



# San Bernardino County

## Legislation Text

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**File #: 1494, Agenda Item #: 86**

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### **REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION**

**December 17, 2019**

#### **FROM**

**MICHELLE D. BLAKEMORE, County Counsel**

#### **SUBJECT**

Repeal of County Code restrictions concerning registered sex offenders.

#### **RECOMMENDATION(S)**

1. Consider proposed ordinance relating to the repeal of County Code restrictions concerning registered sex offenders.
  2. Make alterations, if necessary, to proposed ordinance.
  3. Approve introduction of proposed ordinance.
  4. Read title only of proposed ordinance; waive reading of entire text and SCHEDULE FOR FINAL ADOPTION ON TUESDAY, January 7, 2020 on the consent calendar.
- (Presenter: Michelle Blakemore, County Counsel, 387-5455)

#### **COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Operate in a Fiscally-Responsible and Business-Like Manner.**

#### **FINANCIAL IMPACT**

Approval of this item will incur no additional Discretionary General Funding (Net County Cost).

#### **BACKGROUND INFORMATION**

On November 7, 2006, the voters enacted Proposition 83, the Sexual Predator Punishment and Control Act: Jessica's Law, adopting Penal Code section 3003.5, subdivisions (b) and (c). The new subdivision (b) made it unlawful for any person for whom registration was required pursuant to Penal Code section 290 to reside within 2,000 feet of any public or private school, or park where children regularly gather.

On the same day Jessica's Law was passed, the Board of Supervisors (Board) approved Ordinance No. 3993 that added several provisions to the County Code, including prohibiting sex offenders from residing within 2,000 feet of a day care center or park, and within one-half mile of a school. The Ordinance also created 300-foot "predator-free zones" around schools and parks where children are present in San Bernardino County's unincorporated areas. On June 28, 2011, the Board approved Ordinance No. 4144 that amended the "predator-free zones" to include public libraries, public museums, public swimming pools, and arcades where children are present and extended the residency restrictions to one-half mile for day care centers and parks. On July 10, 2012, the Board approved Ordinance No. 4179, prohibiting registered sex offenders from participating in Halloween activities.

On January 10, 2014, the Fourth District Court of Appeal, Division 3, issued a decision in *People v. Jeanpierre Cuong Nguyen* invalidating a City of Irvine ordinance that prohibited sex offenders from entering public parks or recreational facilities without prior written permission. The Court of Appeal invalidated the ordinance on preemption grounds and held that “the state statutory scheme imposing restrictions on a sex offender’s daily life fully occupies the field and therefore preempts the city’s efforts to restrict sex offenders from visiting city parks and recreational facilities.” (*People v. Nguyen* (2014) 222 Cal.App.4th 1168, 1172.) On April 23, 2014, the California Supreme Court denied review. On February 10, 2015 (Item 59), in response to a civil lawsuit and the holding in *People v. Nguyen*, the Board repealed the “presence” restrictions pertaining to registered sex offenders from the County Code. The restrictions regarding residency and Halloween remained intact.

Subsequent thereto, on March 2, 2015, the California Supreme Court issued a decision in *In re Taylor* (2015) 60 Cal.4th 1019, finding the blanket enforcement of sex offender residency restrictions imposed by Jessica’s Law as applied to registered sex offenders on parole in San Diego County to be unconstitutional. On March 26, 2015, the California Department of Corrections and Rehabilitation issued a New Policy on Sex Offender Residency Restrictions indicating that based on *In re Taylor*, “the State Attorney Office advised CDCR that applying the blanket mandatory residency restrictions of Jessica’s Law would be found to be unconstitutional in every county.” As a result, CDCR indicated it would not be enforcing the blanket residency restrictions found in Jessica’s Law.

On August 4, 2016, the Court of Appeal, First District, Division 1, in *People v. Lynch* (2016) 2 Cal.App.5th 524, held that the 2,000 foot residency restriction in Jessica’s Law only applied to sex offenders while on parole.

On September 9, 2019, a civil lawsuit was filed by “John Doe” and the Alliance for Constitutional Sex Offense Laws, Inc. challenging the remaining sex offender restrictions regarding residency and Halloween as unconstitutional and preempted by State law. Based upon the case law cited above, it is recommended that the remaining restrictions regarding sex offenders be repealed.

Even with the repeal of the restrictions, several Penal Code sections remain in place regarding sex offenders, including:

- A lifetime duty to register with local law enforcement for each city or county in which the offender resides and to update that registration annually or upon any relevant change (§§290-290.024);
- A state-mandated website that discloses information about the offender to the public (§290.46);
- A sex offender’s duty to submit to monitoring with a global positioning device while on parole and potentially for the remainder of the offender’s life if the underlying sex offense was one of several identified felonies (§§3000.07, 3004, subd. (b));
- A prohibition against the offender “enter[ing] any park where children regularly gather without the express permission of his or her parole agent” if the victim of the underlying sex offense was under 14 years of age (§3053.8, subd. (a));
- A prohibition against the offender residing with another sex offender while on parole and within 2,000 feet of a school or park (§3003.5);
- A prohibition against the offender entering any school without “lawful business” and written permission from the school (§626.81);
- Enhanced penalties for the offender remaining at or returning to “any school or public place at or near which children attend or normally congregate” after a school or law enforcement official has asked the offender to leave (§653b);
- A prohibition against the offender entering a day care or residential facility for elders or dependent adults without registering with the facility if the victim of the underlying sex offense was an elder or dependent adult (§653c);
- A duty to disclose the offender’s status as a sex offender when applying for or accepting a job or volunteer position involving direct and unaccompanied contact with minor children, or involving direct

and accompanied contact if the work would require the registrant to touch the minor children on more than an incidental basis (§290.95, subds. (a) & (b));

- A prohibition against the offender working or volunteering with children if the victim of the underlying sex offense was under 16 years of age (§290.95, subd. (c)); and
- A prohibition against the offender receiving publicly funded prescription drugs or other therapies to treat erectile dysfunction (§290.02).

#### **PROCUREMENT**

Not applicable.

#### **REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Kristina M. Robb, Deputy County Counsel) on December 3, 2019; County Administrative Office (Carl Lofton, Administrative Analyst, 387-5404) on December 10, 2019; and County Finance and Administration, Robert Saldana, Deputy Executive Officer, 387-5423) on December 10, 2019.