SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	AB 514	**Hearing Date:**	June 26, 2018
Author:	Salas		
Version:	June 14, 2018		
Urgency:	No	**Fiscal:**	Yes
Consultant:	GC		

Subject: ***Registered Sex Offenders: Residential Limitations: Day Care Facilities***

HISTORY

Source: Author

Prior Legislation: SB 54 (Runner) – 2015, failed passage in Senate Public Safety
SB 54 (Runner) – 2011, failed passage Senate Public Safety

Support: Unknown

Opposition: American Civil Liberties Union of California; Alliance for Constitutional Sex Offense Laws; California Public Defenders Association; individuals

Assembly Floor Vote: Not relevant

PURPOSE

The purpose of this bill is to prohibit a person who is required to register pursuant to the act from residing within 1,000 feet of a day care center or a family day care home, as defined, if one or more of the victims of the offense for which the person is required to register was 14 years of age or younger at the time the crime was committed.

Existing case law provides that the residency restrictions contained in subdivision (b) of Penal Code section 3003.5 "are unconstitutional as applied across the board to petitioners and similarly situated registered sex offenders on parole in San Diego County." (*In Re Taylor* [2015] 60 Cal. 4th 1019.)

Existing law generally requires persons convicted of enumerated sex offenses to register within five working days of coming into a city or county, with specified law enforcement officials in the city, county or city and county where he or she is domiciled, as specified.[1] (Penal Code § 290.) Registration generally must be updated annually, within five working days of a registrant's

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[1] Penal Code section 290(b) provides: "Every person described in subdivision (c) for the for the period specified in subdivision (d) while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in section 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located."

birthday. (Penal Code § 290.012(a).) In some instances, registration must be updated once every 30 or 90 days, as specified. (Penal Code §§ 290.011, 290.012.)

Existing law provides it "is unlawful for any person for whom registration is required pursuant to the Sex Offender Registration Act to reside within 2,000 feet of any public or private school, or areas of a park where children regularly gather." (Pen. Code § 3003.5 (b).)

Existing law explicitly authorizes municipal jurisdictions to enact local ordinances that further restrict the residency of any person required to register as a sex offender. (Penal Code § 3003.5(c).)

This bill prohibits a person who is required to register pursuant to the act from residing within 1,000 feet of a day care center or a family day care home, as defined, if one or more of the victims of the offense for which the person is required to register was 14 years of age or younger at the time the crime was committed.

COMMENTS

1. Supreme Court Ruling on Residency Restrictions

In March of 2015, the California Supreme Court unanimously ruled that the provisions in state law prohibiting sex offenders from living within 2,000 feet of schools or parks, as applied in San Diego County, are unconstitutional and bear "no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators." (*In Re Taylor* [2015] 60 Cal. 4th 1019). In that case, petitioners pursued habeas corpus relief "by challenging the constitutionality of the residency restrictions as applied to them and other similarly situated registered sex offenders on supervised parole in San Diego County, based on evidence adduced at an eight-day evidentiary hearing ordered by this court." (*Id*. at 1038-39, citation omitted.)

The Court stated in part:

> In this case, however, we need not decide whether rational basis or heightened strict scrutiny review should be invoked in scrutinizing petitioners' constitutional challenges to section 3003.5(b). *As we next explain, we are persuaded that blanket enforcement of the mandatory residency restrictions of Jessica's Law, as applied to registered sex offenders on parole in San Diego County, cannot survive even the more deferential rational basis standard of constitutional review. Such enforcement has imposed harsh and severe restrictions and disabilities on the affected parolees' liberty and privacy rights, however limited, while producing conditions that hamper, rather than foster, efforts to monitor, supervise, and rehabilitate these persons. Accordingly, it bears no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators, and has infringed the affected parolees' basic constitutional right to be free of official action that is unreasonable, arbitrary, and oppressive*. (*In Re Taylor*, supra, 60 Cal.4th at 1038. (emphasis added)

2. Considerations in Light of *In Re Taylor*

As explained in detail above, this bill prohibits a person who is required to register pursuant to the act from residing within 1,000 feet of a day care center or a family day care home, as defined, if one or more of the victims of the offense for which the person is required to register was 14 years of age or younger at the time the crime was committed.

Members may wish to discuss, in light of the decision in the *Taylor* case, the viability of this bill's provisions and how they might work. The *Taylor* decision states in part:

> . . . (W)e agree that section 3003.5(b)'s residency restrictions are unconstitutional as applied across the board to petitioners and similarly situated registered sex offenders on parole in San Diego County. Blanket enforcement of the residency restrictions against these parolees has severely restricted their ability to find housing in compliance with the statute, greatly increased the incidence of homelessness among them, and hindered their access to medical treatment, drug and alcohol dependency services, psychological counseling and other rehabilitative social services available to all parolees, while further hampering the efforts of parole authorities and law enforcement officials to monitor, supervise, and rehabilitate them in the interests of public safety. It thus has infringed their liberty and privacy interests, however limited, while bearing no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators, and has violated their basic constitutional right to be free of unreasonable, arbitrary, and oppressive official action.
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> Nonetheless, as the lower courts made clear, CDCR retains the statutory authority, under provisions in the Penal Code separate from those found in section 3003.5(b), to impose special restrictions on registered sex offenders in the form of discretionary parole conditions, including residency restrictions that may be more or less restrictive than those found in section 3003.5(b), as long as they are based on, and supported by, the particularized circumstances of each individual parolee. (*In re Taylor, supra,* 60 Cal.4th at 1023.)

It appears that the reasoning of *Taylor* now would apply in any jurisdiction seeking to apply a residency restriction on registered sex offenders. Additionally, the reasoning contradict the reasoning for this legislation. As enumerated by the Court, the trial court made a number of findings of fact in the San Diego case:

1) Despite certain imprecisions, the map book prepared by (the) San Diego County crime analyst . . . is the most accurate assessment of housing that is reasonably available to registered sex offender parolees in San Diego County.

2) Registered sex offender parolees are unlikely candidates to rent single-family homes; they are most likely to be housed in apartments or low-cost residential hotels.

3) By virtue of the residency restrictions alone, registered sex offender parolees are effectively barred from access to approximately 97 percent of the existing rental property that would otherwise be available to them.

4) The remaining 3 percent of multifamily rental housing outside the exclusion areas is not necessarily available to registered sex offender parolees for a variety of reasons, including San Diego County's low vacancy rate, high rents, and the unwillingness of some landlords to rent to such persons.

5) In addition to CDCR's policy prohibiting parole agents from supplying registered sex offender parolees with specific information about the location of compliant housing, parole authorities in San Diego County have taken affirmative steps to prevent parole agents from helping parolees find compliant housing.

6) Rigid application of the residency restrictions results in large groups of registered sex offender parolees having to sleep in alleys and riverbeds, a circumstance that did not exist prior to Jessica's Law.

7) The residency restrictions place burdens on registered sex offender parolees that are disruptive in a way that hinders their treatment, jeopardizes their health and undercuts their ability to find and maintain employment, significantly undermining any effort at rehabilitation. (Id. at 1034.)

This bill would prohibit a person who is required to register pursuant to the act from residing within 1,000 feet of a day care center or a family day care home, as defined, if one or more of the victims of the offense for which the person is required to register was 14 years of age or younger at the time the crime was committed.

3. Measuring 1,000 Feet for Purposes of the Residency Restriction

In its January 2008 initial report, the California Sex Offender Management Board noted that some of the terms in the existing residency restrictions are not defined by the initiative, and are not clear:

> Proposition 83 added Section (b) to Penal Code Section 3003.5 which makes it unlawful for any person required to register pursuant to Penal Code Section 290 to live within 2,000 feet of any "public or private school, or park where children regularly gather."
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> 1) The term "park where children regularly gather" is not defined by the initiative.
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>   a) It is unclear if this term refers to the entire grounds of a park (sizeable portions in which children may not routinely gather) or the portion (such as location where a play structure is located) where children are intended to be present.
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>   b) It is unclear how often children need to be present at a park to meet the threshold of the phrase "regularly gather."
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> 2) Proposition 83 does not prescribe a method for determining how to measure the 2,000 residency restriction.

a) It is unclear what physical point on a site should be used to begin measurement. For example, some localities measure from the center-point of a property and some measure from the border edges of the property.

b) It is unclear how the 2,000 foot distance should be measured. Should practitioners determine the distance by roads or routes a car would travel? Should the distance be determined using straight lines or 'as the crow flies'?

This bill would provide that a 1,000 feet is the acceptable distance for a specified registered sex offender to reside from a day care facility or a family day care home.

4. Day Care Facility and Family Day Care Home

Additionally, this bill fails to define what constitutes a day care facility or a family day care. Committee members may wish to discuss what constitutes a family day care home or a day care facility. Furthermore what is the remedy if a sex offender is living in his or her home and his or her neighbor decides to open up a family day care home? Must the sex offender become homeless in order to comply with the provisions of this bill?

5. Argument in Opposition

According to the American Civil Liberties Union of California:

> The American Civil Liberties Union of California regrets to inform you that we oppose your AB 514, which seeks to revive the residency restrictions for people required to register for a sex offense. AB 514 would increase homelessness among people required to register for a sex offense—making it more difficult to manage this population and putting public safety at risk—and would be unconstitutional as applied.
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> AB 514 prohibits a person on parole who is required to register for a sex offense from living in a single-family home with another person also required to register, unless related by blood or marriage or if the dwelling is a residential facility serving six of fewer people. The bill further prohibits individuals required to register, including those no longer on parole, from residing within 2,000 feet of any "public or private school, or park where children regularly gather." Finally, if the person is required to register for an offense in which one or more of the victims was 14 years old or younger, then AB 514 prohibits that person from residing within 1,000 feet of a daycare center.
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> In 2015, the California Supreme Court invalidated the statewide residency requirements for sex offenders as applied to parolees living in San Diego County. (*In re Taylor* (2015) 60 Cal.4th 1019, 1042.) In its analysis, the Supreme Court noted that:
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> . . . . all parolees retain certain basic rights and liberty interests, and enjoy a measure of constitutional protection against the arbitrary, oppressive and unreasonable curtailment of "the core values of unqualified liberty" [citation], even while they remain in the constructive legal custody of state prison authorities until officially discharged from parole.

(*In re Taylor* (2015) 60 Cal.4th 1019, 1042.)
In analyzing the constitutionality of the statewide residency restrictions, the Supreme Court quoted the findings of the California Department of Corrections and Rehabilitations' Sex Offender Supervision and GPS Monitoring Task Force (Task Force), as follows:

The Task Force studied the increased rate of homelessness among paroled sex offenders following the enactment of section 3003.5(b)'s residency restrictions and reported that between 2007 and 2010, the number of homeless sex offender parolees statewide reflected an alarming increase of "approximately 24 times." [Citation.] A specific finding was made that "[h]omeless sex offenders put the public at risk. These offenders are unstable and more difficult to supervise for a myriad of reasons." [Citation.]
(*In re Taylor*, *supra*, 60 Cal.4th at p. 1033.)
The Supreme Court ultimately held that:

Blanket enforcement of the residency restrictions against these parolees has severely restricted their ability to find housing in compliance with the statute, greatly increased the incidence of homelessness among them, and hindered their access to medical treatment, drug and alcohol dependency services, psychological counseling and other rehabilitative social services available to all parolees, while further hampering the efforts of parole authorities and law enforcement officials to monitor, supervise, and rehabilitate them in the interests of public safety. It thus has infringed their liberty and privacy interests, however limited, while bearing no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators, and has violated their basic constitutional right to be free of unreasonable, arbitrary, and oppressive official action.

(*In re Taylor*, *supra*, 60 Cal.4th at p. 1023.)
Although the Supreme Court's ruling only addressed parolees living in San Diego County, the California Department of Corrections and Rehabilitation (CDCR) concluded that the reasoning applies statewide. As a result, the Department no longer enforces the blanket residency restriction but instead makes an individual determination about what residency restrictions, if any, are appropriate for each individual parolee.

AB 514 simply seeks to reinstate these unconstitutional residency restrictions. As stated by the Supreme Court, these restrictions bear no relationship to the state's legitimate interest in protecting public safety because they have the opposite result, pushing people convicted of sex offenses into homelessness and making it more difficult to prevent recidivism. For these reasons, we must oppose AB 514.

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