



## California Sex Offender Management Board

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The Honorable Bill Quirk  
Chair – Assembly Committee on Public Safety  
State Capitol  
Sacramento, CA 95814

Dear Assemblyman Quirk and Members of the Assembly Committee on Public Safety,

The California Sex Offender Management Board (CASOMB) has been following assembly Bill 201 and has determined that it would be important for CASOMB to offer some contributions to the deliberations about whether to pass this proposed legislation through the Public Safety Committee.

As you know, AB 201 is an attempt to authorize the state's 540 local jurisdictions to create their own local ordinances regulating where registered sex offenders may not live (Residence Restrictions) and where they may not be present (Exclusion Zones).

CASOMB sees this Bill as a very important and well intentioned effort to contribute to the safety of California citizens by reducing the chances that individuals previously convicted of a sex offense (Penal Code 290 Registrants) will commit a new sex offense.

Based upon knowledge of the research and scientific evidence related to policies such as the ones proposed by AB 201, CASOMB has previously concluded that policies creating these types of restrictions are not effective and, in fact, actually increase the risk of sexual recidivism.

In addition, they have many other consequences, some intended and some unintended, which make their implementation undesirable.

The Board therefore registers its strong opposition to moving this legislature forward and urges Public Safety Committee members to vote against it in the January 12, 2016 hearing.

In the hope that the information will be of assistance to Committee members in making a wise decision, CASOMB has prepared a statement reviewing many of the issues and concerns raised by AB 201 and has provided that document in the following pages.

Thank you for your service to the citizens of California and your efforts to support wise and productive policies.

Sincerely,

A handwritten signature in blue ink that reads "T. J. Tobin Ph.D.".

Tom Tobin, Ph.D.  
Vice-Chair  
California Sex Offender Management Board

**CONSIDERATIONS SUBMITTED BY THE  
CALIFORNIA SEX OFFENDER MANAGEMENT BOARD (CASOMB)**

**TO THE  
ASSEMBLY PUBLIC SAFETY COMMITTEE**

**REGARDING  
ASSEMBLY BILL 201 - LOCAL REGULATIONS CREATING  
RESIDENCE RESTRICTIONS AND EXCLUSION ZONES  
FOR REGISTERED SEX OFFENDERS**

**ORGANIZATION OF THIS DOCUMENT**

- PART ONE: PRELIMINARY STATEMENTS**
- PART TWO: RECOMMENDATIONS OF EXPERTS**
- PART THREE: ASSUMPTIONS APPARENTLY UNDERLYING AB 201**
- PART FOUR: CONSEQUENCES – INTENDED AND UNINTENDED**
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**PART ONE: PRELIMINARY STATEMENTS**

The following document presents a written statement provided to the Assembly Public Safety Committee regarding Assembly Bill 201, a proposed Bill which addresses local regulation of sex offender residence restrictions and exclusion zones.

Although the California Sex Offender Management Board (CASOMB) has not been able to meet at a time which permitted a direct specific response prior to the January 12 Assembly Public Safety Committee hearing on AB 201, CASOMB's published papers and Reports certainly make it unambiguously evident that the Board does stand in strong opposition to this piece of legislation.

Even though the present document appears lengthy, each of the statements below represents only a condensed summary of the important points which merit the Committee's attention as this Bill is considered. CASOMB is prepared to provide any needed references or additional clarifications.

For the information of any readers who are not aware, the California Sex Offender Management Board was created by the Legislature nearly ten years ago and has, since then, provided a substantial number of reports and statements regarding various aspects of sex offender management in California. CASOMB was created to fill a need, namely that there had been no forum at the statewide level at which the many perspectives on sex offender management issues could be considered by and discussed among major stakeholders and experts so that recommendations on best policies could be provided. CASOMB, housed within CDCR but independent in its operations, is made up of 17 members who represent the major stakeholders in sex offender management in California. The Board's mission is the protection of the state's citizens from future victimization by previously convicted sexual offenders. More information is available at [www.CASOMB.org](http://www.CASOMB.org).

One of the principles under which CASOMB operates is that policies and practices should be guided by the best available scientific research. Making such research available and recommending policies and practices consistent with verifiable knowledge and recommending against policies and practices which the research finds ineffective, useless, or counterproductive is a major part of CASOMB's efforts to increase public safety. A national panel of experts on sex offender management issues – convened by the United States Department of Justice's SMART Office - stated the following:

*Perpetrators of sex crimes are often seen as needing special management practices. As a result, jurisdictions across the country have implemented laws and policies that focus specifically on sex offenders, often with extensive public support. At the same time, the criminal justice community has increasingly recognized that crime control and prevention strategies—including those targeting sex offenders—are far more likely to work when they are based on scientific evidence. (Emphasis added.) <http://smart.gov/SOMAPI/index.html>*

CASOMB consistently urges policy makers to be familiar with and follow what is known and supported by research and, whenever such relevant research is available, not to advance policies which are not evidence-based.

When it comes to residence restrictions and, to a slightly lesser extent, exclusion zones, the research and evidence is sufficiently clear. There is no research which supports the use of these strategies, there is substantial research showing that such policies have no effect on preventing recidivism, and there is growing body of research which indicates that residence restrictions actually increase sex offender recidivism and decrease community safety.

In support of the statement that residence restrictions actually make communities less safe because they increase the risk of sexual recidivism, some yet-unpublished research recently conducted as part of a 2016 California study provides data showing that about 18% of sexual re-offenses in the probation group of registered sex offenders were committed by individuals who were registered as transients at the time of arrest on the new sex offense. Even more striking is the finding that 29% of sexual re-offenses in the parolee sex offender group were committed by individuals who were registered as transients at the time of re-arrest. Since transient sex offenders make up only about 8% of the overall population of sex offenders living in California communities, it is obvious that the rate of reoffending among those who are transient is quite disproportionately high. (Source: verbal report by California Department of Justice (DOJ) staff at a CASOMB meeting on November 19, 2015.) A substantial body of criminal justice research supports the fact that "lifestyle stability" is a "protective factor" and that anything which undermines such stability amplifies the risk of reoffending.

The proponents of residence restrictions and exclusion zones, as put forth in AB 201, appear to begin with the premise and assumption that such policies will make California citizens safer. The Analysis of AB 201 by the Assembly Committee on Local Government provides the following Author's Statement:

*"Prior to this ruling many cities and counties had taken action by enacting ordinances that would protect their residents. These cities and counties are now faced with the harrowing choice of repealing local ordinances, compromising the safety of their communities, or face the excessive cost of litigation. AB 201 restores a jurisdiction issue that has left local governments unable to protect their communities in an appropriate way. AB 201 will restore authority to local agencies and authorize the ability to implement their own ordinances to protect their friends and neighbors from becoming victims of convicted sexual predators."*

As articulated in several places in this paper, the claim that residence restrictions make communities safer is one which has no support in the scientific literature. It is a claim which CASOMB and

numerous other authoritative sources strongly reject as untrue. It is not a proper foundation upon which to build effective policies.

As CASOMB has stated previously, those who are really interested in reducing the risk of recidivism by registered sex offenders should be raising and addressing the question of where can they safely live rather than merely creating restrictions on where they cannot live.

## **PART TWO: RECOMMENDATIONS OF EXPERTS**

Whether residence restrictions and exclusion zones are good public policies is not a question which should be decided by “common sense” or other considerations, including the impulse to further punish sex offenders because of the damage they have done to innocent victims. The understandable anger many citizens feel about sex offenders and their crimes makes it difficult to think clearly and legislate wisely with the goal of preventing future victimization. Therefore the body of knowledge produced by scientific research should be the guiding force in identifying effective policies.

A number of respected bodies have reviewed the research regarding residence restrictions and exclusion zones and have published their conclusions. CASOMB is not aware of any similar statements from experts in support of such policies.

**(1) USDOJ SMART Office:** A national group of highly respected experts has issued recommendations against the adoption and continued use of residence restrictions. The United States Department of Justice under the auspices of the “SMART Office” convened a panel of recognized national experts. This panel, named the *Sex Offender Management Assessment and Planning Initiative (SOMAPI)*, issued its Report in October of 2014. In that document, the participants recommended against adopting residence restrictions.

*“Finally, the evidence is fairly clear that residence restrictions are not effective. In fact, the research suggests that residence restrictions may actually increase offender risk by undermining offender stability and the ability of the offender to obtain housing, work, and family support. **There is nothing to suggest this policy should be used at this time.**” **“SOMAPI forum participants do not recommend expanding the residency restriction policy.”** (Emphasis added.) (<http://smart.gov/SOMAPI/index.html>)*

**(2) ATSA:** The international Association for the Treatment of Sexual Abusers (ATSA) issued a statement regarding residence restrictions. In that document, ATSA strongly recommended against the use of residence restriction policies. The research supporting that conclusion is also provided.

*ATSA supports evidence-based public policy and practice. Research consistently shows that residence restrictions do not reduce sexual reoffending or increase community safety. In fact, these laws often create more problems than they solve, including homelessness, transience, and clustering of disproportionate numbers of offenders in areas outside of restricted zones. Housing instability can exacerbate risk factors for reoffending. Therefore, in the absence of evidence that these laws accomplish goals of child protection, **ATSA does not support the use of residence restrictions as a feasible strategy for sex offender management.** (Emphasis added.) ([www.ATSA.org](http://www.ATSA.org))*

**(3) California Supreme Court:** In the landmark Taylor case regarding residence restrictions in San Diego County, the California Supreme Court determined that the restrictions, as applied in San Diego County, were unconstitutional. The published decision included a number of strong statements about

the practice of imposing residence restrictions and the Justices based their decision in part on the “no rational basis” principle. In other words, the court held that, although the intentions of protecting the community may have been admirable, there was no reason to think that residence restrictions did anything meaningful to actually achieve that end. It is difficult to advance a “no rational basis” argument because the presumption is that the government has implemented a policy which bears some relationship to the goal it is attempting to achieve. The Taylor decision is believed to be the first “no rational basis” determination regarding residence restrictions which has been decided against the government.

The court’s decision, filed on March 2, 2015, included the following language:

*“As will be explained, we agree that section 3003.5(b)’s residency restrictions are unconstitutional as applied across the board to petitioners and similarly situated registered sex offenders on parole in San Diego County. Blanket enforcement of the residency restrictions against these parolees has severely restricted their ability to find housing in compliance with the statute, greatly increased the incidence of homelessness among them, and hindered their access to medical treatment, drug and alcohol dependency services, psychological counseling and other rehabilitative social services available to all parolees, while further hampering the efforts of parole authorities and law enforcement officials to monitor, supervise, and rehabilitate them in the interests of public safety. It thus has infringed their liberty and privacy interests, however limited, **while bearing no rational relationship to advancing the state’s legitimate goal of protecting children from sexual predators**, and has violated their basic constitutional right to be free of unreasonable, arbitrary, and oppressive official action.” (Emphasis added.)*

In re WILLIAM TAYLOR et al., on Habeas Corpus. Ct.App. 4/1 D059574 S206143

**(4) CASOMB:** For many years, CASOMB has recommended against adopting or continuing residence restrictions in California. These repeated recommendations can be found in papers and Reports available at [www.CASOMB.org](http://www.CASOMB.org), and include numerous research references and facts supporting the Board’s position.

*“CASOMB has ... repeatedly stated that the promulgation of conditions which actually create homelessness and transience among registered sex offenders while producing no discernible benefit to community safety is counterproductive and continues to be the single most problematic aspect of sex offender management policy in California. CASOMB continues to recommend the elimination of one-size-fits-all restrictions on where registered sex offenders may live.”*

*([www.CASOMB.org](http://www.CASOMB.org) Year End Report, February 2015)*

It is worth noting that none of the statements and arguments made by proponents and supporters of this Bill and none of the Analysis provided by the Assembly Committee on Local Government have made any reference to these highly credible authorities.

### **PART THREE: ASSUMPTIONS APPARENTLY UNDERLYING AB 201**

#### **Assumptions and beliefs and myths**

The push to pass AB 201 and thereby empower local jurisdictions to create their own versions of residence restrictions and exclusion zones appears to be grounded on the acceptance by proponents of a large number of assumptions which are simply not true.

**ASSUMPTION 1.** The foundational assumption which appears to be accepted by the proponents of this Bill is this: *Residence restrictions and exclusion zones are actually effective in preventing the commission of new sex offenses by previously identified (PC 290 Registrant) individuals.* (See the Author's statement provided in PART ONE above.) As stated previously, this assumption is not true. These types of policies simply do not accomplish the purposes for which they have been enacted.

**ASSUMPTION 2.** *All convicted sex offenders are equally likely to reoffend and so it is effective to develop "one-size-fits-all" policies.* This assumption is false. There is a wide range of re-offense risk among sex offenders. For this reason, California has put a great deal of thought and effort into developing systems to evaluate the risk level for each PC 290 Registrant and into following the widely accepted "Risk Principle," which urges that more effort be put into the management of higher risk offenders and less into those whose risk to reoffend is lower. Risk levels are determined through a system developed by the legislatively-created State Authorized Risk Assessment Tools for Sex Offenders ([www.SARATSO.org](http://www.SARATSO.org)) committee. The SARATSO system is being effectively used throughout the state and the various management interventions are calibrated to take that risk into account. Opening the door to "blanket" one-size-fits-all policies would move the state back in the opposite direction and would ignore California's thoughtfully developed risk-based approach.

**ASSUMPTION 3.** *Most convicted sex offenders will reoffend. Therefore extremely robust controls and restrictions are needed to stop them.* This assumption is not supported by the research. Measuring and accurately stating recidivism rates is very complex. However, all of the various published studies indicate that the overall rate is considerably lower than is commonly believed. The largest single study of sex offender recidivism conducted to date found a sexual recidivism rate of 5.3 percent for the entire sample of sex offenders based on an arrest during the 3-year follow-up period. As more time passes, the re-offense rate continues to drop.

Research recently conducted in California by one of the most highly respected researchers in the world has found that the recidivism rates for sex offenders who have been identified by SARATSO risk assessment instruments (cf. [www.SARATSO.org](http://www.SARATSO.org)) as "Low to Medium risk" fall in the range of 1 to 2 percent.

**ASSUMPTION 4.** *Every sex offender will continue to be a significant risk to reoffend for the remainder of his or her life.* The research provides ample evidence that this assumption is not true. The longer a sex offender remains offense-free in the community, the lower the risk that that individual will reoffend in the future. Because California continues to be one of the four states requiring universal lifetime registration, many, many thousands of California's approximately 83,000 registered sex offenders living in the state's communities have reached the point where, according to the risk assessment research, their risk of reoffending is negligible. Yet apparently they would all fall under the scope of this Bill and, with no scientifically defensible justification, would be subject to residence restrictions and exclusion zones.

**ASSUMPTION 5.** *Previously convicted sex offenders account for a substantial proportion of the new sex offenses committed.* This assumption is false. The research has found that only about 5% of new sex offenses were committed by individuals previously convicted of a sex offense. Conversely, almost all new sex offenses are committed by individuals who have never been previously convicted of a sex offense. Efforts to prevent new sexual victimizations by focusing on PC 290 Registrants are misplaced and a waste of resources. Instead, increased attention and resources should be directed toward broader prevention strategies.

**ASSUMPTION 6.** *Sex offenders are all alike in terms of their potential danger of offending against a juvenile victim.* Therefore all need the same restrictions with respect to limiting their access to

children. This assumption is obviously not true. Many sex offenses involve victimization of adult women or men. When it comes to offenders with no history of victimizing children, community safety is not improved by regulating their access to places where children gather.

**ASSUMPTION 7.** *Molests perpetrated by persons who are strangers to the victim make up a substantial portion of sex offenses against children.* Sex offenders prowl California communities looking for children to molest. This assumption is discredited by the research. Although the “stranger danger” perspective paints compelling images of sex offenders lurking in the bushes in order to snatch and molest a child, the reality is that sex offenses perpetrated against strangers account for only about 5% of total offenses. In the vast majority of cases, the offender is already known to the victim through some existing relationship, including being a member of the same family. Formulating policies based on the belief that “stranger danger” represents much of the problem needing attention diverts attention from the other types of prevention efforts are needed to attempt to reduce the 95% of actual victimization events.

**ASSUMPTION 8.** *Sex offenders find their victims and commit their crimes in or around schools or parks or other places where children gather.* This assumption is not correct. Research on these questions discloses that such scenarios are by far the exception. Most contact with child victims and most actual offenses occur in the home of the victim or the offender. Of the very small number of sex offenses actually committed in or around a school, the majority were committed by teachers or staff who had never been convicted of a prior sex offense. Similarly, very few victims were encountered or offenses committed occurred in parks or similar locations. Where do sex offenders find their victims and commit their offenses? In almost all cases, not in the places from which they would be restricted by this Bill.

(Note that the research upon which each of the above statements is based can be provided upon request.)

#### **PART FOUR: CONSEQUENCES – INTENDED AND UNINTENDED**

##### **ANTICIPATED OVERALL CONSEQUENCES**

It is likely that many of California’s 540 local jurisdictions (58 Counties and 482 Municipalities) will enact some form of residence restriction and exclusion zone regulations. It is impossible to predict how many will actually do so. Prior to the court ruling determining that they were in violation of the California constitution, many local ordinances had been put in place. Numbers cited suggest that 70 Municipalities and 5 Counties had restrictions in place. Others were presumably in the process of being enacted.

Because there is no system in place or anticipated to keep track of all of the possible local ordinances and regulations, it will be very difficult for anyone governed by or involved with this local-jurisdiction system to actually know what the rules are. Before the court decision prohibiting such local regulations was issued, CASOMB staff had made attempts to track the emergence of new local regulations. Staff found the effort frustrating, challenging, and extremely time-consuming and eventually were unable to continue the monitoring. This Bill makes no provision for any such tracking as a new set of regulations begin to roll out across the state.

The Bill also makes no provision for the notification of registered individuals who might be directly impacted by new local residence restrictions or exclusion zones. If the Bill and the new local ordinances are written so that they apply to all registrants, then as many as 83,000 individuals could be impacted. Since it is likely that not all local jurisdictions will create local regulations, the number would probably not be that high, but could easily be tens of thousands. How would they learn of and

be given the specific information which would allow them to follow the proliferation of new restrictions in their own localities and across the state?

Because the introduction of regulations purporting to prevent sexual reoffending is often – in the view of some observers – driven more by political factors than by well-informed policy considerations, it appears quite possible that local jurisdictions, especially those in certain parts of the state where many smaller jurisdictions are geographically contiguous, will vie with each other to avoid being seen as a “safe-haven” for sex offenders and will escalate efforts to match or surpass the restrictions imposed by their neighboring communities. A notorious example of this mentality on the national stage is that politicians in Georgia openly stated that their intent was to put in place stringent regulations which would drive sex offenders out of the state. Such a stance reflects an attitude of “we don’t really care where they go, just get them out of here.”

### **ANTICIPATED DESIRED CONSEQUENCES**

Although, based on the above information, it seems highly unlikely, it is possible that a very small number of offenses might be prevented by the actions of local jurisdictions made possible by this Bill.

### **ANTICIPATED UNDESIRED CONSEQUENCES**

Since AB 201 would open the door for them to do so, it appears likely that local restrictions will apply to ALL PC 290 registrants. Because Proposition 83 (Jessica’s Law) was completely unclear about the populations it intended to target, its restrictions were never applied to all registrants. The state’s previous experience with residence restrictions is based upon their application primarily to those on state parole – approximately 6,500 individuals. By contrast, ordinances developed under AB 201 could impact as many as 83,000 PC 290 registrants living in California communities, regardless of whether they are currently under parole or probation supervision or not under any formal criminal justice system supervision. The number of individuals who might be impacted by AB 201 would be exponentially larger. The potential for dislocation, loss of previously stable living arrangements, fragmentation of families, disruptions of children’s lives, loss of jobs due to exclusion zones, and other foreseeable consequences would be massive.

The consequences of efforts to apply residence restrictions and exclusion zones to all of the state’s Registrants who live in jurisdictions which would implement AB 201 must be considered. No one appears to have made any estimate regarding the number of citizens who would be forced by residence restrictions to move, including those who own their own homes. There is no estimate about the amount of homelessness and transience which would result. Projections based on the experience of CDCR in enforcing residence restrictions on parolees suggest that those numbers would be considerable. There has been no apparent effort to estimate the number of jobs which would be lost because the place where a Registrant works – and may have worked for many years – happens to be in an area declared an exclusion zone by the local jurisdiction.

Historically and currently, CDCR Parole Agents have been depending on Global Positioning Monitoring (GPS Ankle Bracelets) information to monitor exclusion zones. (Such case-specific exclusion zones can be and frequently are imposed by parole authorities in response to individualized needs and concerns.) The use of this costly equipment and the supporting tracking systems is now limited to parolees and some county probationers. The cost of requiring such tracking for all PC 290 registrants would be absolutely prohibitive. Yet without such a system, it would appear impossible to do any type of consistent enforcement of exclusion zone restrictions. Only if local law enforcement should happen to find a registrant in an exclusion zone would the presumed effectiveness of creating such zones have any chance of being realized.

**PART FIVE: ADDITIONAL CONSIDERATIONS**

Experts advise that case-by-case decisions about where sex offenders may live or be present are far preferable to blanket, one-size-fits-all policies. Fortunately, California's current system allows such case-based determinations to be made for individual sex offenders under direct criminal justice system supervision. The time when convicted sex offenders are most likely to commit a new offense occurs during the initial period after release. Over time the risk diminishes. It is during this initial period that authorities have the greatest control over these individuals since they are supervised under the authority of the California Department of Corrections and Rehabilitation's Division of Parole Operations (CDCR-DAPO) or under one of the state's 58 County Adult Probation Departments. These supervising agencies can use case information to impose individually-tailored requirements regarding where specific offenders may live or may be present during their period of supervision. These periods of parole or probation vary in length. CDCR parolees are under supervision for periods of 5, 10, or 20 years or, in certain cases, for life. Those on county probation are usually supervised for periods of 3 or 5 years. This system of sex offender management is already in place in California. The Legislature has included in the Penal Code explicit requirements that sex offenders under supervision be engaged in a certified specialized treatment program and that supervisors and treatment providers hold regular meetings and communicate regularly in accord with the "Containment Model." This sex offender management approach, including individualized supervision guided by the "Risk Principle" paired with a specialized rehabilitative treatment program, is viewed by experts as the most effective approach to reducing sex offender recidivism.

Although it is extremely difficult to estimate the costs involved with implementing, enforcing, and defending the local ordinances which might be created under this Bill, it is clear that they could be substantial. It may be true that there would be no direct costs to the state itself. There would definitely be costs to local government jurisdictions. The costs of filing, pursuing and responding to anticipated lawsuits would be considerable. It is certain that there would be fiscal impacts on individual citizens, including potentially tens of thousands of registrants who could lose their housing and, in some cases, their jobs. Landlords would lose income as tenants were forced to relocate. Whether it would even be possible to estimate all of the costs is questionable. To pass such legislation without even attempting to do so seems irresponsible.

Given the history of residence restrictions in California, the proliferation of previous court challenges, and the decision returned by the California Supreme Court in the Taylor case, it seems predictable that there will be numerous court cases subsequent to the implementation of this Bill. The process of bringing lawsuits is, of course, a very costly one and much of the cost would be incurred by local jurisdictions defending their ordinances. Ultimately, such a process is also likely to take years.

It seems improbable that decision makers in the state's 540 local jurisdictions would have the internal expertise or access to such expertise to support the crafting of local ordinances which would really have some chance of improving sex offender management and reducing recidivism. Based upon past history, it seems more likely that the local decisions would be influenced by "common sense" and other considerations which would not be helpful in drafting solid policies. The history of the emergence of sex offender management policies throughout the United States is filled with experiences of jurisdictions creating policies which are not grounded in good science and verifiable knowledge.

FINAL NOTE: As CASOMB has stated repeatedly in its Reports and other documents, it is unfortunate that so much energy goes into introducing and even implementing policies and practices which research says do not work rather than into actualizing the many possible policies and practices which could actually reduce sexual victimization in California.