

SENATE, No. 837

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED FEBRUARY 1, 2010

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Permits municipality to enact ordinance regulating where sex offenders may reside; restricts locations of certain child care centers and school bus stops.

CURRENT VERSION OF TEXT

As introduced.



S837 MADDEN

2

1 AN ACT concerning sex offenders, amending R.S.40:48-1 and
2 P.L.1989, c.286, and supplementing chapter 48 of Title 40 of the
3 Revised Statutes and Title 18A of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) The Legislature finds and declares that public
9 safety will be enhanced by providing municipalities with the
10 authority to enact ordinances to prevent convicted sex offenders
11 who have committed crimes against minors from residing within
12 500 feet of a school, playground or child care center, subject to
13 certain statutorily-enumerated exceptions. The Legislature also
14 finds and declares that the public safety will be enhanced by
15 prohibiting the construction of new child care centers within 500
16 feet of the residence of a sex offender at high risk to reoffend, and
17 by prohibiting school boards from locating school bus stops from
18 being located within 250 feet of the residence of a high-risk sex
19 offender.

20
21 2. (New section) a. As used in this act:
22 “Child care center” shall have the same meaning as section 3 of
23 P.L.1983, c.492 (C.30:5B-3).

24 “Playground” shall have the same meaning as section 1 of
25 P.L.1999, c.50 (C.52:27D-123.9).

26 “Person subject to limitations” means a person over the age of 21
27 subject to the registration requirements set forth in P.L.1994, c.133
28 (C.2C:7-1 et seq.) who has been convicted of, adjudicated
29 delinquent or found not guilty by reason of insanity for a sex
30 offense enumerated in subsection b. of section 2 of P.L.1994, c.133
31 (C.2C:7-2) in which the victim of the offense was under 18 years of
32 age, except for those whose risk of re-offense has been determined
33 to be low in accordance with paragraph (1) of subsection c. of
34 section 3 of P.L.1994, c.128 (C.2C:7-8).

35 b. A municipality may enact an ordinance establishing areas in
36 or around elementary or secondary schools, playgrounds, or child
37 care centers where a person subject to limitations may be prohibited
38 from residing, in order to reduce the likelihood of contact between
39 the person and children who are likely to gather at such locations,
40 thereby reducing the risk of re-offense by the person subject to
41 limitations.

42 c. Municipal ordinances establishing areas where a person
43 subject to limitations may be prohibited from residing shall not
44 establish areas that extend such prohibition beyond 500 feet from
45 the real property comprising an elementary or secondary school,

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 playground, or child care center, as the case may be, provided that
2 any such ordinance shall not be formulated in a manner that would
3 prohibit persons subject to limitations from residing in every
4 residentially-zoned area within the municipality.

5 d. A municipal ordinance enacted pursuant to P.L. ,
6 c. (C.) (pending before the Legislature as this bill) shall not
7 be applied to prohibit a person subject to limitations from residing
8 within 500 feet of the real property comprising an elementary or
9 secondary school, playground, or child care center if:

10 (1) the person is required to serve a sentence at a jail, prison,
11 juvenile facility or other correctional institution or facility or is
12 involuntarily committed to a psychiatric, mental health or other
13 facility which is located within 500 feet of the real property
14 comprising an elementary or secondary school, playground, or child
15 care center;

16 (2) the person resides and receives services at an institution,
17 mental health or other facility licensed or permitted by the
18 Department of Human Services which is located within 500 feet of
19 the real property comprising an elementary or secondary school,
20 playground, or child care center;

21 (3) the parole board, after considering the person's housing
22 options, determines that a needs-based exception for the person is
23 required; or

24 (4) a court that discharges the person from a psychiatric facility
25 with conditions pursuant to section 15 of P.L.1987, c.116 (C.30:4-
26 27.15) determines that an exception is appropriate.

27 e. The provisions of an ordinance enacted pursuant to the
28 provisions of this act shall not be applied to prohibit a person
29 subject to limitations from continuing to reside at a residence
30 established by that person within the municipality prior to the
31 enactment of the ordinance.

32 f. An ordinance enacted pursuant to the provisions of this act
33 shall provide that the municipal engineer shall produce a map for
34 the purpose of depicting the location and boundaries of the areas
35 where a person subject to limitations is prohibited from residing
36 pursuant to the ordinance. A true copy of such a map shall, upon
37 proper authentication, be admissible and shall constitute prima facie
38 evidence of the location and boundaries of those areas, provided
39 that the governing body of the municipality has adopted an
40 ordinance approving the map as official finding and record of the
41 location and boundaries of the area. Any map approved pursuant to
42 this section may be changed from time to time by the governing
43 body of the municipality. The original of every map approved or
44 revised pursuant to this section, or a true copy thereof, shall be filed
45 with the clerk of the municipality and shall be maintained as an
46 official record of the municipality. Nothing in any ordinance
47 adopted pursuant to this section shall be construed to preclude the
48 prosecution from introducing or relying upon any other evidence or

1 testimony to establish any element of an offense; nor shall any such
2 ordinance be construed to preclude the use or admissibility of any
3 map or diagram other than one which has been approved by the
4 governing body of a municipality, provided that the map or diagram
5 is otherwise admissible pursuant to the Rules of Evidence.

6 g. Nothing in P.L.1994, c.133 (C.2C:7-1 et seq.), P.L.1994,
7 c.128 (C.2C:7-6 et seq.) or P.L.2001, c.167 (C.2C:7-12 et seq.)
8 shall be construed to impair the operation or enforcement of this
9 act.

10

11 3. (New section) A school board shall not locate a school bus
12 stop within 250 feet of the residence of a sex offender whose risk of
13 re-offense has been determined to be high pursuant to paragraph (3)
14 of subsection c. of section 3 of P.L.1994, c.128 (C.2C:7-8), unless
15 the relocation of the school bus stop creates a more dangerous
16 condition for a child. In making this determination, the school
17 board shall consult with the chief law enforcement officer of the
18 municipality. The school board shall adopt a resolution stating the
19 reason for the relocation of the school bus stop.

20

21 4. R.S.40:48-1 is amended to read as follows:

22 40:48-1. Ordinances; general purpose. The governing body of
23 every municipality may make, amend, repeal and enforce
24 ordinances to:

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

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

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

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

42 Salaries instead of fees; disposition of fees. 5. Provide that any
43 officer or employee receiving compensation for his services, in
44 whole or in part by fees, whether paid by the municipality or
45 otherwise, shall be paid a salary to be fixed in the ordinance, and
46 thereafter all fees received by such officer or employee shall be
47 paid into the municipal treasury;

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

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

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

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

21 Prohibit annoyance of persons or animals. 10. Regulate or
22 prohibit any practice tending to frighten animals, or to annoy or
23 injure persons in the public streets;

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

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

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

39 Inflammable materials; inspect docks and buildings. 14. Regulate
40 the use, storage, sale and disposal of inflammable or combustible
41 materials, and to provide for the protection of life and property from
42 fire, explosions and other dangers; to provide for inspections of
43 buildings, docks, wharves, warehouses and other places, and of
44 goods and materials contained therein, to secure the proper
45 enforcement of such ordinance;

46 Dangerous structures; removal or destruction; procedure. 15.
47 Provide for the removal or destruction of any building, wall or
48 structure which is or may become dangerous to life or health, or

1 might tend to extend a conflagration; and to assess the cost thereof
2 as a municipal lien against the premises;

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

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

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

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

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

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

38 Sample medicines. 22. Regulate and prohibit the distribution,
39 depositing or leaving on the public streets or highways, public
40 places or private property, or at any private place or places within
41 any such municipality, any medicine, medicinal preparation or
42 preparations represented to cure ailments or diseases of the body or
43 mind, or any samples thereof, or any advertisements or circulars
44 relating thereto, but no ordinance shall prohibit a delivery of any
45 such article to any person above the age of 12 years willing to
46 receive the same;

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

S837 MADDEN

1 Fire escapes. 24. Provide for the erection of fire escapes on
2 buildings in the municipality, and to provide rules and regulations
3 concerning the construction and maintenance of the same, and for
4 the prevention of any obstruction thereof or thereon;

5 Care of injured employees. 25. Provide for the payment of
6 compensation and for medical attendance to any officer or
7 employee of the municipality injured in the performance of his
8 duty;

9 Bulkheads and other structures. 26. Fix and determine the lines
10 of bulkheads or other works or structures to be erected, constructed
11 or maintained by the owners of lands facing upon any navigable
12 water in front of their lands, and in front of or along any highway or
13 public lands of said municipality, and to designate the materials to
14 be used, and the type, height and dimensions thereof;

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

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

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

41 Advertise municipality. 30. Appropriate funds for advertising the
42 advantages of the municipality;

43 Government Energy Aggregation Programs. 31. Establish
44 programs and procedures pursuant to which the municipality may
45 act as a government aggregator pursuant to sections 40 through 43
46 of P.L.1999,c.23 (C.48:3-89 through C.48:3-92), section 45 of
47 P.L.1999, c.23 (C.48:3-94), and sections 1, 2 and 6 of P.L.2003,
48 c.24 (C.48:3-93.1 through C.48:3-93.3). Notwithstanding the

1 provisions of any other law, rule or regulation to the contrary, a
2 municipality acting as a government aggregator pursuant to
3 P.L.1999, c.23 (C.48:3-49 et al.) shall not be deemed to be a public
4 utility pursuant to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed
5 to be operating any form of public utility service pursuant to
6 R.S.40:62-1 et seq., to the extent such municipality is solely
7 engaged in the provision of such aggregation service and not
8 otherwise owning or operating any plant or facility for the
9 production or distribution of gas, electricity, steam or other product
10 as provided in R.S.40:62-12;

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

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

45 Protective Custody. 34. Provide protective custody to persons
46 arrested for operating a motor vehicle under the influence of
47 alcoholic beverages, any chemical substance, or any controlled

1 dangerous substance in violation of R.S.39:4-50 as provided in
2 section 1 of P.L.2003, c.164 (C.40:48-1.3).

3 Sex Offenders. 35. Regulate the location of sex offenders'
4 residences within the municipality as provided in P.L. _____,
5 c. (C. _____) (pending before the Legislature as this bill).
6 (cf: P.L.2003, c.164, s.2)

7
8 5. Section 1 of P.L.1989, c.286 (C.40:55D-66.6) is amended to
9 read as follows:

10 1. **【Child】** a. Except as provided in subsection b. of this
11 section, child care centers for which, upon completion, a license is
12 required from the Department of Human Services pursuant to
13 P.L.1983, c.492 (C.30:5B-1 et seq.), shall be a permitted use in all
14 nonresidential districts of a municipality. The floor area occupied in
15 any building or structure as a child care center shall be excluded in
16 calculating: (1) any parking requirement otherwise applicable to
17 that number of units or amount of floor space, as appropriate, under
18 State or local laws or regulations adopted thereunder; and (2) the
19 permitted density allowable for that building or structure under any
20 applicable municipal zoning ordinance.

21 b. On or after the effective date of P.L. _____, c. (C. _____)
22 (pending before the Legislature as this bill), it shall not be a
23 permitted use to site a child care center in a nonresidential district if
24 the siting would result in the center being within 500 feet of the
25 residence of a sex offender whose risk of re-offense has been
26 determined to be high pursuant to paragraph (3) of subsection c. of
27 section 3 of P.L.1994, c.128 (C.2C:7-8).
28 (cf: P.L.1989, c.286, s.1)

29
30 6. This act shall take effect immediately.

31
32
33 STATEMENT

34
35 This bill permits a municipality to enact an ordinance
36 establishing areas in or around elementary or secondary schools,
37 playgrounds, or child care centers where certain registered sex
38 offenders may be prohibited from residing. The bill also imposes
39 restrictions on the location of school bus stops and the siting of
40 child care centers so that they are not situated near the residence of
41 a high risk sex offender. It is the Legislature's intent to enhance the
42 public safety by permitting municipalities to enact ordinances to
43 prevent convicted sex offenders who have committed crimes against
44 minors from residing within 500 feet of a school, playground or
45 child care center, subject to certain statutorily-enumerated
46 exceptions, and also by prohibiting the siting of school bus stops
47 and child care centers near the residence of high risk sex offenders.

1 The bill establishes specific limitations that the ordinance may
2 impose on sex offenders establishing residences. These ordinances
3 would be applicable to “persons subject to limitations,” which the
4 substitute defines as a person over the age of 21 subject to the
5 registration requirements set forth in Megan’s Law who has been
6 convicted of, adjudicated delinquent or found not guilty by reason
7 of insanity for a sex offense enumerated in Megan’s Law in which
8 the victim of the offense was under 18 years of age, except for those
9 whose risk of re-offense has been determined to be low.

10 Under the bill’s provisions, such persons would be prohibited
11 from residing within 500 feet from the real property comprising an
12 elementary or secondary school, playground, or child care center,
13 provided that any such ordinance shall not be formulated in a
14 manner that would prohibit these persons from residing in every
15 residentially-zoned area within the municipality.

16 The municipal ordinance shall not be applied to prohibit such a
17 person from residing within 500 feet of an elementary or secondary
18 school, playground, or child care center if:

19 (1) the person is required to serve a sentence at a jail, prison,
20 juvenile facility or other correctional institution or facility or is
21 involuntarily committed to a psychiatric, mental health or other
22 facility which is located within 500 feet of the elementary or
23 secondary school, playground, or child care center;

24 (2) the person resides and receives services at an institution,
25 mental health or other facility licensed or permitted by the
26 Department of Human Services which is located within 500 feet of
27 an elementary or secondary school, playground, or child care
28 center;

29 (3) the parole board, after considering the person’s housing
30 options, determines that a needs-based exception for the person is
31 required; or

32 (4) a court that discharges the person from a psychiatric facility
33 determines that an exception is appropriate.

34 The bill provides that an ordinance shall not be applied to
35 prohibit such a person from continuing to reside at a residence
36 established by that person within the municipality prior to the
37 enactment of the ordinance.

38 An ordinance enacted pursuant to the bill shall provide that the
39 municipal engineer shall produce a map for the purpose of depicting
40 the location and boundaries of the areas. The original of every map
41 shall be filed with the clerk of the municipality and shall be
42 maintained as an official record of the municipality.

43 This bill also prohibits a school board from locating a school bus
44 stop within 250 feet of the residence of a high risk (tier three) sex
45 offender unless the relocation of the school bus stop creates a more
46 dangerous condition for a child. In making this determination, the
47 school board is required to consult with the chief law enforcement
48 officer of the municipality. The bill requires the school board to

S837 MADDEN

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1 adopt a resolution stating the reason for the relocation of the school
2 bus stop.

3 Finally, the bill prohibits child care centers from being located
4 within 500 feet of the residence of a tier three sex offender.