S T A T E O F N E W Y O R K

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:

Section 1. Section 10.00 of the penal law is amended by adding three new subdivisions 21, 22 and 23 to read as follows:

21. "SCHOOL GROUNDS" MEANS (A) IN OR ON OR WITHIN ANY BUILDING, STRUCTURE, ATHLETIC PLAYING FIELD, PLAYGROUND OR LAND CONTAINED WITHIN THE REAL PROPERTY BOUNDARY LINE OF A PUBLIC OR PRIVATE ELEMENTARY, PAROCHIAL, INTERMEDIATE, JUNIOR HIGH, VOCATIONAL, OR HIGH SCHOOL, OR (B) IN A CITY WITH A POPULATION OF ONE MILLION OR MORE, ANY AREA ACCESSIBLE TO THE PUBLIC LOCATED WITHIN ONE THOUSAND FEET OF THE REAL PROPERTY BOUNDARY LINE COMPRISING ANY SUCH SCHOOL, OR (C) WITHIN ANY COUNTY NOT WHOLLY CONTAINED WITHIN A CITY, ANY AREA ACCESSIBLE TO THE PUBLIC LOCATED WITHIN ONE THOUSAND FIVE HUNDRED FEET OF THE REAL PROPERTY BOUNDARY LINE COMPRISING ANY SUCH SCHOOL. FOR THE PURPOSES OF THIS SECTION AN "AREA ACCESSIBLE TO THE PUBLIC" SHALL MEAN SIDEWALKS, STREETS, PARKING LOTS, PARKS, PLAYGROUNDS, STORES AND RESTAURANTS.

22. "CHILD DAY CARE CENTER" MEANS (A) IN OR ON OR WITHIN ANY BUILDING, STRUCTURE, ATHLETIC PLAYING FIELD, PLAYGROUND OR LAND CONTAINED WITHIN THE REAL PROPERTY BOUNDARY LINE OF A PROGRAM OR FACILITY CARING FOR CHILDREN FOR MORE THAN THREE HOURS PER DAY PER CHILD IN WHICH CHILD DAY CARE IS PROVIDED BY A CHILD DAY CARE PROVIDER, AS SUCH TERM IS DEFINED 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.

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THE SOCIAL SERVICES LAW, INCLUDING THOSE PROGRAMS OPERATING AS A GROUP FAMILY DAY CARE HOME, AS SUCH TERM IS DEFINED IN PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW, A FAMILY DAY CARE HOME, AS SUCH TERM IS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW, AND A SCHOOL-AGE CHILD CARE PROGRAM, AS SUCH TERM IS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW, OR (B) IN A CITY WITH A POPULATION OF ONE MILLION OR MORE, ANY AREA ACCESSIBLE TO THE PUBLIC LOCATED WITHIN ONE THOUSAND FEET OF THE REAL PROPERTY BOUNDARY LINE COMPRISING ANY SUCH CHILD DAY CARE CENTER, OR (C) WITHIN ANY COUNTY NOT WHOLLY CONTAINED WITHIN A CITY, ANY AREA ACCESSIBLE TO THE PUBLIC LOCATED WITHIN ONE THOUSAND FIVE HUNDRED FEET OF THE REAL PROPERTY BOUNDARY LINE COMPRISING ANY SUCH CHILD DAY CARE CENTER. FOR THE PURPOSE OF THIS SECTION AN "AREA ACCESSIBLE TO THE PUBLIC" SHALL MEAN SIDEWALKS, STREETS, PARKING LOTS, PARKS, PLAYGROUNDS, STORES AND RESTAURANTS.

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

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

(a) When imposing a sentence of probation or conditional discharge upon a person convicted of an offense defined in article one hundred thirty, two hundred thirty-five or two hundred sixty-three of this chapter, or section 255.25, 255.26 or 255.27 of this chapter, and the victim of such offense was under the age of eighteen at the time of such offense or such person has been designated a level three sex offender pursuant to subdivision six of section [168-l] ONE HUNDRED SIXTY-EIGHT-L of the correction law, the court shall require, as a mandatory condition of such sentence, that such sentenced offender shall refrain from knowingly entering into or upon any school grounds, as that term is defined in subdivision [fourteen] TWENTY-ONE of section [220.00] 10.00 of this chapter, OR ANY CHILD DAY CARE CENTER, AS THAT TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 10.00 OF THIS CHAPTER, OR ANY PLACE WHERE CHILDREN CONGREGATE, AS THAT TERM IS DEFINED IN SUBDIVISION TWENTY-THREE OF SECTION 10.00 OF THIS CHAPTER, or any other facility or institution primarily used for the care or treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present, provided however, that when such sentenced offender is a registered student or participant or an employee of such facility or institution or entity contracting therewith or has a family member enrolled in such facility or institution, such sentenced offender may, with the written authorization of his or her probation officer or the court and the superintendent or chief administrator of such facility, institution or grounds, enter such facility, institution or upon such grounds for

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

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

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

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

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

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.