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Your Responsibility When Using this Information:

When putting this material together, we did our best to give you useful and accurate information because we know that people in prison or on parole or PRCS often have trouble getting legal information and we cannot give specific advice to everyone who asks 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 RE:  
PAROLE REQUIREMENTS FOR PEOPLE  
WITH PENAL CODE § 290 OFFENSES**

(updated November 2022)

This letter addresses common questions about special requirements that apply to people who have been convicted of sexual offenses when they are on parole or post-release community supervision (PRCS). Some of these requirements continue even after discharge from parole or PRCS. This letter will refer broadly to the offenses that trigger these requirements as “§ 290 offenses.”

Other sources of information on special restrictions for people with § 290 offenses include:

- California’s “Megan’s Law” website at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov) (note that if you are required to register, you are forbidden from accessing some portions of this website);
- The California Attorney General’s website at [www.oag.ca.gov/sex-offender-reg](http://www.oag.ca.gov/sex-offender-reg), which includes extensive helpful answers to FAQ about registration and public notification laws; and
- Alliance for Constitutional Sex Offender Laws (ACSOL) at [www.all4consolaws.org](http://www.all4consolaws.org) or ACSOL, 2110 K Street, Sacramento, CA 95816 or (818) 305-5984. ACSOL provides information and advocacy for people convicted of sex offenses, including on-line discussion forums and support groups.

Prison Law Office also has a free Parole Manual with information about parole terms, conditions, and revocations that applies more broadly to all people who are on parole. The manual is available by writing to the Prison Law Office or on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).

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## PAROLE/PRCS TERM AND LENGTH

### Will my offense affect whether I am placed on parole rather than PRCS?

You will be placed under supervision after you are released from prison (except in very unusual circumstances). That supervision will either be parole supervised by a CDCR parole agent or post-release community supervision (PRCS) supervised by a county probation officer. A § 290 offense might or might not require that you be placed on parole rather than PRCS, depending on the type of offense, whether it is a current or past offense, and whether CDCR finds that you are at high risk of re-offending.

You will be placed on parole if:

- ◆ any part of your current prison term is for a serious felony listed in Penal Code § 1192.7(c) or a violent felony listed in Penal Code § 667.5(c);
- ◆ you are sentenced as a three-striker (Penal Code § 667(b)-(i));
- ◆ you are classified by CDCR as a “High-Risk Sex Offender” based on any prior and/or current offense; OR
- ◆ you are found to be a “Mentally Disordered Offender” (MDO) under Penal Code § 2962 (in which case, you will be committed to the Department of State Hospitals (DSH) for some or all of your parole period, and perhaps for longer).<sup>1</sup>

If you are not required to serve parole, you will instead be placed on PRCS.<sup>2</sup>

### Will my offense affect my parole supervision level?

CDCR has regulations about parole supervision and conditions for people with registration requirements at California Code of Regulations (CCR), Title 15, §§ 3500-3590.3.

If you are required to register for a past or current sex offense, you will be placed on the highest level of parole supervision, called High Control. You must have an in-person meeting with your parole agent within 48 hours after your release and must meet with your parole agent at your residence within seven working days of release. After that, you will be required to have a monthly contact at your residence and one other contact every 30 days, as well as a case review 30 days after

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<sup>1</sup> Penal Code § 3000.08(a); Penal Code § 3056; see also 15 CCR § 3079.1; *People v. Toussain* (2015) 240 Cal.App.4th 974 (classification as “high risk sex offender” requires parole even if the most recent offense not a sex-related crime). The risk assessment is a Static-99R for people being paroled from men’s prisons or a FSORA for people being paroled from women’s prisons.

<sup>2</sup> Penal Code § 3451.

your release and then every 60 days thereafter.<sup>3</sup> If you don't have a residence, you must tell your parole agent where you intend to sleep at night and the "residential" contacts will be at that location or at your workplace.<sup>4</sup>

If you are being released from a men's prison, you will be labelled as a High Risk Sex Offender (HRSO) if the CDCR risk assessment puts you at an above average or higher risk of committing a new sex offense.<sup>5</sup> If you are being released from a women's prison, you will be labelled as an HRSO if you are assessed as being moderate or higher risk of committing a new sex offense.<sup>6</sup>

### **Will my offense affect how long I am on parole or PRCS?**

Parole terms vary from a two year base term (extendable to a maximum of 3 years) to a life-long term, with several tiers in between. For some parole terms, early discharge can be granted if you perform well on parole. The length your parole term and date on which you could be eligible for early discharge depend on the type of crime(s) for which you are on parole, whether your sentence was determinate (set-length) or indeterminate (life with the possibility of parole), and the date of your offense(s). If you committed several different types of crimes or committed crimes at several different times, then the crime with the longest parole term will control how long you are on parole. If your current offense requires registration as a "sex offender," it may or may not affect the length of your parole term, depending on the type of the offense and of any other offenses that are part of your sentence. The law is complicated and has changed many times over the years, especially for people with violent § 290 offenses, crimes with minors under age 14, and § 290 offenses with indeterminate terms. Another complication is that some changes in the law apply only if you committed the crime(s) after the date the law changed, but other changes apply if you are paroled after the date the law changed. The general impact of these confusing laws is that many people who are on parole for § 290 offenses have base parole terms of 10 years, 20 years and six months, or even life.<sup>7</sup> Also, if you are designated as a HRSO when you are first released, then you will not be eligible for early discharge from parole, regardless of the result of any future risk assessments.<sup>8</sup>

PRCS is much simpler. The maximum term for PRCS is 3 years. Early discharge may be

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<sup>3</sup> 15 CCR §§ 3504(a)(1), 3504.1, 3504.2.

<sup>4</sup> 15 CCR §§ 3590.3.

<sup>5</sup> 15 CCR § 3573(a).

<sup>6</sup> 15 CCR §§ 3573(b), 3580.

<sup>7</sup> Penal Code §§ 3000, 3000.01, 3000.1, 3001 set forth details about parole terms and early discharge eligibility for various offenses. However, because the law has changed many times over the years, you may need to refer to older versions of these statutes that were in effect at the time of your crime in order to determine your correct parole term.

<sup>8</sup> 15 CCR § 3573(f).

considered after six months of good performance and must be granted after 1 year of continuous good performance.<sup>9</sup>

## REGISTRATION

### Do I have to register?

The California laws about registration as a “sex offender” are in the Penal Code starting at § 290.<sup>10</sup>

You should get informed multiple times if you are required to register under California law. The court should have told you about any registration requirement before you entered a guilty or no contest plea,<sup>11</sup> and also when you were sentenced.<sup>12</sup> You also must be notified about any registration requirement before you are released from prison, jail, or a state hospital (or, if you were not incarcerated, then before you were placed on probation or conditional release).<sup>13</sup> If you are being paroled from state prison, complying with the registration requirement will be one of your conditions of parole.

**You are required to register if** you have a past or current conviction for any of the crimes listed in Penal Code § 290(c). Penal Code § 290(c) includes a wide range of felony and misdemeanor crimes involving sexual acts against adults or children, prostitution, child pornography, kidnap or assault for the purpose of committing a sex crime, soliciting another person to commit a sex crime,

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<sup>9</sup> Penal Code § 3456.

<sup>10</sup> Registration generally is not considered to be “punishment,” and courts have upheld even lifetime registration requirements for juvenile offenses against claims the registration is cruel and unusual punishment. See *People v. J.C.* (2017) 13 Cal.App.5th 1201. Also, the Legislature has wide leeway in deciding who is or is not required to register and for how long, if there are plausible rational reasons for those decisions. See *Johnson v. Dept. of Justice* (2015) 60 Cal.4th 871; *People v. Ruelas* (2015) 235 Cal.App.4th 374; *Legg v. Dept. of Justice* (2022) 81 Cal.App.5th 504. Note that the specific disparity at issue in *Johnson v. Dept. of Justice* (2015) 60 Cal.4th 871, 890 was later fixed by the legislature via Senate Bill No. 145 (Stats. 2020, c. 79, § 2).

<sup>11</sup> See *People v. McClellan* (1993) 6 Cal.4th 367, 376. You might be able to withdraw a guilty or no contest plea if you were not advised of the registration requirement and would not have entered the plea had you known about the registration requirement. See *People v. McClellan* (1993) 6 Cal.4th 367, 379-381; *People v. Zaidi* (2007) 147 Cal.App.4th 1470; see also *People v. Olea* (1977) 59 Cal.App.4th 1289, 1298-1299 (discretionary registration requirement may not be imposed after plea unless possibility of registration was included in the plea agreement). Any challenge to your plea should be filed as soon as you become aware of the registration requirement; otherwise, the challenge may be dismissed as untimely. *In re Douglas* (2011) 200 Cal.App.4th 236.

<sup>12</sup> A statutory registration requirement applies even if the sentencing judge failed to include it in the oral and written sentencing orders. *Maciel v. Cate* (9th Cir. 2013) 731 F.3d 928.

<sup>13</sup> Penal Code § 290.017; see also *Lambert v. California* (1957) 355 U.S. 225, 229-230 (registration requirement violates due process if person has no knowledge of duty to register).

and attempt or conspiracy to commit any of the § 290(c) crimes.<sup>14</sup> You can also be required to register for a crime that is *not* listed in § 290(c) if the sentencing judge finds that you committed the crime “as a result of sexual compulsion or for purposes of sexual gratification.”<sup>15</sup>

**In addition, there are some other circumstances in which you will be required to register:**

- ◆ if you were ever made a ward of the juvenile court and committed to the CDCR Division of Juvenile Justice (DJJ) (formerly the California Youth Authority or CYA) or the equivalent agency in another state for an offense listed in Penal Code § 290.008;<sup>16</sup> OR
- ◆ if you were ever found not guilty by reason of insanity of an offense listed in Penal Code § 290(c);<sup>17</sup> OR

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<sup>14</sup> Penal Code § 290 and § 290.003. The crimes requiring registration listed in PC § 290 (c) are: § 187 committed in the perpetration, or an attempt to perpetrate, rape, or any act punishable under § 286, § 287, § 288, or § 289 or former § 288a; § 207 or § 209 committed with intent to violate § 261, § 286, § 287, § 288, or § 289 or former § 288a; § 220 (except assault to commit mayhem); § 236.1(b) or (c), § 243.4, § 261; former § 262(a)(1) involving force or violence resulting in a prison sentence; § 264.1, § 266; § 266c; § 266h(b), § 266i(b); § 266j; § 267; § 269; § 285; § 286; § 287; § 288; § 288.3; § 288.4, § 288.5; 288.7; 289; 311.1; former § 288a; § 311.2(b), (c), or (d); § 311.3; § 311.4; § 311.10; § 311.11; § 647.6; former § 647a; § 653f(c); § 314(1) or (2); a § 272 offense involving lewd or lascivious conduct; a felony violation of § 288.2; attempt or conspiracy to commit any of the offenses listed in PC § 290(c)(1). There is one limitation, a person is not subject to mandatory registration for a violation of § 286(b), § 287(b), or § 289(h) or (i), if the person was not more than 10 years older than the minor at the time of the offense.

California’s registration law has been upheld against constitutional due process challenges and claims that applying the requirements retroactively to people were convicted prior to the law’s enactment violates the prohibition on “ex post facto” laws *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; see also *Smith v. Doe* (2003) 538 U.S. 84 (upholding Alaska’s Sex Offender Registration Act against ex post facto challenge).

<sup>15</sup> Penal Code § 290.006. See also *People v. Mosley* (2015) 60 Cal.4th 1044, 1070 (allowing judge to make discretionary registration order does not violate the Sixth Amendment right to a jury trial).

<sup>16</sup> Penal Code § 290.008; *In re Derrick B.* (2006) 39 Cal.4th 535, 539-542 (court cannot require registration for juvenile offense that is not listed in § 290.008); *In re T.O.* (2022) 84 Cal.App.5th 252, not yet final as of 11/15/2022 (court cannot require registration for juvenile placed in locked county facility rather than in DJJ, even though state is closing all DJJ facilities). There are fewer juvenile offenses that require registration, compared to offenses in adult criminal court. The offenses listed in Penal Code § 290.008 are: § 220 assault with intent to commit rape, sodomy, oral copulation, or any violation of § 264.1, § 288, or § 289; § 261(a) (1), (2), (3), (4), or (6); § 264.1; § 266c; § 267; § 286(b)(1), (c) or (d); § 287(b)(1), (c) or (d); § 288; 288.5; former § 288a(b)(1), (c), or (d); § 289(a); § 647.6; § 207 or § 209 committed with the intent to violate § 261, § 286, § 287, § 288, § 289, or former § 288a. Also, note that registration for a juvenile offense is not required if you were discharged from the CYA for that offense before January 1, 1986. Penal Code § 290.008(a).

<sup>17</sup> Penal Code § 290.004.

- ◆ if you were ever found to be a “Mentally Disordered Sex Offender” (MDSO) or “Sexually Violent Predator” (SVP);<sup>18</sup> OR
- ◆ if you were ever convicted in another state or in a federal or military court of an offense that has the same elements as an offense listed in Penal Code § 290(c) or that was found by the sentencing court to be committed as a result of sexual compulsion or for the purpose of sexual gratification;<sup>19</sup> OR
- ◆ if you are required to register in another state for a crime committed in that state, then you are (with very few exceptions) required to register in California when you are living in California, or if you are working, volunteering, or doing business in California for more than 14 consecutive days or for a total of more than 30 days per year, or if you are attending school in California full-time or part-time.<sup>20</sup>

There is a separate federal registration law (SORNA), and, as of 2022, new federal regulations implementing SORNA that in some ways are harsher than California’s registration laws. (34 § U.S.C. 20901 et seq; 18 U.S.C. § 2250 (penalties for SORNA violations); 28 C.F.R. § 72.2.) However, there is no system for federal registration and California officials currently do not notify people about the federal registration law. California officials will only register people who are subject to registration under California laws, and do not register people who are subject to registration under federal law but not under California law. There are on-going disputes about whether the federal registration regulations will be enforced and whether they are lawful. (*Doe v. U.S. Department of Justice* (C.D. Cal.) No. 5:22-cv-00855, Amended Complaint Filed Oct. 11, 2022.)

### Where and how do I register?

If you are being paroled from state prison, complying with registration laws will be one of your conditions of parole. Your correctional counselor and/or parole agent should “pre-register” you by obtaining your fingerprints, a photo, and your registration information, and sending that information to the Department of Justice registry.<sup>21</sup>

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<sup>18</sup> Penal Code §§ 290.001, 290.004.

<sup>19</sup> Penal Code § 290.005(a)-(b); see *San Nicolas v. Harris* (2016) 7 Cal.App.5th 41, 45 (person who moved to California was required to register for Washington conviction that was equivalent to California crime that requires registration). Note that because different states have different registration laws, you can be required to register in California even if you are not required to register in the state where you committed the offense.

<sup>20</sup> Penal Code §§ 290.002, 290.005(c)-(d).

<sup>21</sup> Penal Code § 290.016.

After your release, you must go in person to register with the police department of the city where you have a “residence,” or with the county sheriff’s department if you have a “residence” in an unincorporated area or a town that has no police department.<sup>22</sup> The definition of “residence” is broad and you can be residing at an address for registration purposes even if you are only visiting regularly, spending the night occasionally, or staying temporarily.<sup>23</sup> If you reside in more than one city or county, you must register with the police or sheriff in each of those locations.<sup>24</sup> In addition, if you are a college student, employed by or volunteering at a college, or living on a college campus, you must register with the campus police.<sup>25</sup>

You have 5 working days to register after you are released from custody or placed on probation.<sup>26</sup> When you register, you must provide all of your current residence addresses.<sup>27</sup> If you are transient, you will have to provide information about where you sleep, eat, work, and spend time.<sup>28</sup> Your fingerprints and photo will be taken.<sup>29</sup> You must also provide the name and address of your employer (if you have one), the license plate number of any car that you own or drive regularly, and proof of your residence location (if you have one). Proof of residence may be shown by an ID with your address, a recent rent or utility bill or receipt from a landlord, or an official document like a bank

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<sup>22</sup> Penal Code § 290(b). During the COVID-19 pandemic, the Governor directed law enforcement agencies to make efforts to use remote and telephonic registration and reporting. However, this order expired on June 30, 2021. Executive Order N-63-20, § 15 (May 7, 2020); Executive Order N-71-20, § 36 (June 30, 2020); Executive Order N-08-21, § 24. (June 11, 2021).

<sup>23</sup> 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, 34 (conviction for failing to register a second “residence” where person visited about three times a week, regardless of whether they ever spent 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); *People v. Deluca* (2014) 228 Cal.App.4th 1263, 1267 (emergency winter shelter was a “residence”).

<sup>24</sup> Penal Code § 290.010.

<sup>25</sup> Penal Code §§ 290(b), 290.009. If you are participating only in on-line courses, with no requirement that you ever be physically present on campus, you can register in writing rather than in person. There is a form and instructions on how to provide written notification of on-line college course registration on the California Attorney General’s website at [www://oag.ca.gov/sex-offender-reg/forms](http://www://oag.ca.gov/sex-offender-reg/forms).

<sup>26</sup> Penal Code §§ 290(b), 290.015.

<sup>27</sup> Penal Code §§ 290.010, 290.015(a).

<sup>28</sup> Penal Code § 290.011(d).

<sup>29</sup> Penal Code § 290.015(a).



statement showing your address.<sup>30</sup> You also must provide any internet identifiers that you use.<sup>31</sup> The law enforcement agency must provide you with a proof of registration document.<sup>32</sup>

If you are on parole, PRCS, probation, or any other type of supervision, you must show your supervising agent your proof of registration form within 6 working days after your release from prison or jail; this period may be extended in unusual circumstances. You also must keep your agent notified of any updates or changes to your registration within 5 working days of the update or change.<sup>33</sup>

### **Do I have to disclose my internet accounts when I register?**

As part of your registration, you must tell the police or sheriff all of your Internet identifiers if (1) you are required to register for a § 290 conviction that occurred on or after January 1, 2017 and (2) you used the Internet to collect private information to identify a victim of the crime or further the commission of the crime, to commit human trafficking, or to prepare, distribute, exchange obscene material or material depicting a minor engaging in sexual conduct. If you add to or change your Internet identifiers, you must notify the local police or sheriff by mail within 30 working days of the change. “Internet identifier” means any electronic mail address or user name used for instant messaging or social networking that is actually used for direct communication between users on the Internet in a manner that makes the communication not accessible to the general public. “Internet identifier” does not include passwords, date of birth, social security number, or PIN numbers. Law enforcement can use your Internet identifiers for the purpose of investigating a new suspected crime that is sexual, kidnapping, or human trafficking, but they cannot disclose the information to the public unless required to do so by a court order. Refusal to provide your Internet identifiers is a misdemeanor punishable by up to six months in jail.<sup>34</sup>

There is a form and instructions on how to provide written notification of changes to your internet identifiers on the California Attorney General’s website at [www://oag.ca.gov/sex-offender-reg/forms](http://www.oag.ca.gov/sex-offender-reg/forms).

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<sup>30</sup> Penal Code § 290.015(a).

<sup>31</sup> Penal Code § 290.015(a).

<sup>32</sup> Penal Code § 290.85(d).

<sup>33</sup> Penal Code § 290.85.

<sup>34</sup> Penal Code §§ 290.014(b), 290.015(a)(4), 290.024, 290.45(b). A law that would have required all registrants to disclose their Internet identifiers and service providers was struck down as unlawful because the law was not narrowly tailored enough to justify its impact on First Amendment rights. *Doe v. Harris* (9th Cir. 2014) 772 F.3d 563.

### **When do I have to update my registration?**

At the very minimum, you must update your registration in person with the police or sheriff every year within 5 working days before or after your birthday.<sup>35</sup> Some people must update their registration more frequently. If you are transient, you are required to update your registration every 30 days, as well as within 5 working days of your birthday.<sup>36</sup> If you have ever been found to be a Sexually Violent Predator (SVP), you must update your registration every 90 days.<sup>37</sup>

In addition, you must update your registration whenever you change your name or residence. If you change your name, you must notify the police or sheriff within 5 working days after your name change.<sup>38</sup> If you move, you must update your registration with your new address within 5 working days of the move.<sup>39</sup> If you have a home but then become homeless, you must update your registration within 5 working days of losing your home.<sup>40</sup> If you spend the night at a shelter, you will have to update your registration within 5 working days of going there.<sup>41</sup> If you are homeless and then find a new place to live, you must update your registration with your new address within 5 working days.<sup>42</sup>

If you get sent to the CDCR, county jail, or a state mental hospital while you are registered, officials at those institutions are supposed to inform the Department of Justice of your confinement.<sup>43</sup> If you are incarcerated or 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 return to your last registered address (unless your normal registration update deadline occurred up while you were incarcerated).<sup>44</sup>

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

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<sup>35</sup> Penal Code § 290.012(a).

<sup>36</sup> Penal Code § 290.011(a)-(b).

<sup>37</sup> Penal Code § 290.012(b); *Litmon v. Harris* (2014) 768 F.3d 127 (90-day verification requirement for people committed as SVPs does not violate due process or equal protection).

<sup>38</sup> Penal Code § 290.014; see *People v. Vincelli* (2005) 132 Cal.App.4th 646 (law requiring registration after name change is not unconstitutionally vague).

<sup>39</sup> Penal Code § 290.013; see *People v. Armas* (2011) 191 Cal.App.4th 1173 (evidence sufficient for conviction for failing to notify the agency in location from which person had moved, but insufficient to show failure to register in the area to which person had re-located).

<sup>40</sup> Penal Code § 290.011(b).

<sup>41</sup> Penal Code § 290.11(g); 15 CCR § 3652(c).

<sup>42</sup> Penal Code § 290.011(b).

<sup>43</sup> Penal Code § 290.013(d).

<sup>44</sup> Penal Code § 290.015(a).

within 5 working days of the move.<sup>45</sup> If you don't know what your new address will be, then you still have to notify the both agencies that you will be moving; once you do get a new temporary or permanent address, you will have 5 working days to update your registration in person with authorities in your new location and to send a registered or certified letter informing the authorities in your prior county about your new address.<sup>46</sup>

### **Do I have to keep registering if I move to another state?**

If you are moving out of state, you must tell the local California authorities in the city or county that you are leaving; you must do the notification in person and within 5 working days of your move. After that, you don't need to keep registering in California.<sup>47</sup> The exception is that if you are required to register in your new state, you must still register in California if you are working, volunteering, 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 in California full-time or part-time.<sup>48</sup>

You also should immediately contact the local law enforcement agency in any new state in which you are living, going to school, working, or regularly doing business to make sure that you comply with your new state's registration laws and with the federal SORNA law, (if it is being implemented in your new state). The other state's laws could be the same or different than California's laws. This means that even if you are no longer required to register in California at all, you might still have to register in your new state.

### **What happens if I don't register?**

Failure to comply with a registration requirement is a crime. If your § 290 offense 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.<sup>49</sup> There is no statute of limitations on failure to register since courts consider

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<sup>45</sup> Penal Code §§ 290(b), 290.013(a).

<sup>46</sup> Penal Code § 290.013(b); *People v. Annin* (2004) 117 Cal.App.4th 591, 603-604 (duty to notify about move arises immediately upon move, not just when person gets a new address).

<sup>47</sup> Penal Code § 290.011(f), 290.013; see *People v. Wallace* (2009) 176 Cal.App.4th 1088 (upholding conviction for failure to provide notice of moving out of state).

<sup>48</sup> Penal Code § 290.013

<sup>49</sup> Penal Code § 290.018.

it to be a continuing offense.<sup>50</sup> If you fail to register a move from one state to another, you could also be convicted of violating federal registration laws or another state's registration laws.<sup>51</sup>

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.<sup>52</sup> However, there are rules that prohibit courts from imposing sentences for 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, then you can be convicted of two crimes but can be punished for only one.<sup>53</sup>

In order to be a crime, your failure to register must be "willful."<sup>54</sup> If you did not actually know you had to register or if you were unable to register due to circumstances beyond your control, then you should be able to avoid a conviction for violating the registration law.<sup>55</sup> For examples, failure to register is not willful if you had a severe involuntary physical or mental condition that caused you not to have actual knowledge of the duty to register.<sup>56</sup> However, simply forgetting to register is not a defense, even if your memory lapse was related to depression.<sup>57</sup>

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<sup>50</sup> *People v. Fioretti* (1997) 54 Cal.App.4th 1209, 1217. Also, even if your sex offense conviction is later reversed or vacated by a court, the State can convict you for a registration violation that occurred before the conviction was reversed or vacated. *In re Watford* (2010) 186 Cal.App.4th 684, 687.

<sup>51</sup> See *People v. Davis* (2011) 202 Cal. App. 4th 429 (federal prosecution for failing to register under SORNA did not bar prosecution under state registration laws).

<sup>52</sup> Penal Code § 290.018(i).

<sup>53</sup> *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 plan to move and failure to report new address were separate violations which could result in convictions of two crimes; however, multiple punishments were prohibited).

<sup>54</sup> Penal Code § 290.018(a)-(b); *People v. Garcia* (2001) 25 Cal.4th 744, 754.

<sup>55</sup> *Bartlett v. Alameida* (9th Cir. 2004) 366 F. 3d 1020, 1024 (although there was evidence that person was given written notice of duty to register, person was entitled to present evidence that they 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 person was transient, documents did not provide clear notice of requirements, and prosecutor failed to show person knew he was required to register additional addresses); *People v. Aragon* (2012) 207 Cal. App. 4th 504 (no willful violation of where person, who lived in a mobile trailer but continued to register as a transient, did not know that the trailer was a residence); but see *People v. Garcia* (2001) 25 Cal.4th 744, 754-755; *People v. Vigil* (2001) 94 Cal.App.4th 485, 501-502; ); *People v. Yoloy* (2015) 239 Cal.App.4th 1116 (failure of jail officials to notify about registration requirement upon release did not bar conviction for failing to register since person had previously registered and must have actually known of duty to re-register).

<sup>56</sup> *People v. Sorden* (2005) 36 Cal.4th 65, 72.

<sup>57</sup> *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.

The punishment for failure to register can be severe. Many of the crimes that require registration are violent or serious “strike” offenses. If you have a prior strike, and you then fail to register, you could face a doubled sentence under the “two strikes law.”<sup>58</sup> In some circumstances, the punishment could even be a life sentence under the “three strikes law.”<sup>59</sup> Courts have upheld some third strike sentences for failure to register against claims that those sentences were cruel or unusual punishment in violation of the federal Constitution’s Eighth Amendment.<sup>60</sup> On the other hand, in a few cases, courts have overturned life sentences as being cruel or unusual where the failure to register was a technical violation, such as not registering annually though staying at the same address.<sup>61</sup>

If you are on parole when you violate your registration requirements, then you can be returned to custody for a parole violation in addition to or instead of being prosecuted for a criminal offense.<sup>62</sup>

### **Can I ever get rid of my registration requirement?**

California registration requirements continue after you are off parole or PRCS and may last for life. However, as of January 1, 2021, there are several different “tiers” of registration requirements and, depending on which tier you are in, you may be able to petition have your registration requirements terminated after you have been in the community for some period of time. There are different tier categories for adult criminal court offenses and for juvenile court adjudications. Note that if you have multiple convictions for sex offenses that fall into different tiers, then you are subject to the tier for the offense with the longer registration requirement.

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<sup>58</sup> See Penal Code §§ 667(e)(i), 667.5(c), 1192.7(c).

<sup>59</sup> See Penal Code §§ 667(b)-(i), 667.5(c), 1192.7(c). A person who has two prior “strikes” and is later convicted of failing to register can get a three-strikes life term for violating registration rules if they have a prior conviction for a “super strike” offense. Some sex offenses qualify as super strikes: a sexually violent offense as defined by Welfare & Institutions Code § 6600; a violation of either Penal Code §§ 288a, 286, or 289 with a child under 14 and more than 10 years younger than the person; or a violation of Penal Code § 288 with a child under age 14. Penal Code § 667(e)(2).

<sup>60</sup> 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. Postof* (2005) 126 Cal.App.4th 92, 108-109; *People v. Meeks* (2004) 123 Cal.App.4th 695, 703.

<sup>61</sup> 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.

<sup>62</sup> See generally Penal Code §§ 3056-3057.

**If your § 290 conviction was in adult criminal court, the minimum registration period is:**<sup>63</sup>

Tier One: a minimum registration period of 10 years for:

- ◆ any misdemeanor; OR
- ◆ a felony that is not serious or violent; OR
- ◆ an order to register for an offense not listed in Penal Code § 290 because you acted as a result of sexual compulsion or for purposes of sexual gratification, unless the sentencing court found that you should be in a higher tier.

Tier Two: a minimum registration period of 20 years for:

- ◆ a serious or violent felony; OR
- ◆ a conviction of Penal Code § 285, § 286(g) or (h), § 288a(g) or (h), § 289(b); OR
- ◆ a second conviction of Penal Code § 647.6 that was charged and tried separately from your first conviction.
- ◆ **HOWEVER**, if you are a Tier Two registrant, you can petition for termination earlier – after 10 years in the community -- if your § 290 offense: involved no more than one victim age 14 to 17, you were under age 21 at the time of the offense, and the offense was not a violent felony, was not a § 288(a) offense (lewd or lascivious act with minor under age 14), and is not listed in § 236.1 (human trafficking). In addition, you must not have been convicted of a new sex offense or violent felony since being released from custody on your Tier Two § 290 offense. If the petition is denied you may not file a new termination petition for at least 1 year.<sup>64</sup>

Tier Three: lifetime registration for:

- ◆ conviction of any of a long list of specific crimes; OR
- ◆ conviction of a sex offense followed by a later conviction in a separate case of a § 290 offense that was a violent or serious felony; OR

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<sup>63</sup> Penal Code § 290(d); Penal Code § 290.006 (offenses not specified in § 290). The violent felonies are listed in Penal Code § 667.5(c) and the serious felonies are listed in Penal Code § 1192.7.

<sup>64</sup> Penal Code § 290.5(b).

- ◆ anyone who was committed to a state hospital as a Sexually Violent Predator (SVP);  
OR
- ◆ anyone deemed by CDCR as having a “well above average risk” of re-offending at the time of release.<sup>65</sup>
- ◆ HOWEVER, you can petition earlier – after 20 years in the community -- if (1) your § 290 offense is not a violation of § 288 and not a serious felony, (2) you were made a Tier Three registrant based only on a CDCR risk assessment, and (3) you have not been convicted of a new sex offense or a violent felony since being released from custody on your § 290 offense.<sup>66</sup>

**If your § 290 conviction was a juvenile adjudication for which you were sent to DJJ 9or CYA), the minimum registration period is:**

Tier One: a minimum registration period of 5 years for:

- ◆ any felony that was not serious or violent.

Tier Two: a minimum registration period of 10 years for:

- ◆ any serious or violent felony.<sup>67</sup>

If your registration requirement is due to an offense in another state (or a federal or military offense) you will be in the tier that applies to the equivalent California crime. If there is no equivalent offense, you will be in Tier Two. The exception is that you will be in Tier Three if you (1) had a risk assessment of well above average when you were released from custody, or (2) you had a subsequent

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<sup>65</sup> Penal Code § 290(d)(3); The Tier Three crimes are: § 187 while attempting to commit or committing an act punishable under §§ 261, 286, 287, 288, former 288a, or 289; §§ 207 or 209 with intent to violate §§ 261, 286, 287, 288, former 288a, or 289; § 220; § 266h(b); § 266i(b); § 266j; § 267; § 269; § 288(b) or (c); § 288.2; § 288.3 (unless committed with intent to commit a violation of §§ 286(b), 287(b), 288a(b), or 289(h) or (i)); § 288.4; § 288.5; § 288.7; § 653f(c); any offense with an indeterminate sentence pursuant to § 667.61; sentenced as a “habitual sex offender” under § 667.71; two convictions for § 288(a) brought and tried separately; any person required to register pursuant to § 290.004; any felony offense described in § 236.1(b) or (c); any felony offense described in § 243.4(a), (c), or (d); § 261(a)(2), (3), or (4) or § 261 and punished pursuant to § 264(c)(1) or (2); former § 262(a)(1); § 264.1; § 272 involving lewd or lascivious conduct; § 286(c)(2), (d), (f), or (i); § 287(c)(2), (d), (f), or (i); § 289(a)(1), (d), (e), or (j); felony § 311.1; felony § 311.11; § 311.2(b), (c) or (d); § 311.3; § 311.4; § 311.10. CDCR’s risk assessment tools are discussed in 15 CCR § 3575. If CDCR staff cannot immediately figure out which tier you are in, they can place you on “tier-to-be-determined” status for up to 24 months while they decide what tier applies to you. Penal Code § 290(d)(5).

<sup>66</sup> Penal Code § 290.5(b).

<sup>67</sup> Penal Code § 290.008(d)(1). Violent felonies are listed in Penal Code § 667.5(c) and serious felonies are listed in Penal Code § 1192.7.

conviction for an offense substantially similar to a California § 290 crime that is a violent felony or to a § 269 or § 288.7 crime, or (3) you have ever been committed to a mental health facility in a proceeding substantially similar to a Sexually Violent Predator (SVP) commitment.<sup>68</sup>

The minimum registration period starts on the date you are released from prison (or jail or state hospital). The minimum registration period is extended by 1 year each time you get a misdemeanor conviction for failing to register and by 3 years each time you get a felony conviction for failing to register. In addition, time toward the minimum registration period is tolled – meaning the clock stops running -- during any period you spend in custody for a parole or PRCS revocation or for a new criminal charge or civil commitment. The clock then starts again when you are released and start registering again. However, the minimum registration period is not tolled (the clock keeps running) for time during which you are incarcerated for arrests that do not lead to a conviction or probation or parole revocation.<sup>69</sup>

### **How do I ask to get rid of my registration requirement?**

After you have served your minimum registration period, you can petition to terminate your registration requirement.<sup>70</sup> When you file your petition, you also must be out of custody, must not be on parole, probation or other supervised release, and must not have any pending charges that could change your tier status or extend the time to complete your mandatory minimum registration requirement.<sup>71</sup>

The petition form, information about how to fill out the form, and a proof of service form are available from the county court clerk or on the California courts' website at: [www.courts.ca.gov/forms.htm?query=](http://www.courts.ca.gov/forms.htm?query=). The form numbers are CR 415 Petition, CR 415 Info and CR 416 Proof of Service. When you file your petition, you must attach proof of registration, which you can get from the law enforcement agencies where you are registered. You may be able to get help with filing a petition from the local public defender's office or other advocates.

You must file your petition in the local court in the county where you are registered, either in the juvenile court (if your § 290 offense was a juvenile adjudication) or superior court (if your § 290

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<sup>68</sup> Penal Code § 290(d)(4).

<sup>69</sup> Penal Code § 290(e).

<sup>70</sup> Penal Code § 290.5. Obtaining a dismissal of a § 290 conviction under § 1203.4 following successful completion of probation will not relieve you of registration. Penal Code § 290.007; see also *Doe v. Brown* (2009) 177 Cal.App.4th 408. A certificate of rehabilitation issued on or after July 1, 2021 does not relieve you of the obligation to register; you must separately petition for and be granted termination of registration. Penal Code § 4852.03(a)(2)(B). Also, be aware that there are provisions that make it more difficult or in some cases impossible for people with § 290 offenses to get certificates of rehabilitation. Penal Code § 4852.01 et seq.; see also *People v. Tirey* (2015) 242 Cal.App.4th 1255.

<sup>71</sup> Penal Code § 290.5(a)(2).



offense was an adult criminal conviction).<sup>72</sup> You must serve your petition on the local district attorneys and law enforcement agencies for all locations in which you are registered; this means that you must send a copy of your petition to those agencies and attach a completed proof of service form to your petition when you file it in court.<sup>73</sup>

If the district attorney does not request a hearing, the court can go ahead and grant your petition without a hearing if you are in compliance with your registration requirements, have served your minimum registration period, and are not in custody or on supervision or facing pending charges that would affect your registration requirement. Alternatively, if you do not meet those requirements or have not properly filed and served your petition, the court can deny your petition without a hearing.<sup>74</sup> If the district attorney requests a hearing, the court will hold a hearing to consider evidence about whether community safety would be enhanced by continuing to require you to register. The court shall consider the facts of your § 290 offense, your other criminal and social history, how long it has been since your § 290 offense, whether you have completed a treatment program, and any current risk assessments.<sup>75</sup>

If the court grants your petition, you will be relieved of your registration requirement. If the court denies your petition, it must consider community safety factors and set a time period after which you can file a new petition. For most petitions, the time period set by the judge can range from a minimum of 1 year to a maximum of 5 years after the denial.<sup>76</sup> The exceptions are: (1) if you are in Tier Two and were eligible to file a petition after 10 years of registration, then you cannot file a new petition for at least 1 year and (2) if you are in Tier Three and were eligible to file a petition after 20 years of registration, then you cannot file a new petition for at least three years.<sup>77</sup> The court will notify the Department of Justice about the outcome of the hearing.<sup>78</sup>

If the court denies your petition, you can challenge that decision by filing a direct appeal in the court of appeal for the district that covers the local county court district. If the court grants your petition, the District Attorney can file an appeal. Information about Direct Appeals and the deadline for filing a notice of appeal is in the Prison Law Office's packet on Direct Appeals, which is available by writing to the office or on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).

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<sup>72</sup> Penal Code § 290.5(a)(1).

<sup>73</sup> Penal Code § 290.5(a)(1).

<sup>74</sup> Penal Code § 290.5(a)(2).

<sup>75</sup> Penal Code § 290.5(a)(2).

<sup>76</sup> Penal Code § 290.5(a)(4).

<sup>77</sup> Penal Code § 290.5(b).

<sup>78</sup> Penal Code § 290.5(a)(5).

## PUBLIC NOTIFICATION

### Will the government release information about me to the public?

If you are in Tier Two or Tier Three for an adult § 290 crime, the state can publish your name, photograph, physical description, date of birth, type and date of your crime and date of release from custody, and zip code on the “Megan’s Law” website. If you are in Tier Three, the state also can publish your street address.<sup>79</sup> The state cannot publish the name of your employer or any criminal history not related to your registration requirement.<sup>80</sup> When you are released, CDCR (or the jail or state hospital) will send your information to the Department of Justice for inclusion on the website.<sup>81</sup> Your information will not appear on the Megan’s Law website if: your § 290 crime was a juvenile adjudication;<sup>82</sup>

If you are required to register, it is a misdemeanor for you to look at the restricted portion of the Megan’s Law website.<sup>83</sup>

You can apply to be excluded from (taken off) the Megan’s Law website if you meet all of the following criteria:

- ◆ your most recent risk assessment is average, below average, or very low (Static -99 score of 3 or lower); AND
- ◆ you are the parent, stepparent, sibling, or grandparent of the victim of your § 290 offense; AND
- ◆ your § 290 offense did not involve either oral copulation or penetration of the vagina or rectum other either you or the victim by a penis or any foreign object; AND

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<sup>79</sup> Penal Code § 290.46(a)-(c). The public notification rules apply even if you who entered a plea bargain to a § 290 offense prior to the adoption of Megan’s Law on September 24, 2004, unless there was a specific agreement that future changes to the registration laws would not be applied. *Doe v. Harris* (2013) 57 Cal.4th 64. They also apply even if you were not subject to public notification or were excluded from public notification under different versions of Penal Code § 290.46 that were in effect prior of 2022 and 2023. See Penal Code § 290.46(c)(2) or (d)(1)(ii)(C).

<sup>80</sup> Penal Code § 290.46(a)(1).

<sup>81</sup> Penal Code § 290.46(a)(2)(B).

<sup>82</sup> Penal Code § 290.46(b)(1).

<sup>83</sup> Penal Code § 290.46 (i). The website is [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). You may view the Main page and links to general information and FAQs. If you click on the link to the restricted portion of the website, you will see a warning that you cannot legally proceed to that section of the website.

- ◆ you are on probation or you have successfully completed probation (without getting any probation violations or new convictions that resulted in incarceration) or for your § 290 offense.<sup>84</sup>

The form (CJIS 4046D) and instructions for applying for removal from the Megan’s Law website is available on the California Attorney General’s website at [www://oag.ca.gov/sex-offender-reg](http://www.oag.ca.gov/sex-offender-reg). You must submit the form to the California Department of Justice along with official documents, such as a probation report, proof of successful probation, or other court documentation to prove that you are eligible for removal. Note that removal from the website will not affect your registration requirement.

The information on the Megan’s Law website should only be used for protection of the public. The information should not be used to deny you health insurance, credit, educational funds, housing, or (with certain exceptions) a job. A person who misuses the information against you can be liable in a civil lawsuit.<sup>85</sup> A person who uses the information to commit a crime can be subjected to criminal punishment including incarceration and fines.<sup>86</sup>

In addition to public notification on the Megan’s Law website, law enforcement agencies can release information about you by other means when necessary to protect public safety.<sup>87</sup>

## GPS TRACKING

### Do I have to wear a GPS tracker?

If you are required you to register as a “sex offender,” you must wear a GPS tracker (usually an ankle bracelet) during your parole.<sup>88</sup> When you first make contact with your parole agent, you will get the GPS tracker.<sup>89</sup> Although CDCR can require you to pay to cover the cost of GPS monitoring,

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<sup>84</sup> Penal Code § 290.46(d); see also *Yohner v. DOJ* (2015) 237 Cal.App.4th 1 (exclusion from Megan’s law website did not apply to person who was step-grandparent of victim; this distinction did not violate equal protection).

<sup>85</sup> Penal Code § 290.46(j).

<sup>86</sup> Penal Code § 290.46(h).

<sup>87</sup> Penal Code § 290.45.

<sup>88</sup> Penal Code §§ 3000.07(a), 3004(b), 3010.10; see also 15 CCR §§ 3540-3565. The GPS requirement does not apply to persons who were both convicted prior to November 8, 2006 *and* paroled, given probation, or otherwise released from custody prior to that date. *Doe v. Schwarzenegger* (E.D.Cal. 2007) 476 F.Supp.2d 1178.

<sup>89</sup> Penal Code § 3010.10(a); 15 CCR § 3564.

it should not make you pay if you are unable to do so, especially if you still owe fines, restitution, or fees on your criminal case.<sup>90</sup>

Your parole can be revoked if you do not comply with the GPS requirement. If you do not get your GPS device on time, your revocation term will be 180 days, unless the court decides that a lower or higher term is more appropriate. If you remove, disable, render inoperable, or knowingly circumvent the operation of your GPS device, your revocation term will be 180 days.<sup>91</sup> However, it is not a violation of parole if your device is removed or disabled by a medical professional or first responder for necessary medical treatment or is authorized by a court of the law enforcement agency responsible for the GPS device.<sup>92</sup>

The law also says that you must wear a GPS tracking device for the rest of your life, but does not specify any punishment that could be imposed for failing to do so after you are off parole.<sup>93</sup> When you are discharged from parole, CDCR remove your parole GPS tracker and will notify local law enforcement, who could make you wear a new GPS device monitored by local officers.<sup>94</sup> However, in practice, local officers rarely if ever provide people with GPS trackers once they are off parole.

## **RESIDENCY, MOVEMENT, AND EMPLOYMENT RESTRICTIONS**

### **Are there restrictions on where I can live?**

California laws put some restrictions on where people with § 290 offenses may live while they are on parole. These restrictions are:

- ◆ If you are required to register, you cannot reside in a single-family house with another person who is also required to register, unless the other person is legally related to you by blood, marriage, or adoption; residential treatment facility do not count as single-family houses for this purpose.<sup>95</sup>

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<sup>90</sup> Penal Code §§ 3004(c); 15 CCR § 3563.

<sup>91</sup> Penal Code § 3010.10(d); 15 CCR § 3572. However, if you are on life-long parole, a revocation presumably could result in you being returned to prison for life. Penal Code 3000.1

<sup>92</sup> Penal Code § 3010.10(c).

<sup>93</sup> Penal Code § 3004(b). Forcing a person to wear a GPS device for life after completion of parole or other supervision constitutes a “search” under the U.S. Constitution’s Fourth Amendment. *Grady v. North Carolina* (2015) 575 U.S. 306. On remand, the North Carolina Supreme Court found that such an intrusion was not justified for a person convicted of a sex offense classified as “second degree” under North Carolina law. *State v. Grady* (2019) 372 N.C. 509.

<sup>94</sup> 15 CCR §§ 3464-3565;

<sup>95</sup> Penal Code § 3003.5(a); 15 CCR § 3571(c), 3582(a). Also, SVPs who were convicted of violating Penal Code § 228(a)-

- ◆ If your offense is Penal Code § 288 or § 288.5, and you are assessed as being “high risk,” you may not live within half a mile (2,640 feet) of a K-12 school.<sup>96</sup>
- ◆ If your offense was against a minor, you cannot reside in a child day care facility or child residential facility or foster family home. Violating this law is a misdemeanor.<sup>97</sup>

There is a section of the Penal Code that says that any person who is required to register is forbidden from living within 2,000 feet of a school or park where children regularly gather.<sup>98</sup> However, it has been established that this can be applied only to people are on parole.<sup>99</sup> Furthermore, the California Supreme Court held that applying this broad restriction to all registrants on parole violated the constitutional Fourteenth Amendment due process right to be free of unreasonable, arbitrary and oppressive official action.<sup>100</sup>

CDCR still has authority to impose special residency restrictions on a case-by-case basis.<sup>101</sup> If you have a condition of parole prohibiting contact with specific children, you will not be allowed to live in the same residence as those children.<sup>102</sup> CDCR also can bar you from residing within a certain distance of a park, K-12 school, or other location, but only if that parole condition is justified by a connection between your offense, criminal history, and/or likelihood of future offenses.<sup>103</sup>

CDCR has procedures for enforcing residency requirements.<sup>104</sup> When you are paroled, you must tell your 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 that residence complies with your residency restrictions. If you are required to live a certain distance from places like schools or parks, the parole agent will be measure the distance with a GPS device, using the straight-line distance

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(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).

<sup>96</sup> Penal Code § 3003(g); see also 15 CCR § 3582(a).

<sup>97</sup> Penal Code § 3003.6.

<sup>98</sup> Penal Code § 3003.5(b); see also *Doe v. Schwarzenegger* (E.D. Cal. 2007) 476 F.Supp.2d 1178 (residency provision did not apply to people who were both convicted prior to November 8, 2006 and paroled prior to that date); *In re E.J.* (2010) 47 Cal.4th 1258, 1272-1273 (residency restriction applied to all people released on parole on or after November 8, 2006).

<sup>99</sup> See *People v. Mosley* (2015) 60 Cal.4th 1044; *In re E.J.* (2010) 47 Cal.4th 1258, 1271, fn. 5; *People v. Lynch* (2016) 2 Cal.App.5th 524.

<sup>100</sup> *In re Taylor* (2015) 60 Cal.4th 1044.

<sup>101</sup> *In re Taylor* (2015) 60 Cal.4th 1044; 15 CCR §§ 3571, 3582.

<sup>102</sup> 15 CCR § 3571(f)

<sup>103</sup> 15 CCR §§ 3571(b), 3582.

<sup>104</sup> 15 CCR §§ 3571-3590.3.

between the main entrance of your residence and the exterior boundary of the nearest park or school, (not the driving or walking distance).<sup>105</sup>

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 your “residence” if circumstances “appear to establish a pattern of residency.”<sup>106</sup> You may stay at locations which have no street address (such as bridges, encampments and bus stops) without violating a residency restriction, unless CDCR imposes a special condition of parole limiting your access to such locations.<sup>107</sup>

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. 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.<sup>108</sup>

Parole agents have been instructed to make exceptions to the residency rules for parolees who are mentally ill and housed in a licensed mental health facility or are in need of medical care in a licensed facility 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 sent to jail for up to 180 days.<sup>109</sup>

Cities, towns and counties sometimes adopt their own ordinances imposing restrictions on where you can live.<sup>110</sup> However, these restrictions may be found to be unlawful if they go beyond the restrictions set by state law or if they violate the due process right to be free from arbitrary government restrictions or the right to equal protection.<sup>111</sup> If you are unsure whether your residence is in

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<sup>105</sup> 15 CCR §§ 3571(e) and 3582(e); see *People v. Christman* (2014) 229 Cal.App.4th 810 (upholding straight-line measurement method).

<sup>106</sup> 15 CCR § 3590.

<sup>107</sup> See 15 CCR § 3590.2.

<sup>108</sup> 15 CCR § 3590.1.

<sup>109</sup> See Penal Code § 3000.08. However, if you are on life-long parole, a revocation presumably could result in you being returned to prison for life. Penal Code 3000.1

<sup>110</sup> See Penal Code § 3003(c).

<sup>111</sup> See e.g., *Doe #1 v. City of San Diego* (S.D. Cal. 2019) 363 F.Supp.3d 1104 (case raised viable claims that local residence ordinance was preempted by California law, and violated due process and equal protection); see also *Chlymer v. City of Adelanto* (E.D. Cal.) No 16-02535, Order filed Dec. 8, 2016); *Weiss v. City of Maywood* (L.A. Super. Ct) No. VC066407,

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 I can go?**

There is one statewide restriction on where you can go that applies regardless of whether you are on or off parole. If you are required to register, you cannot enter a school ground or building without "lawful business" and "written permission" from the chief school official. Violating this law is a misdemeanor.<sup>112</sup>

Some cities, towns, and counties may have their own local ordinances that prohibit or restrict you from going to places where children may be present (schools, libraries, museums, parks, bus stops close to parks). If you are unsure about whether there are local laws that might apply to you, check with someone who is familiar with your those laws, such as an attorney from the Public Defender's office. Also, some of these types of local laws have been found to be illegal. For example, when the City of Irvine created an ordinance barring people with registration requirements from entering city parks or recreation facilities without written permission from the police chief, a court held that restrictions on registrants is governed by state law and local governments cannot lawfully impose additional requirements.<sup>113</sup>

### **Are there restrictions on where I can work?**

There are some work restrictions that apply regardless of whether you are on or off parole.

If you are required to register due to a crime against a child under age 18, you cannot work or volunteer in a child day care facility or child residential facility or a foster family home. Violating this law is a misdemeanor.<sup>114</sup>

If you are required to register and your crime was with a child under age 16, you cannot be an employer, employee, independent contractor, or volunteer if you would be working with children directly and unaccompanied on more than an incidental or occasional basis or if you would have supervisory or disciplinary power over a child. If your crime did not involve a child under age 16, and 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

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Order filed May 31, 2018.

<sup>112</sup> Penal Code § 626.81.

<sup>113</sup> *People v. Nguyen* (2014) 222 Cal.App.4th 1168.

<sup>114</sup> Penal Code § 3003.6.

that you are a registrant when you apply for or accept the position. Failure to comply is a misdemeanor.<sup>115</sup>

If you want to obtain a license for some types of business or profession, your criminal history including your sex offense may affect whether you will be granted a license.<sup>116</sup> Check with the agency that issues the specific type of license you want for information on its policies and application procedures.

## OTHER SPECIAL PAROLE CONDITIONS

CDCR may impose other types of special parole conditions based on your § 290 offense. For example, special parole conditions may bar or limit your access to or certain websites or publications. However, courts have sometimes found conditions such conditions to be invalid.<sup>117</sup> Other special conditions might bar you from associating or living with minors, including your 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.<sup>118</sup>

CDCR can require you to undergo further assessments beyond your initial risk assessment to determine what type of treatment program and monitoring will be required during your parole.<sup>119</sup>

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<sup>115</sup> Pen. Code § 290.95.

<sup>116</sup> For example, the Medical Board must revoke the license of a registrant, though the person may later petition to have the license re-instated. Business & Professions Code § 2232.

<sup>117</sup> *Packingham v. North Carolina* (2017) \_\_\_ U.S. \_\_\_ [137 S.Ct. 1730] (statute prohibiting all people with sex offenses from accessing any social media websites was unlawful because it violated First Amendment right to free speech); *In re Stevens* (2004) 119 Cal.App.4th 1228 (unreasonable to prohibit use of computers and Internet when neither used in committing crime); *In re Navarro* (2016) 244 Cal.App.4th 1294 (condition restricting use of internet was reasonably related to crime and to preventing future crime, but was unconstitutionally vague); *People v. Appleton* (2016) 245 Cal.App.4th 717 (conditions requiring searches of electronic devices and barring person from deleting Internet browsing history were validly related to criminality, but search condition was overbroad); *United States v. Gnirke* (9th Cir. 2015) 775 F.3d 1155 (conditions that barred possession of materials depicting “sexually explicit conduct” and forbidding patronizing any place where such materials were available was permissible if construed as limited to sexually explicit materials regarding children and pornographic depictions of adults).

<sup>118</sup> See, e.g., *United States v. Wolf Child* (9th Cir 2012) 699 F.3d 1082 (unreasonable and overbroad to prohibit person from living with or being in company of any minor under 18 or socializing with anyone with minor children, which had resulted in person being unable to live with or see his own non-victim daughters or socialize with his fiancée).

<sup>119</sup> 15 CCR § 3573(c)-(f).



If you are required to register, state law requires that your parole conditions include a group therapy program for at least a year. The need to live in an area where you can participate in a program may also affect the location to which you will be paroled. You will be required to waive (give up) your 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.<sup>120</sup> Such waivers should be, limited to the extent necessary for the parole team to measure the effectiveness of your treatment and monitoring. Information disclosed to your therapist may not be used in criminal proceedings.<sup>121</sup> Nonetheless, you should be cautious in disclosing information that might be used against you in a parole revocation or possible future SVP commitment proceeding.

To show that a parole condition is overbroad, you must 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.<sup>122</sup> Conditions of parole that limit employment must directly relate to your crime.<sup>123</sup> Another ground on which you can challenge a parole condition is that the condition infringes upon a constitutional right and is not reasonably related to a compelling state interest.<sup>124</sup> Conditions that affect constitutional rights also may 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.<sup>125</sup>

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<sup>120</sup> Penal Code § 3008(d).

<sup>121</sup> *People v. Garcia* (2017) 2 Cal.5th 792; see also *People v. Gonzales* (2013) 56 Cal.4th 353 (in SVP proceeding that took place prior to waiver requirement, admission of person's statements to parole therapist did not violate constitutional right to privacy and was harmless violation of California privilege statutes); but see *In re Corona* (2008) 160 Cal.App.4th 315 (striking condition requiring person on parole to waive privilege in regards to a privately-retained therapist).

<sup>122</sup> *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 parole conditions. *In re Corona* (2008) 160 Cal.App.4th 315; *In re Stevens* (2004) 119 Cal.App.4th 1228, 1234.

<sup>123</sup> See *People v. Burden* (1988) 205 Cal.App.3d 1277.

<sup>124</sup> 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.

<sup>125</sup> *People v. Smith* (2007) 152 Cal.App.4th 1245, 1250; *In re Stevens* (2004) 119 Cal.App.4th 1228; *United States v. Wolf Child* (9th Cir 2012) 699 F.3d 1082.

## **CHALLENGING REGISTRATION, A LEGAL RESTRICTION, OR A PAROLE CONDITION**

If you think you have legal grounds to challenge a registration requirement, other statutory requirement, or a parole condition, the procedures you can use to fight the requirement or condition will depend on which part of the state government set the rule, the point in time when you are filing your case, whether or not you are still in custody or on supervised release (parole, PRCS, or probation), and whether the issue is one of state law and/or federal law. Sometimes you will have several options as to what type of court action you can bring. The following sub-sections summarize the available legal procedures.

If you are challenging a CDCR policy or a condition of parole set by CDCR (and which is *not* a policy or condition required by a state statute or court order), then you almost always must file a CDCR Form 602-1 grievance and CDCR Form 602-2 appeal of grievance before you can bring any type of court action. If you are challenging a requirement set by a state statute, local ordinance, or court order, then you do not need to go through the 602 administrative grievance and appeal process. Upon request, Prison Law Office can provide a free manual on Administrative Grievances and Appeals. The manual is also available on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).

No matter what type of court action you file, you 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.<sup>126</sup> You should state on the cover page of your first petition or complaint that you are making a “Request for a Preliminary Injunction” and then explain why the court should put the requirement or restriction on hold while your case is being considered.

The various types of available court actions include:

### Direct Appeal

You can use a direct appeal to ask a court of appeal to overturn many types of superior or juvenile court decisions. For example, you can use a direct appeal to challenge a registration order imposed at sentencing, a conviction for violating a registration requirement, a revocation of parole or probation, a court order imposing a new condition of parole or probation, or an order denying a petition to terminate registration. In order to raise an issue on direct appeal, you must file a notice of direct appeal in the court that made the decision within 60 days after the court made the decision you are challenging. If you do not have money to pay a lawyer, the court will appoint a lawyer to represent

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<sup>126</sup> See, e.g., *In re E.J.* (2010) 47 Cal.4th 1258 (staying enforcement of residence restriction pending determination of habeas corpus petitions).

you in your direct appeal case. You can raise both state law and federal law issues in a direct appeal. However, you cannot present new evidence that was not considered by the court that made the decision you are challenging. Also, if you pled guilty or no contest in the case, the types of issues you can raise on direct appeal will be limited. If your direct appeal is denied, you can file a petition for review in the California Supreme Court.

### State Habeas Corpus Petition

You can use a state court petition for habeas corpus to ask for a hearing on many types of legal challenges. You can ask for injunctive relief (an order that the state do or stop doing something). There is a simple form for filing a petition and the procedures are relatively simple and speedy. However, you can only file a habeas corpus petition while you are in custody or are on parole, probation, or PRCS; you cannot file a habeas corpus petition if you are off supervision and only subject to a registration requirement. In a petition, you can challenge a CDCR parole condition or policy or, in some circumstances, to challenge a requirement or restriction imposed by a court, a state statute, or local ordinance. You can raise state and/or federal legal claims, and you can present new information or evidence that a court has not heard before. If you could have raised your issue in a direct appeal or if you delayed in filing your petition, you will have to convince the court why your case should be allowed to proceed anyway. 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 your petition is denied, you can re-file your petition in the court of appeal and then in the California Supreme Court.

### State Petition for Writ of Mandate

If you are NOT incarcerated and NOT under parole, probation, or PRCS supervision, you can challenge your registration or other requirement by filing a petition for writ of mandate.<sup>127</sup> You can ask for injunctive relief (an order that the state do or stop doing something). Mandate procedures are somewhat similar to habeas corpus procedures. The court has discretion to appoint an attorney to represent you, but there appears to be no requirement that it do so. If your petition is denied, you can re-file your petition in the court of appeal and then in the California Supreme Court.

### Federal Petition for Writ of Habeas Corpus

If you are in custody or are on parole, probation, or PRCS for your § 290 sex offense, you can file a federal habeas corpus petition challenging your registration requirements or restrictions.<sup>128</sup> You can ask for injunctive relief (an order that the state do or stop doing something). However you must first have presented your issues to every level of the state courts, including the California Supreme Court, either through a direct appeal or a state habeas corpus petition. Federal habeas has very strict

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<sup>127</sup> *People v. Picklesimer* (2010) 48 Cal.4th 330; *In re Stier* (2007) 152 Cal.App.4th 63.

<sup>128</sup> *Bagley v. Harvey* (9th Cir.1983) 718 F.2d 921, 922–23 (person on state parole may use federal habeas petition to challenge parole conditions).

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

You can challenge a registration requirement or other restriction by filing a federal civil rights (§ 1983) lawsuit, regardless of whether you are in or out of custody on or off parole or other supervision. However, you cannot attack the validity of your criminal conviction or sentence or seek a speedier release from prison or parole.<sup>129</sup> You must have a federal law issue, but you can also include closely related state law claims. You can ask for injunctive relief (an order that the state do or stop doing something) and might also be able to ask for money damages. Federal civil rights lawsuits involve complicated and slow procedures. 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.

This is only a very general overview of the various types of actions and circumstances in which they can be used. More detailed information can be found in *The California Prison and Parole Law Handbook*, which should be available in prison libraries and is on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com). In addition, upon request, the Prison Law Office can provide more detailed information packets on many of these types of actions; those packets also are available on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).

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<sup>129</sup> *Thornton v. Brown* (9th Cir. 2013) 757 F.3d 834; *Shoemaker v. Harris* (2013) 214 Cal.App.4th 1210.