

April 22, 1993
REPORT TO THE COMMITTEE
ON PUBLIC SERVICES AND SAFETY

RESPONSE TO ATTACKS ON HEALTH CARE FACILITIES

By memorandum dated March 23, 1993, the Chair of the Public Services and Safety Committee requested the City Attorney to prepare three draft ordinances in response to an expressed urgent need to protect health care facilities.

A draft ordinance similar in purpose to a City of Poway ordinance which prohibits the picketing of private residences has been prepared as requested. A copy of the draft ordinance is enclosed as Attachment One.

The Committee also requested draft ordinances similar to "The Stalking Statute SB 2184 (ROYCE), Chapter 1527 of 1990" and to Assembly Bill 1548 (ALPERT). We have researched the legality of these two requested draft ordinances and conclude for the reasons below that they would be preempted by existing state law.

DISCUSSION

1. STATE LAW PREEMPTION

The California Supreme Court has enumerated a test for determining whether a local law is in conflict with general laws. In *Lancaster v. Municipal Court*, 6 Cal. 3d 805, 807-808 (1972), the court held that "conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (Citations omitted; emphasis added.)

2. PENAL CODE SECTION 646.9 (STALKING)

Senate Bill 2184 (ROYCE) was enacted as California Penal Code section 646.9 (STALKING) in 1990 and amended in 1992. An ordinance similar to the Royce Bill or Penal Code section 646.9 would clearly duplicate state law. Such duplication constitutes a conflict with general state laws thereby preempting the proposed ordinance. A copy of Penal Code section 646.9 is enclosed as Attachment Two for information.

3. CIVIL CODE SECTION 3298 (EXEMPLARY DAMAGES)

Assembly Bill 1548 (ALPERT) proposes to amend California Civil Code section 3298 by providing that any person convicted of violating Penal Code section 646.9 (STALKING) may be held liable to the victim in a civil action for an award of exemplary damages

in addition to actual damages.

An ordinance similar to the Alpert Bill proposing to amend Civil Code section 3298 would clearly duplicate state law. Such duplication constitutes a conflict with general state laws thereby preempting the proposed ordinance.

A copy of Civil Code section 3294 is enclosed as Attachment Three for information.

4. OTHER PROPOSED STATE LEGISLATION ON STALKING

Assembly Bill 303 (CONROY) would amend Penal Code section 646.9 relating to stalking by increasing the penalty for a second stalking offense against the same victim. Under existing law, a person who commits a second stalking offense against the same victim is guilty of a felony punishable by imprisonment for sixteen (16) months or two (2) or three (3) years; and a fine of up to ten thousand dollars (\$10,000.00). The proposed bill would increase the penalty imprisonment to two (2), three (3) or four (4) years and fine of up to ten thousand dollars (\$10,000.00) A copy of Assembly Bill 303 (CONROY) is Attachment Four. A supporting letter from the Director of the Department of Legislative Services is Attachment Five.

Assembly Bill 284 (SPEIER) would amend Penal Code section 646.9, by expanding the definition of "stalking" to include willfully and maliciously following another person to a battered women's shelter or to harass another person by approaching a battered women's shelter. The bill would also create a rebuttable presumption that a victim who has sought the refuge of a battered women's shelter and has been admitted to a battered women's shelter is under a credible threat.

A copy of Assembly Bill 284 (SPEIER) is enclosed as Attachment Six for information.

This office will continue to closely monitor state stalking bills and remains ready to further assist the Committee upon request.

Respectfully submitted,
JOHN W. WITT
City Attorney

JMB:jp:520.1(043.1)

Attachments

RC-93-24

TOP

TOP