STATE OF NEW YORK

5369

2021-2022 Regular Sessions

IN SENATE

March 3, 2021

Introduced by Sen. OBERACKER -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, in relation to restricting sex offenders from residing near the residence of their victim or near any school

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 168-w of the correction law, as renumbered by chapter 604 of the laws of 2005, is renumbered section 168-x and a new section 168-w is added to read as follows:

§ 168-w. Level two and level three sex offender residence limitations; penalty. 1. (a) It shall be unlawful for any level two or level three sex offender to knowingly reside within fifteen hundred feet of the residence of a victim of his or her sex offense or sexually violent offense.

(b) The residence prohibition established by paragraph (a) of this subdivision shall remain in effect for as long as the offender is classified as a level two or three sex offender.

(c) In any prosecution pursuant to this subdivision, it shall be an affirmative defense that, after the sex offender's conviction of a sex offense or sexually violent offense, the victim of such offense established a residence within fifteen hundred feet of the sex offender's residence.

(d) No provision of this subdivision shall be deemed to require the disclosure or notification of the address of any victim to a sex offender.

2. (a) It shall be unlawful for any level two or three sex offender to knowingly reside or enter within one thousand five hundred feet of any school grounds. For the purposes of this subdivision, "school grounds" means any building, structure, athletic playing field, playground or

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

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land contained within the real property line of a public or private elementary, parochial, intermediate, junior high, vocational or high school.

(b) It shall be unlawful for any level two or three sex offender to knowingly attend or participate in any event or activity sponsored by a public or private elementary, parochial, intermediate, junior high, vocational or high school, regardless of whether such event or activity is conducted upon school grounds.

(c) The prohibitions imposed by paragraphs (a) and (b) of this subdivision shall remain in effect for as long as the sex offender is classified as a level two or three sex offender.

(d) In any prosecution pursuant to paragraph (a) of this subdivision, it shall be an affirmative defense that:

(i) the sex offender resides within a facility operated by and is in the custody of a local corrections department, a county sheriff, the department, the office of children and family services or the office of mental health;

(ii) the sex offender established his or her residence prior to the effective date of this subdivision, or school grounds are established or extended after the sex offender has established his or her residence;

(iii) the sex offender is under twenty-one years of age or a ward under a guardianship; or

(iv) the sex offender's place of residence has been fixed by order of a court of competent jurisdiction, or by any federal, state, county or city agency having jurisdiction over the sex offender.

(e) Notwithstanding the provisions of paragraph (a) of this subdivision, a level two or three sex offender may enter upon and within one thousand five hundred feet of school grounds for the limited purpose of casting his or her ballot at his or her polling place, within such one thousand five hundred feet area, in a special, primary or general election for which the sex offender is registered to vote. The provisions of this paragraph shall only apply to a sex offender who provides not less than thirty days notice to the building principal of the appropriate school, that such sex offender will be entering upon or near school grounds for the purpose of voting. Such notice shall also state the one hour period of time during which the sex offender will cast his or her ballot, and the exemption granted by this paragraph shall only apply to the sex offender during such one hour period of time.

3. A sex offender who violates the provisions of this section shall be guilty of a class E felony.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.