

S. 2446

A. 5773

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

February 20, 2009

IN SENATE -- Introduced by Sens. LAVALLE, ALESI, BONACIC, FLANAGAN, MAZIARZ, MORAHAN, SKELOS, WINNER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

IN ASSEMBLY -- Introduced by M. of A. ALESSI, EDDINGTON, ALFANO -- Multi-Sponsored by -- M. of A. BARRA -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the correction law, in relation to prohibiting sex offenders from knowingly entering certain areas

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 10.00 of the penal law is amended by adding three  
2     new subdivisions 21, 22 and 23 to read as follows:  
3     21. "SCHOOL GROUNDS" MEANS (A) IN OR ON OR WITHIN ANY BUILDING, STRUC-  
4     TURE, ATHLETIC PLAYING FIELD, PLAYGROUND OR LAND CONTAINED WITHIN THE  
5     REAL PROPERTY BOUNDARY LINE OF A PUBLIC OR PRIVATE ELEMENTARY, PAROCHI-  
6     AL, INTERMEDIATE, JUNIOR HIGH, VOCATIONAL, OR HIGH SCHOOL, OR (B) IN A  
7     CITY WITH A POPULATION OF ONE MILLION OR MORE, ANY AREA ACCESSIBLE TO  
8     THE PUBLIC LOCATED WITHIN ONE THOUSAND FEET OF THE REAL PROPERTY BOUND-  
9     RY LINE COMPRISING ANY SUCH SCHOOL, OR (C) WITHIN ANY COUNTY NOT WHOLLY  
10    CONTAINED WITHIN A CITY, ANY AREA ACCESSIBLE TO THE PUBLIC LOCATED WITH-  
11    IN ONE THOUSAND FIVE HUNDRED FEET OF THE REAL PROPERTY BOUNDARY LINE  
12    COMPRISING ANY SUCH SCHOOL. FOR THE PURPOSES OF THIS SECTION AN "AREA  
13    ACCESSIBLE TO THE PUBLIC" SHALL MEAN SIDEWALKS, STREETS, PARKING LOTS,  
14    PARKS, PLAYGROUNDS, STORES AND RESTAURANTS.  
15    22. "CHILD DAY CARE CENTER" MEANS (A) IN OR ON OR WITHIN ANY BUILDING,  
16    STRUCTURE, ATHLETIC PLAYING FIELD, PLAYGROUND OR LAND CONTAINED WITHIN  
17    THE REAL PROPERTY BOUNDARY LINE OF A PROGRAM OR FACILITY CARING FOR  
18    CHILDREN FOR MORE THAN THREE HOURS PER DAY PER CHILD IN WHICH CHILD DAY  
19    CARE IS PROVIDED BY A CHILD DAY CARE PROVIDER, AS SUCH TERM IS DEFINED  
20    IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THREE HUNDRED NINETY OF

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD08970-01-9

1 THE SOCIAL SERVICES LAW, INCLUDING THOSE PROGRAMS OPERATING AS A GROUP  
2 FAMILY DAY CARE HOME, AS SUCH TERM IS DEFINED IN PARAGRAPH (D) OF SUBDI-  
3 VISION ONE OF SECTION THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW, A  
4 FAMILY DAY CARE HOME, AS SUCH TERM IS DEFINED IN PARAGRAPH (E) OF SUBDI-  
5 VISION ONE OF SECTION THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW,  
6 AND A SCHOOL-AGE CHILD CARE PROGRAM, AS SUCH TERM IS DEFINED IN PARA-  
7 GRAPH (F) OF SUBDIVISION ONE OF SECTION THREE HUNDRED NINETY OF THE  
8 SOCIAL SERVICES LAW, OR (B) IN A CITY WITH A POPULATION OF ONE MILLION  
9 OR MORE, ANY AREA ACCESSIBLE TO THE PUBLIC LOCATED WITHIN ONE THOUSAND  
10 FEET OF THE REAL PROPERTY BOUNDARY LINE COMPRISING ANY SUCH CHILD DAY  
11 CARE CENTER, OR (C) WITHIN ANY COUNTY NOT WHOLLY CONTAINED WITHIN A  
12 CITY, ANY AREA ACCESSIBLE TO THE PUBLIC LOCATED WITHIN ONE THOUSAND FIVE  
13 HUNDRED FEET OF THE REAL PROPERTY BOUNDARY LINE COMPRISING ANY SUCH  
14 CHILD DAY CARE CENTER. FOR THE PURPOSE OF THIS SECTION AN "AREA ACCESSI-  
15 BLE TO THE PUBLIC" SHALL MEAN SIDEWALKS, STREETS, PARKING LOTS, PARKS,  
16 PLAYGROUNDS, STORES AND RESTAURANTS.

17 23. "PLACE WHERE CHILDREN CONGREGATE" MEANS (A) IN OR ON OR WITHIN ANY  
18 BUILDING, STRUCTURE, ATHLETIC PLAYING FIELD, PLAYGROUND OR LAND  
19 CONTAINED WITHIN THE REAL PROPERTY BOUNDARY LINE OF A PROGRAM OR FACILI-  
20 TY MAINTAINED PRIMARILY TO ATTRACT, ENTERTAIN, BENEFIT OR OTHERWISE  
21 BRING TOGETHER CHILDREN UNDER THE AGE OF EIGHTEEN, OR (B) IN A CITY WITH  
22 A POPULATION OF ONE MILLION OR MORE, ANY AREA ACCESSIBLE TO THE PUBLIC  
23 LOCATED WITHIN ONE THOUSAND FEET OF THE REAL PROPERTY BOUNDARY LINE  
24 COMPRISING ANY SUCH PROGRAM OR FACILITY, OR (C) WITHIN ANY COUNTY NOT  
25 WHOLLY CONTAINED WITHIN A CITY, ANY AREA ACCESSIBLE TO THE PUBLIC  
26 LOCATED WITHIN ONE THOUSAND FIVE HUNDRED FEET OF THE REAL PROPERTY BOUN-  
27 DARY LINE COMPRISING ANY SUCH PROGRAM OR FACILITY. FOR THE PURPOSES OF  
28 THIS SECTION AN "AREA ACCESSIBLE TO THE PUBLIC" SHALL MEAN SIDEWALKS,  
29 STREETS, PARKING LOTS, PARKS, PLAYGROUNDS, STORES AND RESTAURANTS.

30 S 2. Paragraph (a) of subdivision 4-a of section 65.10 of the penal  
31 law, as amended by chapter 67 of the laws of 2008, is amended to read as  
32 follows:

33 (a) When imposing a sentence of probation or conditional discharge  
34 upon a person convicted of an offense defined in article one hundred  
35 thirty, two hundred thirty-five or two hundred sixty-three of this chap-  
36 ter, or section 255.25, 255.26 or 255.27 of this chapter, and the victim  
37 of such offense was under the age of eighteen at the time of such  
38 offense or such person has been designated a level three sex offender  
39 pursuant to subdivision six of section [168-1] ONE HUNDRED SIXTY-EIGHT-L  
40 of the correction law, the court shall require, as a mandatory condition  
41 of such sentence, that such sentenced offender shall refrain from know-  
42 ingly entering into or upon any school grounds, as that term is defined  
43 in subdivision [fourteen] TWENTY-ONE of section [220.00] 10.00 of this  
44 chapter, OR ANY CHILD DAY CARE CENTER, AS THAT TERM IS DEFINED IN SUBDI-  
45 VISION TWENTY-TWO OF SECTION 10.00 OF THIS CHAPTER, OR ANY PLACE WHERE  
46 CHILDREN CONGREGATE, AS THAT TERM IS DEFINED IN SUBDIVISION TWENTY-THREE  
47 OF SECTION 10.00 OF THIS CHAPTER, or any other facility or institution  
48 primarily used for the care or treatment of persons under the age of  
49 eighteen while one or more of such persons under the age of eighteen are  
50 present, provided however, that when such sentenced offender is a regis-  
51 tered student or participant or an employee of such facility or institu-  
52 tion or entity contracting therewith or has a family member enrolled in  
53 such facility or institution, such sentenced offender may, with the  
54 written authorization of his or her probation officer or the court and  
55 the superintendent or chief administrator of such facility, institution  
56 or grounds, enter such facility, institution or upon such grounds for

1 the limited purposes authorized by the probation officer or the court  
2 and superintendent or chief officer. Nothing in this subdivision shall  
3 be construed as restricting any lawful condition of supervision that may  
4 be imposed on such sentenced offender.

5 S 3. Section 168-w of the correction law, as relettered by chapter 604  
6 of the laws of 2005, is relettered section 168-x and a new section 168-w  
7 is added to read as follows:

8 S 168-w. PROHIBITION ON ENTERING SCHOOL GROUNDS, CHILD DAY CARE  
9 CENTER OR ANY PLACE WHERE CHILDREN CONGREGATE. ANY PERSON REGISTERED  
10 PURSUANT TO THIS ARTICLE SHALL REFRAIN FROM KNOWINGLY ENTERING INTO OR  
11 UPON ANY SCHOOL GROUNDS, AS THAT TERM IS DEFINED IN SUBDIVISION TWENTY-  
12 ONE OF SECTION 10.00 OF THE PENAL LAW, OR ANY CHILD DAY CARE CENTER, AS  
13 THAT TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 10.00 OF THE  
14 PENAL LAW, OR ANY PLACE WHERE CHILDREN CONGREGATE, AS THAT TERM IS  
15 DEFINED IN SUBDIVISION TWENTY-THREE OF SECTION 10.00 OF THE PENAL LAW.

16 S 4. Section 168-t of the correction law, as amended by chapter 373 of  
17 the laws of 2007, is amended to read as follows:

18 S 168-t. Penalty. Any sex offender required to register or to verify  
19 pursuant to the provisions of this article who fails to register or  
20 verify in the manner and within the time periods provided for in this  
21 article shall be guilty of a class E felony upon conviction for the  
22 first offense, and upon conviction for a second or subsequent offense  
23 shall be guilty of a class D felony. Any sex offender who violates the  
24 provisions of section one hundred sixty-eight-v of this article OR WHO  
25 VIOLATES THE PROVISIONS OF SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS  
26 ARTICLE shall be guilty of a class A misdemeanor upon conviction for the  
27 first offense, and upon conviction for a second or subsequent offense  
28 shall be guilty of a class D felony. Any such failure to register or  
29 verify may also be the basis for revocation of parole pursuant to  
30 section two hundred fifty-nine-i of the executive law or the basis for  
31 revocation of probation pursuant to article four hundred ten of the  
32 criminal procedure law.

33 S 5. This act shall take effect on the first of November next succeed-  
34 ing the date on which it shall have become a law.