



Sex Offender Registration and Notification In the United States Current Case Law and Issues — March 2018

Residency Restrictions

SORNA does not address or require residency restrictions in any way. These residency restrictions are generally passed and enforced on a local or municipal level, although a state, tribe or territory can pass such provisions.¹ When a jurisdiction chooses to impose residency restrictions on registered sex offenders, such restrictions may prohibit registered sex offenders from residing within a certain perimeter of schools, day care centers, parks and other locations frequented by children.

In North Carolina, one portion of the state's residency restriction provisions was recently held to be unconstitutionally vague.² Other significant opinions have been issued in previous years. For example, in California, certain residency restrictions were held unconstitutional as applied on due process grounds.³ In New York and some other states, municipal residency restrictions have been invalidated because they were preempted by state law.⁴ In another case, a residency restriction was deemed to be punitive and therefore not retroactively applicable.⁵ The 11th Circuit recently permitted a case to proceed where the plaintiffs allege that Florida's residency restrictions are punitive.⁶ More frequently, however, local residency restrictions have been upheld,⁷ such as in Colorado, where a local ordinance that in effect bars certain sex offenders from living within a city was *not* preempted by state law.⁸

¹ See, e.g., Cal. Penal Code § 3003.5; Idaho Code § 18-8329; 57 Okla. Stat. § 590.

² *Doe v. Cooper*, 842 F.3d 833 (4th Cir. 2016) (prohibition on being present at "any place where minors gather for regularly scheduled educational, recreational, or social programs" is impermissibly vague).

³ *In re William Taylor*, 343 P.3d 867 (Cal. 2015).

⁴ *Doe v. City of Lynn*, 36 N.E.3d 18 (Mass. 2015); *G.H. v. Twp. of Galloway*, 951 A.2d 221 (N.J. 2008) (New Jersey law preempted municipal residency restrictions); *People v. Diack*, 26 N.E.3d 1151 (N.Y. 2015) (New York law preempts local residency restriction provisions); *People v. Oberlander*, 880 N.Y.S.2d 875 (N.Y. Sup. Ct. 2009) (Rockland County residency restriction preempted by New York state law); *People v. Blair*, 873 N.Y.S.2d 890 (Albany City Ct. 2009) (Albany County residency restriction preempted by New York state law). *Contra* *United States v. King*, 431 Fed. Appx. 630 (10th Cir. 2011) (Oklahoma's residency restrictions did not present an obstacle to complying with federal sex offender registration requirements).

⁵ See *Commonwealth v. Baker*, 295 S.W.3d 437 (Ky. 2009) (Kentucky's residency restrictions exceeded the nonpunitive purpose of public safety and thus violated the Ex Post Facto clause); see also *Duarte v. City of Lewisville*, 759 F.3d 514 (5th Cir. 2014) (standing granted in challenge to residence restrictions suit), *all claims dismissed on remand*, 136 F.Supp. 3d 752 (E.D. Tex. 2015). *But see* *McAteer v. Riley*, 2008 U.S. Dist. LEXIS 26209 (M.D. Ala. March 31, 2008) ("The court expresses no opinion today on whether McAteer

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could present evidence and arguments to establish by the clearest proof that the residency and employment restrictions violate the ex post facto clause and leaves that question for another day”).

⁶ Doe v. Miami-Dade County, 838 F.3d 1050 (11th Cir. 2016).

⁷ State v. Stark, 802 N.W.2d 165 (S.D. 2011) (discussing state-level loitering and safety zone provisions).

⁸ Ryals v. City of Englewood, 2016 Colo. LEXIS 74 (Jan. 25, 2016). *But see* Millard v. Rankin, 2017 U.S. Dist. LEXIS 140301 (D. Colo. Aug. 31, 2017) (relying in part on certain localities’ residency restriction provisions in finding that Colorado’s registration scheme violated the Eighth and 14th Amendments).