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When putting this material together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you want legal advice backed by a guarantee, try to hire a lawyer to address your specific problem. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your institution's law library.

**INFORMATION REGARDING
PROPOSITION 83 AND CHANGES IN SEX OFFENDER LAWS
(09/12/2007)**

The following information addresses common questions about the changes to California law resulting from Proposition 83,¹ which was passed by the voters on November 7, 2006. Proposition 83 changes the laws concerning punishment for sex offenses, the requirements for sex offenders after release from prison, and the rules for civil Sexually Violent Predator (SVP) commitments. If you want information about the general sex offender registration requirements that were in place prior to Proposition 83 (most of which remain unchanged), please write to us and ask for the letter called "Information Regarding Sex Offender Registration Requirements."

1. What does Proposition 83 do?

Proposition 83 changes existing laws in four main ways:

- it increases penalties for certain sex crimes;
- it greatly expands the number of registered sex offenders who are required to wear GPS electronic tracking devices;
- it imposes new restrictions on where registered sex offenders may live;
- it makes more people who are convicted of sex offenses eligible for commitment to a mental hospital as sexually violent predators (SVP's).

These changes are discussed in more detail in other sections of this letter.

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¹ Proposition 83 is also known as "Jessica's Law," the "Sexual Predator Punishment and Control Act," or the "SPPCA."

2. When did Proposition 83 go into effect and does it apply to me?

Proposition 83 presumably went into effect the day after the voters passed it into law, which was November 8, 2006. All of Proposition 83's provisions will apply to anyone who commits a sex crime on or after November 8, 2006.

There is a legal argument that the changes that Proposition 83 makes to the definitions, sentencing provisions, and credit-earning eligibility for some sex crimes should not be applied to people who committed their sex offenses prior to November 8, 2006. This is because the “ex post facto” clauses of the federal and state constitutions prohibit the government from increasing punishment for a crime after the crime was committed.²

Although the provision of Proposition 83 that restricts the areas where sex offenders are allowed to live and requires them to be monitored by a global positioning system (GPS) apply only “prospectively,” it is disputed as to what that means exactly. One federal judge has ruled that these provisions do not apply to people who were both convicted prior to the effective date of the statute (November 8, 2006) and paroled, placed on probation or released from custody prior to that date.³ Another federal judge has agreed with this reasoning and found that Proposition 83 did not apply to a registered sex offender who had completed his sentence and probation many years before.⁴ Both judges rejected the Attorney General’s claim that people released on parole prior to November 8, 2006 could be subjected to the Proposition 83 residency rules if they later move to a new residence that is within 2,000 feet of a school or park.⁵

The CDCR has apparently taken the position that the residency requirements apply to people who were paroled prior to November 8, 2006, but then were later re-incarcerated on parole violations and re-released to parole after that date. However, the CDCR’s position appears to be contrary to one of the federal court decisions and it is unclear whether CDCR’s interpretation will be upheld by the courts.⁶

The Governor has argued that the residency requirements of Proposition 83 apply to

² U.S. Const., art. I, § 10; Ca. Const., art. 1, § 9; see *Miller v. Florida* (1987) 482 U.S. 423; *United States v. Guzman-Bruno* (9th Cir. 1994) 27 F.3d 420; *Lynce v. Mathis* (1997) 519 U.S. 433.

³ *Doe v. Schwarzenegger* (E.D.Cal.) No. S-06-2521, Order filed Feb. 9, 2007.

⁴ *Doe v. Schwarzenegger* (N.D. Cal.) No. C-06-6968, Order filed Feb. 22, 2006.

⁵ *Doe v. Schwarzenegger* (E.D.Cal.) No. S-06-2521, Order filed March 6, 2007; *Doe v. Schwarzenegger* (N.D. Cal.) No. C-06-6968, Order filed Feb. 22, 2006..

⁶ See *Doe v. Schwarzenegger* (N.D. Cal.) No. C-06-6968, Order filed Feb. 22, 2006, pp. 1-2, fn. 1 (“By prospective effect, the court means that the law does not apply to persons convicted prior to the effective date of the statute and who were paroled, given probation, or released from incarceration prior to that date. The court expresses no opinion upon the law's effect as to anyone else.”).

people who were convicted prior to November 8, 2006 but paroled after that date; however, the courts have not yet addressed the issue and this interpretation may be subject to challenge.

There will likely be further court proceedings on these and related issues. We will update this information letter as new information becomes available.

3. What are the changes to the punishment for sex crimes?

Proposition 83 increases the punishment for some sex crimes in several different ways.

Broadened definitions of crimes: For certain crimes, the definition of the crime is broadened, so that more types of conduct will fall within the definition. For example, aggravated sexual assault on a child now includes offenders who are seven years older than the victim, where previously the limit was ten years.⁷

Increased penalties: For other crimes, the penalty is increased. For example, assault with intent to commit certain sex crimes during the course of a burglary now carries a sentence of life without parole, where before it carried a maximum sentence of six years.⁸

Denial of probation: There have always been certain crimes for which the court was prohibited from granting probation. Proposition 83 expands the list of such crimes.⁹

Ineligibility for prison conduct credits: Prison conduct (or “good time”) credits have been eliminated in some cases, such when a person has multiple convictions for lewd and lascivious acts on a child¹⁰ or is considered to be a habitual sexual offender.¹¹

Longer parole periods: The length of time that a person must spend on parole has been extended for certain offenders, such as habitual sexual offenders.¹²

This information letter does not provide a complete list of offenses for which punishment has been increased by Proposition 83. You should check the specific sections of the law in effect at the time of your crime. Also, if your crime was committed before November 8, 2006, the parts of the new law discussed in this section will not apply to you. (See section 2 of this letter.)

⁷ Penal Code § 269(a). This and all following statutory citations are to the law as amended by Proposition 83, effective November 8, 2006.

⁸ Penal Code § 220(b).

⁹ Penal Code § 1203.065(a).

¹⁰ Penal Code § 667.51(d).

¹¹ Penal Code § 667.71(b).

¹² Penal Code § 3000(b).

4. Who must wear a GPS tracking device?

Under Proposition 83, if: (1) you have been convicted of a felony offense that requires you to register as a sex offender,¹³ and (2) you are sentenced to prison, then you must wear a GPS tracking device (usually an ankle bracelet with a small electronic device attached) during your parole, *and for the rest of your life*.¹⁴

Law enforcement agencies have taken varying positions whether this provision applies retroactively and whether you will have to wear the GPS device if you had already served your sentence and been released on parole or if your sex offense crime was committed prior to November 8, 2006.¹⁵ As of February 9, 2007, a federal judge has ruled that the GPS requirement does not apply to persons who were convicted prior to the effective date of the statute and who were paroled, given probation, or released from custody prior to that date.¹⁶ There will likely be further court proceedings on this and related issues.

This provision applies only to people convicted of felonies which require them to register as sex offenders. However, people convicted of misdemeanors, or of felonies which do not require sex-offender registration, may be required to wear GPS tracking devices while they are on parole;¹⁷ this law existed prior to Proposition 83.

The California Department of Correction and Rehabilitation (“CDCR”) can require you to pay to cover the cost of the GPS monitoring. The CDCR can waive these fees if you are unable to pay. The CDCR must also take into account any court-ordered fines, restitution, or other payments that you owe, and give priority to those before requiring you to pay for GPS monitoring.¹⁸

5. What are the restrictions on where registered sex offenders may live?

Proposition 83 provides that no registered sex offender may live within 2,000 feet of a school or park where children regularly gather.¹⁹ This requirement applies to *all* registrants, regardless of whether the underlying offense was a felony or misdemeanor, and regardless of whether it involved children. See Section 2 of this letter for information on retroactive vs. prospective application of the law and to whom this provision applies.

Proposition 83 had no effect on the existing law which provides that certain offenders identified by the CDCR as “high risk” may not live within one half mile (or 2,640 feet) of a

¹³ The offenses for which sex-offender registration is required – are listed in Penal Code § 290(a)(2)(A).

¹⁴ Penal Code § 3004(b).

¹⁵ See Walsh, D., “*Parolee’s Legal Challenge is Second Levied Against New Sexual Predator Law*,” S.F. Daily Journal, Nov. 20, 2006, p. 3.

¹⁶ *Doe v. Schwarzenegger* (E.D.Cal.) No. S-06-2521, Order filed Feb. 9, 2007.

¹⁷ Penal Code §§ 3010-3010.7.

¹⁸ Penal Code § 3004(c).

¹⁹ Penal Code § 3003.5(b).

school.²⁰ However, that prior law applies only to schools, not to parks. Thus, even if you are a high-risk registrant and you were complying with pre-Proposition 83 law, you may not be complying with the new provisions if your home is within 2,000 feet of a park. Also, the CDCR's position is that compliance is determined by the straight-line distance between the primary entrance of the parolee's residence and the exterior boundary of the nearest park or school, not the driving or walking distance between the two points.

In August 2007, the CDCR and BPH began concerted efforts to enforce this law with respect to approximately 2,000 parolees who may be in violation of the Proposition 83 residence requirements.

Parole agents were instructed to confirm CDCR's initial measurement using a handheld GPS (Global Positioning System) device and to serve revised conditions of parole. If the GPS check confirmed a residency violation (too close to a school or park), the parole agents were instructed to serve notices of parole violations giving these parolees a short period of time to comply with the residency rules. The parole agents were given until September 11, 2007 to complete the checking and the service. All of the parolees served were to be referred to the BPH for parole violation hearings. Parole agents were instructed not to arrest the parolee immediately, unless the parole agent or the BPH believed the parolee presented a risk to public safety, or the agent believes that the parolee has committed other parole violations other than living in non-compliant housing.

If the parolee moves within six (6) working days of the notice, the parole agents have been instructed to refrain from writing a violation report, and the revocation process should end. After the sixth working day, the parole agent will have submitted a violation report to the BPH, but the parolee should still normally have 45 days from the notice before the parolee is arrested.

If the parolee moves to compliant housing and satisfies the parole agent that it is compliant within 45 calendar days of the notice, the revocation process should end with no arrest, and a "Continue on Parole" disposition.

Parolees who fail to comply within 45 days are to be arrested by their parole agents and brought to a revocation hearing before the BPH. Based on policy instructions that the BPH management have given their hearing officers, the violations are likely to result in re-incarceration for 10-12 months, eligible for half-time unless the parolee has a commitment offense or other charged conduct that prohibits work incentive credits. Based on the date on which parole officers started serving the notices, on or about August 17, 2007, the first arrests of persons who have not found compliant housing are likely to begin on or about October 1, 2007.

Parole agents and the BPH have been instructed to make an exception for parolees who are mentally ill and housed in a licensed mental health facility or are in need of medical care in a licensed facility. In either case, if the facility has 24-hour supervision, the parole agent has been instructed to get a decision from the Director of the Division of Adult Parole Operations on

²⁰ Penal Code § 3003(g).

whether the parolee may stay in that facility until the continued care there is no longer needed.

For parolees who are in compliant housing after the 45-day notice period, CDCR has instructed parole agents to prohibit the parolee from making any future changes in residence until the parole agent can check the new residence with an handheld GPS (Global Positioning System) device to ensure that the new residence is at least 2,000 feet from the nearest school or park. CDCR is giving the parole agents six working days to verify the new residence. It is important that if you need to move, you must give your parole agent six working days notice of your new address, so that the parole agent can check it.

After the parole agents were to have completed service of the 2,000 parolees thought to be out of compliance by September 11, 2007, parole agents were then to start checking the residences of all PC 290 registrant parolees who had were not served because their housing was assumed to be compliant based on CDCR first rough check using a mapping system. If you were not served in the initial wave, you can expect to be served in the near future with a Modified Condition of Parole Addendum saying that you must not reside or maintain a residence within 2,000 feet of a school or park. The parole agent has been instructed to use the handheld GPS device to measure the distance between the primary entrance of your residence and the exterior boundary of the nearest school or park. The CDCR's policy is unclear, but it appears that if you are in this second wave of checks and are found to live too close to a school or park, you will receive 45 days notice to move, and have revocation procedures started in the same manner that applied to the people in the first wave.

Local cities, towns and counties are permitted to adopt ordinances which impose further restrictions on where you can live.²¹ If you are unsure about whether your residence is in compliance with local law, check with an attorney who is familiar with your community's laws.

6. What are the changes to the laws regarding sexually violent predators?

Some sex offenders who have diagnosed mental disorders may be committed to state mental hospitals at the end of their prison sentences under the Sexually Violent Predators Act.²² Proposition 83 changes some of the rules regarding such "SVP" commitments. SVP commitments are not considered by the courts to be a type of "punishment,"²³ so the new SVP laws will probably be applied to people who committed their crimes before November 7, 2006.

Expanded list of qualifying offenses: Only certain sex offenses qualify a person for an SVP classification. Proposition 83 expands the list of qualifying offenses to include the following: any rape, including spousal rape; penetration with a foreign object; aggravated sexual assault on a child; sodomy; lewd or lascivious acts on a child; oral copulation; continuous sexual abuse of a child; forcible sexual penetration. Felony convictions for kidnapping or assault are

²¹ Penal Code § 3003.5(c).

²² Welfare and Institutions Code § 6600(a)(1).

²³ *Kansas v. Hendricks* (1997) 521 U.S. 346; *Seling v. Young* (2001) 531 U.S. 250; *People v. Hubbart* (2001) 88 Cal.App.4th 1202.

qualifying crimes if committed with the intention of committing any qualifying sex offense.²⁴

In addition, qualifying offenses which were committed when the person was a juvenile, and which resulted in a commitment to the CDCR, Division of Juvenile Justice (previously called the California Youth Authority) can make a person eligible for an SVP commitment.²⁵

Reduction in required number of victims: Prior to Proposition 83, an SVP classification required conviction of qualifying sex offenses against two different victims. Under Proposition 83, only one victim is required.²⁶

Indeterminate commitment: Prior to Proposition 83, an SVP commitment was for no more than two years at a time. At the end of the two-year period, the district attorney would have to file a petition asking the court to extend the commitment, and the court would hear arguments from both sides as to whether it should grant the request. This procedure guaranteed court review of an SVP commitment at least every two years.

Under Proposition 83, an SVP commitment to a mental hospital is indeterminate,²⁷ meaning that it is not for any set length of time. The Department of Mental Health (DMH) must prepare a report each year. A person committed as an SVP may petition the court for release from the mental hospital only if the DMH report indicates that he or she is no longer dangerous to society because of a mental disorder.²⁸

²⁴ Welfare and Institutions Code § 6600(b).

²⁵ Welfare and Institutions Code § 6600(a)(2)(H).

²⁶ Welfare and Institutions Code § 6600(a)(1).

²⁷ Welfare and Institutions Code § 6604.

²⁸ Welfare and Institutions Code § 6605(a) and (b), as amended.