

A-33



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Board of Supervisors
Department No.: 0110
For Agenda Of: May 12, 2009
Placement: Set Hearing
Estimated Time: 45 minutes – May 19, 2009
Continued Item: No
If Yes, date from:
Vote Required: Majority Vote Required

0572.35 09.00457

TO: Board of Supervisors

MAY 12 2009

FROM: Board Member(s) Name & Phone: Supervisor Joni Gray, 4th Dist., ext. 7700
Contact Info: Name & Phone: Stephen Underwood, County Counsel, ext. 2950

SUBJECT: Set hearing to consider implementing provisions of Jessica's Law

County Counsel Concurrence

As to form: No

Auditor-Controller Concurrence

As to form: No

Other Concurrence: N/A

As to form: No

Recommended Action:

- 1) Set hearing for May 19, 2009, to receive report on Jessica's Law and
- 2) Provide direction to staff regarding drafting an ordinance implementing Jessica's Law's residency restrictions.

Summary Text: Passage of Jessica's Law (Proposition 83) on November 8, 2006, added Penal Code § 3003.5(b) and (c) (among other additions). PC § 3003.5(b) prohibits Penal Code § 290 sex offenders (those required to register with local law enforcement agencies) from residing within 2000 feet of any public or private school, or park where children regularly gather. Penal Code § 3003.5(c) allows municipalities to enact residency restrictions on individuals subject to sex offender registration per Penal Code § 290. Such restrictions could include those that are "greater than" the restrictions found in section 3003.5(b).

Background: Penal Code § 3003.5(b) limits its residency restrictions to 2000 feet of any public or private school or park. However, Penal Code § 3003.5(c) allows local governments to enact greater restrictions and provides: "Nothing in this section shall prohibit municipal jurisdictions from enacting local ordinances that further restrict the residency of any person for whom registration is required pursuant to Section 290." There

is no penalty provision associated with Penal Code § 3003.5(c). Cities and counties generally make criminal ordinance violations a misdemeanor.

A number of California jurisdictions have enacted local ordinances pursuant to section 3003.5(c), for example Fresno County, San Bernardino County (copies are attached) and a number of cities, San Diego (copy attached), Santee, La Mesa. Each of the ordinances are different with respect to their restrictions. The City of San Diego's ordinance is the most detailed. It provides for a 2000 feet residency restriction, but includes a greater number of excluded places (amusement parks, arcades, day care centers, library, playground, park and school – it even discuss playgrounds at fast food establishments.) Fresno County's ordinance has a 3000 feet residency restriction and also includes more restricted areas than are found in Penal Code § 3003.5(b). In addition, the City of San Diego excludes sex offenders from merely "being" within 300 feet of these locations. Fresno County's ordinance has a 3000 feet residency restriction and also includes more restricted areas than are found in Penal Code § 3003.5(b).

There is current litigation over various aspects of Jessica's Law pending before the California Supreme Court, and while none of those current challenges relate specifically to Penal Code § 3003.5(c), the residency restriction of section 3003.5(b) is an issue. (*People v. Mosley*, 168 Cal.App.4th 512 (Cal. App. 2008 – Review Granted)) There is also an issue over the retroactive application of Jessica's Law. The courts and the Attorney General take the position that anyone required to register under Penal Code § 290 prior to November 8, 2006, is not covered by Jessica's Law. San Bernardino County and the City of San Diego made their ordinances effective 30 days after adoption – prospective only.

Santa Barbara County can enact a local ordinance restricting sex offenders' residency pursuant to Penal Code § 3003.5(c). However, there are legal limitations and policy options to consider.

1. If the County enacts such an ordinance, it appears under current law (a) it would not be applicable to anyone required to register under Penal Code § 290 before the effective date of Jessica's Law, and (b) it may not be applicable to anyone required to register between the passage of Jessica's Law (November 8, 2006) and the effective date of a county ordinance.

2. Until the Supreme Court decides *Mosley* we cannot be certain what the impact of the residency restrictions of section 3003.5 (b) or (c) might be or how those may ultimately be applied to registered sex offenders.

3. We believe an expanded residency and designated area restriction, unless otherwise impacted by *Mosley*, would likely be upheld. Your Board could adopt an aggressive residency ordinance along the lines of the City of San Diego or a more moderate one like Fresno County.

4. If a residency restriction ordinance were proposed and adopted, we do not believe the City of San Diego or San Bernardino County models, specifically, the provisions relating to "being" within 300 feet of designated locations, should be included since mere presence is not a "residency restriction." It may, however, be possible to draft a separate ordinance

with such a restriction for registered sex offenders as part of a "loitering" or "presence" restriction unrelated to residency.

5. The ordinance could also include a "grandfather" clause allowing those currently residing within a designated residency restricted area to remain. However, if a registered sex offender changed residency after the effective date of an ordinance they would become subject to the ordinance.

Staff requests Board direction with respect to implementing an ordinance under Jessica's Law, and the types of distance and location restrictions your Board would like to have in such an ordinance, if adopted.

Performance Measure:

Fiscal and Facilities Impacts:

Budgeted: No

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund			
State			
Federal			
Fees			
Other:			
Total	\$ -	\$ -	\$ -

Narrative:

Staffing Impacts:

Legal Positions:

FTEs:

Special Instructions:

Attachments: Ordinances from City of San Diego, San Bernardino and Fresno Counties

Authored by: Stephen D. Underwood, Chief Assistant County Counsel

cc:

City of San Diego

Article 8: Minors

Division 6: Child Protection Act

§58.0601 Purpose

It is the purpose and intent of the Child Protection Act (CPA) to protect children from registered sex offenders by limiting their access to locations where children gather. It is intended to reduce the risk of harm to children by impacting the ability of sex offenders to be in contact with children. It is further the intent of this ordinance to provide additional restrictions beyond those provided for in Proposition 83, Jessica's Law (effective November 8, 2006) by adding locations to the residence restrictions of Jessica's Law, by restricting sex offenders from certain limited locations, and by allowing for both criminal and civil remedies, pursuant to Sections 12.0201-12.0205 of this Code. It is not the intent of this ordinance to allow conduct otherwise prohibited by state law, or to contradict state law.

§58.0602 Definitions

For purposes of this Division:

"Amusement center" means any establishment open to the public who provides entertainment directed at *minors*, or whose play equipment is primarily used by *minors*. It includes places like Chuck E. Cheese, Sea World, the San Diego Zoo and children's museums. It includes but is not limited to establishments that provide activities like gymnastics, laser tag, art classes, so long as the primary users of the establishment are *minors*. It does not include restaurants, movie theaters or shopping malls. It does not include businesses whose primary business is to sell toys or games or other similar products primarily used by *minors*.

"Arcade" means the same as it does in Section 33.1635.

"Child day care facility" means any facility licensed as such pursuant to California Health and Safety Code, section 1596.750, except it does not include a *"small family day care home"* as defined in California Health and Safety Code section 1596.78(c).

"Library" means any public library operated by the City of San Diego.

"Minor" means any person less than eighteen (18) years of age.

"Offense" means any criminal offense requiring registration under California Penal Code section 290.

"Playground" means any outdoor premises or grounds owned or operated by the City that contains any play or athletic equipment used or intended to be used by *minors*.

"Park" means the same as it does for purposes of California Penal Code section 3003.5(b).

"Registered Sex Offender" and *"sex offender"* means any person required to register pursuant to California Penal Code section 290.

"Reside" or *"Residence"* means the same as it does for purposes of California Penal Code section 3003.5(b).

"School" means any public or state licensed private elementary or secondary school, attendance at which satisfies the compulsory education laws of the State of California. It does not include a residence where parents or guardians provide home schooling. This definition shall be interpreted to be consistent with California Penal Code section 3003.5(b).

§58.0603 Restricted Areas for Sex Offenders-Presence

It is unlawful for any *registered sex offender* to be within 300 feet of any of the following places:

- (a) *Amusement Center*
- (b) *Arcade*
- (c) *Child Day Care Facility*
- (d) *Library*
- (e) *Playground*
- (f) *Park*
- (g) *School*

§58.0604 Restricted Areas for Sex Offenders-Residency

It is unlawful for any *registered sex offender* to be *reside* within 2000 feet of any of the following places:

- (a) *Amusement Center*
- (b) *Arcade*
- (c) *Child Day Care Facility*
- (d) *Library*
- (e) *Playground*
- (f) *Park*
- (g) *School*

§58.0605 Measure of Distance

The 300-foot buffer zone and the 2000-foot buffer zone are measured in a straight line, in all directions, without regard to intervening structures, from the property line of the places listed in Section 58.0603(a) through (g), and 58.0604 (a) through (g).

§58.0606 Other Establishment Restrictions for Sex Offenders

It is unlawful for any *registered sex offender* to enter in to or remain in any *amusement center* contained within a non-restricted establishment, such as the play area of a fast food restaurant, or a video game arcade establishment in a shopping mall.

§58.0607 Exemptions

Any particular subsection of 58.0603 does not apply to any *registered sex offender* who is currently on probation or parole for an *offense* for which registration is required, and whose conditions of probation or parole would otherwise violate that subsection. A *registered sex offender* may be on or within 300 feet of a school if that *sex offender* is a parent or guardian of a child attending that school, or is a student at the school or has prior written permission

for the entry from the chief administration office of that school. This exemption does not apply to the *residence* restriction, only to the presence restriction. This exemption is intended to be co-extensive with Penal Code section 626.8, and is not intended to authorize any conduct prohibited by Penal Code section 626.8.

Any *registered sex offender* who lives within 300 feet of any of the places listed in Section 58.0603 on April 13, 2008, is not required to move. However the *sex offender* must proceed directly to and from his or her *residence*, and not loiter or remain within the 300 foot zone. Any *registered sex offender* who *resides* outside 2000 feet of any of the places listed in Section 58.0604 on April 13, 2008, is not required to move if one of the entities listed in 58.0604 moves within 2000 feet of the *sex offender's residence* after April 13, 2008.

§58.0608 Defenses

It is an affirmative defense to Section 58.0603 when the person charged can show that traveling through the 300 foot zone was the only reasonable way to reach another destination. Loitering or unnecessarily remaining within the zone defeats the availability of the defense. For example, if a person takes a bus to work and the bus drives by or stops near a park, such person can use this subsection if charged with a crime under this section. Conversely, if a person walks to work, and must pass within 300 feet of a library, and if the person stands in front of the library rather than proceeding to his or her destination, the defense is not available. Entering into the prohibited establishment defeats the availability of the defense.

§58.0609 Effective Date for Residency Requirements

The residency restriction contained in Section 58.0604 applies to any person who is required to register as a *sex offender* based on a crime committed on or after the April 13, 2008.

County of San Bernardino

§ 27.1401 Definitions.

For the purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CHILD or *CHILDREN*. Any person under the age of 18 years of age.

DAY CARE CENTER. Any licensed child day care facility including infant centers, preschools, extended day care facilities, and school age child care centers. It does not include a family day care home as defined in Health and Safety Code § 1596.78.

PARK. A park or other recreation facility operated and/or maintained by a governmental entity.

SCHOOL. The buildings and grounds of any public or private school used for purposes of the education of children in kindergarten or any of grades one to 12, inclusive.

SEX OFFENDER. An individual who is required by law to register with a governmental entity as a sex offender as a result of a conviction of a sex crime against a child.

§ 27.1402 Prohibitions.

(a) Any registered sex offender, who is no longer the subject of parole by any governmental entity, is prohibited from residing within 2,640 feet of any school, or from residing within 2,000 of any park or day care center.

(b) Any registered sex offender, who is no longer the subject of parole by any governmental entity, is prohibited from being located within 300 feet of a school, unless the registered sex offender is a parent or guardian of a child for which the individual is legally responsible and the child attends the school or is a student at the school.

(c) Any registered sex offender, who is no longer the subject of parole by any governmental entity, is prohibited from being located within 300 feet of a park where children are present, unless the registered sex offender is a parent or guardian of a child for which the individual is legally responsible and the child is present at the park.

§ 27.1403 Exception.

A registered sex offender is not in violation of § 27.1402(a) because he or she is residing and registered with a governmental entity, at an address that is within

2,640 feet of any school or within 2,000 of any park or day care center, on the effective date of this Chapter.

§ 27.1404 Criminal Penalty.

Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof, the penalty shall be a fine of not more than \$1,000.00 or imprisonment in the County jail for a period of not more than six months or by both such fine and imprisonment.

County of Fresno

Chapter 10.42 RESIDENCY RESTRICTIONS FOR REGISTERED SEX OFFENDERS

10.42.010 Violation of residential exclusion zone.

No person for whom registration is required pursuant to Penal Code Section 290 shall permanently or temporarily reside within three thousand feet of a public and private school, park, child care center, public library, or a school bus stop.

10.42.020 Violation—Penalty.

The penalty for violation of any of the provisions of this chapter shall be as prescribed in Section 1.12.010.