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FISCAL IMPACT REPORT

SPONSOR Neville **ORIGINAL DATE** 1/21/08
LAST UPDATED _____ **HB** _____

SHORT TITLE Local Government Sex Offender Restrictions **SB** 224

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
New Mexico Sentencing Commission (NMSC)
Public Defender Department (PDD)

No Responses Received From

New Mexico Corrections Department
Association of Counties
New Mexico Municipal League

SUMMARY

Synopsis of Bill

Senate Bill 224 permits cities, counties, home rule municipalities and other political subdivisions of the state to enact residence restrictions with respect to sex offenders.

FISCAL IMPLICATIONS

AOC states there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enactment of residency restrictions and any constitutional challenges to the same.

SIGNIFICANT ISSUES

AOC states residency restriction would likely face constitutional challenges on at least the following grounds:

- As being an unconstitutional form of ex post facto law when applied to offenders whose convictions are final, if the restrictions are found to be criminal sanctions imposed to punish an offender;
- As cruel and unusual punishment in violation of the eight amendment of the United States Constitution;
- As depriving offenders of the right to travel within or among states or the right to choose where one lives; and
- As not rationally advancing a legitimate state interest in violation of the equal protection clause.

AOC suggest for policy discussion on the issue see the October 2005 report to the Florida Legislature, “Sex Offender Residence Restrictions” By Jill S. Levenson, Ph.D. at [http://www.nacdl.org/sl_docs.nsf/issues/sexoffender_attachments/\\$FILE/Levinson_FL.pdf](http://www.nacdl.org/sl_docs.nsf/issues/sexoffender_attachments/$FILE/Levinson_FL.pdf). See also “The Impact of Residency Restrictions on Sex Offenders and Correctional Management Practices: A Literature Review” at www.library.ca.gov/crb/06/08/06-008.pdf and <http://www.dc.state.ks.us/publications/sex-offender-housing-restrictions>, published by the Kansas Department of Corrections regarding findings of research on residential restrictions for sex offenders.

In December 2007, NMSC released a report titled “Distance Restrictions on Sex Offender Residential Housing.” The report states that the Sex Offender Management Board concluded that current research does not support imposing residency restrictions on sex offenders. The report notes that New Mexico is a rural state with limited resources that are largely concentrated in very few communities. The report states “extensive residential restrictions would likely force a large population of sex offenders into rural communities” with few if any resources available, such as jobs, education, supervision, treatment and other resources. The report notes that the Sex Offender Management Board makes no specific recommendation regarding current laws, standards or practices regarding existing residency restrictions. (See Attachment).

PDD states the proposed legislation would allow local governments to create a patchwork of residence restrictions. PDD notes if enacted into law, it would likely be judicially challenged by the American Civil Liberties Union.

PERFORMANCE IMPLICATIONS

AOC states the proposed legislation may have an impact on the performance measures of the courts in the following areas: cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

AOC notes that new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SEX OFFENDER MANAGEMENT BOARD OF THE NEW MEXICO SENTENCING COMMISSION

DECEMBER 2007

Summary

- The New Mexico Sex Offender Management Board has concluded that current research does not support imposing residency restrictions on sex offenders in New Mexico.
- New Mexico is a rural state with limited resources. Jobs, education, supervision, treatment and other resources, are largely concentrated in very few communities. Extensive residential restrictions would likely force a large population of sex offenders into rural communities with few if any of the resources mentioned above. Further, such a migration would place a significant burden on the limited social and law enforcement resources available to these communities.
- The New Mexico Sex Offender Management Board makes no specific recommendation regarding current laws, standards or practices regarding residency restrictions already existing within agencies or municipalities. Further, while the Board has concluded that imposing residency restrictions may ultimately reduce public safety, the Board is not aware of any state law that would prohibit a municipality from enacting such a rule, if that municipality would otherwise possess such authority.

Distance Restrictions On Sex Offender Residential Housing

Residential Restrictions

Pursuant to Section 9-13-3D(9) NMSA 1978, the Sex Offender Management Board shall "research and analyze safety issues raised when sex offenders live in a community." This document presents the formal position of the New Mexico Sex Offender Management Board (the "Board") on whether imposing legal restrictions on places where persons who have been convicted of sex offenses may reside will promote public safety in New Mexico.

The Board has concluded that current research does not support imposing residency restrictions on sex offenders in New Mexico. The Board makes no specific recommendation regarding current laws, standards or practices already existing within agencies or municipalities. Further, while the Board has concluded that imposing residency restrictions may ultimately reduce public safety, the Board is not aware of any state law that would prohibit a municipality from enacting such a rule, if that municipality would otherwise possess such authority.

Discussion

A number of jurisdictions in the United States have enacted laws restricting where persons who have been convicted of sex offenses ("Sex Offenders") may reside ("residency restrictions"). These restrictions generally provide that a Sex Offender may not live within a specified distance from a school, daycare center, park, or other place where children would be likely to congregate. The distances vary by jurisdiction generally from 500 to 2,500 feet.

While these restrictions are clearly well-intentioned, they do not appear to be supported by scientific research and may in fact result in a more dangerous society. Professor Jill Levenson, Ph.D, of Lynn University in Florida,

joins other experts in pointing out that "[sex offenders] need to have a place to live, they need to be able to get jobs. They need to be able to support themselves and their families... without those things, they're going to be more likely to resume a life of crime. That's not a debate, that's a fact."

The Minnesota Department of Corrections recently released a study that echoes Dr. Levenson's concerns. The study examined 224 sex offenders convicted for a sexual reoffense between 1990 to 2006 to determine whether residency restrictions would have prevented the crime. The study concluded that "[n]ot one of the 224 sex offenses would likely have been deterred by a residency restrictions law."

The Department went on to state that "a statewide residency restrictions law would likely have, at best, only a marginal effect on sexual recidivism." The study noted that "it is *possible* that a residency restrictions law could avert a sex offender from recidivating sexually", but concluded that "the chances that it would have a deterrent effect are slim because the types of offenses it is designed to prevent are exceptionally rare and, in the case of Minnesota, virtually non-existent over the last 16 years." Finally, the Department cautioned that "[r]ather than lowering sexual recidivism, housing restrictions may work against this goal by fostering conditions that exacerbate sex offenders' reintegration into society."

Iowa has state-wide restrictions and has encountered significant problems. Iowa reported that its absconder population doubled in the first year of its broader restrictions. This prompted the Iowa County Attorneys Association to request that the Iowa Legislature repeal that state's residential restrictions law. The Association noted, among other concerns, that the restrictions were forcing Offenders into homelessness, to register falsely, or simply disappear.

Iowa County Sheriffs and victims advocates joined with the Iowa County Attorneys Association to testify before the Iowa legislature that the law is actually hurting, not helping protect the public. "It places restrictions on where they lay their head down and where they sleep, but it doesn't keep them out of our parks or out of our schools, and out of day-care centers," said Clay County Sheriff Randy Krukow. Krukow said the law was based on good intentions, but it's not working. Authorities said the problem is that the state law and many local ordinances are so restrictive that sex offenders are giving up trying to follow them. Police and prosecutors said the result is that they are actually losing track of sex offenders. "It's almost unenforceable, and it's not effective, and we need to replace it with more effective measures that do protect Iowa children," said Corwin Ritchie, of the Iowa County Attorneys Association.

The Kansas Department of Corrections recently released a report also raising concerns. Because the Kansas report includes many of the concerns that led the New Mexico Sex Offender Management Board to conclude that residency restrictions are not in New Mexico's best interest, it is reproduced here in its entirety (unedited):

Twenty Findings of Research on Residential Restrictions for Sex Offenders and the Iowa Experience with Similar Policies

- 1) Housing restrictions appear to be based largely on three myths that are repeatedly propagated by the media: 1) all sex offenders reoffend; 2) treatment does not work; and 3) the concept of "stranger danger." Research does not support these myths, but there is research to suggest that such policies may ultimately be counterproductive. Sex offender residence restrictions. A Report to the Florida Legislature, October 2005, Jill S. Levinson, Ph.D.
- 2) Research shows that there is no correlation between residency restrictions and reducing sex offenses against children or improving the safety of children. Iowa County Attorneys Association
- 3) The resulting damage to the reliability of the sex offender registry does not serve the interests of public safety. Iowa County Attorneys Association
- 4) There is no demonstrated protective effect of the residency requirement that justifies the huge draining of scarce law enforcement resources in the effort to enforce the restriction. Iowa County Attorneys Association
- 5) Many prosecutors have observed that the numerous negative consequences of the lifetime residency restriction has caused a reduction in the number of confessions made by offenders in cases where defendants usually confess after disclosure of the offense by the child. In addition, there are more refusals by defendants charged with sex offenses to enter plea

agreements. Plea agreements are necessary in many cases involving child victims in order to protect the children from trauma of the trial process. Iowa County Attorneys Association

- 6) Recommendation 1: Shared Living Arrangements appear to be a frequently successful mode of containment and treatment for higher risk sex offenders and should be considered a viable living situation for higher risk sex offenders in the community.... Recommendation 2: Placing restrictions on the location of correctionally supervised sex offender residences may not deter the sex offender from re-offending and should not be considered as a method to control sexual offending recidivism. Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community; Colorado Department of Public Safety, Division of Criminal Justice, Sex Offender Management Board
- 7)the number of sex offenders who are unaccounted for has doubled since the law went into effect. Iowa Coalition Against Sexual Assault
- 8) There is no accommodation in the current statute for persons on parole or probation supervision. These offenders are already monitored and their living arrangements approved. Iowa County Attorneys Association
- 9) [This policy] is contrary to well-established principles of treatment and rehabilitation of sex offenders....These goals are severely impaired by the residency restriction, compromising the safety of children by obstructing the use of the best known corrections practice. Iowa County Attorneys Association
- 10) The sex offender residency restriction was a very well intentioned effort to keep the children of our communities safe from sex offenders. It has, however, had unintended consequences that effectively decrease community safety. Iowa Coalition Against Sexual Assault
- 11)some offenders are attempting to comply by providing descriptions of where they are actually living...."under the 7th street bridge," "truck near river," "rest area mile marker 149," "Flying J, in truck," "in tent, S side of I-80," "RV in old K-Mart parking lot," "I-35 rest area,"Two listed Quick Trips.... For the first time, sex offender treatment providers tell us, sex offenders are absconding in larger numbers. Iowa Coalition Against Sexual Assault
- 12) When a brutal sexually violent crime occurs, such as the one that occurred in Iowa last year, our societal tendency is to focus all our resources and energy on stopping offenders. The long-term solutions to eradicating sexual violence from our society, however, do not lie in measures taken to stop re-offense, but rather in preventing sexual violence from happening in the first place. Iowa Coalition Against Sexual Assault
- 13) ... the Board of the Iowa Coalition Against Sexual Assault joined the Iowa County Attorneys Association in stating that these unintended consequences warrant replacing the residency restriction with more effective measures. Iowa Coalition Against Sexual Assault

- 14) Housing restrictions have passed in most localities with little resistance. Child safety is rightly the primary concern when sex offender restrictions are imposed. It seems to make sense that decreasing access to potential victims would be a feasible strategy to preventing sex crimes. There is no evidence, however, that such laws are effective in reducing recidivistic sexual violence. On the other hand, such laws aggravate the scarcity of housing options for sex offenders, forcing them out of metropolitan areas and farther away from the social support, employment opportunities and social services that are known to aid offenders in successful community re-entry. Sex offender residence restrictions. A Report to the Florida Legislature, October 2005, Jill S. Levinson, Ph.D.
- 15) Despite overwhelming public and political support, there is no evidence that proximity to schools increases recidivism, or, conversely, that housing restrictions reduce reoffending or increase community safety. Sex offender residence restrictions. A Report to the Florida Legislature, October 2005, Jill S. Levinson, Ph.D.
- 16) Based on the examination of level three re-offenders, there were no examples that residential proximity to a park or school was a contributing factor in any of the sexual re-offenses noted... Enhanced safety due to proximity restrictions may be a comfort factor for the general public, but it does not have any basis in fact...it appears that a sex offender attracted to such locations for purposes of committing a crime is more likely to travel to another neighborhood on order to in secret rather than in a neighborhood where his or her picture is well known. Level Three Sex Offenders Residential Placement Issues, 2003 Report to the Legislature, Minnesota Department of Corrections
- 17) Having such restrictions in the cities of Minneapolis and St. Paul would likely force level three offenders to move to more rural areas that would not contain nearby schools and parks but would pose other problems, such as high concentration of offenders with no ties to the community; isolation; lack of work, education and treatment options; and an increase in the distance traveled by agents who supervise offenders. Again, no evidence points to any effect on offense rates of school proximity residential restrictions. Level Three Sex Offenders Residential Placement Issues, 2003 Report to the Legislature, Minnesota Department of Corrections
- 18) Since blanket proximity restrictions on residential locations of level three offenders do not enhance community safety, the current offender-by-offender restrictions should be retained. Proximity restrictions, based on circumstances on an individual offender, serve as a valuable supervision tool...Most of these supervision proximity restrictions address the issue of the offender associating or interacting with children or minors, rather than where the offender resides. Level Three Sex Offenders Residential Placement Issues, 2003 Report to the Legislature, Minnesota Department of Corrections

- 19) A significant number of offenders have married or have been reunited with their victims; and, in those cases, the residency restriction is imposed on the victims as well as the offenders. Iowa County Attorneys Association...
- 20) A tight web of supervision, treatment and surveillance may be more important in maintaining community safety than where a sex offender resides. Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community; Colorado Department of Public Safety, Division of Criminal justice, Sex Offender Management Board

Consistent with the observation the Colorado Department of Public Safety cited in Kansas Department of Corrections finding number 20 above, the Board believes that supervision, treatment and surveillance are the keys to community safety with regard to this population. Thus, the Board has recommended Standards and Guidelines for the Management of Sex Offenders on Probation and Parole that encompass the three listed components. The Standards provide for a multi-disciplinary supervision team composed of a parole and probation officer, law enforcement officer, sex offender treatment provider, polygraph examiner, and others as deemed appropriate. The team will collaborate to ensure that the offender receives supervision and treatment appropriate to the level of risk that the individual presents.

Conclusion

New Mexico is a rural state with limited resources. Jobs, education, supervision, treatment and other resources are largely concentrated in very few communities. Extensive residential restrictions would likely force a large population of Sex Offenders into rural communities with few if any of the resources mentioned above. Further, such a migration would place a significant burden on the limited social and law enforcement resources available to these communities.

The Sex Offender Management Board staff has been unable to locate research or other reports that indicate that residency restrictions have resulted in reduced reoffenses, reduced victimization or had, or will have, any positive impact on public safety. On the other hand, current research and anecdotal reports from law enforcement and prosecutorial professionals overwhelmingly suggest that such laws are ineffective at best, and may do more harm than good. Thus, based upon current information, the New Mexico Sex Offender Management Board cannot recommend implementing residency restrictions in New Mexico at this time. ■

Footnotes

¹ <http://minnesota.publicradio.org/display/web/2007/06/11/sexoffender1/> See also Sexual Offender Treatment, Volume 2 (2007), Issue , Myths and Facts about Sexual Offenders: Implications for Treatment and Public Policy Timothy Fortney, Jill Levenson, Yolanda Brannon & Juanita N. Baker. Having an accurate picture of who is at risk can serve as a powerful relapse prevention tool to help offenders recognize and avoid situations in which they have opportunities to cultivate relationships for the purposes of grooming or re-offending. The stereotypical fear of a creepy guy snatching a child from a playground or luring a youngster into a car with promises of candy may allow sex offenders to continue to minimize their potential to reoffend with distorted rationalizations: "I would never do that."

Broad policies that treat all sex offenders equally despite their heterogeneity divert attention and resources from monitoring the highest risk offenders. As a result, these laws are less likely to be effective in enhancing public safety, and may inadvertently create a false sense of security for community members.

In terms of rehabilitation, the economic and social marginalization of sex offenders resulting from poorly developed policies can create psychosocial stressors that may increase dynamic risk for reoffense. Negative moods, instability, and lack of social support have been associated with sexual reoffending (Hanson & Harris, 1998;2001). Defiance theory suggests that harsh sanctions perceived as unfair by criminal offenders can set up a counter-therapeutic reaction when offenders lament the injustice of discrimination and rebel against society's iniquitous treatment of them (Sherman, 1993). In fact, conformity to the norms of society and desistance from crime are enhanced when offenders are given opportunities for community integration, civic contribution, and investment in prosocial roles such as employment, property ownership, and parenting (Kruttschnitt, Uggen, & Shelton, 2000; Rowe, Kloos, Chinman, Davidson, & Cross, 2001; Sherman, 1993; Uggen, Manza, & Behrens, 2004; Uggen, Manza, & Thompson, 2006). Ostracizing sex offenders may divert their energies and attention from the real task of learning therapeutic skills and positive cognitions to prevent future abuse, and leave them overly focused on their anger at society and sense of unfairness.

² Residential Proximity & Sex Offense Recidivism in Minnesota April 2007, Minnesota Department of Corrections, <http://www.doc.state.mn.us/documents/04-07SexOffenderReport-Proximity.pdf>

³ *Id.* at 2.

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.*

⁷ Iowa Laws: 692A.2A Residency restrictions — child care facilities and schools.

1. For purposes of this section, "person" means a person who has committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor.
2. A person shall not reside within two thousand feet of the

real property comprising a public or nonpublic elementary or secondary school or a child care facility.

3. A person who resides within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school, or a child care facility, commits an aggravated misdemeanor.
4. A person residing within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility does not commit a violation of this section if any of the following apply:
 - a. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.
 - b. The person is subject to an order of commitment under chapter 229A .
 - c. The person has established a residence prior to July 1, 2002, or a school or child care facility is newly located on or after July 1, 2002.
 - d. The person is a minor or a ward under a guardianship.

2002 Acts, ch 1157, §3

⁸ Iowa Coalition Against Sexual Assault

⁹ Iowa County Attorneys Association

¹⁰ KCCI Channel 8-- A group of county prosecutors, county sheriffs and victim advocates said a law designed to limit where sex offenders can live is actually hurting, not helping protect the public. The sex offender residency law requires convicted sex offenders to register their address with law enforcement and live at least 2,000 feet away from schools and child-care centers. Those who enforce the law said it's just not working. "It places restrictions on where they lay their head down and where they sleep, but it doesn't keep them out of our parks or out of our schools, and out of day-care centers," said Clay County Sheriff Randy Krukow. Krukow said the law was based on good intentions, but it's just not working. Authorities said the problem is the state law and many local ordinances are so restrictive, that sex offenders are giving up trying to follow them. Police and prosecutors said the result is they are actually losing track of sex offenders. "It's almost unenforceable, and it's not effective, and we need to replace it with more effective measures that do protect Iowa children," said Corwin Ritchie, of the Iowa County Attorneys Association. Getting rid of the law is a political challenge. No Iowa lawmaker wants voters to think they are trying to make life easier for sex offenders. A coalition recommended child safety zones. They would legally keep most sex offenders off the property of schools and child-care centers. "That's what this is about. It's not to protect sex offenders. It's to protect kids," said Polk County attorney John Sarcone. Group members said most crimes against children are committed by someone they know, not by strangers. The group also recommended that lawmakers spend more money on sexual abuse prevention and treatment efforts. Coalition Says Sex Offender Residency Law Does Not Work, Des Moines, Iowa <http://www.kcci.com/news/10512650/detail.html>

¹¹ *Id.*

¹² Sex Offender Housing Restrictions, Twenty Findings of Research on Residential Restrictions for Sex Offenders and the Iowa Experience with Similar Policies, Kansas Department of Corrections, <http://www.dc.state.ks.us/publications/sex-offender-housing-restrictions>