
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1143 **Hearing Date:** April 24, 2018
Author: Vidak
Version: March 19, 2018
Urgency: No **Fiscal:** No
Consultant: GC

Subject: *Housing Restrictions: Sex Offenders*

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

PURPOSE

The purpose of this bill is to 1) limit the ability of specified registered sex offenders to purchase or rent residential housing within a quarter mile of schools, parks, or child care facilities; 2) require specified sex offenders to disclose to a seller or landlord the fact that he or she is a registered sex offender; 3) authorizes a seller to refuse to sell to a person based on that disclosure, or rescind a prior sales contract with the registered sex offender without penalty; and 4) authorizes a landlord to refuse to rent to a person based on the disclosure that they are a specified registered sex offender, and to evict said registered offender if disclosure is not made after entry into the housing rental agreement.

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 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.)

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."

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).)

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.)

This bill would require a person who is required to register as a sex offender for a conviction involving a victim under 18 years of age, when seeking to purchase or rent a residential housing unit located within a quarter mile of a school, park, or child care facility, as defined, to disclose to the seller or landlord the fact that he or she is a registered sex offender.

This bill would authorize a seller to refuse to sell to a person based on that disclosure, or, if the disclosure is not made or is made after entry into a sales contract, to rescind the sales contract without penalty. The bill would also authorize a landlord to refuse to rent to a person based on that disclosure, or, if the disclosure is not made or is made after entry into a housing rental agreement, to cause the person to be evicted.

COMMENTS

1. Need for This Bill

According to the author:

Crimes which require sex offender registration are spelled out under Jessica’s Law, Megan’s Law, and the Sex Offender Registration Act (Penal Code 290).

Jessica’s Law, which passed with over 70% of the vote in November 2006, among other things, imposed a strict residency restriction on sex offenders by prohibiting them from residing within 2,000 feet (1/3rd mile) of any school or park where children congregate.

Unfortunately, the residency restrictions enacted under Jessica’s Law were deemed “unconstitutionally unreasonable” in the court case *William TAYLOR et al. on Habeas Corpus* (2012).

While the State Supreme Court ruling only applied to San Diego County, the California Department of Corrections and Rehabilitation (CDCR) unfortunately decided that the residency restrictions [PC 3003.5(b)] would not be enforced state-wide. As a result, registered sex offenders may now live across the street, or even next door to any school, day care, or park, even if their crime was committed against a child.

Megan's Law established an online searchable database of all persons required to register with local law enforcement as a sex offender throughout the state. However, Megan's Law prohibits the use of the information contained in their database from being used to screen people for housing or accommodations [PC 290.46 (j)]. The information is made available for the public to know where sex offenders are living, but can't be used by landlords or rental companies to keep sex offenders out of the neighborhood.

Recently, in the City of Hanford, it was discovered that a sex offender, convicted of a crime against a child, had secretly moved in next door to a child care center. The rental home is also located less than 2,000 feet from two separate elementary schools. But, due to CDCR's disregard for residency restrictions, local law enforcement was powerless to require him to move.

Senate Bill 1143 will require registered sex offenders, if their crime was committed against a child 18 years of age or younger, to notify the landlord, management company, or owner of a property prior to leasing or purchasing the property if it is located within 1/4th mile of an existing school, park or licensed child care center.

2. 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)

3. Considerations in Light of *In Re Taylor*

As explained in detail above, this bill would require specified sex offenders to disclose their status as a sex offender when purchasing real property or when leasing a residential rental property. Additionally, the bill would permit sellers and landlords to rescind prior sales contracts and leases with persons who are registered sex offenders.

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.

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 blanket 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 limit the availability of rental property and real estate available to registered sex offenders.

4. Measuring 2,000 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.”

- The term “park where children regularly gather” is not defined by the initiative.
 - 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.
 - It is unclear how often children need to be present at a park to meet the threshold of the phrase “regularly gather.”
- Proposition 83 does not prescribe a method for determining how to measure the 2,000 residency restriction.

- 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.
- 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 quarter mile is the acceptable distance that specified registered sex offenders can purchase or rent property without restriction.

5. Argument in Opposition

According to the Alliance for Constitutional Sex Offense Laws:

As currently written, SB 1143 would reduce public safety as well as invade the privacy of more than 105,000 California citizens who are required to register as sex offenders. In addition, SB 1143 is inconsistent with both the findings of the California Sex Offender Management Board (CASOMB) and academic research. Finally, SB 1143 could overturn an important decision made by the California Supreme Court about two years ago.

SB 1143 would reduce public safety because it could significantly increase the number of homeless sex offenders. There are currently more than 6,000 homeless sex offenders in the State of California and that number would grow if they were required to reveal to potential landlords and homeowners that they are required to register. This requirement would also be a needless invasion of privacy because the status of an individual as a sex offender has no bearing on whether they would be a good tenant and/or good home buyer.

SB 1143 would be inconsistent with a recent report issued by the CASOMB, the legislature’s experts on sex offender policy, which concluded that restricting where a sex offender may reside is “likely to have the unintended effect of increasing the likelihood of sexual re-offense.” SB 1143 is also inconsistent with findings in recent academic reports such as “Hidden Challenges: Sex Offenders Legislated into Homelessness” published by Jill S. Levinson, Ph.D. in 2016. In that report, Dr. Levinson concluded that limitations on where a sex offender may live often hinder the ability of a sex offender to reintegrate successfully.

Finally, SB 1143 could overturn a recent decision by the California Supreme Court which determined that restrictions regarding where a sex offender lives bears no rational relationship to advancing the state’s legitimate goal of protecting children. *In re Taylor*, 60 Cal. 4th 1019 (2015).