

ASSEMBLY, No. 641

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblywoman PAMELA R. LAMPITT

District 6 (Camden)

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblyman ERIC MUNOZ

District 21 (Essex, Morris, Somerset and Union)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblywoman NANCY F. MUNOZ

District 21 (Essex, Morris, Somerset and Union)

Co-Sponsored by:

Assemblywoman Evans, Assemblyman Rudder, Assemblywoman Addiego,

Assemblyman Biondi, Assemblywomen Casagrande and Handlin

SYNOPSIS

Permits municipalities to enact ordinances regulating where sex offenders may reside.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/9/2009)

1 AN ACT authorizing municipalities to enact ordinances concerning
2 sex offenders' residences, supplementing chapter 48 of Title 40
3 of the Revised Statutes and amending R.S.40:48-1.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) a. As used in this act:

9 "Child care center" shall have the same meaning as section 3 of
10 P.L.1983, c.492 (C.30:5B-3).

11 "Playground" shall have the same meaning as section 1 of
12 P.L.1999, c.50 (C.52:27D-123.9).

13 "Public park" shall have the same meaning as section 1 of
14 P.L.1997, c.327 (C.2C:35-7.1).

15 "Person subject to limitations" means a person subject to the
16 registration requirements set forth in P.L.1994, c.133 (C.2C:7-1 et
17 seq.) who has been convicted of, adjudicated delinquent or found
18 not guilty by reason of insanity for a sex offense enumerated in
19 subsection b. of section 2 of P.L.1994, c.133 (C.2C:7-2) in which
20 the victim of the offense was under 18 years of age or a person
21 subject to the registration requirements set forth in P.L.1994, c.133
22 (C.2C:7-1 et seq.) whose risk of reoffense has been determined to
23 be high pursuant to section 3 of P.L.1994, c.128 (C.2C:7-8).

24 b. A municipality may enact an ordinance establishing areas in
25 or around elementary or secondary schools, parks, playgrounds,
26 public libraries or daycare centers where a person subject to
27 limitations may be prohibited from residing, in order to reduce the
28 likelihood of contact between the person and children or women
29 who are likely to gather at such locations, thereby reducing the risk
30 of re-offense by the person subject to limitations.

31 c. Municipal ordinances establishing areas where a person
32 subject to limitations may be prohibited from residing shall not
33 establish areas that extend such prohibition beyond 2,000 feet from
34 a school, park, playground, public library or daycare center, as the
35 case may be, provided that any such ordinance shall not be
36 formulated in a manner that would prohibit persons subject to
37 limitations from residing in every residentially-zoned area within
38 the municipality.

39 d. The provisions of an ordinance enacted pursuant to the
40 provisions of this act shall not be applied to prohibit a person
41 subject to limitations from continuing to reside at a residence
42 established by that person within the municipality prior to the
43 enactment of the ordinance.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 e. An ordinance enacted pursuant to the provisions of this act
2 shall provide that the municipal engineer shall produce a map for
3 the purpose of depicting the location and boundaries of the areas
4 where a person subject to limitations is prohibited from residing
5 pursuant to the ordinance. A true copy of such a map shall, upon
6 proper authentication, be admissible and shall constitute prima facie
7 evidence of the location and boundaries of those areas, provided
8 that the governing body of the municipality has adopted an
9 ordinance approving the map as official finding and record of the
10 location and boundaries of the area. Any map approved pursuant to
11 this section may be changed from time to time by the governing
12 body of the municipality. The original of every map approved or
13 revised pursuant to this section, or a true copy thereof, shall be filed
14 with the clerk of the municipality and shall be maintained as an
15 official record of the municipality. Nothing in any ordinance
16 adopted pursuant to this section shall be construed to preclude the
17 prosecution from introducing or relying upon any other evidence or
18 testimony to establish any element of an offense; nor shall any such
19 ordinance be construed to preclude the use or admissibility of any
20 map or diagram other than one which has been approved by the
21 governing body of a municipality, provided that the map or diagram
22 is otherwise admissible pursuant to the Rules of Evidence.

23

24 2. R.S.40:48-1 is amended to read as follows:

25 40:48-1. Ordinances; general purpose. The governing body of
26 every municipality may make, amend, repeal and enforce
27 ordinances to:

28 Finances and property. 1. Manage, regulate and control the
29 finances and property, real and personal, of the municipality;

30 Contracts and contractor's bonds. 2. Prescribe the form and
31 manner of execution and approval of all contracts to be executed by
32 the municipality and of all bonds to be given to it;

33 Officers and employees; duties, terms and salaries. 3. Prescribe
34 and define, except as otherwise provided by law, the duties and
35 terms of office or employment, of all officers and employees; and to
36 provide for the employment and compensation of such officials and
37 employees, in addition to those provided for by statute, as may be
38 deemed necessary for the efficient conduct of the affairs of the
39 municipality;

40 Fees. 4. Fix the fees of any officer or employee of the
41 municipality for any service rendered in connection with his office
42 or position, for which no specific fee or compensation is provided.
43 In the case of salaried officers or employees, such fee shall be paid
44 into the municipal treasury;

45 Salaries instead of fees; disposition of fees. 5. Provide that any
46 officer or employee receiving compensation for his services, in
47 whole or in part by fees, whether paid by the municipality or

1 otherwise, shall be paid a salary to be fixed in the ordinance, and
2 thereafter all fees received by such officer or employee shall be
3 paid into the municipal treasury;

4 Maintain order. 6. Prevent vice, drunkenness and immorality; to
5 preserve the public peace and order; to prevent and quell riots,
6 disturbances and disorderly assemblages; to prohibit the
7 consumption of alcoholic beverages by underage persons on private
8 property pursuant to section 1 of P.L.2000, c.33 (C.40:48-1.2);

9 Punish beggars; prevention of loitering. 7. Restrain and punish
10 drunkards, vagrants, mendicants and street beggars; to prevent
11 loitering, lounging or sleeping in the streets, parks or public places;

12 Auctions and noises. 8. Regulate the ringing of bells and the
13 crying of goods and other commodities for sale at auction or
14 otherwise, and to prevent disturbing noises;

15 Swimming; bathing costume; prohibition of public nudity. 9.
16 Regulate or prohibit swimming or bathing in the waters of, in, or
17 bounding the municipality, and to regulate or prohibit persons from
18 appearing upon the public streets, parks and places clad in bathing
19 costumes or robes, or costumes of a similar character; regulate or
20 prohibit persons from appearing in a state of nudity upon all lands
21 within its borders which are under the jurisdiction of the State
22 including, without limitation, all lands owned by, controlled by,
23 managed by or leased by the State;

24 Prohibit annoyance of persons or animals. 10. Regulate or
25 prohibit any practice tending to frighten animals, or to annoy or
26 injure persons in the public streets;

27 Animals; pounds; establishment and regulation. 11. Establish
28 and regulate one or more pounds, and to prohibit or regulate the
29 running at large of horses, cattle, dogs, swine, goats and other
30 animals, and to authorize their impounding and sale for the penalty
31 incurred, and the costs of impounding, keeping and sale; to regulate
32 or prohibit the keeping of cattle, goats or swine in any part of the
33 municipality; to authorize the destruction of dogs running at large
34 therein;

35 Hucksters. 12. Prescribe and regulate the place of vending or
36 exposing for sale articles of merchandise from vehicles;

37 Building regulations; wooden structures. 13. Regulate and
38 control the construction, erection, alteration and repair of buildings
39 and structures of every kind within the municipality; and to
40 prohibit, within certain limits, the construction, erection or
41 alteration of buildings or structures of wood or other combustible
42 material;

43 Inflammable materials; inspect docks and buildings. 14.
44 Regulate the use, storage, sale and disposal of inflammable or
45 combustible materials, and to provide for the protection of life and
46 property from fire, explosions and other dangers; to provide for
47 inspections of buildings, docks, wharves, warehouses and other

1 places, and of goods and materials contained therein, to secure the
2 proper enforcement of such ordinance;

3 Dangerous structures; removal or destruction; procedure. 15.
4 Provide for the removal or destruction of any building, wall or
5 structure which is or may become dangerous to life or health, or
6 might tend to extend a conflagration; and to assess the cost thereof
7 as a municipal lien against the premises;

8 Chimneys and boilers. 16. Regulate the construction and setting
9 up of chimneys, furnaces, stoves, boilers, ovens and other
10 contrivances in which fire is used;

11 Explosives. 17. Regulate, in conformity with the statutes of this
12 State, the manufacture, storage, sale, keeping or conveying of
13 gunpowder, nitroglycerine, dynamite and other explosives;

14 Firearms and fireworks. 18. Regulate and prohibit the sale and
15 use of guns, pistols, firearms, and fireworks of all descriptions;

16 Soft coal. 19. Regulate the use of soft coal in locomotives,
17 factories, power houses and other places;

18 Theaters, schools, churches and public places. 20. Regulate the
19 use of theaters, cinema houses, public halls, schools, churches, and
20 other places where numbers of people assemble, and the exits
21 therefrom, so that escape therefrom may be easily and safely made
22 in case of fire or panic; and to regulate any machinery, scenery,
23 lights, wires and other apparatus, equipment or appliances used in
24 all places of public amusement;

25 Excavations. 21. Regulate excavations below the established
26 grade or curb line of any street, not greater than eight feet, which
27 the owner of any land may make, in the erection of any building
28 upon his own property; and to provide for the giving of notice, in
29 writing, of such intended excavation to any adjoining owner or
30 owners, and that they will be required to protect and care for their
31 several foundation walls that may be endangered by such
32 excavation; and to provide that in case of the neglect or refusal, for
33 10 days, of such adjoining owner or owners to take proper action to
34 secure and protect the foundations of any adjacent building or other
35 structure, that the party or parties giving such notice, or their
36 agents, contractors or employees, may enter into and upon such
37 adjoining property and do all necessary work to make such
38 foundations secure, and may recover the cost of such work and
39 labor in so protecting such adjacent property; and to make such
40 further and other provisions in relation to the proper conduct and
41 performance of said work as the governing body or board of the
42 municipality may deem necessary and proper;

43 Sample medicines. 22. Regulate and prohibit the distribution,
44 depositing or leaving on the public streets or highways, public
45 places or private property, or at any private place or places within
46 any such municipality, any medicine, medicinal preparation or
47 preparations represented to cure ailments or diseases of the body or

1 mind, or any samples thereof, or any advertisements or circulars
2 relating thereto, but no ordinance shall prohibit a delivery of any
3 such article to any person above the age of 12 years willing to
4 receive the same;

5 Boating. 23. Regulate the use of motor and other boats upon
6 waters within or bounding the municipality;

7 Fire escapes. 24. Provide for the erection of fire escapes on
8 buildings in the municipality, and to provide rules and regulations
9 concerning the construction and maintenance of the same, and for
10 the prevention of any obstruction thereof or thereon;

11 Care of injured employees. 25. Provide for the payment of
12 compensation and for medical attendance to any officer or
13 employee of the municipality injured in the performance of his
14 duty;

15 Bulkheads and other structures. 26. Fix and determine the lines
16 of bulkheads or other works or structures to be erected, constructed
17 or maintained by the owners of lands facing upon any navigable
18 water in front of their lands, and in front of or along any highway or
19 public lands of said municipality, and to designate the materials to
20 be used, and the type, height and dimensions thereof;

21 Lifeguard. 27. Establish, maintain, regulate and control a
22 lifeguard upon any beach within or bordering on the municipality;

23 Appropriation for life-saving apparatus. 28. Appropriate moneys
24 to safeguard people from drowning within its borders, by location
25 of apparatus or conduct of educational work in harmony with the
26 plans of the United States volunteer life-saving corps in this State;

27 Fences. 29. Regulate the size, height and dimensions of any
28 fences between the lands of adjoining owners, whether built or
29 erected as division or partition fences between such lands, and
30 whether the same exist or be erected entirely or only partly upon the
31 lands of any such adjoining owners, or along or immediately
32 adjacent to any division or partition line of such lands. To provide,
33 in such ordinance, the manner of securing, fastening or shoring such
34 fences, and for surveying the land when required by statute, and to
35 prohibit in any such ordinance the use at a height of under 10 feet
36 from the ground, of any device, such as wire or cable, that would be
37 dangerous to pedestrians, equestrians, bicyclists, or drivers of off-
38 the-road vehicles, unless that device is clearly visible to pedestrians,
39 equestrians, bicyclists or drivers of off-the-road vehicles. In the
40 case of fences thereafter erected contrary to the provisions thereof,
41 the governing body may provide for a penalty for the violation of
42 such ordinance, and in the case of such fence or fences erected or
43 existing at the time of the passage of any such ordinance, may
44 provide therein for the removal, change or alteration thereof, so as
45 to make such fence or fences comply with the provisions of any
46 such ordinance;

1 Advertise municipality. 30. Appropriate funds for advertising
2 the advantages of the municipality;

3 Government Energy Aggregation Programs. 31. Establish
4 programs and procedures pursuant to which the municipality may
5 act as a government aggregator pursuant to sections 40 through 43
6 of P.L.1999,c.23 (C.48:3-89 through C.48:3-92), section 45 of
7 P.L.1999, c.23 (C.48:3-94), and sections 1, 2 and 6 of P.L.2003,
8 c.24 (C.48:3-93.1 through C.48:3-93.3). Notwithstanding the
9 provisions of any other law, rule or regulation to the contrary, a
10 municipality acting as a government aggregator pursuant to
11 P.L.1999, c.23 (C.48:3-49 et al.) shall not be deemed to be a public
12 utility pursuant to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed
13 to be operating any form of public utility service pursuant to
14 R.S.40:62-1 et seq., to the extent such municipality is solely
15 engaged in the provision of such aggregation service and not
16 otherwise owning or operating any plant or facility for the
17 production or distribution of gas, electricity, steam or other product
18 as provided in R.S.40:62-12;

19 Joint municipal action on consent for the provision of cable
20 television service. 32. Establish programs and procedures pursuant
21 to which a municipality may act together with one or more
22 municipalities in granting municipal consent for the provision of
23 cable television service pursuant to the provisions of the "Cable
24 Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as amended
25 and supplemented. Notwithstanding the provisions of any other
26 law, rule or regulation to the contrary, two or more municipalities
27 acting jointly pursuant to the provisions of P.L.1972, c.186
28 (C.48:5A-1 et seq.) shall not be deemed a public utility pursuant to
29 R.S.48:1-1 et seq., to the extent those municipalities are solely
30 engaged in granting municipal consent jointly and are not otherwise
31 owning or operating any facility for the provision of cable
32 television service as provided in P.L.1972, c.186 (C.48:5A-1 et
33 seq.);

34 Private cable television service aggregation programs. 33.
35 Establish programs and procedures pursuant to which a
36 municipality may employ the services of a private aggregator for
37 the purpose of facilitating the joint action of two or more
38 municipalities in granting municipal consent for the provision of
39 cable television service provided that any such municipality shall
40 adhere to the provisions of the "Cable Television Act," P.L.1972,
41 c.186 (C.48:5A-1 et seq.) as amended and supplemented, and to the
42 provisions of the "Local Public Contracts Law," P.L.1971, c.198
43 (C.40A:11-1 et seq.) as amended and supplemented.
44 Notwithstanding the provisions of any other law, rule or regulation
45 to the contrary, a municipality that employs the services of a private
46 aggregator pursuant to the provisions of P.L.1972, c.186 (C.48:5A-
47 1 et seq.) shall not be deemed a public utility pursuant to R.S.48:1-1

1 et seq., to the extent that the municipality is solely engaged in
2 employing the services of a private aggregator for the purpose of
3 facilitating the joint action of two or more municipalities in
4 granting municipal consent and is not otherwise owning or
5 operating any facility for the provision of cable television service as
6 provided in P.L.1972, c.186 (C.48:5A-1 et seq.);

7 Protective Custody. 34. Provide protective custody to persons
8 arrested for operating a motor vehicle under the influence of
9 alcoholic beverages, any chemical substance, or any controlled
10 dangerous substance in violation of R.S.39:4-50 as provided in
11 section 1 of P.L.2003, c.164 (C.40:48-1.3).

12 Sex Offenders. 35. Regulate the location of sex offenders'
13 residences within the municipality as provided in
14 P.L. , c. (C.) (pending before the Legislature as this bill).
15 (cf: P.L.2003, c.164, s.2)

16

17 3. This act shall take effect immediately.

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STATEMENT

21

22 This bill permits a municipality to enact an ordinance
23 establishing areas in or around elementary or secondary schools,
24 parks, playgrounds, public libraries or daycare centers where certain
25 registered sex offenders may be prohibited from residing. It is the
26 Legislature's intent to permit municipalities to enact such
27 ordinances in order to reduce the likelihood of contact between sex
28 offenders and children or women who are likely to gather at such
29 locations, thereby reducing the risk of re-offense by a sex offender.

30 The bill establishes specific limitations that the ordinance may
31 impose on sex offenders establishing residences. These ordinances
32 would be applicable to "persons subject to limitations," which the
33 bill defines as Megan's Law registrants whose victim was under age
34 18 or whose risk of reoffense has been determined to be high. An
35 ordinance enacted under the provisions of this bill may prohibit a
36 person subject to limitation from residing within 2,000 feet from a
37 school, park, playground, public library or daycare center.

38 Under the bill's provisions, municipalities could not formulate an
39 ordinance in a manner that would prohibit persons subject to
40 limitations from residing in every residentially-zoned area within
41 the municipality. In addition, an ordinance could not prohibit a
42 person subject to limitations from continuing to reside at a
43 residence that the person established within the municipality prior
44 to the enactment of the ordinance.

45 The bill requires that the ordinance provide that the municipal
46 engineer produce a map for the purpose of depicting the location
47 and boundaries of the restricted areas where a person subject to

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- 1 limitations is prohibited from residing. The original map is to be
- 2 filed with the clerk of the municipality and maintained as an official
- 3 record of the municipality.