



PRISON LAW OFFICE
General Delivery, San Quentin CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Rebekah Evenson
Steven Fama
Penny Godbold
Alison Hardy
Corene Kendrick
Kelly Knapp
Millard Murphy
Lynn Wu

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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 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 a law library.

**INFORMATION REGARDING
CALIFORNIA'S SEX OFFENDER REGISTRATION, TRACKING,
RESIDENCY AND PUBLIC NOTICE REQUIREMENTS**

(updated May 2015)

This letter addresses common questions about the legal requirements that apply to people who have been convicted of sex offenses and then released on parole or discharged from custody. It includes information about recent developments, especially the March 2015 California Supreme Court decision in *In re Taylor*, which held that the Proposition 83 (Jessica's Law) residency restrictions are unconstitutional as applied in San Diego County, and the California Department of Correction and Rehabilitation's (CDCR's) announcement that it will stop enforcing the Proposition 83 residency restrictions throughout the state (see page 15).

There are four main types of special requirements for sex offenders: (1) they must register with local law enforcement authorities, (2) while on parole they are subject to GPS tracking, (3) they may sometimes be subject to restrictions on where they live (residency), where they can go, and where they can be employed, and (4) information about their identities and where they live may in some cases be disclosed to the public. In addition, the CDCR may place other special conditions of parole on sex offenders.

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REGISTRATION¹

Who has to register as a sex offender?

You will be required to register as a sex offender if you have ever been convicted of any crime listed in Penal Code § 290(c). Penal Code § 290(c) includes a wide range of felony and misdemeanor offenses including forcible sex crimes against adults, most sex crimes involving children, prostitution and child pornography-related crimes, kidnap or assault for the purpose of committing a sex crime, soliciting another person to commit a sex offense, and attempt or conspiracy to commit any of the included crimes.²

You can also be required to register based on convictions for crimes that are *not* listed in § 290(c) if you committed the crime “as a result of sexual compulsion or for purposes of sexual gratification.”³ This determination is made by the judge when you are convicted or sentenced for the crime.⁴

Some groups of people are required to register even if they have not been convicted of a qualifying California sex crime. You will be required to register if you meet any of the following criteria:

- you were adjudicated as a ward of the juvenile court for certain sex offenses and committed to the CDCR Division of Juvenile Justice (DJJ) (formerly the California Youth Authority or CYA) or the equivalent agency in another state;⁵

¹ Information about registration requirements (available in numerous languages) can be found on the Department of Justice website at <http://www.meganslaw.ca.gov>.

² Penal Code § 290 and § 290.003.

³ Penal Code § 290.006.

⁴ Sentencing judges may make discretionary findings and orders requiring defendants to register as sex offenders without violating the constitutional Sixth Amendment right to a jury trial. *People v. Mosley* (2015) 60 Cal.4th 1044.

⁵ Penal Code § 290.008. The list of juvenile offenses for which registration is required is shorter than that which applies to adults or juveniles tried as adults. Compare Penal Code § 290.008(c) with § 290(c) and § 290.006. See also *In re Derrick B.* (2006) 39 Cal.4th 535, 539-540 (court does not have authority to require juvenile to register for offense not listed in registration statute applicable to juveniles, even if offense was committed for sexual gratification). Also, registration is not required if the juvenile was discharged from the CYA for the sex offense before January 1, 1986. Penal Code § 290.008(a).

- you have been found not guilty by reason of insanity of any offense listed in Penal Code § 290(c);⁶
- you have ever been found to be a Mentally Disordered Sex Offender (MDSO) or Sexually Violent Predator (SVP);⁷
- you have been convicted in another state or in a federal or military court of an offense that has the same elements as one of the offenses listed in Penal Code § 290(c).⁸ Also, if you are required to register as a sex offender in another state, you are almost certainly required to register with California law enforcement when you are in California.⁹

When you are sentenced for a sex offense, the court should inform you of your duty to register.¹⁰ If you pled guilty or no contest to a sex offense, you should also have been informed of any registration requirement before you entered your plea.¹¹ In addition, when you are released to the streets, the custody or supervision agency should inform you of your registration requirements.¹² For example, if you are in state prison, your correctional counselor and parole officer should go over the registration requirement as part of informing you about your conditions of parole.

⁶ Penal Code § 290.004.

⁷ Penal Code §§ 290.001, 290.004.

⁸ Penal Code § 290.005.

⁹ See Penal Code §§ 290.002, 290.005(c).

¹⁰ Penal Code § 290.017; but see *Maciel v. Cate* (9th Cir. 2013) 731 F.3d 928 (sex offender subject to mandatory registration requirement even though sentencing judge failed to include it in the oral and written sentencing orders).

¹¹ See *People v. McClellan* (1993) 6 Cal.4th 367, 379-381 (defendant may be allowed to withdraw guilty plea if he was not advised of mandatory registration requirement and would not have entered the plea if he had known of it); *People v. Zaidi* (2007) 147 Cal.App.4th 1470 (same); see also *People v. Olea* (1977) 59 Cal.App.4th 1289, 1298-1299 (discretionary registration requirement may not be imposed after no contest or guilty plea unless the possibility of registration was included in the plea agreement). Any challenge to the plea should be filed as soon as the defendant becomes aware of the registration requirement; otherwise, the challenge may be deemed to be untimely. See *In re Douglas* (2011) 200 Cal.App.4th 236.

¹² Penal Code § 290.017; *Lambert v. California* (1957) 355 U.S. 225, 229-230 (registration provisions violate due process if person has no knowledge of duty to register).

If you are subject to registration, then you must register for the rest of your life, so long as you reside in California.¹³ It does not matter whether you are on or off parole, PCRS or probation or whether you have discharged your criminal term completely. You will also be required to register in California if you are living in another state, but are employed in or doing business in California for more than 14 days in a row or more than 30 days in a year, or if you are attending school full-time or part-time in California.¹⁴

If you are moving out of state, you must tell the local California authorities in the city or county that you are leaving; the notification must be given in person and within 5 working days of your move. After that, you don't need to keep registering in California, so long as you don't spend much time in California.¹⁵ However, you may need to register in your new state because the Federal Sex Offender Registration and Notification Act (SORNA) requires sex offenders to register with local authorities in each location in which they reside, are employed or are going to school. The SORNA registration requirements can last for between 10 years and life, depending on the nature of the sex crime and whether the offender has a clean record after being released from custody.¹⁶ It is a federal crime to live, work, or go to school in another state without complying with the SORNA requirements.¹⁷

¹³ Penal Code §§ 290(b), 290.005.

¹⁴ Penal Code § 290.002.

¹⁵ Penal Code § 290.013; see *People v. Wallace* (2009)176 Cal.App.4th 1088 (overturning convictions for failure to update registration where defendant may have moved out of state, but upholding conviction for failure to provide notice of move).

¹⁶ 42 U.S.C. § 16901 et seq. (effective on July 27, 2006). SORNA has withstood most constitutional challenges. See e.g., *United States v. Shoulder* (9th Cir. 2013)738 F.3d 948 (SORNA does not violate ex post facto or due process clause, and is within the scope of Congress's authority); *United States v. Elkins* (9th Cir. 2012) 683 F.3d 1039 (SORNA does not violate ex post facto clause); *United States v. Richardson* (9th Cir. 2014) 754 F.3d 1143 (OK to delegate authority to Attorney General to determine extent of SORNA's retroactive applicability); *United States v. Cabrera-Gutierrez* (9th Cir. 2013) 756 F.3d 1125 (U.S. Congress has authority under Commerce Clause to enact SORNA); but see *Reynolds v. United States* (2012) __ U.S. __; 132 S. Ct. 975 (sex offenders whose crimes were committed prior to SORNA can't be punished for violations that occurred before U.S. Attorney General issued valid retroactivity rules) and *United States v. Mattix* (9th Cir. 2012) 694 F.3d 1082 (SORNA's effective date for people with pre-SORNA sex offenses is August 1, 2008).

¹⁷ The criminal penalties for moving, working, or going to school out-of-state and knowingly failing to comply with SORNA are in 18 U.S.C. § 2250.

How do I register?

You must register in person with the police department of the city where you live, or with the sheriff's department if you live in an unincorporated area or in a city that has no police department.¹⁸ If you live at more than one address, and your addresses are in different cities or counties, you must register with multiple police or sheriff's departments so that you are registered in all locations.¹⁹ The definition of residence is broad and you can be "residing" at an address for registration purposes even if you are only spending the night there occasionally or staying there on a temporary basis.²⁰ If you are a college student, employed by a college, or living on a college campus, you must also register with the campus police.²¹

You have 5 working days to register after you are released from custody or placed on probation or parole.²² When you register, you will be required to provide all of your current residence addresses.²³ Your fingerprints will be taken. You must also provide the name and address of your employer, the license plate number of any car that you drive regularly, and proof of your residence location, such as an ID with your address, a recent rent or utility bill or receipt, or a bank or official document showing your address.²⁴

You must update your registration every year within 5 working days of your birthday.²⁵ If you have ever been found to be a Sexually Violent Predator(SVP), you also must update your

¹⁸ Penal Code § 290(b).

¹⁹ Penal Code § 290.010.

²⁰ Penal Code § 290.011(g) ("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."); see *People v. Gonzales* (2010) 183 Cal.App.4th 24 (upholding conviction for failing to register as a second "residence" a place where defendant visited about three times a week but did not spend the night); *People v. Williams* (2009) 171 Cal.App.4th 1667, 1672-1673 ("residence" need not be a place which has the potential of becoming a permanent home).

²¹ Penal Code §§ 290(b), 290.009.

²² Penal Code §§ 290(b), 290.015.

²³ Penal Code § 290.010.

²⁴ Penal Code § 290.015.

²⁵ Penal Code § 290.012(a).

registration every 90 days.²⁶ If you change your name, you must notify the police or sheriff within 5 working days of your name change.²⁷

If you move, you must notify, in person, the local authorities about your new address within 5 working days.²⁸ If you are moving to a different city or county, you must notify, in person, *both* the local authorities where you were previously registered and the local authorities in your new city or county.²⁹ If you don't know what your new address will be, then you still have to notify the agency with authority over your old residence that you will be going to a new general location; once you do get a new address, you then have 5 working days to send a registered or certified letter informing the agency of your exact new address.³⁰

If you move out of California, you must notify California authorities in person of your intended destination within 5 working days of the move.³¹ If you are subject to the Federal Sex Offender Registration and Notification Act (SORNA), you must notify the authorities in your new state within 3 working days of your move.³²

If you are on parole, you must also provide your parole officer with proof of registration within 6 working days of your release from prison. The police must provide you with a copy of your registration form free of charge. You must notify your parole officer of any updates or changes to your registration information within 5 working days of the update or change.³³

There are special rules for people who are “transient” because they are homeless or do

²⁶ Penal Code § 290.012(b); *Litmon v. Harris* (2014) 768 F.3d 127 (90-day verification requirement for SVPs does not violate due process or equal protection).

²⁷ Penal Code § 290.014; see *People v. Vincelli* (2005) 132 Cal.App.4th 646 (law requiring registration after name change not unconstitutionally vague).

²⁸ Penal Code § 290.013; see *People v. Armas* (2011) 191 Cal.App.4th 1173 (evidence was sufficient to support defendant's conviction for failing to tell the agency where he initially registered about his move, but insufficient to show that he had failed to register in the area to which he re-located).

²⁹ Penal Code §§ 290(b) and 290.013(a).

³⁰ Penal Code § 290.013(b); *People v. Annin* (2004) 117 Cal.App.4th 591, 603-604 (duty to notify arises immediately upon move, not just when person gets a new address).

³¹ Penal Code §§ 290.011(f), 290.013(a).

³² 42 U.S.C. § 16913.

³³ Penal Code § 290.85.

not have a long-term residence. If you are homeless, you are required to register within 5 working days of release from prison or jail, every 30 days after that, and within 5 working days of your birthday every year.³⁴ If you have a home but then become homeless, you must update your registration within 5 working days of losing your home.³⁵ When you register, you will have to provide information about where you sleep, eat, work, and spend time.³⁶ Note that if you spend the night at a shelter, that shelter qualifies as a “residence,” and you will have to register the address of the shelter within 5 working days of going there.³⁷ If you find a place to live, you must update your registration and tell the authorities your address within 5 working days.³⁸

If you get sent to the CDCR or a state mental hospital, officials at those institutions are supposed to inform the Department of Justice of your confinement.³⁹ If you are incarcerated or civilly committed for 30 days or more, you must re-register upon your release. You do not need to re-register if you are incarcerated or civilly committed for less than 30 days and you then return to your last registered address (unless your normal re-registration date came up while you were incarcerated).⁴⁰

Do I have to disclose all my internet accounts and email addresses?

In November 2012, California voters passed Proposition 35 (the CASE Act) which would require registered sex offenders to turn over lists of all of their internet identifiers and service providers to the law enforcement agencies with which they register.⁴¹ Registrants would also

³⁴ Penal Code § 290.011(a)-(b).

³⁵ Penal Code § 290.011(b).

³⁶ Penal Code § 290.011(d).

³⁷ Penal Code § 290.11(g); 15 CCR § 3652(c)(2); *People v. Deluca* (2014) 228 Cal.App.4th 1263 (National Guard Armory winter emergency shelter is a “residence”).

³⁸ Penal Code § 290.011(b).

³⁹ Penal Code § 290.013(d).

⁴⁰ Penal Code § 290.015(a).

⁴¹ Penal Code §§ 290.014(b), 290.015(a)(4)-(6). An “internet service provider” is “a business, organization, or other entity providing a computer and communications facility directly to consumers through which a person may obtain access to the Internet”, but does not include “any system operated or services offered by a library or educational institution.” Penal Code § 290.024(a). An “internet identifier” is “an electronic mail address, user name, screen name, or similar identifier used for the purpose of Internet forum discussions, Internet chat room discussions, instant messaging, social networking, or similar Internet communication.” Penal

have to give written notification within 24 hours of any change to their internet identifiers or service providers.⁴² The internet information must be updated as part of the annual registration process, and the registrant must sign statement acknowledging the requirement.⁴³

However, the ACLU and other civil rights advocates have filed a federal lawsuit arguing that Proposition 35 violates the First Amendment rights to free speech and free association. In January 2013, the federal court granted a preliminary injunction, which has been upheld by the Ninth Circuit Court of Appeal.⁴⁴ This means that the State cannot enforce Proposition 35 unless and until a court rules that Proposition 35 does not violate the constitution.

What happens if I don't register?

Failure to register is a crime. If the sex offense conviction that requires you to register was a misdemeanor or a juvenile adjudication, then failure to register is usually a misdemeanor for the first violation and a felony for any further violations. If your sex offense conviction was a felony, failure to register is usually a felony.⁴⁵ There is no statute of limitations on failure to register since courts consider it to be a continuing offense.⁴⁶ If you fail to register a move from one state to another, you could also be convicted of violating federal registration laws.⁴⁷

You can be convicted of a separate offense for each requirement you violate. For example, you can be convicted of two crimes for failing to update your registration annually and failing to inform authorities of a change of address, even if both offenses happened during the same time period.⁴⁸ However, there are rules that prohibit courts from imposing sentences for

Code § 290.024(b).

⁴² Penal Code § 290.014(b).

⁴³ Penal Code § 290.012(a); Penal Code § 290.015(a).

⁴⁴ *Doe v. Harris* (N.D. Cal.) No. CV12-5713; *Doe v. Harris* (9th Cir. 2014) 772 F.3d 536.

⁴⁵ Penal Code § 290.018.

⁴⁶ *People v. Fioretti* (1997) 54 Cal.App.4th 1209, 1217. Even if your sex offense conviction is later reversed or vacated by a court, the State can prosecute and convict you for a registration violation that occurred before the reversal of the sex offense conviction. *In re Watford* (2010) 186 Cal.App.4th 684, 687.

⁴⁷ 42 U.S.C. § 16901 et seq.; *People v. Davis* (2011) 202 Cal. App. 4th 429 (federal prosecution for failing to register under SORNA did not bar state court action).

⁴⁸ Penal Code § 290.018(i).

two registration crimes that arise from a single course of conduct. For example, if you move to a new county and do not notify authorities in either the county you are leaving or the county you are entering, you can be convicted of two crimes but can be punished for only one.⁴⁹

In order to be a crime, your failure to register must be “willful.”⁵⁰ If you can show that you did not know you had to register or that you were unable to register due to circumstances beyond your control, then you may be able to avoid a conviction for violating the registration law.⁵¹ However, it is very difficult to show that you did not know you had to register unless you were never notified of your duty to register.⁵² Simply forgetting to register is not a defense, even if your memory lapse was related to depression.⁵³ However, you should be able to avoid a conviction if you had a severe involuntary physical or mental condition that cause you not to have actual knowledge of the duty to register.⁵⁴

The punishment for failure to register can be severe. Many of the crimes that require registration are violent or serious offenses, so a person who fails to register may face a doubled sentence under the “two strikes law” or a life sentence under the “three strikes law.”⁵⁵ Courts

⁴⁹ *People v. Britt* (2004) 32 Cal.4th 944, 953-954; *People v. Meeks* (2004) 123 Cal.App.4th 695, 703; *People v. Villegas* (2012) 205 Cal. App. 4th 642 (failure to report move, and failure to report new address upon learning of it, were separate violations which allowed for multiple convictions, but multiple punishments were prohibited).

⁵⁰ Penal Code § 290.018(a)-(b); *People v. Garcia* (2001) 25 Cal.4th 744, 754.

⁵¹ *Bartlett v. Alameida* (9th Cir. 2004) 366 F.3d 1020, 1024 (although there was evidence that petitioner was given written notice of duty to register, petitioner was entitled to present evidence that he did not read the forms, did not comprehend them, or misinterpreted the requirements); *People v. Edgar* (2002) 104 Cal.App.4th 210, 221 (conviction reversed where defendant was transient, documents did not provide clear notice of requirements, and prosecutor failed to show defendant knew he was required to register additional addresses); *People v. Aragon* (2012) 207 Cal. App. 4th 504 (no willful violation of where defendant, who lived in a mobile trailer but continued to register as a transient, did not know that trailer was a residence).

⁵² *People v. Garcia* (2001) 25 Cal.4th 744, 754-755; *People v. Vigil* (2001) 94 Cal.App.4th 485, 501-502.

⁵³ *People v. Barker* (2004) 34 Cal.4th 345, 356-357; *People v. Sorden* (2005) 36 Cal.4th 65, 72; *People v. Bejarano* (2009) 180 Cal.App.4th 583.

⁵⁴ *People v. Sorden* (2005) 36 Cal.4th 65, 72.

⁵⁵ See Penal Code §§ 667(b)-(i), 667.5(c), 1192.7(c). Although Proposition 36, passed on November 7, 2012, reduces the scope of the Three Strikes law, a person who has two prior “strikes” and is convicted of failing to register can still get a life sentence in some circumstances.

have upheld some third strike sentences for failure to register against claims that those sentences were cruel and unusual punishment in violation of the federal Constitution's Eighth Amendment.⁵⁶ In a few cases, courts have overturned life sentences where the failure to register was a technical violation, such as not registering annually though staying at the same address.⁵⁷

The registration requirement will be included as a special condition of your parole. If you do not sign an agreement to register, your parole will be revoked for up to 6 months at a time.⁵⁸ If you fail to register while on parole, you can be returned to custody for a parole violation in addition to or instead of being prosecuted for a criminal offense.⁵⁹

Can I be released from my registration requirement?

There are very few ways to get a registration requirement removed; only a few people with special situations are likely to be successful in challenging a registration requirement.

Obtaining a dismissal of your sex offense conviction under Penal Code § 1203.4 following successful completion of probation will not relieve you of your registration requirement.⁶⁰

Most people who have committed registerable sex offenses are either barred from

For example, a sex offender can get a three-strikes life term for violating registration rules if he or she has a prior conviction for a sexually violent offense as defined by Welfare & Institutions Code §6600, a violation of Penal Code §§ 288a, 286 or 289 with a child under 14 and more than 10 years younger than the defendant, or a violation of Penal Code § 288 with a child under age 14. Penal Code § 667(e)(2)(C).

⁵⁶ See, e.g., *In re Coley* (2012) 55 Cal.4th 524 (not cruel and unusual punishment to sentence defendant to 25 years to life for failing to update registration where refusal to register was intentional and prior criminal history heinous); *Crosby v. Schwartz* (9th Cir. 2012) 678 F.3d 784 (26 years to life was not cruel and unusual punishment for a registration violation where defendant had lied about his identity in an attempt to deceive); see also *People v. Nichols* (2009) 176 Cal.App.4th 428, 435-436; *People v. Haller* (2009) 174 Cal.App.4th 1080; *People v. Poslof* (2005) 126 Cal.App.4th 92, 108-109; *People v. Meeks* (2004) 123 Cal.App.4th 695, 703.

⁵⁷ See, e.g., *People v. Cluff* (2001) 87 Cal.App.4th 991; *People v. Carmony* (2005) 127 Cal.App.4th 1066; *Gonzalez v. Duncan* (9th Cir. 2008) 551 F.3d 875.

⁵⁸ Penal Code § 3060.5.

⁵⁹ See generally Penal Code §§ 3056-3057.

⁶⁰ Penal Code § 290.007; see also *Doe v. Brown* (2009) 177 Cal.App.4th 408.

obtaining a certificate of rehabilitation or will not be relieved of the duty to register even if they do obtain a certificate of rehabilitation. However, there are a few exceptions.⁶¹

If you obtain a full governor's pardon, you do not have to continue to register as a sex offender.⁶² There are two ways to obtain a full pardon. First, a person who obtains a certificate of rehabilitation will automatically be recommended for a full pardon; note that a pardon is not normally available by this means to a person who has twice been convicted of a felony.⁶³ Second, a person may apply directly to the governor for a pardon; however, full pardons are granted only in extraordinary circumstances.⁶⁴

If you were convicted before January 1, 1976 for conduct that has since been decriminalized (meaning it is no longer a crime), you can take steps to remove your registration requirement.⁶⁵

California's sex offender registration law has been upheld against due process challenges and claims that applying the requirements retroactively violates the U.S. Constitution's prohibition on "ex post facto" laws.⁶⁶ The United States Supreme Court has upheld similar provisions in Alaska's Sex Offender Registration Act against an ex post facto challenge.⁶⁷

⁶¹ The requirements and procedures for obtaining a certificate of rehabilitation are set forth in Penal Code § 4852.01 et seq. A person is barred from obtaining a certificate of rehabilitation if he or she was convicted of Penal Code §§ 269, 286(c), 288, 288a(c), 288.5, 288.7 or 289(j), is serving a life parole term, or is in the military. Penal Code § 4852.01(d); see also *People v. Ansell* (2001) 25 Cal.4th 868, 880 (bar applies to persons convicted prior to statute's effective date of January 1, 1998); *People v. Adair* (2014) 228 Cal.App.4th 1469 (no equal protection violation where statute requires certain eligible sex offenders to serve longer periods of time before applying for certificates of rehabilitation).

Penal Code § 290.5 lists the crimes for which obtaining a certificate of rehabilitation does not relieve the person of the duty to register as a sex offender.

⁶² Penal Code § 290.5(b).

⁶³ Penal Code § 4852.16.

⁶⁴ Penal Code §§ 4800 et seq. and 4853.

⁶⁵ See Penal Code § 290.019.

⁶⁶ *Hatton v. Bonner* (9th Cir. 2004) 356 F.3d 955; *People v. Castellanos* (1999) 21 Cal.4th 785; *People v. Jeha* (2010) 187 Cal.App.4th 1063, 1068.

⁶⁷ *Smith v. Doe* (2003) 538 U.S. 84.

In the past, courts held that some registration requirements violated the constitutional guarantee of equal protection because they treated similar types offenses differently. In the leading case, *People v. Hofsheier* (2006) 37 Cal.4th 1185, the California Supreme Court struck down a mandatory registration provision for a person convicted of oral copulation with a 16-year-old (Penal Code § 288a(b)(1)) because a person convicted of sexual intercourse with a 16-year-old (Penal Code § 261.5) is subject to registration only if the court exercises discretion to impose a registration requirement; the Court held that there was no rational justification for treating the two types of crimes differently.⁶⁸ The lower courts then issued numerous varying opinions as to whether mandatory registration requirements for other non-forcible crimes involving minors posed similar equal protection problems. However, in January 2015, the California Supreme Court overruled *Hofsheier*. The Court found there were plausible rational reasons for applying different rules for intercourse and oral copulation. The Court opined that pedophiles may have more opportunities to engage in oral copulation or fondling than in intercourse, and that men who impregnate consenting near-adults might be more likely to accept responsibility and provide support for their children if they could avoid the stigma of sex offender registration. The Court also cautioned that the Legislature has wide leeway in setting the consequences of criminal conduct.⁶⁹ As mentioned by the dissenting justices, it is unclear whether people who were previously released from registration requirements under *Hofsheier* may now be required to register, and there is likely to be litigation on that issue.⁷⁰

GPS TRACKING

Who must wear a GPS tracking device?

Under Proposition 83, which became effective on November 8, 2006, if (1) you have been convicted of a felony that requires you to register as a sex offender and (2) you were sentenced to prison, then the law says that you must wear a GPS tracking device (usually an ankle bracelet) during your parole, and for the rest of your life.⁷¹ You must report to your parole officer within one working day after release from custody unless instructed otherwise to get your

⁶⁸ *People v. Hofsheier* (2006) 37 Cal.4th 1185.

⁶⁹ *Johnson v. Dept. of Justice* (2015) 60 Cal.4th 871.

⁷⁰ *Johnson v. Dept. of Justice* (2015) 60 Cal.4th 871, 890 (dissenting opinion of Werdergar, J.).

⁷¹ Penal Code § 3004(b); see also Penal Code § 3000.07(a). The GPS requirement does not apply to persons who were convicted prior to the effective date of the proposition *and* were paroled, given probation, or otherwise released from custody prior to that date. *Doe v. Schwarzenegger* (E.D.Cal. 2007) 476 F.Supp.2d 1178.

GPS device.⁷²

The Proposition 83 GPS requirement applies only if you were convicted of a felony that requires you to register as a sex offender. However, there are other laws that allow parole authorities to require parolees to wear GPS tracking devices.⁷³ The 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, and must take into account the matter of whether you owe any court-ordered fines, restitution, or other payments.⁷⁴

If you are on parole and do not comply with a GPS requirement, your parole can be revoked. If you do not report on time to get your GPS device, your revocation term will be 180 days unless the court decides that such a term is not appropriate; if you disable or remove your GPS device, your revocation term will be 180 days.⁷⁵ After you are off parole, the law does not specify any punishment if you do not comply with the purportedly “life-long” GPS requirement.⁷⁶

RESIDENCY, MOVEMENT AND EMPLOYMENT RESTRICTIONS

Are there restrictions on where registered sex offenders may live?

If you are a sex offender parolee who was convicted under Penal Code § 288 or § 288.5, and you are deemed by the CDCR to be “high risk,” you may not live within half a mile (2,640 feet) of a K-12 school.⁷⁷

If you are a sex offender parolee, you may not reside in a single-family house with another person who is also required to register as a sex offender, unless they are legally related

⁷² Penal Code § 3010.10(a).

⁷³ Penal Code §§ 3004(a), 3010-3010.7.

⁷⁴ Penal Code §§ 3004(c), 3010.8.

⁷⁵ Penal Code § 3010.10(d)-(e).

⁷⁶ In an interesting development, the U.S. Supreme Court held that forcing a person to wear a GPS device for life constitutes a “search” under the U.S. Constitution’s Fourth Amendment. The Court sent the case back to the state courts to rule on whether such a requirement is unreasonable. *Grady v. North Carolina* (2015) __ U.S. __; 135 S.Ct.1368.

⁷⁷ Penal Code § 3003(g); see also 15 CCR § 3582.

to you by blood, marriage, or adoption.⁷⁸

If you are required to register as a sex offender due to a crime against a minor, you cannot reside (except as a client) in a child day care facility or residential facility or a foster family home. Violation of the law is a misdemeanor.⁷⁹

Much stricter and broader residency restrictions were enacted on November 8, 2006 by Proposition 83, which forbade any registered sex offender from living within 2,000 feet of a school or park where children regularly gather.⁸⁰ However, in March 2015, the California Supreme Court held that the Proposition 83 residency restrictions were unconstitutional as applied in San Diego County. The Court found that Proposition 83 severely restricted parolees' ability to find housing, greatly increased homelessness, and hindered access to medical and mental health treatment, drug and alcohol programs, and other rehabilitation services. Instead of promoting public safety, the residence restrictions actually hampered the efforts of parole and law enforcement authorities to supervise and assist sex offender parolees. The court thus concluded that the infringement on parolees' liberty and privacy interests bore no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators, and violated the parolees' constitutional Fourteenth Amendment due process right to be free of unreasonable, arbitrary and oppressive official action. The Court noted that the CDCR still has authority to impose special conditions of parole on a case-by-case basis, including residency restrictions that may be more or less restrictive than those in Proposition 83.⁸¹

On March 26, 2015, the CDCR announced that it will stop enforcing the Proposition 83 residence restrictions throughout the entire state. The existing § 3003.5(b) restrictions will stay in place temporarily while parole officials review all sex offender parolees' files to determine whether any other statutory residency restriction or special condition of parole should be applied; this review is expected to take about 60 days to complete. (SFGate, *California Loosens Sex-*

⁷⁸ Penal Code § 3003.5(a); 15 CCR § 3571(b). Also, SVPs who were convicted of violation Penal Code §§ 228(a)-(c)(1) or 288.5 and who are conditionally released may not reside within one-quarter mile of a K-12 school. Welfare and Institutions Code § 6608.5(f).

⁷⁹ Penal Code § 3003.6.

⁸⁰ Penal Code § 3003.5(b). The State has taken the position that Proposition 83 residency restriction applies only while sex offenders are on parole. *People v. Mosley* (2015) 60 Cal.4th 1044; *In re E.J.* (2010) 47 Cal.4th 1258, 1271, fn. 5. See also *Doe v. Schwarzenegger* (E.D. Cal. 2007) 476 F.Supp.2d 1178 (Prop. 83 residency provision did not apply to people who were convicted prior to November 8, 2006 and paroled prior to that date); *In re E.J.* (2010) 47 Cal.4th 1258, 1272-1273 (Prop. 83 residency restrictions applied to all people released on parole on or after November 8, 2006).

⁸¹ *In re Taylor* (2015) 60 Cal.4th 1044.

Offender Residency Rules (Mar. 26, 2015); *The Sacramento Bee, California Loosens Sex Offender Residency Restrictions* (Mar. 26, 2015.)

The CDCR has standard procedures for enforcing residency requirements.⁸² When you are paroled, you must tell the parole agent where you plan to live. You also must give the parole agent notice before you move to a new address. The parole agent will then verify whether the residence is far enough away from a school or park to comply with any statutory or individualized residency restriction. The distance will be measured with a GPS device, and using the straight-line distance between the main entrance of your residence and the exterior boundary of the nearest park or school, not the driving or walking distance.⁸³

If you are homeless or transient (moving from place to place), parole agents will monitor your GPS “tracks” to ensure that you are not loitering or staying in noncompliant locations. Spending even one or two days or nights in a shelter or structure that can be located by an address (such as a building or a car parked in a certain spot) can establish that location as you “residence” if circumstances “appear to establish a pattern of residency.”⁸⁴ If you are transient, you may stay at locations which have no street addresses, such as bridges, encampments and bus stops, without violating the residency restriction, unless the CDCR imposes special conditions of parole limiting your access to such locations.⁸⁵

If you are subject to residency restrictions, you may work in businesses that are within the restricted areas if you have permission from your parole agent.⁸⁶ You may also be allowed to regularly enter places in order to charge your GPS device, conduct business or receive treatment without being considered to have established a “residence” there.⁸⁷

Parole agents have been instructed to make exceptions to the residency rules for parolees

⁸² 15 CCR §§ 3571-3590.3. Note: *In re Taylor* (2015) 60 Cal.4th 1044 and the CDCR’s decision not to apply the Proposition 83 residency restrictions across the board to all paroles nullifies some portions of these regulations. However, it is expected that the CDCR’s general procedures will remain the same in regards to enforcing other statutory or individualized residency requirements.

⁸³ 15 CCR §§ 3571(e) and 3582(g); see *People v. Christman* (2014) 229 Cal.App.4th 810 (upholding straight-line measurement method).

⁸⁴ 15 CCR § 3590.

⁸⁵ See 15 CCR § 3590.2.

⁸⁶ 15 CCR § 3590.1(b).

⁸⁷ 15 CCR § 3590.1.

who are mentally ill and housed in a licensed mental health facility or are in need of medical care in a licensed facility with 24-hour supervision. Parole agents are supposed to seek a decision from the Director of the CDCR Division of Adult Parole Operations on whether the parolee may stay in that facility until care is no longer needed.

If you are on parole and you do not comply with the residence restrictions, you may be arrested on a parole violation charge, referred for a revocation hearing, and possibly returned to jail for up to 180 days.⁸⁸

You should be aware that cities, towns and counties are permitted to adopt their own ordinances imposing restrictions on where you can live.⁸⁹ If you are unsure whether your residence is in compliance with local laws, check with someone who is familiar with your community's laws, such as an attorney from the Public Defender's office.

Are there restrictions on where registered sex offenders may go?

Some cities, towns and counties have enacted local ordinances that prohibit or restrict sex offenders from going to places where children may be present (schools, libraries, museums, parks, bus stops close to parks). However, there has been a lot of litigation challenging these types of restrictions. For example, a court of appeal struck down a City of Irvine ordinance that barred sex offenders from entering city parks or recreation facilities without written permission from the police chief. The court held that sex offender registration is governed by state law, and that local governments cannot impose additional or different types of registration requirements.⁹⁰ In other cases, courts have blocked enforcement of ordinances or the local governments have agreed to drop or change the ordinances. Other cases raising such challenges are still in process. (See Aleaziz, *Suits Challenge Sex Offender Laws*, S.F. Daily Journal, p. 5 (April 1, 2014); Green, *A Champion for Modern Day Pariahs*, S.F. Daily Journal, pp. 1, 3 (June 5, 2014); Nelson, *Special Report: Pair Seeks Repeal of Sex-Offender Laws in California*, San Bernardino Sun (Oct. 11, 2014).)⁹¹

⁸⁸ See Penal Code § 3000.08.

⁸⁹ Penal Code § 3003.5 (c).

⁹⁰ *People v. Nguyen* (2014) 222 Cal.App.4th 1168.

⁹¹ An organization called California Reform Sex Offender Laws provides information about recent developments on its website at www.californiarsol.org.

Are there restrictions on where registered sex offenders may work?

If you are required to register as a sex offender due to a crime against a minor, you cannot work or volunteer in a child day care facility or residential facility or a foster family home. Violation of the law is a misdemeanor.⁹²

If you are a registered sex offender and your crime was with a minor under age 16, you cannot be an employer, employee, independent contractor, or volunteer with minors, if you would be working with minors directly and unaccompanied on more than an incidental or occasional basis or if you would have supervisory or disciplinary power over a child. Even if your crime was not against a minor under age 16, if you want to work or volunteer in a setting where you will touch minors or will be around minors regularly without other people present, then you must notify the employer or volunteer organization that you are a sex offender registrant when you apply for or accept the position. Failure to comply is a misdemeanor.⁹³

If you want to obtain a license for some type of business or profession, your criminal history including your sex offense may affect whether you will be granted a license.⁹⁴ You should check with the agency responsible for issuing licenses for information on its policies and application procedures. Also, prospective employers generally can ask you at some point in the process about your criminal conviction history before deciding whether or not to hire you.

PUBLIC NOTIFICATION

Can the government release information about me to the public?

Unless you fall under certain exceptions or your sex offense was handled as a juvenile court adjudication, the state can publish your name, photograph, physical description, date of birth, and zip code on the internet;⁹⁵ this is sometimes called the “Megan’s Law” website. The

⁹² Penal Code § 3003.6.

⁹³ Pen. Code § 290.95.

⁹⁴ For example, the Medical Board must revoke the license of a registered sex offender, though the person may later petition to have the license re-instated. Business & Professions Code § 2232.

⁹⁵ Penal Code § 290.46. The public notification rules apply even to a person who entered a plea bargain to a sex offense prior to the adoption of Megan’s Law on September 24, 2004, unless there was a specific agreement that future retroactive changes to the registration laws

state cannot publish the name of your employer or any criminal history not related to your registration requirement.⁹⁶ Any person who is required to register is not permitted to look at this website; it is a misdemeanor to do so.⁹⁷

You can apply to be taken off the Megan's Law website if you have never been found to be a Sexually Violent Predator (SVPs) *and* your only registerable sex offenses fall into following categories:

- (1) a violation of Penal Code § 243.4(a);
- (2) a misdemeanor violation of Penal Code § 647.6 (or former § 647(a));
- (3) an offense that did not involve oral copulation or penetration of any type *and* the victim was your child, stepchild, grandchild or sibling *and* you successfully completed or are successfully serving probation for the offense; or
- (4) a violation of Penal Code §§ 311.1; 311.2(b), (c), or (d); 311.3; 311.4; 311.10 or 311.1, if the minor was 16 years or older.⁹⁸

The information on the website should only be used for protection of the public. If it is used to commit a crime against you, the person who committed the crime may be punished and can also be liable in a civil suit.⁹⁹ In addition, the information should not be used to deny you health insurance, credit, educational funds, housing, or (with certain exceptions) a job.¹⁰⁰ You cannot be excluded from a public business establishment because of your registration status.¹⁰¹

In addition to the Megan's Law website, law enforcement agencies can release information about sex offender registrants by other means when necessary to protect the

would not be applied. *Doe v. Harris* (2013) 57 Cal.4th 64.

⁹⁶ Penal Code § 290.46(a)(1).

⁹⁷ Penal Code § 290.46(k). The website on which information about sex offenders is published is www.meganslaw.ca.gov. You cannot enter the restricted portion of the website without reading and acknowledging a warning. The information is also available through the U.S. Department of Justice Sex Offender website at www.nsopw.gov/. See 42 U.S.C. 16920. The rule prohibiting a sex offender from entering the restricted portion of the website applies to the U.S. DOJ website.

⁹⁸ Penal Code § 290.46(e). The form for applying for removal from the website is available at www.meganslaw.ca.gov/pdf/Application.pdf.

⁹⁹ Penal Code § 290.46(j) and (l).

¹⁰⁰ Penal Code § 290.46(l).

¹⁰¹ Penal Code § 290.46(g)(2).

public.¹⁰²

OTHER PAROLE CONDITIONS

Parole officials may impose other special conditions on parolees who were convicted of sex offenses. Some of these are required by state laws and others are at the discretion of parole officials. Generally, a parole condition is valid unless you can show that the condition (1) has no relation to the crime of which you have been convicted; (2) relates to conduct which is not in itself criminal; and (3) requires or forbids conduct that is not reasonably related to future criminality.¹⁰³ You can also convince a court to hold a parole condition invalid if the condition infringes upon a constitutional right and is not reasonably related to a compelling state interest.¹⁰⁴ Conditions that affect constitutional rights may also be invalid if they are broader than necessary to promote public safety or rehabilitation or if they are so vague that they cannot be understood and followed.¹⁰⁵ Also, conditions of parole that limit employment must directly relate to your crime.¹⁰⁶

State law requires that the parole conditions for a registered sex offender include a group therapy program for at least a year. You will be required waive (give up) the privilege against self-incrimination and participation in polygraph examinations and to waive the psychotherapist-patient privilege as to anything you tell the state-funded therapist.¹⁰⁷ This means that

¹⁰² Penal Code § 290.45.

¹⁰³ *People v. Dominguez* (1967) 256 Cal.App.2d 623, 627; *People v. Lent* (1975) 15 Cal.3d 481, 486. Although *Dominguez* and *Lent* concern probation conditions, courts apply the same legal analysis to conditions of parole. *In re Corona* (2008) 160 Cal.App.4th 315; *In re Stevens* (2004) 119 Cal.App.4th 1228, 1234.

¹⁰⁴ *See, e.g., In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084-1085; *In re Stevens* (2004) 119 Cal.App.4th 1228; *In re Daniel R.* (2006) 144 Cal.App.4th 1.

¹⁰⁵ *People v. Smith* (2007) 152 Cal.App.4th 1245, 1250 [62 Cal.Rptr.3d 316]; *In re Stevens* (2004) 119 Cal.App.4th 1228 [15 Cal.Rptr.3d 168]; *United States v. Wolf Child* (9th Cir 2012) 699 F.3d 1082.

¹⁰⁶ *See People v. Burden* (1988) 205 Cal.App.3d 1277 [253 Cal.Rptr. 130].

¹⁰⁷ Penal Code § 3008(d). Note that the California Supreme Court is reviewing cases that challenge the constitutionality of requiring sex offender probationers to waive the privilege against self-incrimination and the psychotherapist-patient privilege. *People v. Garcia*, No. S218197; *People v. Friday*, No. S218288; *People v. Klatt*, No. S218755. Note that one court has stricken a condition requiring a parolee to waive psychotherapist-patient privilege for a

information you disclose during therapy may later be used against you if you ever face new criminal charges or SVP commitment proceedings.¹⁰⁸ Thus, you should be careful about disclosing any information that is not already in your records.

Parole officials sometimes impose conditions barring or limiting sex offenders' access to computers, the internet, or publications. Courts have found some such conditions to be invalid.¹⁰⁹

Parole officials may place special conditions barring sex offenders from associating or living with minors, including their own children, step-children, nieces and nephews, or minor siblings. Whether such conditions are lawful depends on case-by-case factors, such as the scope of the condition, your type and number of sex offenses, the findings of any risk assessment evaluation, the sex and age of the minor child, and the closeness of the family relationship.¹¹⁰

Violating a condition of parole can subject you to a parole revocation term of up to 180 days in jail.¹¹¹ If the violation is a crime, you could also face new criminal charges. Moreover, re-incarceration on a parole violation or a new criminal term could potentially trigger an SVP evaluation and SVP commitment proceedings.

privately-retained therapist. *In re Corona* (2008) 160 Cal.App.4th 315.

¹⁰⁸ See, e.g., *People v. Gonzales* (2013) 56 Cal.4th 353 (in SVP proceeding that took place prior to enactment of waiver requirement, admitting parolee's statements to therapist did not violate constitutional right to privacy; although admitting the statements violated California privilege statutes, the error was deemed harmless).

¹⁰⁹ *In re Stevens* (2004) 119 Cal.App.4th 1228 [15 Cal.Rptr.3d 168] (unreasonable to prohibit use of computers Internet when neither used in committing crime); *United States v. Gnirke* (2015) 775 F.3d 1155 (special condition of supervision barring possession of any materials that depicted "sexually explicit conduct" involving either children or adults, and forbidding releasee from patronizing any place where such materials or entertainment were available was overbroad).

¹¹⁰ See, e.g., *United States v. Wolf Child* (9th Cir 2012) 699 F.3d 1082 (unreasonable and overbroad to prohibit releasee from living with or being in company of any minor under 18 or socializing with anyone with minor children, resulting in releasee being unable to live with or see his own (non-victim) daughters or socialize with his fiancée).

¹¹¹ Penal Code § 3000.08.

CHALLENGING A SEX OFFENDER REGISTRATION OR RESTRICTION

You may think you have good legal grounds to challenge a sex offender registration requirement, other statutory requirement (such as GPS tracking, or a restriction on where you can live or go or a public notification provision), or parole condition. The procedures you can use to fight the restriction or requirement will depend on which part of the state government set the rule, the point in time at which you are filing your case, whether or not you are still in custody or on some type of supervised release (parole, PRCs or probation), and whether the issue is a matter of state law or federal law. Sometimes you will have several different options. The following sub-sections very briefly and generally summarize the available legal procedures.

No matter what type of court action you file, can request that the court stay enforcement of the requirement or restriction while your case is going on. A court is more likely to grant your request if you can convince the court that your fundamental rights are being violated in a manner that will cause you irreparable harm and that you are likely to eventually win your case.¹¹² You should state on the cover page of your first petition or complaint that you are making a “Request for Stay,” and then in the next few pages explain why the court should stay the requirement or restriction.

Upon request, the Prison Law Office can provide free, more detailed information on each of these types of actions. Information manuals and forms are also available on the Resources page at the Prison Law Office website at www.prisonlaw.com.

Administrative Appeal

If you are challenging a condition of parole set by the CDCR (and which is *not* a condition required by a state statute or court order), you almost always must file a CDCR Form 602 administrative appeal before you can file any type of court action in either state or federal court. If your administrative appeal is denied, you should keep re-filing it until you get responses at all three levels of review.

If you are challenging a requirement set by a state statute or a court order, then you do not need to go through the 602 administrative appeal process.

¹¹² See, e.g., *In re E.J.* (2010) 47 Cal.4th 1258 (staying enforcement of residence restriction pending determination of petitions for writ of habeas corpus); see also *In re Alcala* (1990) 222 Cal.App.3d 345, 352 & n.4 (noting that temporary restraining order had been issued pursuant to habeas petition, enjoining enforcement of prison restrictions on clothing); *Faucette v. Dunbar* (1967) 253 Cal.App.2d 338, 340, 346 (affirming preliminary injunction enjoining revocation of petitioner's parole); *Diamontiney v. Borg* (9th Cir. 1990) 918 F.2d 793; *Taylor v. Honig* (9th Cir. 1990) 910 F.2d 62..

Direct Criminal Appeal

If you were very recently convicted of a sex crime and your sentencing included a registration order, or if you recently had your parole revoked or were otherwise subjected to a court order imposing a new condition of probation or parole, then you can challenge the court's order in a direct appeal. You can also file a direct appeal from a conviction for violating the registration laws. You must file a notice of direct appeal within 60 days after you are sentenced. You can raise both state law and federal law issues in a direct appeal. However, if you pled guilty or no contest, the types of issues you can raise will be limited. If you do not have money to pay a lawyer, the court will appoint a lawyer to represent you in your direct appeal case.

State Habeas Corpus Petition

If you are in custody or on parole, probation or PRCS, then you can file a state court petition for writ of habeas corpus challenging a sex offender requirement or restriction imposed by a court, by a state statute, by the CDCR parole officials, or by local probation officials. You can raise state and/or federal legal claims. Be aware that if you could have raised your issue in a direct appeal or if you delayed in filing your habeas petition, you may have to convince the court why your case should be allowed to proceed anyway. Otherwise, state habeas procedures are relatively simple and speedy. Also, if the court allows the case to proceed it must appoint an attorney for you if you want an attorney and have no money to pay for one. If a local superior court denies your petition, you can re-file it to the court of appeal and then to the California Supreme Court.

State Petition for Writ of Mandate

If you are NOT either incarcerated or under parole, probation or PRCS supervision, then you CANNOT file a state habeas petition. Instead, you can challenge your sex offender registration or other requirement by filing a petition for writ of mandate.¹¹³ Mandate procedures are somewhat similar to habeas corpus procedures. If your petition for writ of mandate is denied, you can re-file your case to the court of appeal and then to the California Supreme Court. The court has discretion to appoint an attorney to represent you, but there appears to be no requirement that it do so.

¹¹³ *People v. Picklesimer* (2010) 48 Cal.4th 330; *In re Stier* (2007) 152 Cal.App.4th 63.

Federal Petition for Writ of Habeas Corpus

If you are in custody or on parole, probation or PRCS for your sex offense, you can file a federal habeas corpus petition challenging your sex offender requirements or restrictions.¹¹⁴ However you must first have presented your issues to the California Supreme Court, either through a direct appeal or a state habeas corpus petition. Federal habeas involves very strict timelines and procedural requirements, and the federal courts have limited authority to overturn state court decisions. Also, you can only raise federal law claims. The court has discretion to appoint an attorney to represent you, but there is no requirement that it do so in most cases. If your petition is denied, you may be able to appeal to the Ninth Circuit Court of Appeals.

Federal Civil Rights (§ 1983) Lawsuit

If you are either in OR out of custody, you can challenge a sex offender requirement or restriction by filing a federal civil rights (§ 1983) lawsuit. However, your lawsuit must not attack the validity of your criminal conviction or sentence or seek a speedier release from parole.¹¹⁵ You can generally raise only federal law issues (although there may be circumstances in which you can also include closely related state law claims). You may be able to ask for injunctive relief (an order that the state do or stop doing something) and/or money damages. Unfortunately, federal civil rights lawsuits can involve complicated and slow procedures. Also, the court can ask an attorney to represent you only in exceptional circumstances. If you lose your case, you may be able to appeal to the Ninth Circuit Court of Appeals.

¹¹⁴ *Bagley v. Harvey* (9th Cir.1983) 718 F.2d 921, 922–23 (state parolee may challenge parole conditions through a federal habeas petition).

¹¹⁵ *Thornton v. Brown* (9th Cir. 2013) 757 F.3d 834; *Shoemaker v. Harris* (2013) 214 Cal.App.4th 1210..