

**Introduced by Senator Runner**February 11, 2016

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An act to amend Section 3003.5 of, and to add Section 3003.51 to, the Penal Code, relating to sex offenders, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1021, as introduced, Runner. Sex offenders: residency restriction: petition for relief.

Existing law, as amended by Proposition 83 at the November 7, 2006, statewide general election, prohibits any person who is required to register pursuant to the Sex Offender Registration Act from residing within 2,000 feet of any public or private school, or park where children regularly gather.

This bill would require that the 2,000-foot residency restriction be measured by the shortest practical pedestrian or vehicle path. The bill would limit the residency restriction to persons convicted of specified offenses. The bill would clarify that the state parole authority shall enforce the residency restriction except under specified conditions. The bill would permit a person who is subject to the residency restriction to petition the superior court of the county within which he or she resides for relief from the requirement. The bill would provide that original jurisdiction for the petition would lie with the appellate division of the superior court in which the petition is filed. The bill would require the petitioner to establish by a preponderance of the evidence that there is a pervasive lack of compliant housing in the county, that the petitioner is among a substantial proportion of sex offenders subject to the residency restriction who are unable to find compliant housing, and that the housing restriction is the principal reason that those without a

residence have been unable to find housing. The bill would allow relief to modify the residential distance restrictions if that relief is narrowly crafted, and would allow the court to bifurcate the application of residency restrictions so as to apply discrete restrictions to those who have been convicted of child molestation or other felony sex offenses involving victims under 18 years of age. The bill would prohibit a subsequent petition from being heard if relief is granted or denied, unless the petitioner establishes in the petition, to the satisfaction of the court, that circumstances regarding compliant housing have changed, as provided.

Proposition 83 permits the Legislature, by a vote of  $\frac{2}{3}$  of the membership of each house and in accordance with specified procedures, to amend the provisions of the act.

By amending Proposition 83, this bill would require a  $\frac{2}{3}$  vote.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 3003.5 of the Penal Code is amended to  
2 read:

3 3003.5. (a) Notwithstanding any other ~~provision of law~~, when  
4 a person is released on parole after having served a term of  
5 imprisonment in state prison for any offense for which registration  
6 is required pursuant to Section 290, that person may not, during  
7 the period of parole, reside in any ~~single-family~~ *single-family*  
8 dwelling with any other person also required to register pursuant  
9 to Section 290, unless those persons are legally related by blood,  
10 marriage, or adoption. For purposes of this section, ~~“single-family~~  
11 *“single-family dwelling”* shall not include a residential facility  
12 ~~which that serves six or fewer persons.~~

13 (b) (1) Notwithstanding any other ~~provision of law~~, it is  
14 unlawful for any person *convicted of any of the offenses*  
15 *enumerated in Section 667.61 and* for whom registration is required  
16 pursuant to Section 290 to reside within ~~2000~~ *2,000* feet of any  
17 public or private school, or park where children regularly gather.  
18 *The 2,000-foot residency restriction shall be measured by the*  
19 *shortest practical pedestrian or vehicle path.*

1 (2) *The state parole authority shall enforce the residency*  
2 *restriction required pursuant to this section until the sex offender*  
3 *is discharged from parole unless any of the following occur:*

4 (A) *The offender is subject to a greater preexisting residency*  
5 *restriction.*

6 (B) *The residency restriction is modified within the county in*  
7 *which the offender resides as provided by Section 3003.51.*

8 (C) *The residency restriction is found unconstitutional as applied*  
9 *within the county and no modified restriction can be*  
10 *constitutionally enforced.*

11 (3) *Any person subject to the residency restriction imposed*  
12 *pursuant to paragraph (1) may, if compliance is not reasonably*  
13 *possible within his or her county, seek relief pursuant to Section*  
14 *3003.51.*

15 (c) Nothing in this section shall prohibit municipal jurisdictions  
16 from enacting local ordinances that further restrict the residency  
17 of any person for whom registration is required pursuant to Section  
18 290.

19 SEC. 2. Section 3003.51 is added to the Penal Code, to read:

20 3003.51. (a) Any person prohibited pursuant to Section 3003.5  
21 from living within 2,000 feet of any public or private school, or  
22 park where children regularly gather, may seek relief from those  
23 restrictions if he or she cannot comply with the restriction because  
24 of the unavailability of compliant housing within his or her county  
25 of domicile.

26 (b) Any person seeking relief under this section may file a  
27 petition with the superior court of the county in which he or she  
28 resides. Notice of the petition shall be timely served on the state  
29 parole authority or other entity enforcing the subject sex offender  
30 residency restrictions.

31 (c) Notwithstanding any other law, original jurisdiction for any  
32 petition filed pursuant to this section shall lie with the appellate  
33 division of the superior court in which the petition is filed. The  
34 court may consolidate all pending petitions.

35 (d) The appellate division of the superior court in which the  
36 petition is filed pursuant to this section may grant the petition in  
37 whole or in part if the petitioner establishes by a preponderance  
38 of the evidence, and the court finds, each of the following:

39 (1) There is a pervasive lack of compliant housing within the  
40 petitioner's county of domicile.

1 (2) The petitioner is among a substantial proportion of sex  
2 offenders subject to the 2,000 foot residency restriction who have,  
3 despite good faith efforts, been unable to find compliant housing  
4 within the county.

5 (3) The 2,000 foot restriction is the principal reason that those  
6 without a residence have been unable to find compliant housing.

7 (e) (1) Relief granted pursuant to this section may modify  
8 residential distance restrictions to comport with the geographic  
9 constraints within the subject county but modifications shall be  
10 narrowly crafted in order to substantially comply with the intent  
11 of the people in approving Section 3003.5.

12 (2) The court may, if necessary, bifurcate the application of  
13 residency restrictions so as to apply discrete restrictions to those  
14 who have been convicted of child molestation or other felony sex  
15 offenses involving victims under 18 years of age.

16 (f) If relief is granted or denied pursuant to this section, no  
17 subsequent petition shall be heard, unless the petitioner or  
18 petitioners establish in the petition, to the satisfaction of the court,  
19 both of the following:

20 (1) There has been a change of circumstances based upon a  
21 substantial decline in the availability of compliant housing.

22 (2) There has been a corresponding increase in the percentage  
23 of sex offenders who are unable to comply with the residency  
24 restriction due to the change of circumstances described in  
25 paragraph (1) since the court ruling on the prior petition.

26 SEC. 3. This act is an urgency statute necessary for the  
27 immediate preservation of the public peace, health, or safety within  
28 the meaning of Article IV of the Constitution and shall go into  
29 immediate effect. The facts constituting the necessity are:

30 In order to protect the public at the earliest possible time, it is  
31 necessary that this act take effect immediately.