

State of California

Department of Corrections and Rehabilitation

Memorandum

Date : July 24, 2009

To : Regional Parole Administrators
District Administrators
Unit Supervisors
Parole AgentsPolicy No.: 09-11
Supersedes Policy No.: 08-35
Amends Policy No.: 07-36 and 08-14Subject: **REPORTING GUIDELINES FOR TRANSIENT REGISTERED SEX OFFENDERS
ON GLOBAL POSITIONING SYSTEM MONITORING**

This memorandum represents the California Department of Corrections and Rehabilitation's (CDCR) commitment to protecting the public by monitoring and tracking sex offender movement as well as enforcing residency restrictions through the use of Global Positioning Systems (GPS). This policy will afford agents the ability to better supervise transient sex offenders and identify those transient sex offenders who violate the law. The term "transient" in this memorandum is defined as a parolee who has an obligation to register as a sex offender and who has no residence.

This policy amends the reporting requirements in (1) Policy Number 07-36, *Implementation of Proposition 83, AKA Jessica's Law* and (2) Policy Number 08-14, *Residence Restrictions for Sex Offenders Required to Register While on Parole*; specifically, language on page three with regard to transient residence restrictions and GPS verification requirements.

Policy

All transients who are supervised through Active or Passive GPS shall be required to report to his or her assigned Parole Unit in person once per week as instructed by the Agent of Record (AOR). Parole Agents (PA) shall ensure that transients on Active or Passive GPS are supervised in accordance with current case supervision specifications. Additionally, because these parolees are transient, the required monthly face-to-face residence contacts shall be modified to a face-to-face contact in the field or place of employment. The GPS handheld measurement of "locations" where a parolee frequents is not required. However, based on information received by a PA, any "established residence," as defined in this policy, must comply with the Residency Restrictions, and be verified using the handheld GPS device.

"Transient" Clarified

"Transient" is defined as a parolee who has an obligation to register as a sex offender and who has no residence. (Penal Code [PC] Section 290.011(g)).

Regional Parole Administrators
District Administrators
Unit Supervisors
Parole Agents
Page 2

"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 (PC 290.011[g]). A person can have several residences pursuant to this definition.

If a parolee who is required to register as a sex offender claims that he or she is transient, he or she must comply with the transient registration requirements, including registering with the law enforcement agency that has jurisdiction over his or her location. If the parolee establishes a "residence," that parolee is no longer a transient, and the residence must comply with the applicable residency restrictions as defined in PC Sections 3003(g) and/or 3003.5(b) – see the table under Residency Restrictions, Page 4. Violation of the 2,000 foot requirement, one of the Residency Restrictions, is a mandatory report and shall be reported to the Board of Parole Hearings (BPH). It is imperative that the report contain sufficient detail to substantiate the charge, including any necessary attachments.

"Regularly" Clarified

For purposes of this policy, when determining whether a parolee "regularly resides" at an address, the PA must review the totality of the circumstances. "Regularly" spending one day or one night in a house, apartment, motel, hotel, shelter, structure, or property that can be located by a street address indicates that a "residence" *may* be established if other circumstances are present. The following situations or a combination thereof may substantiate that a parolee has established a residence:

- The parolee stays one day or night at the same address every week, for multiple consecutive weeks, thus establishing an apparent pattern of occupancy.
- The parolee stays two or more consecutive days or nights at the same address, or two days or nights at the same address in a period that would appear to establish a pattern of occupancy.
- The parolee is in possession of a key to an address where he or she has stayed and there is evidence of an apparent pattern of occupancy.
- The parolee receives mail at an address where he or she has stayed and there is evidence of an apparent pattern of occupancy.
- Upon contacting the parolee at an address where he or she is located or had been staying, and evidence exists that he or she established residency. Evidence would include, but is not limited to, clothing in a closet or drawer, toiletries in the bathroom, or collateral information from occupants and/or neighbors. Such evidence could establish pattern indicating establishment of residency.

Regional Parole Administrators
 District Administrators
 Unit Supervisors
 Parole Agents
 Page 3

In an effort to determine whether a residence has been established, the PA shall utilize all available resources and information. If the totality of the circumstances clearly indicates residency has been established, and a reasonable and prudent PA reviewing the same information would draw a similar conclusion, then a residence has been established. However, the following repeated and regular entries at an address, without additional circumstances, shall not be considered "establishing a residence:"

- For the purpose of charging the GPS device, but no more than two hours per charging occurrence.
- For the purpose of approved employment.
- For the purpose of conducting legitimate business in a licensed business, professional, or government building.
- For the purpose of obtaining care, treatment, or other services provided by licensed providers.

GPS tracks and/or evidence of other circumstances that reveal a transient may have established a "residence" shall be investigated by the AOR, as this information may indicate a violation of parole. If this information indicates that a "residence" has been established, the parolee is no longer transient, and as such, the residence must comply with the residency restrictions noted below. Further, if a residence has been established, the parolee must register that address with local law enforcement within five working days of the date the residence was established.

Note that some *locations* where the transient parolee is staying, such as a bridge, transient encampment, and/or bus stop, may be in close proximity to a school, park, or area where children congregate, but these locations do not meet the statutory definition of a "residence" and therefore, are not subject to the provisions of residency restrictions. However, these locations may not be appropriate for the parolee to frequent based upon his or her existing special conditions of parole, local community ordinances, or criminal history. If a special condition of parole does not exist, yet the circumstances warrant such consideration, an additional special condition of parole may be imposed.

Residency Restrictions

	Classification	Restriction	Authority
1	High Risk Sex Offenders (HRSO) who have a current or prior conviction of PC Sections 288 (including all subsections) and/or PC 288.5, released on or before November 7, 2006.	One-half mile from any public or private school serving any grade(s) of Kindergarten (K) thru 12.	PC 3003(g)

Regional Parole Administrators
 District Administrators
 Unit Supervisors
 Parole Agents
 Page 4

	Classification	Restriction	Authority
2	HRSOs who have a current or prior conviction of PC Sections 288 (including all subsections) and/or PC 288.5, released on or after November 8, 2006.	One-half mile from any public or private school serving any grade(s) of K thru 12, and 2,000 feet from any park where children regularly gather.	PC 3003(g) and PC 3003.5 (b)
3	All Registered Sex Offenders released on or after November 8, 2006, except those in number 2 above.	2,000 feet from any public or private school serving any grade(s) of K thru 12, and 2,000 feet from any park where children regularly gather.	PC 3003.5(b)
4	Non-HRSOs who have a current or prior conviction of PC Sections 288 (including all subsections) and/or PC 288.5, released on or before November 7, 2006.	Any residence restriction must be supported by circumstances found in the parolee's criminal history and include clear and articulate justification. <i>NOTE: This condition of parole shall only apply to a parolee who changes his or her residence on or after February 28, 2008. The residence restriction shall require prior approval by the District Administrator.</i>	Based upon current and/or prior offense(s), arrests and/or behavior as noted in the Subject's criminal history.
5	All Remaining Registered Sex Offenders, regardless of their supervision classification, who have a current or prior conviction that is not PC Section 288 (including all subsections) and/or PC 288.5, and released on or before November 7, 2006.	Any residence restriction must be supported by circumstances found in the parolee's criminal history and include clear and articulate justification.	Based upon current and/or prior offense(s), arrests and/or behavior as noted in the Subject's criminal history.

Transient Registration Requirements

Transients have lifetime registration requirements including:

- Register within five working days of release from incarceration.
- Reregister at least once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters.

Regional Parole Administrators
District Administrators
Unit Supervisors
Parole Agents
Page 5

- Upon moving to a residence – register that address within five working days.
- Upon becoming transient after moving out of a residence, register as a transient within five working days after moving out.
- Beginning on the first birthday following registration, register annually, within five working days of birthday - update registration in whichever jurisdiction he or she is physically present on that date.
- At the 30-day updates and the annual update, provide current information as required on the Department of Justice annual update form, including:
 1. A written and signed statement with the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.
 2. Fingerprints and a current photograph.
 3. The license plate number of any vehicle owned by, regularly driven by, or registered to him or her.
- When transients register and reregister, they must provide current information as required on the Department of Justice registration forms, *and must list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities.* If a transient changes or adds to the places listed on the form during the 30-day period, reporting the changes or additions is not required until the next required reregistration.

Violations of sex offender registration provisions are a mandatory report and shall be reported to the BPH. It is imperative that the report contain sufficient detail to substantiate the charge, including any necessary attachments.

For transients who establish a residence, there is no violation until expiration of the five working day period after the residence has been established. If a transient establishes a residence then moves out before expiration of the five working day period, he has not violated the registration provisions, and the requirement to reregister no longer exists. However, this provision shall not be utilized or manipulated in such a way as to circumvent the statute or as a means by which to avoid registration.

Agent of Record

The AOR shall inform each PC 290 parolee of the PC definition of "transient" and ensure the parolee is aware of his or her registration requirements.

In lieu of completing the required face-to-face residence contacts, the AOR shall contact the parolee at either his or her place of employment (if employed) or in the field. This could

Regional Parole Administrators
District Administrators
Unit Supervisors
Parole Agents
Page 6

include a residence where the parolee appears to be staying. All contacts shall be documented on the Record of Supervision (ROS), CDCR form 1650D. Transients shall still be required to disclose the locations where they have slept, or intend to sleep at night, during the face-to-face contacts.

The AOR shall ensure that transient parolees are instructed to charge the GPS devices in accordance with current conditions of parole. Agents shall continue to give transients the opportunity to charge their GPS devices in the Parole Unit during normal business hours.

Unit Supervisor

During case reviews, the Unit Supervisor (US) shall ensure that the AOR is meeting current contact case supervision specifications. Transients on GPS monitoring shall have the residential face-to-face contact specifications modified to a face-to-face contact in the field or place of employment.

Additionally, the US shall ensure:

- The AOR adheres to existing GPS monitoring requirements, and annotates any issues on the ROS.
- All violations are addressed in accordance with existing policy.
- Any special conditions of parole that may be warranted are imposed.

The supervision of sex offenders is a comprehensive task, and relies on a tremendous amount of discretionary decision making. The monitoring of transient sex offenders is no different, as this population poses a unique set of challenges that must be addressed.

If you have any questions, please contact the Sexually Violent Predator/High Risk Sex Offender Unit via e-mail at ParoleSVPHRSO@cdcr.ca.gov.



THOMAS G. HOFFMAN
Director
Division of Adult Parole Operations