



Sex Offender Registration and Notification In the United States Current Case Law and Issues — March 2019

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 also 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 one recent case, a sex offender unsuccessfully challenged the constitutionality of a state's residency restrictions, arguing that they interfered with his right to vote; his polling place was on the property of a high school and he was prohibited from being on school property.²

In North Carolina, one portion of the state's residency restriction provisions was held to be unconstitutionally vague.³ 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.⁴ In New York and some other states, municipal residency restrictions have been invalidated because they were preempted by state law.⁵ In another case, a residency restriction was deemed to be punitive and therefore not retroactively applicable.⁶ The 11th Circuit recently permitted a case to proceed where the plaintiffs allege that Florida's residency restrictions were punitive.⁷ More frequently, however, local residency restrictions have been upheld,⁸ 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.⁹

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

² Valenti v. Lawson, 889 F.3d 427 (7th Cir. 2018).

³ 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).

⁴ *In re Taylor*, 343 P.3d 867 (Cal. 2015).

⁵ Doe v. City of Lynn, 36 N.E.3d 18 (Mass. 2015); G.H. v. Twp. of Galloway, 951 A.2d 221 (N.J. Super. Ct. App. Div. 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). *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).

⁶ 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

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of Lewisville, 858 F.3d 348 (5th Cir. 2017) (standing granted in challenge to residence restrictions suit but all claims dismissed).

⁷ Doe v. Miami-Dade County, 846 F.3d 1180 (11th Cir. 2017).

⁸ State v. Stark, 802 N.W.2d 165 (S.D. 2011) (discussing state-level loitering and safety zone provisions).

⁹ Ryals v. City of Englewood, 364 P.3d 900 (Colo. 2016). *But see* Millard v. Rankin, 265 F. Supp. 3d 1211 (D. Colo. 2017) (relying in part on certain localities' residency restriction provisions in finding that Colorado's registration scheme violated the Eighth and 14th Amendments).