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

6673

2013-2014 Regular Sessions

I N A S S E M B L Y

April 12, 2013

Introduced by M. of A. DIPIETRO -- read once and referred to the Committee on Correction

AN ACT in relation to prohibiting certain sex offenders from residing, working or frequenting areas where children are likely to regularly congregate within the county of Wyoming

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

Section 1. Legislative intent and purpose. Due to the recidivism rate among convicted sex offenders, there exists a heightened potential for reoccurrence of their crimes when they reside, have employment or frequent areas where children are likely to regularly congregate, such as public or nonpublic elementary, middle and high schools, child-care facilities, parks, playgrounds, public or private youth center or public swimming pools. It is essential for Wyoming county to make every effort to protect children from sex offenders. It is in the best interests of the health, safety and welfare of the residents of Wyoming county, and particularly its children, to establish residency restrictions and restrictions on location of employment and other activities for sex offenders.

It is the purpose of this act to prohibit sex offenders from residing, having employment or otherwise entering or remaining within 1,500 feet of areas and facilities that would provide them easy access to potential victims.

S 2. Definitions. For the purposes of this act, the following definitions shall apply:

a. "Child-care facility" means a licensed and/or registered nursery, preschool, child day-care center, group family day-care home, and family day-care home as defined in the social services law.

b. "Child safety zone" means an area within 1,500 feet of the real property within Wyoming county comprising a public or private, elementary, middle or high school, child-care facility, nature preserve, park,

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

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playground, public or private youth center or public swimming pool, public or commercial recreational facility clearly designed to attract children, including but not limited to theaters, bowling alleys, sports fields, exercise or sporting facilities, and, additionally, multifamily dwellings (three families or more), apartment buildings, co-ops, condominiums, mobile home (trailer) parks, or other clustered housing developments (10 or more single-family homes on less than 1/3 acre).

(1) Hotels, motels, and rooming houses shall be exempt from a child safety zone with the following exception; provided that convicted sex offenders shall not occupy more than 5% of the rooms for rent in any hotel, motel or rooming house. The formula to determine the number of convicted sex offenders shall be rounded to the nearest whole number. (For example, any hotel, motel, or rooming house with fewer than 29 rooms (29 x 0.05 = 1.45) shall be allowed one convicted sex offender; thirty rooms, (30 x 0.05 = 1.5) shall be allowed two convicted sex offenders.) This exception shall not apply:

(A) to any convicted sex offender living in a room for rent in any hotel, motel or rooming house at the time this act is implemented, which convicted sex offender shall be grandfathered. As those convicted sex offenders vacate the premises, the room or rooms shall not be rented unless the hotel, motel, or rooming house is in full compliance with this act and the above-referenced provision regarding maximum occupancy of sex offenders; or

(B) where the owner/manager notifies all patrons of his or her housing unit or units, in writing, daily, that a convicted sex offender is living on the premises.

(2) Any hotel, motel or rooming house that violates these provisions shall be subject to a civil penalty of $500 per day, per violation.

c. "Employment" means doing work, whether or not for financial gain.

d. "Law enforcement officer having jurisdiction" means the chief law enforcement officer of a local police department in the village or town in which the sex offender resides or lives; if there be no local police department in such village or town, the sheriff of Wyoming county. If the primary law enforcement officer having jurisdiction is the chief law enforcement officer of a police department in the village or town in which the sex offender resides or lives, but such officer does not enforce the provisions of this act, then in that event the sheriff of Wyoming county shall be authorized to enforce the provisions of this act.

e. "Residence" means the place where a person sleeps, which may include more than one location and may be mobile and/or transitory.

f. "Sex offender" means any person:

(1) who has been classified as a level 2 or level 3 sex offender pursuant to the procedures set forth in section 168-d of the correction law; and

(2) who is currently required to register pursuant to article 6-c of the correction law; and

(3) whose residence, work and/or travel is not at the time of an alleged violation of state law, including but not limited to subdivision 4 of section 243 of the executive law (restrictions on level 2 and 3 offenders on probation), subdivision 14 of section 259-c of the executive law (restrictions on level 3 sex offenders and certain offenders whose victims were minors), section 20 of the social services law (restrictions on homeless level 2 and 3 offenders seeking shelter) or any state legislation enacted in the future that may restrict the residence, work and/or travel of level 2 and/or level 3 sex offenders.

S 3. Restrictions. a. A sex offender shall not reside within a child safety zone.

b. A sex offender shall not have employment within a child safety zone.

c. A sex offender shall not loiter for purposes of committing any crime within a child safety zone.

S 4. Exceptions. A sex offender entering or remaining within a child safety zone does not commit a violation of this act if any of the following apply:

a. The sex offender is serving a sentence at a jail, prison, juvenile facility or other correctional institution or facility or is an inpatient in a hospital, hospice, mental health facility or nursing home. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that child safety zone.

b. The sex offender established his/her employment prior to the effective date of this act, or prior to the establishment of a newly located child safety zone; provided, however, that this exception does not apply to an individual who initiates or maintains contact with a minor within that child safety zone other than for purposes relating to schooling. In such case, the parent, parents or legal guardian of the minor contacted must be informed of the contact.

c. The sex offender only intermittently or sporadically enters a child safety zone for the purposes of work; provided, however, that this exception does not apply to an individual who initiates or maintains contact with a minor within that child safety zone.

d. The sex offender shall only be permitted to drive past or through a designated school bus stop and those areas as defined as child safety zones of traveling. Under no circumstance shall a sex offender be allowed to initiate or maintain contact with any child while driving past or through a designated school bus stop and those areas as defined as child safety zones.

e. The sex offender is a minor or a ward under a guardianship; provided, however, that this exception does not apply to an individual who initiates or maintains contact with a minor within that child safety zone.

f. The sex offender enters a child safety zone for the purposes of exercising the right to vote; provided, however, that this exception does not apply to an individual who initiates or maintains contact with a minor within that child safety zone.

S 5. Notice to relocate or change employment. Any sex offender who resides or is employed in a child safety zone in violation of this act shall have six months from receipt of written notice of the prohibition set forth in this act to move or change employment. Failure to move his or her residence or employment to a location which is in compliance with this section within that time period shall constitute a violation of this section.

S 6. Notice of prohibition; form of notice; service. a. Notice of prohibition shall be served by registered or certified mail on a sex offender who resides or lives in a child safety zone. Such notice shall be served by the law enforcement officer having jurisdiction. Such notice of prohibition shall be in substantially the following form:

NOTICE TO SEX OFFENDER: PROHIBITED RESIDENCE OR EMPLOYMENT WITHIN CHILD SAFETY ZONE

_____ (Name and Address of sex offender)

You are hereby notified that the undersigned, pursuant to Chapter ___ of the laws of ____ of the state of New York, the County of Wyoming has determined that you reside or are employed within a Child Safety Zone, as that term is defined in such Chapter, which conduct is prohibited. Specifically, it has been determined that your residence or employment is located within one thousand five hundred (1,500) feet of the real property boundary line of _____ (Name and Address of school, park, sporting facility, etc., as the case may be). You are hereby notified to remove yourself from the Child Safety Zone within six months from your receipt of this Notice. Your failure to move your residence or employment to a location that is in compliance with Chapter ___ of the laws of ____ within such six-month period shall constitute a violation of the law. The first violation of the provisions of this law shall be a Class B misdemeanor, punishable by a fine of up to $500 and imprisonment of up to three months in jail. A second or subsequent violation shall be a Class A misdemeanor, punishable by a fine of up to $1,000 and imprisonment of up to one year in jail.

Notice mailed _____ (date)

By: _____ (signature)

_____ (Title and Name of officer)

S 7. Penalties for offenses. The first violation of the provisions of this act shall be a Class B misdemeanor punishable by a fine of up to $500 and imprisonment of up to three months in jail. A second or subsequent violation shall be a Class A misdemeanor, punishable by a fine of up to $1,000 and imprisonment of up to one year in jail.

S 8. Cessation of restrictions. The restrictions set forth in this act shall cease when the sex offender is no longer required to register and/or verify pursuant to article 6-c of the correction law, the Sex Offender Registration Act.

S 9. Immunity from liability. a. No official, employee or agency, whether public or private, shall be subject to any civil or criminal liability for damages in connection with the implementation or enforcement of this act unless it is shown that such official, employee or agency acted with gross negligence or in bad faith.

b. Nothing in this section shall be deemed to impose any civil or criminal liability upon or to give rise to a cause of action against any official, employee or agency, whether public or private, for failing to implement or enforce the provisions of this act unless it is shown that such official, employee or agency acted with gross negligence or in bad faith.

S 10. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this act or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be entered.

S 11. This act shall take effect immediately.