exhibits marked during the
evidentiary hearing in this case, not to exhibits attached to the various pleadings.

1 Diego District Attorney's office and the San Diego Public Defender's office in an attempt
2 to provide evidence of the housing available outside the exclusion zones of
3 section 3003.5(b). This is a project she has worked on since 2006 and has updated for
4 the present litigation with the assistance of two analysts from the County Department of
5 Planning and Land Use (see Exhibits 2 and 3).

6 The map graphically shows 2000 foot circles drawn around each identifiable
7 school or park and shades the areas within those circles. It also shows land parcels
8 based on tax assessor records and distinguishes between residential and nonresidential
9 as well as between single family and multi-family parcels. Among multi-family parcels, it
10 distinguishes between parcels on the basis of how many individual units are authorized
11 in an individual parcel.

12 The project runs into unavoidable complications at the outset regarding the
13 definitions of "public or private school" and "park where children regularly gather."
14 Neither the statute nor CDCR has provided a definition for either of those broad
15 phrases. Working definitions were adopted for purposes of the map. "Public or private
16 school" was defined as any kindergarten through twelfth grade school, as identified by
17 data from the California Department of Education. "Park where children regularly
18 gather" was defined as any "active use" park. This definition arises from the San Diego
19 County Code section 810.102(a)³ and, like the chosen definition of "school," it is
20 amenable to mapping through the County Geographic Information Systems. This
21 definition does not include such large locations as the beaches, Legoland, the San
22 Diego Zoo or Sea World. It is unclear whether they would be included by DAPO

23
24
25 ³ San Diego County Code section 810.102(a) provides "Active Recreational Uses' means recreation
26 facilities occurring on level or gently sloping land (maximum 10%) restricted for park and recreation
27 purposes in a planned development which are designed to provide individual or group activities of an
28 active nature common to local parks in San Diego County, including, but not limited to, open lawn, sports
fields, court games, swimming pools, children's play areas, picnic areas, recreation buildings, dance
slabs, and recreational community gardening. Active Recreational Uses do not include natural open
space, nature study areas, open space for buffer areas, steep slopes, golf courses, riding and hiking
trails, scenic overlooks, water courses, drainage areas, water bodies (lakes, ponds, reservoirs), marinas
and boating areas, parking areas, and archaeology areas."

1 practice. The relevant statute is silent. Including such locations would, obviously,
2 increase the reach of the exclusion zones.

3 An additional layer of imprecision is imposed in defining the location of potential
4 residences. DAPO measures from the school or park to the entrance door of a
5 residence. The mapping system cannot locate the front door of a residence, only the
6 outside of the parcel. Thus the map shows, as excluded, parcels whose boundaries
7 enter the exclusion zone, even if the front door is outside the exclusion zone.

8 Finally, the number and location of schools or parks is not a static matter.
9 Schools and parks can be added or closed. (See, e.g., Exhibit 6) Notwithstanding these
10 potential uncertainties, the map appears to be the most accurate assessment of
11 housing reasonably available.

12 While the bulk of the map is rich in close-up detail, it is the first several pages
13 that present the most striking impression of the impact of the exclusion zones. These
14 pages depict broad overviews of large areas of San Diego County with the 2000 foot
15 exclusion circles still visible. These pages graphically show huge swaths of urban and
16 suburban San Diego, including virtually all of the downtown area, completely consumed
17 by the restrictions.

18 From the detail captured by the map, Ms. Wartell then extracted numerical data
19 regarding how many and what kinds of parcels exist outside the exclusion zones. Once
20 again, some caution is required. While it is possible to count parcels in compliant
21 zones, and to tell how many units are authorized for those parcels, the data does not
22 show how many individual living units are actually constructed in a particular parcel. A
23 given parcel could contain anywhere from zero to sixty individual living units or more.

24 Acknowledging these limitations, Ms. Wartell prepared a chart which was
25 received in evidence as Exhibit 1. The chart purports to capture several details both
26 community by community and in total for the entire county. It shows (1) the total
27 number of tax assessor parcels for each locale, (2) the number that are considered
28 "residential," (3) the number of "residential" parcels outside the exclusion zones and

1 (4) the number of "residential" parcels considered "multi-family"⁴ that are outside the
2 exclusion zones. From these numbers, it was possible to determine the percentage of
3 "residential" parcels which were outside the exclusion zones (24.5%) and the
4 percentage of "residential multi-family" parcels which are outside the exclusion
5 zones (2.9%).⁵

6 Petitioner argues that parolees subject to registration under Penal Code
7 section 290 are overwhelmingly indigent, difficult to employ, and burdened by conditions
8 of parole that further interfere with employability. The testimony of petitioners, parole
9 agents, local police officials, and DAPO staff at this hearing largely supports that
10 generalization. From this conclusion, petitioner argues that such parolees are only
11 rarely candidates to buy or rent single family homes. If they are to find housing, it is
12 most likely to be in apartments or low-cost residential hotels. The testimony of Parole
13 Agents Ruben Hernandez and Maria Dominguez, as well as that of San Diego Police
14 Detective James Ryan persuasively supports this conclusion. It is also supported by
15 the testimony of Jack Chamberlin and Michael Feer who provide treatment for sex
16 offenders on parole, almost all of whom are required to register under section 290.

17 This evidence leads the court to conclude that a parolee required to register
18 under section 290 is, by virtue of the residency restriction alone, barred from access to
19 approximately 97% of the existing rental property that would otherwise be available to
20 him.

21
22
23 ⁴ "Multi-Family" parcels include apartments, condominiums, mobile home parks, and retirement/
independent living facilities.

24 ⁵ At the end of the hearing, Ms. Wartell was recalled to the stand by respondent to testify to a reworking of
25 this chart using land use files instead of tax assessor files. The differences in percentages were mixed
26 and small. Using land use data the percentage of "residential" parcels outside the exclusion zones
27 became 25% (rather than 24.5%) and the percentage of residential "multi-family" parcels became 0.7%
28 (instead of 2.9%). (Exhibit 33.) After the close of evidence, Petitioners filed a written request to submit a
third version of the chart based on a new reworking of the data by Ms. Wartell. A copy of the proposed
new chart is attached to the request. Respondent has filed a written objection. Both sides have rested,
and the figures in the new chart are insignificantly different than those in the first two charts and do not
justify reopening the evidence. The request is denied.

1 This does not mean that the 3 percent outside the exclusion zones are actually
2 available to parolees subject to section 3003.5(b). Another line of evidence presented
3 by petitioners attempts to show, from practical experience, what barriers face parolees
4 attempting to locate compliant housing. Using investigators from the Public Defender's
5 Office and volunteer professors from a local university, petitioners attempted to recreate
6 the process of searching for compliant housing that could actually be rented by a
7 parolee sex offender registrant.

8 Aron Hershkowitz, an investigator for the San Diego County Public Defender's
9 Office, working with other investigators, began the practical exercise by using the map
10 (Exhibit 4) and the internet to target a reasonable segment of potential housing for
11 further investigation. Each investigator involved took a portion of the map. The exercise
12 began by locating compliant multi-family parcels which could contain five or more units
13 each. Parcels which could contain less than five units were excluded as a way to keep
14 the project reasonably manageable, and 278 parcels were identified this way. Then, by
15 seeking information about the parcels on the internet, he excluded properties with rents
16 higher than \$850⁶ a month and properties that required criminal background or credit
17 checks. Hershkowitz spent approximately 70 hours on his portion of the work and
18 doubts he could have completed it without the map and access to the internet. His
19 group's data was then turned over to others to take the search to the streets.

20 Dr. Thomas Green, a professor at National University with a background in
21 criminal justice, along with a colleague, Dr. Kelso, continued the project from there. To
22 get to a manageable number, they pared Hershkowitz's list down to include only parcels
23 with 16 units or more, with rent of \$850 a month or less, no criminal background check
24 and a required deposit of less than one month's rent plus \$500. This resulted in a list
25 of 61 parcels. At that point, Green and Kelso split the list between them and took to the
26 phones and to the street in pursuit of actual available rentals. Green alone spent 25

27
28 ⁶ \$850 a month was chosen as a cutoff because it reflects the average Social Security income for
parolees receiving such income, according to Dr. Thomas Green and Michael Feer.

1 to 30 hours on the phone inquiring about these rentals and about 60 hours driving to
2 them. He drove hundreds of miles in this search.

3 Of the 61 locations Green and Kelso started with, they were able to make actual
4 contact with only 45. Green often found no building of any kind on arrival at the target
5 parcel. The rest simply would not answer or return calls. To the 45, three were added
6 when they were discovered while pursuing other rentals. Of that total of 48, many flatly
7 refused to rent to sex offenders. Only two were in the target price range and required
8 no criminal background check. Three others in the target price range required a
9 criminal background check, but did not automatically exclude parolees. However, of
10 these five possible rentals, not a single one actually had a unit vacant and available to
11 rent.

12 Thus, a team of investigators and a pair of university professors who spent
13 literally hundreds of hours looking for housing actually available to parolee registered
14 sex offenders came up empty handed. While this certainly doesn't prove there is no
15 compliant housing, it makes the task facing any recently released parolee look quite
16 daunting.

17 It also provides a deeper understanding of the statistics Julie Wartell came up
18 with in Exhibit 1. According to that chart, 2.9 %⁷ of the residential multi-family parcels
19 are compliant with section 3003.5(b). However, as previously noted, that does not
20 mean that 2.9% are actually available for rent.

21 David Estrella, Director of the County Department of Housing and Community
22 Development testified that San Diego County's vacancy rate for rental housing generally
23 runs at approximately 5-8%. These figures apply to low cost "affordable" housing as
24 well. He testified that the demand for low cost housing in San Diego has more than
25 doubled in recent years. Thus, of the 2.9% of multi-family parcels shown to be
26 compliant in Exhibit 1, only 5-8% of that number can be expected to be actually

27 ⁷ Or 0.7 % based on the land use data in Exhibit 33.
28

1 available for rent. Then, of that reduced number, the experiences of Aron Hershkowitz
2 and Dr. Green suggest a significant number will be too expensive, or managed by
3 persons unwilling to rent to parolees who are registered sex offenders.

4 5 **C. CDCR'S PROTOCOL FOR ENFORCING SECTION 3003.5(b)**

6 The official protocol for enforcing the residency restrictions of section 3003.5(b)
7 resides largely in a series of policies issued by CDCR and DAPO between August 2007
8 and January 2011.⁸ In addition to these policies, Title 15 of the California Code of
9 Regulations, section 2616(a)(15), was revised to make any violation of the
10 section 3003.5(b) residency restriction a mandatorily reportable parole violation. The
11 written policies reflect an evolving approach toward management of the restrictions.

12 Policy No. 07-36, issued August 17, 2007, as subsequently modified by Policy
13 Nos. 07-48, 08-35, 09-11 and 11-01, set out the heart of the official policies. As they
14 exist at the time of this hearing, they provide as follows: The 2000 foot residency
15 restriction applies to all parolees required to register pursuant to section 290 who were
16 released on parole on or after November 8, 2006, the effective date of Jessica's Law.
17 (Policy No. 07-36.) The responsibility for locating and maintaining compliant housing is
18 placed on the parolee. (Policy No. 07-36.) The condition of parole implementing the
19 residential restriction is to be included in a pre-parole packet given to the parolee prior
20 to release from custody. (Policy No. 07-48.) At the parolee's initial interview with his
21 parole agent, the parolee is required to identify his intended residence. This is to occur
22 within one day of his release. He is not allowed to move into that residence until it has
23 been verified by the parole agent with a portable GPS device. The parole agent is
24 allowed six working days to conduct the verification. If the residence is noncompliant,
25 the parolee must immediately either provide a compliant address or declare himself

26
27 ⁸ Received as Exhibit 24 is a complete set of the relevant policies; 07-36, 07-48, 08-14, 08-35, 09-01, 09-
28 01a, 09-11, 10-21, and 11-01. Section 3003.5(b) is not the only residency restriction for some sex
offenders. Therefore, the policies also address the requirements, both legal and administrative, for
parolees under other restrictions such as that in section 3003(g).

1 transient. If the parolee remains in noncompliant housing, he must be immediately
2 arrested and reported for a parole violation. (Policy No. 07-48.)

3 "Transient" and "residence" have been defined by Policy No 07-36 as modified by
4 Policies No. 08-35 and 09-11. "Transient" is defined as a registered sex offender
5 parolee "who has no residence." "Residence" is defined as an "address" where a
6 person "regularly resides" and can include traditional homes, apartments, hotels and
7 shelters as well as "recreational and other vehicles."⁹ Policy No. 09-11 defines
8 "regularly" (as in "regularly resides") at some substantial length. This is a matter of
9 considerable concern since a transient parolee who "regularly resides" at an "address"
10 is in violation of parole and must be arrested and reported. While the definition of
11 "regularly" in Policy No. 09-11 is very broad, there are four exceptions made. The
12 parolee may be in a residence for as long as it takes to charge his GPS device, but no
13 more than two hours "per charging occurrence."¹⁰ The parolee is also allowed to be in a
14 "residence" for the purpose of approved employment, conducting legitimate business, or
15 obtaining care and treatment from licensed providers.

16 It is interesting to note that a "residence" may not be within 2000 feet of a school
17 or park, but the location where a transient sets up camp may be. This is because, as a
18 matter of definition, the parolee's encampment is not a "residence" barred by
19 section 3003.5(b). (Policy No. 09-11.) The parole agent, of course, retains his
20 traditional authority to control and restrict such proximity with a special condition of
21 parole. (Policy No. 09-11.)

22 Although there is no such express authorization in section 3003.5(b), CDCR has
23 set up a process for parolees to apply for and receive waivers of the residency
24 restriction. These are limited to situations where the parolee is mentally ill and is
25 housed in a licensed mental health facility or where the parolee is in need of medical

26 _____
27 ⁹ The definitions of "transient" and "residence" are derived from Penal Code section 290.011(g).

28 ¹⁰ According to the testimony of petitioner Glynn and Agent Guerrero, this allows the parolee two two-hour periods a day (one a.m., one p.m.) inside a structure even if it is noncompliant.

1 care in a licensed medical facility with 24-hour care. The process for obtaining such
2 waivers is strict and must be approved by the DAPO Director. (Policy No. 07-36, as
3 amended by Policy No. 11-1.)

4 While it places the responsibility for finding compliant housing on the parolee,
5 Policy 07-36 also assigns a role for the parole authorities in locating compliant housing
6 for sex offender parolees. Specifically, it provides that, "Unit Supervisors (US) or their
7 designee shall utilize all available resources to obtain a current listing of all public and
8 private schools and parks within their communities. Updated information will be made
9 available for PAs [Parole Agents] no less than once a month." It furthermore provides
10 that, "The US shall continue to collaborate with community-based programs and local
11 law enforcement to facilitate the identification of compliant housing for sex offender
12 parolees."

13 Finally, there is an express policy regarding financial assistance for parolees not
14 otherwise able to afford compliant housing. Policies No. 09-10 and 10-21 provide the
15 possibility of financial assistance in cases of immediate need where no other resources
16 are available. Any such assistance is limited to 60 days (absent extenuating
17 circumstances), limited to a maximum of \$1500, and is considered a loan.

18 19 **D. PRACTICAL ENFORCEMENT OF SECTION 3003.5(b) IN SAN DIEGO**

20 The hearing in this case featured testimony from parolees, parole staff, parole
21 agents and a unit supervisor on the issue of how the enforcement of section 3003.5(b)
22 is actually being implemented in San Diego County. That testimony established that, in
23 many respects, the written policies are being followed, but not in all respects.

24 Parole Agent II Manuel Guerrero is the unit supervisor for one of the two San
25 Diego units supervising registered sex offenders on parole. He testified that parolees
26 often get their special condition of parole implementing the residency restriction while in
27 pre-parole status before release from prison. They must then meet with their parole
28 agent within one day of release, where they are given the special conditions if that was

1 not accomplished in prison. While the parolee is informed at this point about a variety of
2 community resources, parole agents are instructed, as a matter of policy, not to provide
3 the parolee with any specific compliant addresses to look at. Instead, there is a large
4 map at the parole office which shows some general areas of possibly compliant
5 housing. He is not sure how it was created, or by whom.¹¹ The process is that the
6 parolee brings in a potential address and the agent then verifies whether it is compliant.
7 This is usually done with a GPS device, though agents have come to be aware of
8 specific addresses that have been proven compliant. If one of those addresses is
9 proposed, the agents may not bother with a GPS check. Agents share information
10 about compliant addresses among themselves, but they do not share it with parolees
11 because of the perceived policy against providing such information.

12 Agent Guerrero testified he was unaware of the requirement in Policy No. 07-36
13 that he (as the unit supervisor) "continue to collaborate with community-based programs
14 and local law enforcement to facilitate the identification of compliant housing for sex
15 offender parolees." He acknowledged that he did not do this. Furthermore, he was
16 unaware of the requirement of Policy No. 07-36 that the unit supervisor or his designee
17 maintain a current listing of local schools and parks and make the updated information
18 available to the parole agents at least monthly. He acknowledged he did not do this,
19 and that his information regarding new parks and schools came informally from his
20 agents based on their experiences.

21 In addition to the policy preventing parole agents from providing specific
22 information about the location of compliant housing, there was evidence of instances in
23 which the parole authorities took affirmative steps to prevent parolees from being given
24 this information. Both Jack Chamberlin and Michael Feer are sex offender treatment
25 providers at parole outpatient clinics. Both testified as to the prevalence of
26 homelessness among the parolees they treat and how significantly homelessness

27
28 ¹¹ Parole Agent Maria Dominguez referred to a map used to show parolees general areas of housing. She said the map had not been updated since 2006.

1 hinders sex offender treatment. Because of this, both made efforts to get information to
2 their parolees about the locations of compliant housing.

3 Mr. Chamberlin became aware that Deputy Public Defender Laura Arnold was
4 involved in the present litigation and had developed information about the location of
5 compliant housing. That information was data that became the map marked as
6 Exhibit 4 in this case. He invited Ms. Arnold to make a presentation to one of his groups
7 on available housing and he intended to invite her to speak to his other sex offender
8 groups. After the first presentation, he was instructed by his supervisor not to do it
9 again.

10 Mr. Feer had been making efforts since 2007 to assist his parolees in finding
11 housing. He used Google Earth, which was on his office computer, to locate compliant
12 areas. In addition to his parolees, he shared this information with parole agents who, he
13 believed, also had Google Earth on their computers. In October of 2010, as part of a
14 systemic change in the CDCR computers, Google Earth was removed from all CDCR
15 computers and he was told only CDCR authorized programs would be allowed on
16 CDCR computers. After that, he got an e-mail from the sex offender supervisor which
17 he understood as instructing him not to help parolees find housing.¹²

18 Testimony was consistent among all witnesses that there is no official or even
19 consistently applied definition of "public or private school" or "park where children
20 regularly gather." Special conditions of parole for several parolees subject to the
21 restriction were introduced into evidence, showing that sometimes "daycare center" was
22 included along with "public or private school," and sometimes it was not. (Exhibit
23 Nos. 17, 19, 20, 21, 22.) Petitioners, parole staff, and parole agents testified they had
24 either no instruction or widely different definitions as to what constituted a school or park

25
26 ¹² The particulars of this e-mail and the circumstances surrounding it are somewhat murky. Mr. Feer
27 testified that he later attempted to re-open and print the e-mail but was unable to because his account
28 had been terminated. He testified that he was subsequently asked to resign. But apparently this was
because of his failure to obtain licensure which CDCR had expected him to obtain, even though he had
been working without it for four and a half years.

1 under the statute. If a parolee disagrees with the parole agent's decision about what is
2 a school or park, he may pursue an administrative appeal of that decision, although they
3 are not specifically advised of that right at the time the determination is made. None of
4 the petitioners in these lead cases raised such an objection at the time proposed
5 properties were found to be noncompliant.

6 Agent Guerrero confirmed that "waivers" of the residence restrictions are
7 possible under the terms of Policy Nos. 07-36 and 11-01 for mentally ill and medically
8 needy parolees in licensed facilities under limited circumstances. He also confirmed
9 that, as demonstrated in the cases of petitioners Taylor and Todd, on a showing of real
10 need and an absence of other resources, DAPO can and sometimes will provide
11 financial assistance for a limited period of time.

12 13 **E. IMPACT ON HOMELESSNESS AMONG AFFECTED PAROLEES**

14 As part of their argument that the residency restriction of section 3003.5(b) is
15 being implemented as an unreasonable and unconstitutional parole condition,
16 petitioners argue that available, affordable and compliant housing is so hard to find that
17 most affected parolees are forced to choose between homelessness and returning to
18 state prison. The parties attempted in several ways to demonstrate the impact of the
19 residency restriction on homelessness among affected parolees.

20 This court took judicial notice of the statistics in a report from the California Sex
21 Offender Management Board dated December 2008 and entitled "Homelessness
22 Among Registered Sex Offenders in California: The Numbers, The Risks and the
23 Response."¹³ It reveals that between June 2007 and August 2008, the number of
24 registered sex offenders registering as transient increased from 2,050 to 3,267, an
25 increase of 60%. But among registered sex offenders who were also parolees, between

26
27 ¹³ This court was asked to take judicial notice of many documents. This court did so in several instances
28 and declined, for legal reasons, to do so in others. So that a complete record could be preserved, all of
the documents the court was requested to take judicial notice of have been made part of the record.
(Exhibit 31.)

1 November 2006 and June 2008, the number registering as transient increased from 88
2 to 1056, an increase of over 800%.

3 Dr. Thomas Tobin testified as an expert witness. Dr. Tobin is a licensed clinical
4 psychologist with a significant history of clinical and research work with sex offenders.
5 Among other associations, he is the current Vice Chair of the California Sex Offender
6 Management Board and has been an invited participant in the Governor's High Risk
7 Sex Offender Task Force. He offered his opinion that since the implementation of the
8 residency restriction, the increase in homelessness among parolees who must register
9 as sex offenders is "staggering." He based that opinion on data from CDCR showing
10 that between September 2007 and September 2010, the number of parolees who must
11 register as sex offenders who register as transient grew from 178 to 1081, an increase
12 of 1236%.

13 These statistics were supported on an anecdotal basis by testimony from parole
14 agents and a police detective. Ruben Hernandez is a parole agent with DAPO. He was
15 assigned to a High Risk Sex Offender caseload from 1999 to 2008, typically supervising
16 forty such parolees at a time. During this time, none of his parolees were homeless.
17 He had all of them living within a 16 block area of downtown San Diego – some of them
18 subsidized with housing funds from DAPO. With the passage of Jessica's Law, he
19 asked to be reassigned to a different caseload because it appeared to him that the High
20 Risk Sex Offender caseload would become largely homeless, significantly undercutting
21 his ability to properly supervise them.

22 Maria Dominguez is also a parole agent, currently managing a sex offender
23 caseload. Before Jessica's Law, she "didn't allow them [sex offender parolees] to live
24 on the street." They lived in residential programs or in hotels downtown where they
25 were much easier to supervise. Now, her parolees live all over the county. Initially,
26 after implementation of the residency restriction, about 45% of her caseload was
27 homeless. That number has shrunk now because of the number of temporary
28 injunctions issued by this court.

1 Manuel Guerrero is a unit supervisor over one of the two San Diego units
2 supervising sex offender parolees. Utilizing CALPAROLE, a statewide parole database
3 used by agents and law enforcement, he prepared a report designed to identify the
4 number of San Diego registered sex offender parolees who are transient versus those
5 who are residing in compliant housing. According to this report (Exhibit 16)¹⁴, there are
6 currently (as of January 28, 2011) 498 registered sex offenders on active parole in San
7 Diego County. Subtracting 16 who are either in local or federal custody or are in
8 Parolee-at-Large status, the number is reduced to 482. Based on various clues in the
9 CALPAROLE report, Agent Guerrero concluded that 165 of the 482 are currently
10 transient. When this number is subtracted, 317 remain.¹⁵ Exactly what this 317
11 represents is not clear, however. If it were not for the number of injunctions temporarily
12 staying the impact of section 3003.5(b) issued by this court over the last eight months, it
13 might roughly show the number of affected parolees in compliant housing. However, as
14 the parties stipulated at the hearing, this court has issued 132 such injunctions. Neither
15 Agent Guerrero nor this court can determine how many of them are still transient and
16 how many are in noncompliant, but authorized, housing.

17 Finally, the court took judicial notice of a CDCR report issued in October 2010 by
18 the Department's Sex Offender Supervision and GPS Monitoring Task Force. (See
19 Exhibit 31, Appendix M.) The Task Force was a multi-disciplinary group of CDCR staff
20 and outside participants created by the Secretary of CDCR for the purpose of making
21 recommendations to the Secretary on a broad range of sex offender topics. One of
22 them was the residence restrictions of section 3003.5(b). The task force reported that
23 between 2007 and 2010 the number of homeless sex offender parolees rose from 88 to
24 over 2100, "an increase of approximately 24 times." The task force expressed alarm at

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26 ¹⁴ Exhibit 16 was redacted to remove any identifying data as to which parolees were counted. At the
27 request of petitioners, an unredacted version was created and marked as Exhibit 16a. It was available to
petitioner's counsel during the hearing and then sealed.

28 ¹⁵ When Agent Guerrero subtracted 165 from 482 he came up with 154. This appears to be a simple
math error.

1 this development. Its findings included, "Homeless sex offenders put the public at risk.
2 These offenders are unstable and more difficult to supervise for a myriad of reasons."
3 The task force also concluded that homelessness weakens the GPS tracking system,
4 making it more difficult to monitor and less effective. Their bottom-line recommendation
5 was that "residence restrictions as set forth in Penal Code section 3003.5(b) should be
6 repealed in favor of targeted residence restrictions."
7

8 III. LEGAL ANALYSIS

9 Petitioners raise a variety of statutory and constitutional issues challenging the
10 validity of section 3003.5(b). Before addressing the issues, it is important to note the
11 context of the challenges. Section 3003.5(b) broadly declares it to be "unlawful" for
12 anyone required to register pursuant to section 290 to "reside" within the identified
13 exclusion zone. CDCR has chosen to make this the subject of a specific condition of
14 parole and to enforce it, in part, by making a violation of it a mandatorily reportable
15 violation of parole. (Title 15, California Code of Regulations, section 2616(a)(15).) As
16 was so in *In re E.J., supra*, what is challenged here is "CDCR's attempts to enforce the
17 new statutory residency restrictions against [them] as a ground for revocation of . . .
18 parole." (*In re E.J., supra*, at 1271, emphasis added.) The Supreme Court in *E.J.*
19 emphasized that the question of "whether section 3003.5(b) also created a separate
20 new misdemeanor offense" was not before the court as there were no allegations or
21 evidence of anyone being separately charged with such an offense. Likewise, and for
22 the same reasons, it is not before this court.
23

24 A. RETROACTIVITY AND EX POST FACTO ISSUES

25 Each petitioner here committed the crimes requiring them to register under
26 section 290 before the enactment of Jessica's Law, and each was paroled (or re-
27 paroled after revocation) following the enactment of Jessica's law. Each has a specific
28 parole condition, coextensive with section 3003.5(b), barring them from residing within

1 the 2000 foot exclusion zone. Each argues that application of section 3003.5(b)'s
2 residency restriction against him or her as a condition of parole violates constitutional
3 proscriptions against ex post facto laws. Petitioners Briley, Glynn and Todd further
4 argue that the residency restriction is being applied retroactively, in violation of Penal
5 Code section 3.

6 Respondent correctly notes that these issues were addressed and rejected by
7 the California Supreme Court in *In re E.J.*, supra, at 1279-1280. There it was ruled that
8 the behavior prohibited by section 3003.5(b) is the act of establishing residence inside
9 an exclusion zone. Since CDCR only prohibits such acts taking place after the effective
10 date of Jessica's Law, such enforcement is neither retroactive under section 3 nor ex
11 post facto in violation of either the state or federal constitutions. The rulings of the
12 Supreme Court are, of course, binding on this court. (*Auto Equity Sales, Inc. v.*
13 *Superior Court* (1962) 57 C2d 450, 455.)

14 Petitioner Glynn raises an ex post facto issue he argues to be distinguishable
15 from the one decided in *In re E.J.* He argues that he did not "take up" or "establish"
16 residency in an exclusion zone after Jessica's Law. Rather, he argues that he and his
17 family lived there before Jessica's Law and that on his parole he only "returned" to what
18 had already been his residence. Whatever may be said for this legal argument, it is
19 unsupported by evidence. At the hearing, petitioner Glynn testified that the City Heights
20 apartment his family lived in at the time of his parole was not the one he had lived in
21 before his imprisonment. Therefore, there is no basis to distinguish his circumstances
22 from those addressed in *In re E.J.*

23 Petitioner Todd also raises an ex post facto issue argued to be distinct from
24 those decided by *In re E.J.* It is his juvenile court true finding from 1981 that now
25 requires him to register under section 290 and therefore be subject to the residency
26 restriction of section 3003.5(b). He argues that in the years since his juvenile
27 adjudication, the requirements of section 290 have grown exponentially, to the point that

28 ///

1 application of those accumulated changes to him must now be seen as "punitive" for ex
2 post facto purposes, especially in light of the fact that section 290 now triggers the
3 application of section 3003.5(b).

4 This issue has been examined previously. *People v. Castellanos* (1999) 21
5 C4th 785, 788, 796 rejected an ex post facto challenge to section 290, finding that
6 statute neither punitive in intent, nor so severe that it must be regarded as punitive.
7 *People v. Allen* (1999) 76 CA4th 999, 1001 specifically examined the application of
8 section 290 retroactively to juvenile adjudications such as the one which qualifies
9 petitioner Todd for a lifetime registration requirement. That case also found the
10 registration requirement not to be "punitive" for constitutional purposes.

11 While it is unquestionable that section 290's requirements are unpleasant and
12 extremely burdensome, it does not appear to this court that the changes to
13 section 290's consequences since the *Castellanos* and *Allen* decisions alter the
14 analyses or conclusions of those cases.

15 All petitioners' retroactivity and ex post facto claims are denied.
16

17 **B. UNREASONABLE PAROLE CONDITIONS**

18 All petitioners argue that the residency restriction of section 3003.5(b), imposed
19 as a parole condition, is unreasonably vague and overbroad and infringes on various
20 state and federal constitutional rights, including their privacy rights, property rights, right
21 to intrastate travel, and their substantive due process rights under the federal
22 constitution.

23 These questions do not arise out of a legal vacuum. In fact they must be
24 considered in the context of a reasonably well-developed set of legal principles, most of
25 which were expressly outlined by our Supreme Court in *In re E.J.*

26 Parolees are not completely free citizens. Parole is a part of their prison
27 sentence, and they remain in the constructive custody of CDCR throughout their parole
28 terms. (Sections 3000(a)(1), 3056; *In re E.J. supra*, at 1282, fn. 9.) As such, CDCR

1 and DAPO have considerable authority to establish and enforce general rules and
2 regulations concerning parole and impose any parole conditions deemed proper.
3 (Sections 3052, 3053; *In re E.J. supra*, at 1282, fn. 10.) Conditions of parole may
4 generally govern a parolee's residence, his associates or living companions, his travel
5 and other aspects of his life. (*In re E.J. supra*, at 1282, fn. 10; *Terhune v. Superior*
6 *Court* (1998) 65 CA4th 864, 874.) Parolees simply have fewer constitutional rights than
7 do ordinary persons. (*Morrissey v. Brewer* (1972) 408 U.S. 471, 482.)

8 Parolees, however, are not totally without rights. The conditions of parole "must
9 be reasonable, since parolees retain constitutional protection against arbitrary and
10 oppressive official action." (*In re E.J. supra*, at 1282, fn. 10; *Terhune v. Superior Court*,
11 *supra*.) Furthermore, California cases have consistently held that a condition of parole
12 or probation will be declared invalid if it forbids conduct which is not illegal in itself and
13 the condition (1) bears no relationship to the crime of which the offender was convicted
14 and (2) is not reasonably related to prevention of future criminality. (*People v. Lent*
15 (1975) 15 C3d 481, 486; *People v. Bauer* (1989) 211 CA3d 937, 942; *People v.*
16 *Dominguez* (1967) 256 Cal.App.2d 623, 627.) These cases are based on a
17 construction of the statutory authorization for such conditions and represent a
18 conclusion that any conditions that cannot meet these standards are simply not
19 authorized by statute. (*People v. Dominguez, supra*.)¹⁶

20 Petitioners' reliance on the *Dominguez/Lent* line of cases encounters fatal
21 problems. First, that test begins with the assumption the conduct prohibited is
22 otherwise legal. But taking up residence within the exclusion zone is made expressly
23 unlawful under the very statute examined here, section 3003.5(b). While it remains
24 unclear whether section 3003.5(b) creates a new crime (see, *In re E.J. supra*, at 1271,
25 fn. 5), whatever kind of proscription it is, the statutory language expressly makes it

26
27 ¹⁶ Throughout this discussion, cases are cited that arise in the context of probation conditions. While the
28 present condition involves a parole condition, the cases have judged parole and probation conditions
using the same standards. (*In re Stevens* (2004) 119 CA4th 1228, 1233-1234.)

1 “unlawful” for a registered sex offender to reside within the exclusion zone. This fact
2 alone seems to make the *Dominguez/Lent* analysis inapplicable here.

3 The remaining two elements of the *Dominguez/Lent* analysis yield mixed results.
4 These elements ask whether the challenged condition bears a relationship to the crimes
5 committed or is reasonably related to future criminality. On these points, petitioners’
6 arguments have substantial appeal as they relate to petitioners Glynn and Taylor, who
7 have never been convicted of a crime involving a child. No evidence is offered to
8 suggest they are any more dangerous to children than any other parolee. But these
9 arguments are of less avail with regard to petitioners Briley and Todd, who did commit
10 sex crimes against children, even though they were isolated incidents and decades ago.

11 Ultimately, whatever may be said of these issues, the *Dominguez/Lent* argument
12 is unavailing for a simple reason. Those cases are interpretations of the statutory
13 authority. When a condition is declared invalid under those cases, it is because it is
14 deemed unauthorized by statute. (*People v. Dominguez*, supra, at 627.) But
15 section 3003.5(b) provides independent and express statutory authority. In the ballot
16 pamphlet for Jessica’s Law, the Legislative Analyst told the voters that a violation of
17 proposed section 3003.5(b) by a registered sex offender parolee would constitute a
18 parole violation. (*In re E.J.*, supra, at 1271.) In light of this, it becomes very difficult to
19 find the residency restriction as a parole condition to be in excess of statutory authority.

20 This, however, is not the end of the analysis. Whatever the result under the
21 *Dominguez/Lent* statutory test, the case law establishes a different analysis under
22 constitutional principles when parole conditions may conflict with fundamental
23 constitutional rights. As the Supreme Court noted in *In re E.J.*, supra, at 1282, fn. 10,
24 “conditions [of parole] must be reasonable, since parolees retain constitutional
25 protection against arbitrary and oppressive official action” (quoting *Terhune v. Superior*
26 *Court*, supra, at 874.) It has been well settled that a more stringent analysis applies if a
27 condition of parole impinges on a constitutionally protected right. (*People v.*
28 *Pointer* (1984) 151 CA3d 1128, 1139; *In re White* (1979) 97 CA3d 141, 146.)

1 It is this analysis that the California Supreme Court has expressly commended to
2 our attention here, observing, "the threshold question common to all of petitioners'
3 remaining as-applied challenges to *section 3003.5(b)* is whether the section, *when*
4 *enforced as a statutory parole condition against registered sex offenders*, constitutes an
5 unreasonable parole condition to the extent it infringes on such parolees' fundamental
6 rights." (*In re E.J.*, *supra*, at 1282, fn. 10, emphasis in original.)

7 This constitutional "reasonableness" analysis has been described in various
8 ways in the cases. "There is an overall requirement of reasonableness in relation to the
9 seriousness of the offense for which a defendant is convicted 'The Constitution, the
10 statute, all case law, demand and authorize only 'reasonable' conditions, not just
11 conditions 'reasonably related' to the crime committed.'" (*White*, *supra*, at 146, quoting
12 *People v. Keller* (1978) 76 CA3d 827, 839-40.) "Careful scrutiny of an unusual and
13 severe probation condition is appropriate." (*White*, *supra*, at 146.) "[W]here a condition
14 of probation impinges upon the exercise of a fundamental right and is challenged on
15 constitutional grounds we must additionally determine whether the condition is
16 impermissibly overbroad." (*People v. Pointer*, *supra*.)

17 This tension between the need to supervise parolees and the desire to protect
18 their reduced constitutional rights from unnecessary intrusion was perhaps best
19 articulated in *In re Babak S.* (1993) 18 CA4th 1077, 1084-1085. There the court
20 concluded that, "in order to survive constitutional scrutiny, such conditions not only must
21 be reasonably related to present or future criminality, but also *must be narrowly drawn*
22 *and specifically tailored to the individual probationer.*" (Emphasis added.)

23 There do appear to be fundamental constitutional rights which are infringed by
24 the residency restriction of section 3003.5(b). The constitutional right to travel has been
25 well established under both the state and federal constitutions. (*Shapiro v. Thompson*
26 (1969) 394 U.S. 618; *In re White*, *supra*, at 148, 149; *People v. Smith* (2007) 152
27 CA4th 1245, 1250.) This constitutional right to travel secures more than just the right to
28 move about the country and to decide where one wishes to reside. It also implies a

1 correlative right to travel within a state. (*In re King* (1970) 3 C3d 226; *In re White*,
2 *supra*.) It has been found to be infringed by conditions which forbid a probationer from
3 entering specific areas of a city. (*In re White, supra*, at 147-151.) It has also been found
4 to be infringed by probation conditions ordering a defendant to move from her home and
5 community. (*People v. Beach* (1983) 147 CA3d 612, 621-623.) In *People v. Bauer*
6 (1989) 211 CA3d 937, a condition of probation gave the probation officer the authority to
7 order defendant to move out of the home he had always shared with his parents. The
8 Court of Appeal found the condition invalid, and "all the more disturbing because it
9 impinges on constitutional entitlements -- the right to travel and freedom of association.
10 Rather than being narrowly tailored to interfere as little as possible with these important
11 rights, the restriction is extremely broad. The condition gives the probation officer the
12 discretionary power, for example, to forbid appellant from living with or near his parents
13 -- that is, the power to banish him." (*People v. Bauer, supra*, at 944.)

14 While section 3003.5(b)'s residency restriction does not order a parolee to move
15 to a foreign country (such as in *In re Babak S., supra*) or to completely stay away from
16 specified areas of a city (such as in *In re White, supra*), it is closely akin to the condition
17 in *People v. Bauer, supra*, which impermissibly authorized banishment of a defendant
18 from his family home.

19 Furthermore, the right to establish a home has been held to be one of the liberty
20 interests protected by the Fourteenth Amendment to the United States Constitution.
21 (*Meyer v. Nebraska* (1923) 262 U.S. 390, 399). Further, the right to privacy under the
22 California Constitution (Article I, section 1) also appears implicated. That right has been
23 held to protect a "diverse range of personal freedoms" (*Robbins v. Superior Court*
24 (1985) 38 C3d 199, 213) including the right to choose the people with whom one lives.
25 (*Robbins, supra*; *City of Santa Barbara v. Adamson* (1980) 27 C3d 123, 130, 134.) In
26 *Robbins v. Superior Court, supra*, the Supreme Court found an infringement on the right
27 to privacy where a person was required to move to a particular location, having to give
28

1 up his home and the ability to choose his associates, in return for "in-kind" benefits from
2 the county.

3 There can be little doubt that these rights are infringed upon by section 3003.5(b)
4 when it is enforced as a parole condition. Petitioner Taylor was paroled with a lengthy
5 list of dire medical conditions. He was invited to, and intended to, make his home with
6 his nephew whose wife is a health care professional. He was denied this opportunity
7 because that home is within an exclusion zone. Taylor became homeless, sleeping in
8 the streets near the parole office where his parole officer had directed him. Petitioner
9 Glynn has been married for twelve years and has three children. On parole he wished
10 to move back in with his family, but the apartment was within an exclusion zone. To live
11 with them would thus require uprooting his children from their schools and his wife from
12 a home convenient to her work and her parents. Unwilling to do this, he ultimately
13 bought a van and lived in it as a transient. Petitioner Briley was denied the opportunity
14 to live with her sister because the home was too close to a school. She was also
15 precluded from living in a local women's shelter and other homeless centers because
16 they were within the exclusion zones. She turned to the streets, sleeping in the alley
17 with numbers of other homeless parolees. These are clearly not isolated instances.
18 Evidence at the hearing showed that homelessness among sex offender parolees has
19 increased at a rate of between 800% and 1200% since the implementation of the
20 residency restrictions.

21 Of course, such infringements on fundamental rights may be perfectly
22 permissible in many circumstances. As previously noted, the constitutional rights of
23 parolees are necessarily limited by the fact they continue to be in the constructive
24 custody of CDCR and are subject to reasonable rules and conditions covering a wide
25 range of topics, including housing and associations. Those conditions may properly
26 limit even fundamental liberty rights; but, as the foregoing cases make clear,
27 interference with such fundamental rights is permissible only to the extent it is
28

1 "reasonable" and is "narrowly drawn and specifically tailored to the individual . . ." (*In re*
2 *Babak S., supra.*)

3 Herein lies the fundamental vice of section 3003.5(b) as a parole condition. It is
4 not narrowly drawn, much less specifically tailored to the individual. It applies as a
5 blanket proscription, blindly applied to all registered sex offenders on parole without
6 consideration of the circumstances or history of the individual case. The evidence in
7 this case provides good examples of the wide range of circumstances to which this
8 residence restriction is currently applied.

9 While the purpose and justification for the restriction is a desire to protect
10 children from sexual predators, it is applied to anyone required to register under
11 section 290, irrespective of any basis to see them as a threat to children. Petitioners
12 Glynn and Taylor have never been convicted of crimes involving children. Glynn must
13 register because of a 1989 misdemeanor conviction of sexual battery on an adult
14 woman he was dating. While his record contains a variety of drug and theft convictions,
15 there is no basis offered to suggest that he is any greater threat to children than any
16 other parolee. But section 3003.5(b) bars the experienced parole officer from giving any
17 consideration to the relative degree of danger the parolee may present. Before
18 Jessica's Law, such tailoring to the circumstances of the case was routine. For
19 example, Glynn has been on parole several times prior to Jessica's law without any
20 residential restrictions. At one point, he was given a condition of parole forbidding
21 contact with children, but his parole agent made an express exception for Glynn's own
22 children and the entire condition was ultimately stricken in an administrative appeal.
23 Taylor must register because of a 1991 Arizona conviction of kidnap for the purposes of
24 sexual assault in an incident involving an adult woman. In the ensuing twenty years he
25 has had many contacts with law enforcement, but not a single one involving sexual
26 misconduct and none involving children. Again there has been no basis offered to
27 support the conclusion that he presents any greater threat to children than any other
28 parolee. Furthermore, his grave medical condition and the availability of a supportive

1 family home for him are factors that would be considered in any decision attempting to
2 narrowly tailor parole conditions to his circumstances.

3 Parole Agents have always had discretion to impose residential restrictions on
4 parolees which were tailored to the supervision needs of the individual case. This
5 discretion worked not just to protect the rights of parolee, but also to maximize the
6 parole agent's ability to supervise the parolee for the protection of the public. Agents
7 Hernandez and Dominguez both testified that before Jessica's Law they supervised sex
8 offenders and exercised control over their housing as needed. They made sure their
9 parolees were in appropriate housing, not on the streets. Indoor housing was chosen,
10 in part based on the human needs of the parolee, but also to support the agent's ability
11 to effectively supervise him. Agent Hernandez emphasized the value of managers,
12 superintendents, and other residents of apartments and long term hotels as "eyes and
13 ears" on the parolee, allowing the agent to keep better track of the parolee than is
14 possible if he lives on the street. Agent Guerrero also agreed that placing such
15 parolees in hotels led to better supervision. These concerns have been echoed by
16 CDCR's Sex Offender Supervision and GPS Monitoring Task Force. (See Exhibit 31,
17 Appendix M.) The rigid application of section 3003.5(b) has removed this ability to tailor
18 the conditions to the demands of the individual case.

19 As applied, the 2000 foot restriction invites anomalies that smack of arbitrariness.
20 For example, testimony established that the restriction zones bar parolees from indoor
21 accommodations in virtually all of downtown San Diego, but they are allowed, as
22 "transients," to sleep in alleys and doorways in that same area. Also, situations will
23 inevitably arise where the parolee has an opportunity to live in a supportive family or
24 rehabilitation environment but is prohibited because the front door is a few feet inside
25 the 2000 foot exclusion zone.¹⁷ This would be even more anomalous given that the
26 parolee could register as transient and live in a tent near a school or park in complete

27
28 ¹⁷ Although no such instances are presented in any of the four lead cases, allegations to this effect have
been made in the growing number of petitions being stayed pending the conclusion of this case.

1 compliance with the residential restriction since the tent is not, by definition, a
2 "residence." (Policy No. 09-11.)

3 These intrusions on fundamental rights are not simply minor inconveniences to
4 parolees. The data derived from the mapping process presented in this case
5 (Exhibits 1, 4, 33) suggests that parolees subject to the residency restriction are legally
6 barred from 97% of the "multi-family" housing most likely to be otherwise available to
7 them. Other data showing that homelessness among sex offender parolees has
8 increased from 800% to 1200% in the wake of Jessica's Law is striking. The evidence
9 in this case shows that the rigid application of the residency restriction results in large
10 groups of parolees having to sleep in alleys and riverbeds, a circumstance that did not
11 exist prior to Jessica's Law. It would be unreasonable not to conclude this is the result
12 of the section 3003.5(b) being applied as a parole condition. The burdens this places
13 on parolees are disruptive in a way that hinders their treatment, jeopardizes their health
14 and undercuts their ability to find and maintain employment, significantly undermining
15 any effort at rehabilitation. They are imposed without any consideration of the degree of
16 restriction justified by the circumstances and history of the individual parolee.

17 For all these reasons, section 3003.5(b) is unconstitutionally "unreasonable"
18 under established case law. This is so because it oppressively infringes on
19 fundamental constitutional rights, causing significant harm without justifying that
20 infringement by narrowly tailoring the intrusion to the needs of the individual case. At
21 least with regard to the four petitioners currently before the court, CDCR and DAPO
22 must cease applying this strict residency restriction as a condition of parole.

23 This does not mean, however, that parolees are constitutionally entitled to live
24 wherever or with whomever they choose. Parole Agents continue to have all the
25 discretion they have always had to regulate where and with whom a parolee lives, as
26 well as all the other aspects of a parolee's life. In the proper case, this may well justify a
27 special condition that has an effect just as restrictive or even more restrictive than
28 section 3003.5(b) provides, but this may only be done, as has always been the case, in

1 consideration of the needs of the specific case and narrowly tailored to those needs.

2 Petitioners further argue section 3003.5(b) is unconstitutionally unreasonable
3 because sex offender research shows that the assumptions underlying Jessica's Law
4 are demonstrably wrong. They offer statistical studies and expert testimony that: sex
5 offenders do not reoffend at a greater rate than other offenders, the overwhelming
6 number of sex offenses are committed by people not previously identified as sex
7 offenders, such crimes are only rarely committed in public places, and they are
8 committed by people already known to the victim rather than strangers. From this it is
9 argued there is no rational relationship between residency restrictions and reduction of
10 sexual victimization of children. The court has received this evidence and included it in
11 the record. However, this argument primarily appears to address the wisdom and
12 efficacy of the legislative choice in section 3003.5(b), a matter the courts are not
13 generally authorized to review. (*Nebbia v. New York* (1934) 291 U.S. 502, 537-538.) In
14 any event, in light of this court's ruling invalidating the residency restriction as a
15 condition of parole on other grounds, this issue appears moot and this court declines to
16 resolve it.

17 C. VOID FOR VAGUENESS

18 In a supplemental petition, petitioners argue that section 3003.5(b) is
19 unconstitutionally vague because the key phrases "public or private school" and "park
20 where children regularly gather" are not adequately defined. The evidence in this case
21 demonstrates that both phrases have been ill-defined or contradictorily defined in the
22 statute and in practice. Indeed, this presented considerable difficulty in the effort to map
23 the exclusion zones in this case.

24 The vagueness doctrine asserts a constitutional demand that the citizens be
25 given adequate notice of what is illegal. (*Lanzetta v. New Jersey* (1939) 306 U.S. 451,
26 453.) Thus, a statute that forbids behavior in language so vague that persons of
27 ordinary intelligence must necessarily guess at its meaning and differ in its application
28

1 "violates the first essential of due process of law." (*Connally v. General Construction Co.*
2 (1926) 269 U.S. 385, 391.) Such laws "impermissibly [delegate] basic policy matters to
3 policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the
4 attendant dangers of arbitrary and discriminatory application." (*Grayned, v. City of*
5 *Rockford* (1972) 408 U.S. 104, 108-109.)

6 However, it has been held that, except in cases involving the First Amendment to
7 the U.S. Constitution, vagueness challenges must be assessed "as applied" in the
8 individual case before the court. (*Cranston v. Richmond* (1985) 40 C3d 755, 764; *U.S.*
9 *v. Mazurie* (1975) 419 U.S. 544, 550.) Therefore, a law will not be voided for
10 vagueness unless it is shown either that the law is vague in the specific circumstances
11 before the court or is "impermissibly vague in all of its applications." (*Hoffman*
12 *Estates v. Flipside, Hoffman Estates* (1982) 455 U.S. 489, 497-498.)

13 While it is true that a great deal of uncertainty is possible about the meaning of
14 the phrases "public or private school" or "park where children regularly gather," that
15 uncertainty has not produced any factual disagreement in the cases before the court.
16 Not one instance is cited where DAPO has found a residence noncompliant because of
17 the location of an ambiguous school or park. The administrative process requires the
18 parolee to get approval prior to moving into a residence. This requirement, if followed,
19 eliminates the possibility of ignorant violation. Further, if there is a dispute, there is an
20 administrative appeal process available to challenge the definition. There is no
21 evidence such a dispute has ever arisen, at least among these petitioners. This makes
22 it impossible to find the language vague as to petitioners here or to find that it is vague
23 in all of its applications.

24 25 **D. THE ADMINISTRATIVE PROCEDURES ACT**

26 Petitioners challenge several of the written policies enacted by CDCR and DAPO
27 intended to implement section 3003.5(b). Specifically, it is argued that Policy
28 Nos. 07-36, 07-48, 08-35 and 09-11 qualify as "regulations" which are invalid for failure

1 to comply with the requirements of the Administrative Procedures Act (APA).
2 (Government Code sections 11340 et seq.) The APA requires agency regulations to be
3 submitted to a process which includes procedural safeguards such as notice to the
4 public, an opportunity for response, and approval by the Office of Administrative Law.
5 Respondent does not allege that these policies have complied with the APA process.
6 Rather, respondent argues they do not constitute "regulations," or are subject to
7 statutory exemptions from the APA process. In any event, respondent argues the
8 question may not be reached in this case because petitioners have not exhausted their
9 administrative remedies.

10 This court does not believe the lack of an administrative appeal in these cases
11 bars the issue now. The court entertains substantial doubt that the exhaustion
12 requirement is applicable to a decision by the head of the agency to enact regulations
13 without going through the APA process. Perhaps the most practical reason for this
14 doubt lies in the exception to the exhaustion requirement that applies when it is a
15 foregone conclusion what the agency's decision would be on the issue. (*In re Strick*
16 (1983) 148 CA3d 906, 911-912.) The challenged policies were issued and signed by
17 the Secretary of CDCR (07-36), the Chief Deputy Secretary of CDCR (07-48), and the
18 Director of DAPO (08-35, 09-11.) The decision to proceed outside the APA process
19 was made at the highest levels and it would be unrealistic to imagine the decision would
20 be overturned by the administrative appeal process. The issue may be raised here.¹⁸

21 The APA defines "regulation" very broadly to include "every rule, regulation,
22 order, or standard of general application or the amendment, supplement or revision of
23 any rule, regulation, order, or standard adopted by any state agency to implement,
24 interpret or make specific the law enforced or administered by it, or to govern its
25

26 ¹⁸ At various points in the briefing process respondent has argued petitioners' challenges have become
27 moot as a result of a policy either being amended by or superseded by another one. While Policy No. 07-
28 48 amended 07-36 it did not supersede it. The court will examine the portions of these policies as they
are now applicable. Policy No. 09-11 superseded 08-35. Therefore, the court will address the issues as
they relate to Policy No. 09-11.

1 procedure." (Government Code section 11342.600.) A regulation subject to the APA
2 has two defining characteristics. First, the agency must intend it to apply generally,
3 rather than in a specific case. Second, the agency must adopt it to implement, interpret,
4 or make specific the law enforced by the agency, or to govern the agency's procedures.
5 (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 C4th 557, 571.) The policies at
6 issue clearly meet these requirements.

7 Respondent, however, argues the policies fall within statutory exceptions to the
8 APA process. The APA does not apply to regulations which relate "only to the internal
9 management of the state agency" or which embody "the only legally tenable
10 interpretation of a provision of law." (Government Code section 11340.9(d)(f).)
11 Application of these exceptions to the challenged policies yields mixed results.

12 Policy No. 07-36, as amended by Policy No. 07-48, clearly attempts to implement
13 section 3003.5(b). Large portions of it can be fairly described as matters relating only to
14 the agency's internal management. However, there are specific portions of these
15 policies that govern specific behavior by parolees and prescribe consequences for
16 failure to comply. For example, Policy No. 07-36 places the responsibility for finding
17 compliant housing on the parolee. It also provides an exception to the housing
18 restriction for parolees with specific mental health or medical needs. Policy Nos. 07-36
19 and 07-48, taken together, establish specific timelines for parolees to find compliant
20 housing, specify methods for determining compliance, and order a return to custody for
21 parolees failing to meet the requirements. They also set specific reporting requirements
22 on parolees who register as transient. These provisions do not relate only to the
23 internal management of the agency and they clearly do not constitute the "only legally
24 tenable interpretation" of section 3003.5(b). To this extent, these provisions are
25 "regulations" and are subject to the APA. Failure to comply with the APA makes them
26 subject to being judicially declared invalid.

27 Policy No. 09-11 (which amends Policy No. 07-36 and supersedes Policy
28 No. 08-35) addresses reporting requirements for parolees registered as transient. It too

1 contains provisions relating to internal management of the agency. Further, the detailed
2 listing of the transient registration requirements under section 290 appears to be a
3 straightforward recounting of those statutory requirements. But this policy also imposes
4 specific requirements on transient sex offender parolees as to the manner and
5 frequency of their reporting to their parole agents. It also defines the words "transient,"
6 "residence," and the phrase "regularly resides" in some detail. These provisions do not
7 relate only to internal management and do not constitute the "only legally tenable
8 interpretation" of the related concepts in section 3003.5(b). To this extent these
9 provisions are "regulations" subject to the APA. Failure to comply with the APA process
10 makes them subject to being judicially declared invalid. (*California Advocates for*
11 *Nursing Home Reform v. Bonta* (2003) 106 CA4th 498, 507.)

12 What order should be entered as a result of these conclusions is less obvious.
13 While all petitioners, at one point or another, were subject to these regulations, it is
14 unclear that any of them are impacted by them now, particularly in light of this court's
15 conclusion invalidating section 3003.5 as a parole condition. Given this ruling, the APA
16 arguments as they relate solely to regulations directly implementing the residency
17 restriction appear moot. However, the arguments relating to the transient reporting
18 requirements of parolees (Policy Nos. 07-36, 09-11) are not moot. Even without
19 section 3003.5(b), it is likely there will be some transient parolees required to register as
20 sex offenders.

21 This court has authority to permit the regulations in question to remain in effect
22 pending the agency's compliance with the APA. (*Morning Star Co. v. State Bd. of*
23 *Equalization* (2006) 38 C4th 324, 341-342.)¹⁹ In order to ensure continuity of
24 supervision, it appears appropriate for the court to allow respondent to continue to
25 utilize the challenged transient reporting policies for a period of 120 days, during which
26

27 ¹⁹ The court notes that the APA itself provides for the interim use of emergency regulations for a period
28 not exceeding 120 days. (Government Code section 11346.1; *California Advocates for Nursing Home*
Reform v. Bonta (2003) 106 CA4th 498, 507.)

1 time they may take the steps necessary to comply with the APA. After 120 days, these
2 policies, to the extent they have been found here to be in violation of the APA, shall be
3 invalid and unenforceable.

4
5 **E. CRUEL AND UNUSUAL PUNISHMENT**

6 Petitioner Taylor argues that in light of the fact he has AIDS, the application of
7 section 3003.5(b) to remove him from the Etheridge Center, a drug rehabilitation center
8 affiliated with a respected AIDS clinic, constitutes cruel and unusual punishment in
9 violation of the Eighth Amendment to the U.S. Constitution. It appears to the court that
10 the passage of time and this court's ruling on the central constitutional issue have
11 rendered this issue moot.

12 The passage of time resulted in an order from the Superior Court on
13 October 2, 2009, allowing petitioner to stay in the Etheridge Center for a specified
14 period. According to Mr. Taylor's testimony at the hearing, before the expiration of that
15 period he was suspended from the Etheridge Center for non-sexually related
16 misconduct. His parole was subsequently revoked. Since then he has been released
17 on parole two more times. The first time he lived at a boarding house in the City of
18 Vista, paid for by CDCR. On his current release, he is living in a motel, also paid for by
19 CDCR on a short-term basis. It is not clear whether he is welcome to return to the
20 Etheridge Center. It appears from his testimony that his current wish is to live with his
21 nephew.

22 This court's ruling, *supra*, regarding the central constitutional issue will have the
23 consequence of giving his parole agent the discretion to allow him to return to the
24 Etheridge Center, if he is still welcome there, or to his nephew's home. Subject to
25 appellate review of this court's decision, section 3003.5(b) does not bar either option.
26 The issue is moot.

27 ///

28 ///

1 THEREFORE:

2 It is ordered that the California Department of Corrections and Rehabilitation and
3 the Division of Adult Parole Operations cease application of Penal Code
4 section 3003.5(b) as a parole condition against the four petitioners in this case.

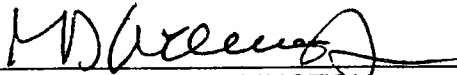
5 The California Department of Corrections and Rehabilitation and the Division of
6 Adult Parole Operations shall have 120 days from the date of this order to continue
7 using the transient reporting regulations present in Policy Nos. 07-36 and 09-11. During
8 that time they may take the steps necessary to comply with the Administrative
9 Procedures Act. After the expiration of that 120 days, the portions of Policy Nos. 07-36
10 and 09-11 identified in this opinion as being subject to the Administrative Procedures
11 Act shall be invalid and unenforceable.

12 A copy of this Order shall be served on the Public Defender and the San Diego
13 Office of the Attorney General.

14 IT IS SO ORDERED.

15
16 Dated: _____

2/18/11

17 
18 MICHAEL D. WELLINGTON
19 Judge of the Superior Court, Ret.
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PROOF OF SERVICE

I, George L. Schraer, declare under penalty of perjury that I am a member of the State Bar of California and not a party to this cause. My business address is 5173 Waring Road, #247, San Diego, California 92120. On January 11, 2012, I served the attached COPIES OF DOCUMENTS OF WHICH APPELLANT HAS ASKED THE COURT TO TAKE JUDICIAL NOTICE by placing true and correct copies in envelopes addressed to

Attorney General
State of California
P. O. Box 85266
San Diego, CA 92186-5266

and by sealing the envelopes and depositing them, with first class postage fully prepaid, in the United States mail at San Diego, California.



GEORGE L. SCHRAER

