

Nos. S156933 / S157631/ S157633/ S157634

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re E.J., S.P., J.S., K.T.
on habeas corpus.

**APPLICATION TO FILE AMICUS BRIEF AND
AMICUS BRIEF IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS**

ATTORNEY FOR AMICI CURIAE,

California Coalition on Sexual Offending (“CCOSO”) and
The Association for the Treatment of Sexual Abusers (“ATSA”)

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TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
I. APPLICATION TO FILE AMICUS BRIEF	1
II. INTRODUCTION	3
III. ARGUMENT	
A. PAROLE CONDITIONS MUST BE REASONABLY RELATED TO THE GOVERNMENT'S GOALS	3
B. RESIDENCE RESTRICTIONS DO NOT ENHANCE PUBLIC SAFETY	4
C. RESIDENCE RESTRICTIONS ARE DETRIMENTAL TO PUBLIC SAFETY	8
IV. CONCLUSION	14

APPLICATION TO FILE AMICUS BRIEF

Pursuant to California Rule of Court 8.520, amici, the California Coalition on Sexual Offending (“CCOSO”) and the Association for the Treatment of Sexual Abusers (“ATSA”), respectfully request leave to file the attached Brief of Amicus Curiae in support of Petitioners in the above matter.

This application is timely made in accordance with the Court’s Orders requiring Respondent, California Department of Corrections and Rehabilitation (“CDCR”), to file its Return on February 11, 2008, showing cause as to why Petitioners are not entitled to the Relief requested in their Petition for Writ of Habeas Corpus, including a permanent injunction preventing enforcement of the residence restriction contained in Penal Code section 3003.5(b).

Interest of Amicus Curiae

CCOSO is a non-profit resource for professionals who work with persons involved in the commission of sexually abusive behaviors, including rape, child sexual abuse, incest, and other forms of severe sexual assault. The core mission of CCOSO is to stop sexual abuse by supporting research, and by educating and training professionals and the community.

CCOSO members are drawn from diverse fields including law enforcement, the criminal justice and mental health systems, probation, parole, and other community services dedicated to addressing the complex issues related to sexual deviance and the sexual assaults that occur in our communities.

ATSA is a non-profit, interdisciplinary organization focused on the prevention of sexual abuse through effective management of sex offenders. ATSA was founded to foster research, facilitate information exchange, further professional education and provide for the advancement of professional standards and practices in the field of sex offender evaluation and treatment.

ATSA's members include the world's leading researchers in the study of sexual violence as well as professionals who conduct evaluations and treat sexual offenders, sexually violent predators, and victims. Members work closely with public and private organizations such as prisons, probation departments, child protection agencies, State Attorney's Offices, Public Defender's Offices, the National Council Against Sexual Violence, and state legislatures in an effort to protect citizens from sexual assault. ATSA advocates for evidence-based practices and policies that are most likely to protect the public from sexual violence, while allowing for the rehabilitation of sexual offenders.

Need for Further Briefing

Further briefing is necessary to address matters not fully addressed by the parties' briefs. Amici present empirical research on the relationship between residence restrictions and the government goals of reintegrating sex offenders into society, encouraging their positive citizenship, and enhancing public safety. Specifically, amici provides data showing that residence restrictions hinder these goals and are in fact counterproductive, creating an atmosphere that is harmful to children and other potential victims, rather than beneficial to them.

Dated: March , 2008

Christina Allbright, Esq.

BRIEF OF AMICUS CURIAE

I. INTRODUCTION

On November 7, 2006, California voters approved Proposition 83, also known as “Jessica’s Law”. The initiative passed by an overwhelming margin, reflecting voters’ deep interest in protecting our communities from sexual assault and an intense fear of predatory sex offenders.

One of the provisions of Proposition 83 is a restriction barring sex offenders on parole from living within 2000 feet of any school or park (Penal Code Section 3003.5(b)). This statute is a misguided and even counterproductive measure which may result in harm to the victims it was designed to protect.

Amici assert that the residence restriction is not reasonably related to the interests of the government. It does not further the goals of reintegrating the paroled offender into society and does not promote positive citizenship. Further, the residence restriction does not enhance public safety or reasonably relate to the deterrence of future criminality.

II. ARGUMENT

A. PAROLE CONDITIONS MUST BE REASONABLY RELATED TO THE GOVERNMENT’S GOALS

The fundamental goal of parole “is to help individuals reintegrate into society as constructive individuals” (*Morrissey v. Brewer* (1972) 408 U.S. 471, 477), “to end criminal careers through the rehabilitation of those convicted of crime” (*People v. Reed* (1994) 23 Cal.App.4th 135, 140), and to help parolees become self-supporting. (*In re Stevens* (2004) 119 Cal.App.4th 1228, 1233.) Our Legislature has found that “the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the

supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge.” (Penal Code section 3000(a)(1).)

Conditions of parole must be reasonably related to the compelling state interest of fostering a law-abiding lifestyle in the parolee. (*In re White* (1979) 97 Cal.App.3d 141, 146) Thus, a condition that bars lawful activity will be upheld only if the prohibited conduct either (1) has a relationship to the crime of which the offender was convicted, or (2) is reasonably related to the deterrence of future criminality. (*In re Stevens, supra*, citing *People v. Lent* (1975) 15 Cal.3d 481, 486.)

The proponents of residence restrictions do not contend that residence restrictions further the government goals of reintegrating offenders into society or creating better citizens. Rather, they proffer the argument that residence restrictions protect society from future sexual assaults.

This argument is misguided. Residence restrictions do not enhance public safety and actually have the potential to exacerbate rather than mitigate risk for reoffense, thus undermining the goals of successful reintegration and subsequent public safety.

B. RESIDENCE RESTRICTIONS DO NOT ENHANCE PUBLIC SAFETY

- 1. Residence restrictions are based on the mistaken belief that the typical sex crime is committed by a repeat sex offender who is a stranger to the victim**

Residence restrictions are based on emotion and conventional wisdom rather than on sound science. First, residence restrictions are based on the belief

that sex offenders are strangers who intrude into a child's otherwise safe environment. The reality is that most victims of sexual assault know their assailant. Over 90 percent of sex crimes against children are committed by someone the child knows and trusts – a family member, or a family friend. (“*No Easy Answers: Sex Offender Laws in the U.S.*”, HUMAN RIGHTS WATCH, Volume 19, No. 4(G), at 4, (September 2007); CALIFORNIA SEX OFFENDER MANAGEMENT TASK FORCE, MAKING CALIFORNIA COMMUNITIES SAFER: EVIDENCE-BASED STRATEGIES FOR EFFECTIVE SEX OFFENDER MANAGEMENT, Full Report, at 3, (July 2007)). In fact, most sexual offenses against children occur in the home of the child, or the home of a family member.

Similarly, three out of four adult victims know their offender as someone with whom the victim had a prior relationship, as a family member, intimate, or acquaintance. (Greenfield, “*Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault*”, BUREAU OF JUSTICE STATISTICS, <http://ojp.usdoj.gov/bjs/pub/pdf/soo.pdf>, at 4 (February 1997)). Nearly 6 out of 10 rapes are reported by victims to have occurred in their own home or at the home of a friend, relative, or neighbor. (*Id.* at 3.)

According to Ed Freeman, District Administrator of the State Parole Department’s Central Coast Division, “[t]here’s a perception that most of the child molesters are this individual who cruises the street and snatches a kid out of a bus stop, and that’s just not the case. Most are coaches, teachers, uncles, stepfathers for sure, that know the child. The number of predatory individuals is probably less than five percent.” (“*Jessica’s law Hits Enforcement Roadblocks*”, HERALD

SALINAS BUREAU, (February 3, 2008)). Mr. Freeman continues, “[w]hen you pass a law like [Proposition 83] and drum up the fear of the public, you’re only getting half-truths out there.” (*Ibid.*)

Secondly, residence restrictions are based on the erroneous belief that future sex offenses can be prevented by imposing harsh conditions on those sex offenders we have already identified. A comprehensive survey by the United States Department of Justice found that 87 % of people arrested for sex crimes had not been previously convicted of a sex offense. (Greenfield, Bureau of Justice Statistics, “Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault”, February 1997, <http://ojp.usdoj.gov/bjs/pub/pdf/soo.pdf>.) The unsettling truth is that the vast majority of the sex offenses of the future will be committed by offenders who have never before been convicted of a sex crime.

A third, related myth is that most sex offenders are destined to reoffend. In fact, the opposite is true: the vast majority of sex offenders who are punished for one sex crime do not commit another. The largest analysis of available data examined the reoffense patterns of over 31,000 sex offenders and found an observed sexual recidivism rate of 13.7% after approximately 5 years. (Hanson and Morton-Bourgon, *Predictors of Sexual Recidivism: An Updated Meta-Analysis*, available at http://ww2.ps-sp.gc.ca/publications/corrections/pdf/200402_e.pdf, at 15 (2004)). This confirmed the results of a previous review which found the observed sexual recidivism rate among typical groups of sex offenders to be in the range of 10 to 15% after 15 years. (Hanson and Bussiere, “*Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*”, JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY, 66(2), 348-362 (1998)). After 15 years, 76% of convicted sex offenders have not been arrested for a new sex crime. (Harris and

Hanson, “*Sex Offender Recidivism: A Simple Question*”, OTTOWA PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, Canada, No. 2004-03,(2004)).

“Jessica’s Law” was named for a child who was tragically abducted and murdered by a registered sex offender. Heinous as this case was, such events are exceedingly rare. About 100 children each year are abducted by strangers, according to the National Center for Missing and Exploited Children. (Sample, “*An Examination of the Degree to Which Sex Offenders Kill*”, CRIMINAL JUSTICE REVIEW, 31(3), 230-250 (2006)). Sex offenders are among the least likely criminals to murder their victims. (*Ibid.*)

Residence restrictions are proposed as a firewall between our communities and a predatory stranger who has already been identified as a sex offender, when the greater threat is posed by someone inside a potential victim’s family or social circle, who has never been convicted of a sex crime. Thus, residence restrictions are unlikely to prevent the most common circumstances where children are sexually abused.

There is no doubt that children and other vulnerable citizens are entitled to protection from sexual assault. The role of government is to determine, based on available evidence, the most effective strategies by which to achieve that goal.

2. An offender’s proximity to schools or parks is not related to sex offense recidivism

There is no evidence that residence restrictions will protect children. State of the art research fails to establish a link between sexual reoffense and a sex offender’s proximity to schools and parks.

In Colorado, researchers found that sex offenders who reoffended did not live significantly closer to school and parks than those who did not recidivate. (COLORADO DEPARTMENT OF PUBLIC SAFETY, REPORT ON SAFETY

ISSUES RAISED BY LIVING ARRANGEMENTS FOR AND LOCATION OF SEX OFFENDERS IN THE COMMUNITY (2004)).

Law enforcement in Minnesota examined 224 repeat sex offenses and found that “not one of the 224 sex offenses would likely have been deterred by a residence restriction law.” (MINNESOTA DEPARTMENT OF CORRECTIONS, RESIDENTIAL PROXIMITY AND SEX OFFENSE RECIDIVISM IN MINNESOTA, at p 2, (2007)). A previous Minnesota report had found that, of 329 high risk sex offenders, 13 reoffended. Of those 13, two committed offenses in parks, but the perpetrators lived miles from the crime scenes and drove a car to commit the offense. (MINNESOTA DEPARTMENT OF CORRECTIONS, REPORT TO THE LEGISLATURE, LEVEL THREE SEX OFFENDERS RESIDENTIAL PLACEMENT ISSUES (2003)). A residence restriction would not have prevented reoffense in either case.

While residence restrictions may feel like a way to prevent sex offenses against children, there is no evidence showing that they are effective.

C. RESIDENCE RESTRICTIONS ARE DETERIMENTAL TO PUBLIC SAFETY

1. Residence restrictions destabilize the sex offender population by increasing homelessness; by separating sex offenders from treatment providers, employment and monitoring; and by creating the psychosocial stressors that are linked to reoffense.

There is no evidence that residence restrictions prevent child molestation, and there is ample evidence that they destabilize the convicted sex offender population. While the Court may not sympathize with sex offenders, it is a fact that faced with diminished opportunities for stability, housing, and employment, sex offenders are more likely to resume a life of crime.

The residence restrictions imposed by Proposition 83 prohibit convicted sex offenders on parole from living within 2,000 feet of schools and parks where

children congregate. To determine which properties fall outside the forbidden zones, various law enforcement agencies have created computerized maps, drawing circles around protected schools and parks then looking to see what remains. The result: vast prohibited areas, with rare strips of land where sex offenders may theoretically live. (*See* CALCASA, Statement in Opposition to Jessica's Law Initiative, http://ccoso.org/CALCASA_Prop83.pdf at 4).

Research in other states with densely populated communities has found comparable results. In Orange County, Florida, which encompasses the greater Orlando region, researchers found that 95% of over 137,000 residential properties were located within 1,000 feet of schools, parks, daycare centers, or school bus stops, and over 99% of housing fell within 2,500 feet of these locations.

(Zandbargen, and Hart, "*Reducing Housing Options for Convicted Sex Offenders: Investigating the Impact of Residency Restriction laws Using GIS*", JUSTICE RESEARCH AND POLICY 8(2), 1-24 (2006)). In Newark, New Jersey, 93% of the city's territory is located within 2,500 feet of a school and is therefore unavailable to sex offenders. (Chajewski and Mercardo, "*An Analysis of Sex Offender Residency Restrictions in Newark, New Jersey*", SEX OFFENDER LAW REPORT, 9, 1-6 (2008)).

As a result of limited housing, in the 15 months since the passage of Proposition 83, the state has recorded a 44% increase in the number of parolees registered as transient. (CALIFORNIA SEX OFFENDER MANAGEMENT BOARD, AN ASSESSMENT OF CURRENT MANAGEMENT PRACTICES OF ADULT SEX

OFFENDERS IN CALIFORNIA, Initial Report, available at <http://www.casomb.org/docs/SOMBReport1.pdf>. (2008)). “The law isn’t working as intended,” says San Diego parole supervisor Steve Kubicek. (“*Law to Boost Sex Offender Monitoring Falling Short, Proposition 83 Possibly Making State Less Safe*”, SAN DIEGO UNION-TRIBUNE, February 14, 2008).

Similar results have been seen outside California. After Iowa passed a residence restriction, the number of registered sex offenders who could not be located more than doubled. There, prosecutors, police, and victim advocates have publicly denounced the restrictions, asserting that they undermine the purpose of sex offender registration and urging changes in the law. (CALCASA, (2006) Opposition to California’s Jessica Lunsford Act, from <http://www.calcasapublicpolicy.org>; IOWA COUNTY ATTORNEYS ASSOCIATION, STATEMENT ON SEX OFFENDER RESIDENCE RESTRICTIONS IN IOWA (2006)).

Sex offenders cannot be monitored when they fail to register. The Sheriff of Cedar Rapids, Iowa, explains, “What it’s done is driven people to – rather than come in and register and comply with the law – there’s no way they can find housing, so it forces them to be on the run or lie about where they are at. So that’s not creating a safe environment for the public at all.” (“*Misguided Measures: New Sex Offender Laws May Causes Bigger Problems Than They Prevent*”, available at <http://abcnews.go.com/WNT/story?id=2931817&page=1>)

Formal studies confirm what, anecdotally, we already know: residence restrictions create homeless sex offenders; separate sex offenders from treatment

services, employment, and monitoring; and create the psychosocial stressors that are linked to reoffense. One Florida study found that, as a result of residence restrictions, 44% of convicted sex offenders were unable to live with family, and 60% reported emotional distress. (Levenson, and Cotter, “*The Impact of Sex Offender Residence Restrictions: 1,000 Feet from Danger or One Step from Absurd?*”, *INTERNATIONAL JOURNAL OF OFFENDER THERAPY AND COMPARATIVE CRIMINOLOGY*, 49(2), 168-178 (2005)).

A separate Florida study reported a common problem with disruption's to a sex offender's stability each time he was forced to move, including lost wages from work and the high cost of hotels while in between homes. (Levenson, “*Collateral Consequences of Sex Offender Residence Restrictions*”, manuscript available from the author, in-press for publication in *CRIMINAL JUSTICE STUDIES*, at 12 (2007)). The author of the report concluded that residence restrictions increased homelessness and transience and appeared to interfere with social support and stability for the majority of registered sex offenders. (*Id.* at 15.) Florida drew national attention last year when it was revealed that groups of sex offenders, faced with no alternatives, began living beneath a bridge.
(<http://www.cnn.com/2007/LAW/04/05/bridge.sex.offenders/index.html>.)

As in Florida, an Indiana survey revealed that 37% of sex offenders were unable to live with family after residence restrictions were imposed, and 38% reported having to move farther away from employment, social services, and mental health treatment. (Levenson, and Hern, “*Sex Offender Residence Restrictions: Unintended Consequences and Community Re-Entry*”, *JUSTICE RESEARCH AND POLICY*, 9(1) (2007)).

One Northern California treatment provider describes the problem this way:

I have spent countless hours with clients about looking for bushes and thoughts on how to get complimentary sleeping bags and backpacks in sessions. When I went to grad school I never

envisioned myself working on such mundane issues. I have a Developmentally Delayed [client], who was never evaluated for Regional Center previously, is a marijuana addict (can't go to residential substance abuse treatment because most places won't accept [registered sex offenders] and none of the residential substance abuse places are Jessica's Law compliant), has offenses against strangers (minors), sleeping literally under a bridge, charging his GPS at a park. Guess who he's around all the time? Addicts, and when it warms up the bridge is near the river so the children will come out to play and now he's in the most dangerous place he could be with no support. Previously he was staying in a group home setting when his whereabouts were accounted for most of the time and he was fed regularly, etc. That place was deemed inappropriate because it's within 2000 feet of a park. (Email from CCOSO member on February 15, 2008.)

This is not an issue of whether one does, or does not, find the plight of the homeless sex offender sympathetic. The issue is whether, by destabilizing this population, the law has unintentionally done something dangerous. Forcing sex offenders to abandon living arrangements where they can be well supervised, with structure and support, contradicts the goal of fostering safer communities.

2. The community is safer when sex offenders are stable

Study after study shows that sex offenders have a better chance of staying law abiding when they have a stable environment, including established housing and social support. (COLORADO DEPARTMENT OF PUBLIC SAFETY SEX OFFENDER MANAGEMENT BOARD, REPORT ON SAFETY ISSUES RAISED BY LIVING ARRANGEMENTS FOR AND LOCATION OF SEX OFFENDERS IN THE COMMUNITY (2004); Kruttschnitt, Uggen, and Shelton, “*Predictors of Desistance among Sex Offenders: The Interaction of Formal and Informal Social Controls*”, JUSTICE QUARTERLY 17(1), 61-88 (2000); “*The Quality of Community Reintegration Planning for Child Molesters: Effects on Sexual Recidivism*”, THE FORUM, THE OFFICIAL JOURNAL FOR THE ASSOCIATION FOR THE TREATMENT OF SEXUAL OFFENDERS, (Winter 2008); “*Managing Sex Offenders in the Community: A National Overview*”, Lane

Council of Governments, Eugene, Oregon (2003)). These are protective factors that mitigate risk.

Stable relationships, employment, and housing stability protect against recidivism; conflicted romantic relationships, frequent unemployment, social rejection and loneliness increase potential risk. (CALIFORNIA DEPARTMENT OF MENTAL HEALTH, *Clinical Evaluator Handbook and Standardized Assessment Protocol*, at 23, 24 (2007)).

Criminal justice studies show a clear link between housing instability and general criminal recidivism. Unstable living arrangements were identified as the strongest predictor of absconding in a study of over 4,000 parolees in California. (Williams, McShane, and Dolny, “*Predicting Parole Absconders*”, PRISON JOURNAL, 80(1) 24-38 (2000)). In Georgia, the likelihood of re-arrest increased by 25% each time a parolee relocated. (Meredith, Speir, Johnson, and Hull, “*Enhancing the Parole Decision-Making Through the Automation of Risk Assessment*” ATLANTA: APPLIED RESEARCH SERVICES, INC. (2003)).

The truth of the empirical data is borne out by what is being reported by law enforcement. According to San Diego Parole Supervisor Steve Kubicek, “[The law] forces a population into the streets. If you put something extra for them to worry about, it increases their chances to reoffend.” (“Law to boost sex offender monitoring falling short”, *supra*.)

This sentiment is echoed by Sheriff Zeller in Iowa. “We’re taking their hope away. We’re taking a place [to] stay and a [work] place they can become a productive part of. We are placing all kinds of restrictions on them. They are doomed to failure. And that’s the problem.” (“*Misguided Measures: New Sex Offender Laws May Causes Bigger Problems Than They Prevent*”, available at <http://abcnews.go.com/WNT/story?id=2931817&page=1>.)

The result, according to researcher and professor Jill Levenson, is that,

[I]ronically, what happens with residence restrictions is that we end up creating exactly the types of risk factors that we know lead to higher recidivism rather than lower recidivism. In other words, we know that stability, social support and employment are really important factors to help criminals maintain a productive life and not resume a life of crime, so disrupting the stability of criminal offenders is not likely to be in the best interest of public safety. (*Ibid.*)

IV. CONCLUSION

To quote California's largest victim advocacy organization: "Residence restrictions for sex offender don't make communities safer. Residence restrictions don't reduce recidivism, don't improve supervision of the offender, and ultimately do not protect children from sex offenders." (CALCASA, Statement in Opposition to Jessica's Law Initiative, http://ccoso.org/CALCASA_Prop83.pdf at 3.)

Because residence restrictions are not reasonably related to preventing the future criminality of the offender, they are not permissible conditions of parole.

Petitioners' request for relief should be granted.

Dated:

Christina Allbright, Esq.

COUNSEL'S CERTIFICATION OF WORD COUNT

I hereby certify that the attached Application and Brief of Amicus Curiae contains 3571 words.

Dated:

BY: _____ Christina Allbright, Esq.

PROOF OF SERVICE BY U.S. MAIL

In re E.J., S.P., J.S., K.T., on habeas corpus
Case No. **S156933 / S157631 / S157633 / S157634**

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On the _____ day of March, 2008, I served the within document,

**APPLICATION TO FILE AMICUS BRIEF AND
AMICUS BRIEF IN SUPPORT OF PETITION
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I declare under penalty of perjury that the foregoing is true and correct. Executed on this _____ day of March, 2008, at Eureka, CA.

Christina Allbright, Esq.

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