

3726

2015-2016 Regular Sessions

I N A S S E M B L Y

January 27, 2015

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:

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

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

17 S 2. Definitions. For the purposes of this act, the following defini-  
18 tions shall apply:

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

22 b. "Child safety zone" means an area within 1,500 feet of the real  
23 property within Wyoming county comprising a public or private, elementa-  
24 ry, 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.

LBD07924-01-5

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

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

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

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

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

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

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

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

42 f. "Sex offender" means any person:

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

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

48 (3) whose residence, work and/or travel is not at the time of an  
49 alleged violation of state law, including but not limited to subdivision  
50 4 of section 243 of the executive law (restrictions on level 2 and 3  
51 offenders on probation), subdivision 14 of section 259-c of the execu-  
52 tive law (restrictions on level 3 sex offenders and certain offenders  
53 whose victims were minors), section 20 of the social services law  
54 (restrictions on homeless level 2 and 3 offenders seeking shelter) or  
55 any state legislation enacted in the future that may restrict the resi-  
56 dence, work and/or travel of level 2 and/or level 3 sex offenders.

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

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

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

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

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

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

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

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

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

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

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

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

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

54 \_\_\_\_\_ (Name and Address of sex  
55 offender)

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

18 Notice mailed \_\_\_\_\_ (date)

19 By: \_\_\_\_\_ (signature)

20 \_\_\_\_\_ (Title and Name of officer)

21 S 7. Penalties for offenses. The first violation of the provisions of  
22 this act shall be a Class B misdemeanor punishable by a fine of up to  
23 \$500 and imprisonment of up to three months in jail. A second or subse-  
24 quent violation shall be a Class A misdemeanor, punishable by a fine of  
25 up to \$1,000 and imprisonment of up to one year in jail.

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

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

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

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

51 S 11. This act shall take effect immediately.