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April 12, 2010

Governor Arnold Schwarzenegger
State Capitol Building
Sacramento, CA 95814

Secretary Matthew Cate
1515 S Street, Suite 502
Sacramento, CA 95814

Supervising Parole Agent Derrick Miller
18002 Sky Park Circle
Irvine, CA 92614

RE: 290 Registrant Parolee Eric Hinnenkamp, CDC # 076473

Dear Sirs:

I am writing to express my grave concerns over the unlawful and lenient treatment of a sex offender parolee named Eric Hinnenkamp by the Division of Adult Parole Operations ("Parole"). In violation of Jessica's Law and Megan's Law, Parole has been operating under a misguided definition of the word "reside" and allowing this convicted sex offender to reside directly across the street from a public park in Fullerton.

I implore you to join me in requiring Parole to correctly interpret the law to protect public safety and keep this sex offender away from a park where children regularly gather.

While on probation for a Los Angeles County conviction for indecent exposure in 1990, a 26-year-old Hinnenkamp tricked two 13-year-old sisters into letting him into the Jacuzzi area at a locked apartment complex in Fullerton. While one of the sisters went to make a phone call, Hinnenkamp removed his shorts, exposed his erect penis, touched the remaining girl's vagina over her bathing suit, and had her masturbate him. The other sister returned to see him touching her sister and his erect penis. For this crime, Hinnenkamp was convicted of two felony counts of child molest and one felony count of indecent exposure. The People requested state prison, but he pleaded guilty to the court's offer and served less than a year in jail.

In 1992, he was again convicted of indecent exposure and lewd acts in public and sentenced to one year in jail. In 2000, Hinnenkamp was convicted in Los Angeles County of sexual battery of a restrained person, indecent exposure during residential trespass, and failure to register as a sex offender. He pleaded guilty and was sentenced to 128 months in state prison and lifetime sex offender registration. Although he was sentenced in Los Angeles County, he was paroled in Orange County.

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After he was released on parole, Hinnenkamp established residency at an apartment in Huntington Beach. Now he wants to live in a house in Fullerton left to him by his parents on Lake Knoll Drive. This home is located 155 feet from Laguna Lake Park, a public park in Fullerton where children regularly play, and just three miles away from where he molested the 13-year-old girl in 1990.

Parole has given Hinnenkamp permission to be present at the Lake Knoll Drive house anytime between the hours of 5:00 a.m. and 11:00 p.m. Neighbors in the community have observed him regularly spending many hours at the house, performing work on the home and just hanging around. He has been seen spending an average of 20 hours per week at the Lake Knoll Drive house. His parole agent has deemed that Hinnenkamp does not "reside" in Fullerton because he does not sleep there overnight. This definition has no logical or legal support and must be corrected promptly.

Penal Code section 3003.5(b), enacted by Jessica's Law, provides that "it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2,000 feet of any public or private school, or park where children regularly gather." We believe that Parole by allowing Hinnenkamp to spend up to 18 hours a day at the Fullerton house is violating Jessica's Law.

As explained in the official Ballot Statement for Proposition 83, the purpose of this section of Jessica's law (PC 3003.5(b)) is to create "predator free zones around schools and parks to prevent sex offenders from living near where our children learn and play" *In re E.J.* 47 Cal. 4th 1258, 1266 (2010). Allowing a predator to spend up to 18 hours a day across the street from a park is inconsistent with the goal of creating a predator free zone around the park. If a sex offender is allowed to spend up to 18 hours close to the park, it matters little that he has designated another address as his "official" residence. Thus, the definition of "reside" being used by Parole ("where he sleeps at night") frustrates the intent of Jessica's law.

Although no court has specifically ruled on the term "reside" as used by Jessica's Law in Penal Code section 3003.5(b), the identical term is used by Megan's Law in Penal Code section 290, et seq. Both Jessica's Law and Megan's Law were enacted after two little girls were sexually assaulted and murdered by repeat sex offenders. As such, the term "reside" as used in both laws should be interpreted identically.

In *People v. McCleod* (1997) 55 Cal.App.4th 1205, the court stated that "residence" is not the same as "domicile" and thus a person can have more than one "residence." The *McCleod* court said that "residence" should be defined in terms best suited for the purpose of the statute, which in the case of Penal Code section 290 is "to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future." (*People v. McCleod, supra*, 55 Cal.App.4th 1205, 1218.)

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In *People v. Horn* (1998) 68 Cal.App.4th 408, the court followed *McCleod* and approved a trial court's definition that a residence is "a temporary or permanent dwelling place, which one keeps and to which one intends to return, as opposed to a place where one rests or shelters during a trip or transient visit. Depending upon the circumstances, one may have a single place of residence or more than one place of residence." (*Id.*, at p. 414.) The *Horn* court noted: "The purpose of section 290 is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future. This objective would be defeated entirely were an offender allowed to remain at one or more undisclosed locations on a regular basis, even if the locations were not the offender's exclusive abode." (*People v. Horn, supra*, 68 Cal.App.4th 408, 417.)

On March 24, 2010, the Court of Appeal interpreted the term "residence" as defined in Penal Code section 290 in *People v. Gonzalez* (Cal. Court of Appeal, Fourth District, Second Division, case number E046800, published March 24, 2010 [available at: <http://www.courtinfo.ca.gov/opinions/documents/E046800.PDF>]). In *Gonzalez*, the defendant sex registrant had registered his residence on Lurelane Street. Gonzalez was convicted for failing to also register at his girlfriend's house on Fairhaven Street. On appeal, defendant argued there was insufficient evidence to prove that he "resided" on Fairhaven Street, the court held:

"There is ample evidence that defendant spent the night at the Fairhaven house, and even if he did not, the evidence was more than sufficient to support the jury's finding that defendant regularly resided at the Fairhaven home in violation of section 290, since he spent a great deal of time there and was at the home on a regular basis."

People v. Gonzalez, Id. at p.14

The *Gonzalez* case squarely refutes the position of Parole that spending the night at a location is the only definition of "residing." The court wisely found that all the circumstances of a person's relationship to the location must be taken into account. In Hinnenkamp's case, he owns the home in question, intends to permanently move into it, is renovating the property, spends an average of 20 hours a week there, and is there on a regular basis. Surely, this fits the definition of "residing," and flies in the face of statute, case law, and commonsense for Parole to say otherwise.

Parole should acknowledge the obvious facts: that Hinnenkamp is residing at the Fullerton location and that it is unlawful for him to do so. I urge you to join me in calling for Parole to instruct Hinnenkamp that he may not reside at the Fullerton location, and to incarcerate him for violating the conditions of his parole should he continue to do so.

I have spent the last 35 years as a prosecutor and a judge. Sex offenders often increase their violence in order to continue to satisfy their sick craving for children. We do not need another law named after another tragic victim.

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I urge you to join me in calling on Parole to enforce the law and protect public safety.

Sincerely,

A handwritten signature in blue ink that reads "Tony Rackauckas". The signature is written in a cursive style with a prominent initial "T".

Tony Rackauckas
District Attorney
County of Orange

TR:ss/ru