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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re WILLIAM TAYLOR et al. on Habeas Corpus.	D059574 (San Diego County Super. Ct. Nos. HC19742, HC19731, HC19612, HC19743)

APPEAL from orders of the Superior Court of San Diego County, Michael D. Wellington, Judge. (Retired judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.) Affirmed.

Kamala D. Harris, Attorney General, Jennifer A. Neill, Acting Senior Assistant Attorney General, Phillip Lindsay and Gregory J. Marcot, Deputy Attorneys General, for Appellant.

Office of the Primary Public Defender, County of San Diego, Randy Mize, Chief Deputy, and Laura Beth Arnold, Deputy, for Respondents.

Matthew Cate, Secretary of the California Department of Corrections and Rehabilitation (CDCR), appeals the order enjoining CDCR from enforcing the residency restriction of "Jessica's Law" on the ground that the blanket restriction is unconstitutional as a parole condition as it applies to registered sex offenders on parole in San Diego County.

In November 2006, the voters of California adopted Proposition 83, "The Sexual Predator Punishment and Control Act: Jessica's Law." Among other things, the proposition enacted revisions to the Penal Code,[1] including one that made it illegal for registered sex offenders "to reside within 2000 feet of any public or private school, or park where children regularly gather." (Ballot Pamp., Gen. Elec. (Nov. 7, 2006) text of Prop. 83, p. 135.) The residency restriction is codified at section 3003.5, subdivision (b) (section 3003.5(b)). The drafters of Jessica's Law assured voters this provision would establish "predator free zones around schools and parks to prevent sex offenders from living near where . . . children learn and play." (Ballot Pamp., Gen. Elec. (Nov. 7, 2006) argument in favor of Prop. 83, p. 46.) Subsequently, the CDCR adopted a policy to enforce the residency restriction as a parole condition for registered sex offenders.

William Taylor, Jeffrey Glynn, Julie Briley and Stephen Todd (collectively, petitioners) are four of the more than 150 registered sex offender parolees in San Diego County who filed habeas corpus petitions challenging the constitutionally of the residency restriction. The petitions of Taylor, Glynn, Briley and Todd were chosen to be

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1 Statutory references are to the Penal Code.

the lead cases for purposes of establishing an evidentiary record to address the " 'as-applied' " constitutionality of the restriction. (*In re E.J.* (2010) 47 Cal.4th 1258, 1281.)

BACKGROUND

This proceeding is an outgrowth of our Supreme Court's decision in *In re E.J.*, *supra*, 47 Cal.4th 1258, a consolidated habeas corpus proceeding, in which four[2] registered sex offenders on parole for nonsex offenses committed before the passage of Proposition 83, but released on parole afterward, challenged the constitutionality of the residency restriction as a parole condition pursuant to CDCR policy. (*Id*. at pp. 1263-1264.) The Supreme Court rejected arguments that CDCR's enforcement of the residency restriction as a condition of parole was a retroactive application of the law and violated constitutional prohibitions against ex post facto laws. (*Id*. at pp. 1264, 1272, 1280.)

However, the *E.J.* petitioners also claimed that "section 3003.5(b) is an unreasonable, vague and overbroad parole condition that infringes on various state and federal constitutional rights, including their privacy rights, property rights, right to intrastate travel, and their substantive due process rights under the federal Constitution." (*In re E.J.*, *supra*, 47 Cal.4th at p. 1280.) Noting that these claims were "considerably more complex 'as applied' challenges" and the evidentiary record before it was insufficient to decide them, the Supreme Court remanded the cases to the trial courts of the counties to which the *E.J.* petitioners had been paroled to hold evidentiary hearings. (*Id*. at pp. 1281, 1284.)

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2 Two of the four petitioners in *In re E.J.* were from San Diego County.

By May 2010, the two *E.J.* petitioners from San Diego County had been discharged from parole and their cases were dismissed as moot. Meanwhile, about three dozen other registered sex offender parolees had filed habeas corpus petitions in San Diego Superior Court and had been granted temporary stays of the enforcement of section 3003.5(b). The parties agreed the evidentiary hearing ordered by the Supreme Court in *E.J.* would focus on the petitions filed by Taylor, Glynn, Briley and Todd.

On February 18, 2011, following an eight-day evidentiary hearing, the trial court issued its statement of decision (SOD). The court found the residency restriction—when enforced as a parole condition—was "unconstitutionally 'unreasonable' " as applied to the lead petitioners because it violated petitioners' right to intrastate travel, their right to establish a home and their right to privacy and was not narrowly drawn and specifically tailored to the individual circumstances of each sex offender parolee. The court found "the fundamental vice of section 3003.5(b) as a parole condition . . . [is i]t is not narrowly drawn, much less specifically tailored to the individual. It applies as a blanket proscription, blindly applied to all registered sex offenders on parole without consideration of the circumstances or history of the individual case."[3] The court ordered

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3 The court rejected petitioners' other constitutional challenges, which are not the subject of this appeal, including a claim that the restriction was unconstitutionally vague. The court also found two policies adopted by the CDCR to implement the residency restriction violated the Administrative Procedures Act, but this is not an issue on appeal. Finally, we decline petitioners' invitation to revisit their retroactivity and ex post facto claims that the Supreme Court rejected in *In re E.J.*, *supra*, 47 Cal.4th at pages 1264, 1272, 1280. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [we are bound by the rulings of our Supreme Court].)

the CDCR to cease applying section 3003.5(b) as a parole condition against the four lead petitioners.

At the same time, the court pointed out parole agents will continue to have the discretion to impose special conditions on sex offender parolees that mirror the residency restriction of section 3003.5(b) or are even more restrictive than its 2,000-feet minimum requirement based on the specific circumstances of the individual parolee.

On March 10, the court issued a supplemental statement of decision (Supp. SOD), which ordered the CDCR to cease applying section 3003.5(b) as a blanket parole condition against all registered sex offender parolees under supervision in San Diego County.[4]

FACTS

In *In re E.J., supra*, 47 Cal.4th at pages 1283 to 1284, the Supreme Court set forth an agenda for the remanded evidentiary hearings: to "find the relevant facts necessary to decide the claims . . . includ[ing], but not necessarily limited to, establishing each petitioner's current parole status; the precise location of each petitioner's current residence and its proximity to the nearest 'public or private school, or park where children regularly gather' (§ 3003.5(b)); a factual assessment of the compliant housing available to petitioners and similarly situated registered sex offenders in the respective counties and communities to which they have been paroled; an assessment of the way in which the mandatory parole residency restrictions are currently being enforced in each particular

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4 By the time the court issued its Supp. SOD, an additional 155 other habeas corpus petitions raising the same issues had been filed.

jurisdiction; and a complete record of the protocol CDCR is currently following to enforce section 3003.5(b) in those respective jurisdictions."

A. *Petitioners' Status*

1. *Taylor*

Taylor was paroled in January 2008 after serving a sentence for failing to register as a sex offender. (§ 290.)[5] He is required to register as a sex offender because in 1991 he was convicted of sexual assault in Arizona.[6] (§ 290.005.) The victim in that case was an adult woman. Although Taylor has a long criminal history, including convictions for theft offenses, weapon possessions and drug offenses, he has never been convicted of another sex crime or a crime involving a child.

Taylor has AIDS and throat cancer. He also suffers from diabetes, chronic hypertension, scleroderma, peripheral neuropathy, sciatica, kidney stones, a torn ligament in his right knee, glaucoma and sleep apnea. Taylor has had three strokes and one heart attack. He is chronically depressed, suffers from paranoid schizophrenia and is addicted to cocaine.

Taylor had planned to live in Spring Valley with his nephew and his nephew's wife, who is a health care professional. However, the nephew's residence is not compliant with the 2,000-foot residency restriction of section 3003.5(b). Taylor, who is

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5 Section 290 imposes a lifetime requirement for persons convicted of specified sex crimes to register with local law enforcement authorities as a sex offender as long as they reside, work or go to school in California. (§ 290, subds. (b), (c).)

6 After Taylor returned to California, the state Department of Justice determined his Arizona conviction was the equivalent of a rape conviction under California law (e.g., § 261, subd. (a)(2)).

destitute, asked his parole agent for financial assistance housing, but was turned down. Subsequently, Taylor slept outside in the alley behind the parole office—a location pointed out to him by his parole agent. He remained homeless for a month and then was arrested for using cocaine.

When Taylor was re-released on parole, he was admitted to the Etheridge Center, a residential drug treatment program near downtown San Diego and near the clinic where he was receiving treatment for AIDS. However, the Etheridge Center is not compliant with the residence restriction of section 3003.5(b). CDCR allowed Taylor to stay there while his application for a waiver of the 2,000-foot restriction was processed. When Taylor's application was denied, he was given two days to move out. On October 2, 2009, the court issued Taylor an emergency 120-day stay, which enjoined the CDCR from requiring him to leave Etheridge Center unless alternative accommodations for medical treatment could be arranged.

However, the Etheridge Center suspended Taylor for 30 days for nonsexual misconduct on Halloween, and he was subsequently arrested for another parole violation. While in custody, his temporary injunction expired. Upon his release on parole, Taylor was homeless for a few weeks until CDCR placed him in a boarding house in Vista, which was a three-hour bus ride from his parole office, the outpatient clinic he was required to attend and the medical facility that had agreed to provide his medical care. While in the Vista facility, Taylor collapsed and was hospitalized in the intensive care unit. His parole agent warned Taylor he would be arrested if did not register the hospital address with local authorities within five days. Taylor's parole was revoked for not

registering the hospital address and for possession of drug paraphernalia. Upon his release on parole, Taylor lived in a compliant hotel with the CDCR paying the rent for 60 days. At the time of the evidentiary hearing, Taylor was living in the hotel.

2. *Glynn*

In 2009, Glynn was released on parole after serving a sentence for a theft related crime. He is a registered sex offender because of his 1989 conviction of misdemeanor sexual battery committed against an adult woman he had been dating.[7] That conviction is his only sex crime, but he has numerous convictions for theft offenses and drug offenses.

Glynn planned to live with his wife and their three children when he was paroled, but the family's residence was not compliant with the residency restriction of Jessica's Law. Glynn's wife did not want to move, and he was unable to find compliant housing in the area. Glynn purchased a van and lived in it as a transient. In December 2009, the court granted Glynn's motion for a temporary injunction against the residence restriction. However, this occurred a week after Glynn committed a burglary. When Glynn was paroled again in August 2010, he moved into the family's noncompliant apartment by virtue of the previously issued injunction and was living there at the time of the evidentiary hearing.

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[7] At the time of Glynn's conviction, section 243.4 was not an offense that required sex offender registration under section 290. (Stats. 1987, ch. 1418, § 3.1, p. 5225.) Effective January 1, 2000, section 243.4 was included as an offense that required sex offender registration. (Stats. 1999, ch. 902, § 1.5, pp. 6561-6562.)

3. *Briley*

In April 2009, Briley was released on parole after serving a prison term for failing to register as a sex offender. Briley is required to register because of her 1988 conviction of committing a lewd and lascivious act on a child under the age of 14 years. (§288, subd. (a).) The victim was Briley's daughter and occurred inside the family residence. Since then, Briley has been sex offense free, but has numerous convictions for drug offenses and failing to register as a sex offender.

Briley had planned to live with her sister upon her release, but her sister's residence is not compliant with the 2,000-foot residency restriction.[8] The residency restriction also prevented Briley from living with her sister-in-law or in any of the women shelters with an available bed or sober living houses for women. After learning from a parole agent that other homeless parolees slept in an alley near the parole office, Briley began sleeping there. She was not alone; about 15 to 20 people slept there. Briley, who has hepatitis C, high blood pressure, thyroid problems and osteoarthritis, which is aggravated by exposure to cold temperatures, lived there for approximately one and one-half years.

In July 2009, the court granted Briley a temporary injunction against the residency restriction, but she was unable to find affordable housing until November 2010. At the

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[8] Briley would not have been able to live with her sister in any event because a different condition of her parole prohibits her from having contact with children. Briley's nephew lives with her sister.

time of the evidentiary hearing, Briley lived in a recreational vehicle parked at a noncompliant location in return for five hours of work each week. She has two other part-time jobs, which together pay her approximately $250 a month.

4. *Todd* [9]

In June 2008, Todd was released on parole after serving a prison term for drug possession. He is required to register as a sex offender because in 1981, when he was 15 years old, he molested his 10-year-old sister. The juvenile court made a true finding that Todd committed a lewd and lascivious act with a child under 14 years old. (§ 288, subd. (a).)[10] Todd does not have any other sex crime convictions or convictions of crimes involving children, but his criminal history includes convictions for assault with a deadly weapon, burglary, vehicle theft, receiving stolen property and drug offenses.

Todd suffers from bipolar disorder. He is also diabetic and subject to seizures, which are exacerbated when he is homeless. Todd is unable to hold his head up for long periods because of nerve damage along the right side of his body. Todd also is a recovering heroin addict and has been addicted to methamphetamine for 18 years.

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9 At the time of the evidentiary hearing, Todd was the only one of the four lead petitioners who was not on parole. Todd had been returned to prison following his conviction for a new drug offense. The court and parties agreed his petition should not be dismissed as moot because of the original agreement to hear the four cases as a representative range of cases.

10 At the time Todd committed the sex crime, the law required him, as a juvenile sex offender, to register only until his 25th birthday. (Former § 290, subd. (d)(4); Stats. 1993, ch. 595, § 8, pp. 3134-3137.) Effective January 1, 1995, the limited duration of the registration requirement for juvenile sex offenders was abolished and a lifetime registration requirement was imposed. (Former § 290, subd. (d)(1); Stats. 1994, ch. 867, § 2.7, pp. 4389, 4391; see now §290.008; see also *People v. Allen* (1999) 76 Cal.App.4th 999, 1001.)

Upon his release from prison in 2008, Todd planned to stay with a friend at the Plaza Hotel in downtown San Diego, but he could not because of the 2,000-foot residency restriction. Unable to find compliant housing, Todd followed his parole agent's suggestion that he live in the bed of the San Diego River.

Over the next one and one-half years, Todd was arrested and his parole was revoked numerous times for violating various parole conditions. Throughout that time, Todd was homeless except for the periods he was in custody.

By the time of the evidentiary hearing, Todd had suffered another drug conviction and was in prison.

B. *Compliant Housing in San Diego County*

In June 2006, Julie Wartell, a crime analyst for the San Diego County District Attorney's Office, collected data and prepared an electronic map depicting the expected effect of the residency restriction of Jessica's Law on available housing in San Diego County. Wartell mapped the location of all public and private schools in the county (kindergarten through 12th grade) and all "active park" locations.[11] Using an automated

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11 "Active park" is taken from section 810.102 (a) of the County of San Diego, Code of Regulatory Ordinances, Vol. II, which reads: " 'Active Recreational Uses' means recreation facilities occurring on level or gently sloping land (maximum 10 %) restricted for park and recreation purposes in a planned development which are designed to provide individual or group activities of an active nature common to local parks in San Diego County, including, but not limited to, open lawn, sports fields, court games, swimming pools, children's play areas, picnic areas, recreation buildings, dance slabs, and recreational community gardening. Active Recreational Uses do not include natural open space, nature study areas, open space for buffer areas, steep slopes, golf courses, riding and hiking trails, scenic overlooks, water courses, drainage areas, water bodies (lakes, ponds, reservoirs), marinas and boating areas, parking areas, and archaeology areas."

mapping program, Wartell used data from the tax assessor's office to show the location of residential land parcels throughout the county. Wartell drew shaded circles around each school and each park on the map to show a 2,000-foot zone or buffer around each of these locations. Thus, Wartell's map showed the location of residences that were not compliant with Jessica Law's residency restriction: any residence within the shaded circles (buffers or exclusion zones) was off limits for registered sex offenders.

In 2010, Wartell twice updated her analysis and map for this litigation to reflect the recent additions of parks and schools in the county. Two analysts with the county's Department of Planning and Land Use refined Wartell's work into a 288-page hard copy Thomas Brothers-like map book, and an online map application, both of which allow a person to view specific areas in much greater detail. In its SOD, the trial court said the map "graphically show[s] huge swaths of urban and suburban San Diego, including virtually all of the downtown area, completely consumed by the [residency] restrictions."

Wartell's research and the maps show about one-quarter (24.5%) of all residential parcels in San Diego County are compliant with the residency restriction of Jessica's Law—that is, are located outside the exclusion zones. If the single family residences are

eliminated,[12] the percentage of multifamily parcels that are compliant with the residency restriction is less than three percent (2.9%).[13]

However, as the trial court acknowledged, the entire 2.9 percent of multifamily parcels located outside the buffer zones around schools and parks is not available to parolees to rent for a number of reasons. For one thing, the tax assessor residential parcel file used by Wartell include all parcels *authorized* for residential structures—not just those on which residential structures have been built and are in use. Also, the demand for low cost housing in San Diego County has more than doubled in recent years. At the time of the evidentiary hearing, the vacancy rate for rental housing in San Diego County was five to eight percent. Therefore, at any given time, only five to eight percent of the multi-family compliant residences could reasonably be expected to be available for rent.

Petitioners' counsel asked four investigators for the Public Defender's Office to identify a reasonable portion of potential rental units outside the 2,000-foot buffer zones, considering various factors that make it difficult for registered sex offender parolees to secure housing. Such factors include the parolees' limited financial resources that

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12 When released from prison, an individual is given $200 in "gate money." The vast number of sex offender parolees, such as petitioners, are destitute and have scarce employment possibilities. They are not likely candidates to purchase or rent single family homes. More typically, they find housing in apartments or low cost residential hotels.

13 During the hearing, Wartell was asked to rework her analysis using data from land use files rather than tax assessor files. Using the substitute data, the percentage of residential parcels that were complaint with the 2,000-foot restriction was 25 percent, and the percentage of multifamily parcels that was complaint was 0.7 percent.

typically made rent exceeding $850 per month[14] prohibitive, their criminal background and the lack of credit history. The investigators each took a portion of Wartell's map (excluding rural areas) and located complaint multi-family parcels with at least five units.[15] The investigators spent approximately 75 hours searching the Internet for the information. The investigators found 13 out of 54 apartment complexes containing more than 60 units rented units for $850 or less per month, but none of these were in downtown San Diego. Of the 57 apartment complexes with between 15 and 60 units, only nine had units that rented for $850 or less per month. There were 167 apartment buildings with five to 14 units, but the investigators were only able to find the rental price of units in four of the complexes.

The investigators turned over their list of apartment buildings with five to 14 units to two professors from National University who volunteered to do field investigations. The professors phoned 61 apartment complexes that listed a number for the property manager, and received only 16 responses despite repeatedly calling and leaving messages. The professors spent approximately 30 hours making phone calls. In an attempt to acquire information about the remaining apartment buildings, the professors drove hundreds of miles around San Diego County; this took approximately 60 hours. The professors made contact with people at 45 out of 61 complexes. Twenty-six of these

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14 The $850 figure was chosen because it is within the range of $800 to $1,000 that Social Security Disability Income and Supplemental Security Income recipients in San Diego typically receive per month.

15 The investigators limited their search to parcels with at least five units because they did not have enough time to research all multiple housing units.

were excluded because they did not rent units for less than $850 per month. Of the remaining 45, only two had all the criteria—a monthly rent of $850 or less, acceptable move-in costs, and no criminal record or credit check. Neither of these two had a rental unit available. Thomas Green, one of the professors, noted the difficulty in finding the two suitable, compliant residences: "Besides making phone calls, besides driving all over the county to only find two, made—it seems to me like it would be a very difficult proposition to try to find affordable housing that was compliant."

Between September 2007 and August 2010, the number of registered sex offenders on active parole in the city of San Diego who registered as "transient" with the San Diego Police Department increased by four to five times. Prior to Jessica's Law, many registered sex offender parolees lived in residential hotels in downtown San Diego—a situation favored by law enforcement because it fostered better surveillance and supervision. But these hotels either have been demolished as result of redevelopment or they are not compliant with the 2000-foot residency restriction.

At the time of the evidentiary hearing, CDCR's CALPAROLE database showed there were 482 registered sex offenders on active parole in San Diego County who were not in custody or in parolee-at-large status. CDCR officials said 165 of these parolees were transient or homeless. There were 317 sex offender parolees who had a residential

address on file with their parole office. The 317 figure presumably included those who had been afforded injunctive relief.[16]

C. *CDCR Protocol for Jessica's Law Residency Restriction*

Before a sex offender is released from prison, prison officials provide the offender with his or her parole conditions, including the residency restriction of Jessica's Law. Within one day of his or her release, the sex offender parolee is required to report to the assigned parole agent and disclose the address of his or her intended residence. The agent has six working days to verify whether the parolee's intended residence is compliant—that is, it is not within 2,000 feet of a school or park—and inform the parolee. Using a handheld GPS device, the agent measures the distance from the front door of the intended residence to the closest boundary of the school or park. The parolee cannot move into the residence before the agent confirms it is compliant. If the proposed residence is not compliant, the parolee must immediately provide a compliant address or declare himself "transient" and register with the local police accordingly.

"Transient" for this purpose is defined as a registered sex offender parolee "who has no residence." (§ 290.011, subd. (g).) "Residence" is defined as an address "at which a person regularly resides, regardless of the number of days or nights spent there, such as

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16 CDCR posits that if 140 registered sex offender parolees in the county received injunctive relief and they would otherwise have been homeless because of the residency restriction, that leaves 177 parolees (317-140)—more than 36 percent (177 out of 482)—who were in compliance with Jessica's Law without the injunctive relief. In its SOD, the trial court discounted this figure because the current status of the parolees receiving injunctive relief—that is, how many continued to be transient and how many were living in noncompliant, but authorized housing—was unclear at that time.

a shelter or structure that can be located by a street address, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles." (*Ibid*.) It is a parole violation for a transient parolee to be in a noncompliant residence except for up to two hours twice a day to charge his or her GPS device.[17]

The sex offender parolee bears the responsibility for locating compliant housing, which is reflected in Policy No. 07-36. Parole agents are not authorized to tell sex offender parolees where to live or to recommend areas where they should look for compliant housing.

Among other things, CDCR policies require supervisory parole agents (unit supervisors) of agents who handle a sex offender caseload to "continue to collaborate with community-based programs and local law enforcement to facilitate the identification of compliant housing for sex offender parolees." (Policy No. 07-36.) The CDCR policy also requires unit supervisors to "utilize all available resources to obtain a current listing of all public and private schools, and parks within their communities" and to provide "[u]pdated information" from the list to parole agents at least once a month. (*Ibid*.)

CDCR has set up a procedure for waivers of the residency restriction for parolees who are mentally ill and are housed in a mental health facility and for parolees who are in need of medical care in a licensed medical facility that provides 24-hour care.

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[17] A transient parolee also is allowed to be in a residence for approved employment, conducting legitimate business and/or obtaining care and treatment from licensed providers.

Parolees who cannot afford compliant housing may apply for financial assistance in emergency situations if no other resources are available. The assistance, which is considered a loan, is limited to 60 days and cannot exceed $1,500.

D. *Enforcement of Statute as Parole Condition in San Diego County*

Parole Agent Maria Dominguez testified that before Jessica's Law was enacted, she did not allow sex offender parolees on her caseload to live "on the street." Many lived in residential programs or in downtown San Diego hotels, where they could be easily supervised. When her office began enforcing in 2007 the residency restriction of Jessica's Law, agents would show parolees areas they considered compliant or tell them about specific addresses. But when her supervisor was transferred, agents were no longer allowed to advise parolees about compliant areas. If a parolee asked where he or she could live, the agent was instructed to say: "I can't tell you where you could live, but if you bring me an address I will check it and make sure that it's compliant."

Parole Agent Manuel Guerrero, the unit supervisor for one of two San Diego County units supervising sex offender parolees, testified parole agents share information about compliant addresses among themselves, but not with parolees. Guerrero said CDCR policy prohibits parole agents from supplying parolees with specific compliant addresses or neighborhoods for them to consider in pursuing housing.

CDCR has not issued a policy statement defining either "school" or "park" for purposes of enforcing Jessica's Law. Nonetheless, Guerrero defined "school" as any public or private school from kindergarten through 12th grade, but acknowledged some sex offender parolees in San Diego County have received Jessica Law parole conditions

that extended the definition to daycare centers. Guerrero defined "park" as an area "where kids would normally be at." Guerrero said he would look at whether the location contains, among other things, open grassy areas, playground equipment or soccer and baseball fields, and whether the area is designated as a park. Guerrero conceded the definition of park sometimes differs among parole agents depending on how an agent interprets the word "park."

Guerrero, who has been a unit supervisor for three and one-half years, was not familiar with CDCR's requirement that unit supervisors work together with community based programs and local law enforcement to improve the identification of compliant housing for sex offender parolees. Guerrero had not done this during his tenure as a unit supervisor. Guerrero also was unaware that he was charged with maintaining a current listing of local schools and parks and providing updates of that list to parole agents at least once a month.

John "Jack" Chamberlin provided psychotherapy counseling for sex offenders at parole outpatient clinics. He testified homelessness among sex offenders hinders the success of their therapy because they lack stability in the lives. Upon learning that the Public Defender's Office had gathered information about compliant housing, Chamberlin invited a deputy public defender to talk to one of the sex offender groups he counseled. Afterward, his supervisor told Chamberlin not to invite the public defender to his other sex offender groups.

Michael Feer, a clinical social worker, provided group and individual counseling to sex offenders at a parole outpatient clinic. When Jessica's Law was implemented, Feer

tried to assist the offenders he counseled to find compliant housing by using Google Earth, which was on his office computer. In October 2010, Google Earth was removed from all CDCR computers and Feer received an e-mail from the sex offender parole supervisor telling him to stop helping sex offender parolees find housing.

E. *Trial Court's Findings of Fact*

The trial court made, among others, the following factual findings:

- Despite certain imprecisions, the map book prepared by Wartell is the most accurate assessment of housing that is reasonably available to sex offender parolees in San Diego County.
- Sex offender parolees are unlikely candidates to rent single-family homes; they are most likely to be housed in apartments or low-cost residential hotels.
- "[B]y virtue of the residency restriction alone, [sex offender parolees are] barred from access to approximately 97 [per cent] of the existing rental property that would otherwise be available to [them]."
- The remaining three percent of multi-family rental housing outside the exclusion areas is not necessarily available to sex offender parolees for a variety of reasons, including San Diego County's low vacancy rate, rent prices that are too high and the unwillingness of some landlords to rent to sex offenders.
- In addition to CDCR policy prohibiting parole agents from supplying sex offender parolees with specific information about the location of

compliant housing, parole authorities in San Diego County have taken "affirmative steps to prevent" parole employees from helping parolees find compliant housing.

- "[R]igid application of the residency restriction results in large groups of parolees having to sleep in alleys and riverbeds, a circumstance that did not exist prior to Jessica's Law."
- The residency restriction places burdens on parolees that "are disruptive in a way that hinders their treatment, jeopardizes their health and undercuts their ability to find and maintain employment, significantly undermining any effort at rehabilitation."

DISCUSSION

I

Introduction

At issue is the petitioners' claim that section 3003.5(b) is an unreasonable parole condition that infringes on various constitutional rights, including their privacy rights, property rights, right to intrastate travel and substantive due process. (See *In re E.J.*, *supra*, 47 Cal.4th at p. 1270.) "[T]he threshold question common to all of petitioners' remaining as-applied challenges to section 3003.5(b) is whether the section, when enforced as a statutory parole condition against registered sex offenders, constitutes an unreasonable parole condition to the extent it infringes on such parolees' fundamental rights." (*Id.* at p. 1282, fn. 10, italics omitted.)

In addressing the issue, three basic principles are noteworthy. First, statutes, including those enacted through the initiative process, "are presumed valid and must be upheld unless their constitutionality is positively and unmistakably demonstrated." (*People v. Basuta* (2001) 94 Cal.App.4th 370, 397; see also *People v. Jablonski* (2006) 37 Cal.4th 774, 826.)

Second, it is important to distinguish the limited rights of parolees from the rights of other citizens. Parolees have fewer constitutional rights than do ordinary persons. (*Morrissey v. Brewer* (1972) 408 U.S. 471, 482 [92 S.Ct. 2593].) "Although a parolee is no longer confined in prison[,] his [or her] custody status is one which requires and permits supervision and surveillance under restrictions which may not be imposed on members of the public generally." (*People v. Burgener* (1986) 41 Cal.3d 505, 531, disapproved on other grounds as stated in *People v. Reyes* (1998) 19 Cal.4th 743, 754, 756.) The parolee "is constructively a prisoner in the legal custody of state prison authorities until officially discharged from parole. [Citations.] Clearly, the liberty of a parolee is 'partial and restricted,' [citations] not the equivalent of that of an average citizen . . . ." (*Prison Law Office v. Koenig* (1986) 186 Cal.App.3d 560, 566-567.)

Nonetheless, parole authorities do not have unbridled license to impose any restriction or parole condition they deem proper. (*In re Stevens* (2004) 119 Cal.App.4th 1228, 1234.) "Parole conditions, like conditions of probation, must be reasonable since parolees retain 'constitutional protection against arbitrary [and] oppressive official action.' [Citation.]" (*Ibid.*; *Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 874; see also

People v. Thompson (1967) 252 Cal.App.2d 76, 84; § 3053, subd. (a) [state may impose any condition reasonably related to parole supervision].)

Third, it is also important to clarify the nature of the challenge before us —this is an as-applied challenge to section 3003.5(b) as a parole condition—not a facial challenge. "A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.) In contrast, an as-applied challenge seeks "relief from a specific application of a facially valid statute . . . to an individual or class of individuals who are under allegedly impermissible present restraint or disability as a result of the manner or circumstances in which the statute or ordinance has been applied." (*Ibid*.) An as-applied challenge "contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute . . . has been applied and to consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right. [Citations.]" (*Ibid*.)

We review the grant of a writ of habeas corpus by applying the substantial evidence test to pure questions of fact and de novo review to questions of law. (*In re Collins* (2001) 86 Cal.App.4th 1176, 1181.) "[W]hen the application of law to fact is predominantly legal, such as when it implicates constitutional rights and the exercise of judgment about the values underlying legal principles, this court's review is de novo." (*Ibid*.)

From our review of the record, we conclude the trial court's factual findings set forth *ante* in "FACTS, [section] E. *Trial Court's Findings of Fact*" are supported by substantial evidence. Accordingly, we proceed to our de novo review of the legal issues.

II

CDCR's Contentions

CDCR contends the residency restriction of section 3303.5(b) is constitutional because (1) it does not infringe upon any constitutional right of parolees, and, (2) even if it did, the restriction is reasonably related to a legitimate government purpose—namely, the protection of children from sex offenders.

CDCR argues the trial court failed to make the standard constitutional inquiry as follows: (1) consider whether the statute infringes on a constitutional right of parolees; (2) if so, settle on the proper level of scrutiny (e.g., strict scrutiny or rational basis); and (3) apply the appropriate scrutiny to determine if the statute impermissibly infringes on the parolee's right. Further, CDCR claims the trial court erred by focusing on whether the residency restriction was narrowly drawn or tailored to the individual parolee.

As CDCR would apply its syllogistic approach, the inquiry properly should have been short-lived because the 2,000-foot residency restriction does not impinge upon any constitutional rights of a registered sex offender parolee. Further, CDCR maintains even if there were an infringement of a registered sex offender parolee's constitutional rights, none of the constitutional interests of such persons is a fundamental constitutional right meriting the higher level of strict scrutiny. CDCR completes its syllogism by arguing

section 3303.5(b) is constitutional because it is rationally related to its intended purpose of providing greater protection to children from sex crimes.

III

Analysis

The problem with CDCR's suggested analytical approach is that it ignores the direct mandate of our Supreme Court—namely, to determine "whether [section 3003.5(b)], *when enforced as a statutory parole condition against registered sex offenders*, constitutes an unreasonable parole condition to the extent it infringes on *such parolees'* fundamental rights." (*In re E.J.*, *supra*, 47 Cal.4th at p. 1283, fn. 10.) This directive implicitly assumes that registered sex offender parolees have some fundamental rights. Moreover, although the Supreme Court recognized the "limited nature" of the constitutional rights of registered sex offender parolees, it nonetheless pointed out that their parole " 'conditions must be reasonable, since parolees retain constitutional protection against arbitrary and oppressive official action.' " (*Id*. at p. 1282, 1283, fn. 10, quoting *Terhune v. Superior Court*, *supra*, 65 Cal.App.4th at p. 874.)

Here, the trial court correctly identified and followed the Supreme Court's directive by applying a reasonableness analysis to the residency restriction to determine if it, as a parole condition, constituted arbitrary and oppressive official action.

CDCR is correct that it, as the designated state agency, has constructive custody of parolees and serves the compelling interest of ensuring public safety; this is accomplished through supervision and surveillance of parolees under restrictions and conditions that are designed to prevent them from reverting to a criminal lifestyle. (§ 3000, subd. (a)(1);

People v. Burgener, *supra*, 41 Cal.3d at p. 531.) To this end, "[t]he Legislature has given the CDCR . . . expansive authority to establish and enforce rules and regulations governing parole, and to impose any parole conditions deemed proper." (*In re E.J.*, *supra*, 47 Cal.4th at p. 1282, fn. 10.) Conditions of parole typically bar a parolee from having contact with old associates or engaging in past activities; they are designed to prevent the parolee from reverting to a former crime-inducing lifestyle. (*People v. Denne* (1956) 141 Cal.App.2d 499, 508-509; 3 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Punishment, § 752, p. 1174.) CDCR also may impose parole conditions that " '*govern a parolee's residence*, his associates or living companions, his travel, his use of intoxicants, and other aspects of his life.' " (*In re E.J.*, *supra*, at p. 1283, fn. 10.) However, such parole conditions must be related to the parolee's crime or " 'reasonably related to deter future criminality.' [Citation.]" (*In re Corona* (2008) 160 Cal.App.4th 315, 321, quoting *In re Stevens*, *supra*, 119 Cal.App.4th at p. 1234.)

CDCR's argument that the residency restriction of section 3003.5(b) does not impinge on any constitutional right is unpersuasive. The trial court found the residency restriction implicated three constitutional rights—the right to travel, the right to privacy and the right to establish a home. We consider the residency restriction in light of the right to travel as the other two rights are closely related to the right to intrastate travel in this context.

The constitutional right to travel, including intrastate travel, has been recognized by California courts. (*In re King* (1970) 3 Cal.3d 226, 234-235; *In re White* (1979) 97 Cal.App.3d 141, 148.) "[T]he right to intrastate travel (which includes intramunicipal

travel) is a basic human right protected by the United States and California Constitutions as a whole. Such a right is implicit in the concept of a democratic society and is one of the attributes of personal liberty under common law." (*In re White*, *supra*, 97 Cal.App.3d at p. 148; see also *People v. Smith* (2007) 152 Cal.App.4th 1245, 1250 [registered sex offender on probation has constitutional right to intrastate travel].)

Petitioners claim the residency restriction infringes on their constitutional right to travel because the restriction has made it virtually impossible for them to find affordable compliant housing in San Diego County. Petitioners further claim the restriction has led to widespread homelessness among the County's registered sex offender parolees and has inhibited their freedom of movement within the state. Petitioners liken the effect of the residency restriction to impermissible banishment.

CDCR counters that the residency restriction does not implicate petitioners' right to travel and has no relation to banishment. As CDCR puts it, "[P]etitioners remain free to live or associate with whomever they want, and may, subject to the terms of their parole, travel throughout and access anywhere within California. The only constraint the law imposes is that registered sex offenders may not establish a permanent residence near a school or park."

California courts have held overly broad or unreasonable residency restrictions unconstitutional. (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084-1085; *People v. Bauer* (1989) 211 Cal.App.3d 937, 943–944; *People v. Beach* (1983) 147 Cal.App.3d 612, 620-623; *In re White, supra,* 97 Cal.App.3d 141; *In re Scarborough* (1946) 76 Cal.App.2d 648, 650; see also *Alhusainy v. Superior Court* (2006) 143 Cal.App.4th

385.)[18] CDCR objects to the reliance on such cases, which involve probation conditions, because the rights of a parolee are significantly more limited than the rights of a probationer. (See e.g. *Samson v. California* (2006) 547 U.S. 843, 850 [126 S.Ct. 2193].) We acknowledge that a probationer has more liberty rights than a parolee, but here we are not concerned with their comparative rights; rather, we are focusing on the reasonableness of parole conditions, which is judged by the same standard developed for probation conditions. (See *People v. Burgener*, *supra*, 41 Cal.3d at p. 531 [same criteria applying to constitutionality of probation condition applies to condition of parole]; *In re Naito* (1986) 186 Cal.App.3d 1656, 1661 [same].)

In *In re Babak S.*, *supra*, 18 Cal.App.4th at page 1082, the juvenile court suspended a commitment to the California Youth Authority and imposed a probation condition that the minor reside with his parents in Iran for two years. Observing that the probation condition effectively constituted a two-year banishment from the United States, the Court of Appeal found it did "not pass constitutional muster." (*Id*. at p. 1084.) "Notwithstanding the good intentions of all the concerned parties in this case, the probation condition lacked any reasonable nexus to Babak's present or future criminality, violated his constitutional rights of travel, association and assembly, and constituted a de facto deportation." (*Id*. at p. 1085.) "[I]n order to survive constitutional scrutiny, such conditions not only must be reasonably related to present or future criminality, but also

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[18] This court has similarly rejected as unconstitutional unreasonable residency restrictions imposed as probation conditions. (*In re James C.* (2008) 165 Cal.App.4th 1198, 1204-1205; *Alex O. v. Superior Court* (2009) 174 Cal.App.4th 1176, 1183.)

must be narrowly drawn and specifically tailored to the individual probationer." (*Id*. at p. 1084.)

In *In re White, supra,* 97 Cal.App.3d at pages 143 to 144, a woman convicted of soliciting prostitution challenged a condition of probation that excluded her from three high volume prostitution areas of the city. The Court of Appeal found the blanket prohibition unreasonable and overly broad, noting that there was no direct relationship between the commission of prostitution and the exercise of the right to travel. (*Id*. at p. 150.) The appellate court also said the condition should be more narrowly drawn: "No case has been called to our attention upholding such a broad condition which completely prohibits mere presence in a geographical area *at all times* . . . ." (*Ibid*.)

In *People v. Bauer, supra,* 211 Cal.App.3d 937, a probationer convicted of false imprisonment and assault successfully challenged a condition requiring his residence be approved by his probation officer. (*Id*. at p. 943.) The Court of Appeal struck the condition because there was no showing that it was reasonably related to future criminality. (*Id.* at pp. 943-944.) Further, the appellate court found the residency restriction "is all the more disturbing because it impinges on constitutional entitlements—the right to travel and freedom of association. Rather than being narrowly tailored to interfere as little as possible with these important rights, the restriction is extremely broad. The condition gives the probation officer the discretionary power, for example, to forbid appellant from living with or near his parents—that is, the power to banish him." (*Id*. at p. 944.)

In *People v. Beach, supra,* 147 Cal.App.3d at page 618, an elderly defendant was convicted of involuntary manslaughter and was granted probation for five years on various conditions, including that she absent herself from her community. The appellate court agreed with the defendant that her banishment from the community where she had lived in her own home for 24 years was both an unconstitutional and unreasonable condition of probation. (*Id*. at pp. 620-622.)

The residency restriction contained in section 3003.5(b), of course, is not a full banishment in the historical sense as practiced by the colonialists as a form of punishment in which an offender was "expelled . . . from the community." (*Smith v. Doe* (2003) 538 U.S. 84, 98 [123 S.Ct. 1140]; see also *United States v. Ju Toy* (1905) 198 U.S. 253, 269-270 [25 S.Ct. 644].) The residency restriction does not prevent registered sex offender parolees from living in every community in San Diego, nor from visiting communities in which they are not allowed to live.

Nonetheless, the residency restriction prevents petitioners from living in large areas of San Diego County. With the large number of schools and parks in the county's densely populated areas, the 2,000-foot exclusion buffers remove three-quarters of all the residential parcels in the county as potential homes for petitioners. Almost all of the residential parcels in the cities of San Diego, Chula Vista, Vista, El Cajon, Lemon Grove and National City are off limits to petitioners as residences. Further, the housing situation for registered sex offender parolees in San Diego County is worse because they are unlikely to be able to afford to live in single family homes. When single family residential parcels are eliminated from consideration, only 2.9 percent of the county's

multifamily residential parcels fall outside the buffer zones and are therefore compliant with Jessica's Law.

Moreover, when considered from a real world perspective, the housing picture for registered sex offender parolees in San Diego County is even more grim. Given the county's low vacancy rate, the petitioners' general inability to pay more than $850 to $1,000 per month for rent, and the unwillingness of many landlords to rent to petitioners with their criminal histories, significantly less than three percent of the county's multifamily residences are realistically available to registered sex offender parolees in the county. There are so few legal housing options in urban areas in the county that many offenders face the choice of living in rural areas or becoming homeless.

Indeed, for more than a year, Briley—following the suggestion of her parole agent—slept in an alley, where 20 registered sex offender parolees also spent their nights. A homeless Taylor also was advised by his parole agent to sleep in an alley and did so for a month. Todd lived along a riverbed with other registered sex offender parolees who had no place else to live. Glynn, too, became a transient, living in a van. As the trial court found, before the residency restriction of Jessica's Law was enforced as a parole condition, there were not large groups of parolees living in alleys and riverbeds in San Diego.

CDCR points out Briley, whose monthly income from three jobs is only $250, remained homeless for more than one year after she received injunctive relief from the residency restriction. Regarding Taylor, CDCR notes he received assistance for housing, but it was short-lived because of his misconduct. Todd, who is without financial

resources, had a hard time staying out of custody because of repeatedly violating parole conditions and committing crimes. Moreover, CDCR notes Briley, Taylor and Todd have been homeless a number of times before Jessica's Law was enacted.

We are not persuaded by this argument. These individuals obviously have plenty of problems, which are reflected in their past experiences. However, each of them had plans on where to live upon his or her release from prison that were thwarted by the residency restriction. Taylor planned to live with his nephew, but his nephew's residence was not compliant. Briley could not live with her sister-in-law or at a shelter because of Jessica's Law. (See fn. 8, *ante*.) Todd was going to live in a downtown low cost residential hotel with a friend, but downtown San Diego is basically an exclusion zone. The residency restriction was not merely incidental to petitioners' homelessness; it was a substantial cause of it.

As to Glynn, CDCR claims that like the others, his homelessness had more to do with his criminality than with Jessica's Law. Further, CDCR maintains Glynn's "affirmative decision not to relocate" his family to a compliant location that he had found and could afford "shows . . . the residency restriction has no impact on whether he would become homeless."

We find disingenuous CDCR's attempts to shift blame to Glynn for his homelessness. Glynn would not have been in the position of having to choose between his living in a van and the upheaval of his family from a location that best suited them *but for* the residency restriction. To suggest that Glynn is bereft of constitutional rights

because he did not force his wife and children to move to a compliant location against their wishes is unrealistic and unsound.

Petitioners aptly demonstrated that it is no easy task for them to find compliant, affordable housing in San Diego County. The investigative team put together by the Public Defender's Office, armed with a detailed map book showing all compliant parcels in the County and with the Internet, spent months trying to locate such rental housing. The record shows the team came up with only five affordable compliant apartment complexes containing between five and 14 units, which from a practical point of view could be rented by a registered sex offender parolee. For registered sex offender parolees without a map book, use of the Internet, private transportation and telephone access, it is a daunting undertaking to find affordable complaint housing in the county, particularly in light of the CDCR policy prohibiting parole agents from supplying sex offender parolees with specific information about the location of compliant housing.

The residency restriction has other serious implications for petitioners. Rehabilitative and medical treatment services for parolees are generally located in the densely populated areas of the county. Relegated to rural areas of the County, petitioners are cut off from access to employment, public transportation and medical care. For petitioners, such as Taylor and Todd who have serious health issues, access to medical care is critical. For example, Taylor, a cocaine addict who has AIDS, had been accepted at Etheridge Center, a residential drug facility which was close to the clinic where he was receiving treatment for AIDS. But the Etheridge Center is in a residential exclusion zone under Jessica's Law, and Taylor's application for a waiver was ultimately denied.

Petitioners also face disruption of family life because of the residency restriction. Although the restriction is silent regarding whether a sex offender parolee can live with his or her family, if the family member's residence is not in a compliant location, the parolee cannot live there. Upon his release from prison, Glynn was unable to live with his wife and three children because the family residence was within 2,000 feet of a school or park. Until the court granted him injunctive relief, Glynn was living in a van and was limited to spending only two, two-hour periods (one in the morning and one in evening) in the family home—to recharge the battery for his GPS ankle bracelet.

Similarly, Taylor and Briley expected to live with relatives when they were released from prison, but could not do so because their relatives' residences were within a 2,000-foot exclusion area. In the case of Taylor, who has a myriad of serious health problems, the residency restriction prevented him from living with his nephew, who is married to a health care professional.

Cases such as *In re Babak S., supra*, 18 Cal.App.4th 1077, *In re White, supra*, 97 Cal.App.3d 141 and *People v. Bauer*, *supra*, 211 Cal. App.3d 937, teach that restrictions on constitutional rights should be narrowly tailored rather than overbroad. "If available alternative means exist which are less violative of the Constitutional right and are narrowly drawn so as to correlate more closely with the purposes contemplated, those alternatives should be used [citations]." (*In re White*, *supra*, at p. 150.)

Such concerns were voiced in *People v. Smith, supra*, 152 Cal.App.4th at page 1247, in which the appellate court struck down a probation condition imposed by the Los Angeles County Probation Department on all registered sex offenders that prohibited

them from leaving the county for any reason. The Court of Appeal noted the blanket travel restriction was not reasonably related to Smith's crime (*id*. at p. 1252) and was imposed without consideration to Smith's circumstances, such as his employment (*id.* at pp. 1251-1252). "Smith has a constitutional right to intrastate travel [citations] which, although not absolute, may be restricted only as reasonably necessary to further a legitimate governmental interest [citation]." (*Id*. at p. 1250.) The appellate court reversed the condition and remanded the case to the trial court "with directions to fashion a less restrictive limitation based on Smith's particularized circumstances or, in the alternative, to eliminate the travel restriction with regard to Smith's work." (*Id*. at p. 1253.)

We find the blanket residency restriction, as applied in San Diego County, excessive and unduly broad in relation to its purpose—namely, to establish predator free zones around schools and parks where children gather. The statute limits the housing choices of all sex offenders identically, without regard to the type of victim or the risk of reoffending.

In addition, the record shows the residency restriction effectively bars sex offender parolees from living in about 97 percent of the existing multifamily rental property that otherwise would be available to them, including in affordable housing located in downtown San Diego where the record shows they are more apt to receive other needed and vital services. The record also reflects that the percentage of multifamily rental housing ostensibly available to sex offender parolees is substantially less than the remaining three percent of that market because of San Diego County's low vacancy rate,

high rent prices and the unwillingness of landlords to rent to sex offenders, among other factors.

In light of these findings, we conclude the blanket residency restriction exceeds the scope of its stated objective—the protection of children—because as applied it eliminates nearly *all* existing affordable housing in San Diego County for sex offender parolees, in essence banishing them from living within most if not all of the County (see *Alex O. v. Superior Court*, *supra*, 174 Cal.App.4th at p. 1183), and because it treats all parolees the same regardless of whether his or her crime involved the victimization of children or adults (and thus the need for the residency restriction in the first place).

Glynn and Taylor are registered sex offenders because each of them committed a sex crime against an adult; there is no hint of pedophilia in their histories. The exclusion of parolees with backgrounds similar to Glynn and Taylor from living near schools and parks does not substantially protect children, but as the record here shows, it has tremendous impact on such parolees' rights and liberty without bearing a substantial relation to their crimes. As in the cases of Glynn and Taylor, it prevented them from living with family members. In Taylor's case, it also decreased his proximity to needed services and treatment. By banning all sex offenders, the absolute residency restriction of Jessica's Law, when enforced as a parole condition, imposes a substantially more burdensome infringement on constitutional rights than is necessary to protect children from sex crimes. As such, the blanket enforcement of section 3303.5(b) as a parole condition in San Diego County has been unreasonable and constitutes arbitrary and oppressive official action.

As noted by the trial court, its orders do not prohibit CDCR from individually enforcing the residency restriction of Jessica's Law as a parole condition for registered sex offender parolees in San Diego County. The orders merely disallow CDCR from blanket enforcement of the residency restriction. Parole agents retain the discretion to regulate aspects of a parolee's life, such as where and with whom he or she can live. (§§ 3052, 3053, subd. (a).) Agents may, after consideration of a parolee's particularized circumstances, impose a special parole condition that mirrors section 3303.5(b) or one that is more or less restrictive. It is only the *blanket* enforcement—that is, to all registered sex offender parolees without consideration of the individual case—that the trial court prohibited and we uphold.

DISPOSITION

The orders are affirmed.

BENKE, Acting P. J.

WE CONCUR:

NARES, J.

McDONALD, J.