

[Second Reprint]

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)

Senator CHRISTOPHER J. CONNORS

District 9 (Atlantic, Burlington and Ocean)

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District 6 (Camden)

Senator LINDA R. GREENSTEIN

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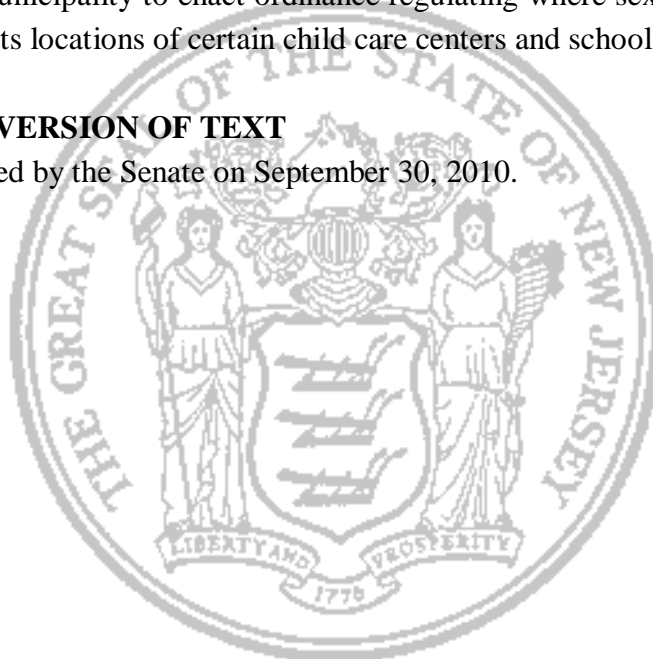
Senators Haines, Addiego and Gordon

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 amended by the Senate on September 30, 2010.



(Sponsorship Updated As Of: 4/29/2011)

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 ¹moderate or high risk to
17 reoffend, and by prohibiting school boards from locating school bus
18 stops ¹**["from being located"]** within 250 feet of the residence of a
19 ¹**["high-risk"]** moderate or high risk¹ sex 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 ¹**["over the age of**
27 **21"]**¹ subject to the registration requirements set forth in P.L.1994,
28 c.133 (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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹**Senate SLP committee amendments adopted September 13, 2010.**

²**Senate floor amendments adopted September 30, 2010.**

1 establish areas that extend such prohibition beyond 500 feet from
2 the real property comprising an elementary or secondary school,
3 playground, or child care center, as the case may be, provided that
4 any such ordinance shall not be formulated in a manner that would
5 prohibit persons subject to limitations from residing in every
6 residentially-zoned area within the municipality.

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

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

18 (2) the person resides and receives services at an institution¹[,]
19 or¹ mental health or other facility licensed or permitted by the
20 Department of Human Services ¹or the Department of Children and
21 Families¹ which is located within 500 feet of the real property
22 comprising an elementary or secondary school, playground, or child
23 care center;

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

27 (4) a court that discharges the person from a psychiatric facility
28 with conditions pursuant to section 15 of P.L.1987, c.116 (C.30:4-
29 27.15) determines that an exception is appropriate.

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

35 f. An ordinance enacted pursuant to the provisions of this act
36 shall provide that the municipal engineer shall produce a map for
37 the purpose of depicting the location and boundaries of the areas
38 where a person subject to limitations is prohibited from residing
39 pursuant to the ordinance. A true copy of such a map shall, upon
40 proper authentication, be admissible and shall constitute prima facie
41 evidence of the location and boundaries of those areas, provided
42 that the governing body of the municipality has adopted an
43 ordinance approving the map as official finding and record of the
44 location and boundaries of the area. Any map approved pursuant to
45 this section may be changed from time to time by the governing
46 body of the municipality. The original of every map approved or
47 revised pursuant to this section, or a true copy thereof, shall be filed
48 with the clerk of the municipality and shall be maintained as an

1 official record of the municipality. Nothing in any ordinance
2 adopted pursuant to this section shall be construed to preclude the
3 prosecution from introducing or relying upon any other evidence or
4 testimony to establish any element of an offense; nor shall any such
5 ordinance be construed to preclude the use or admissibility of any
6 map or diagram other than one which has been approved by the
7 governing body of a municipality, provided that the map or diagram
8 is otherwise admissible pursuant to the Rules of Evidence.

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

13

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

24

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

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

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

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

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

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

46 Salaries instead of fees; disposition of fees. 5. Provide that any
47 officer or employee receiving compensation for his services, in
48 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 and
28 regulate one or more pounds, and to prohibit or regulate the running
29 at large of horses, cattle, dogs, swine, goats and other animals, and
30 to authorize their impounding and sale for the penalty incurred, and
31 the costs of impounding, keeping and sale; to regulate or prohibit
32 the keeping of cattle, goats or swine in any part of the municipality;
33 to authorize the destruction of dogs running at large therein;

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

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

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

- 1 Dangerous structures; removal or destruction; procedure. 15.
2 Provide for the removal or destruction of any building, wall or
3 structure which is or may become dangerous to life or health, or
4 might tend to extend a conflagration; and to assess the cost thereof
5 as a municipal lien against the premises;
- 6 Chimneys and boilers. 16. Regulate the construction and setting
7 up of chimneys, furnaces, stoves, boilers, ovens and other
8 contrivances in which fire is used;
- 9 Explosives. 17. Regulate, in conformity with the statutes of this
10 State, the manufacture, storage, sale, keeping or conveying of
11 gunpowder, nitroglycerine, dynamite and other explosives;
- 12 Firearms and fireworks. 18. Regulate and prohibit the sale and use
13 of guns, pistols, firearms, and fireworks of all descriptions;
- 14 Soft coal. 19. Regulate the use of soft coal in locomotives,
15 factories, power houses and other places;
- 16 Theaters, schools, churches and public places. 20. Regulate the
17 use of theaters, cinema houses, public halls, schools, churches, and
18 other places where numbers of people assemble, and the exits
19 therefrom, so that escape therefrom may be easily and safely made
20 in case of fire or panic; and to regulate any machinery, scenery,
21 lights, wires and other apparatus, equipment or appliances used in
22 all places of public amusement;
- 23 Excavations. 21. Regulate excavations below the established
24 grade or curb line of any street, not greater than eight feet, which
25 the owner of any land may make, in the erection of any building
26 upon his own property; and to provide for the giving of notice, in
27 writing, of such intended excavation to any adjoining owner or
28 owners, and that they will be required to protect and care for their
29 several foundation walls that may be endangered by such
30 excavation; and to provide that in case of the neglect or refusal, for
31 10 days, of such adjoining owner or owners to take proper action to
32 secure and protect the foundations of any adjacent building or other
33 structure, that the party or parties giving such notice, or their
34 agents, contractors or employees, may enter into and upon such
35 adjoining property and do all necessary work to make such
36 foundations secure, and may recover the cost of such work and
37 labor in so protecting such adjacent property; and to make such
38 further and other provisions in relation to the proper conduct and
39 performance of said work as the governing body or board of the
40 municipality may deem necessary and proper;
- 41 Sample medicines. 22. Regulate and prohibit the distribution,
42 depositing or leaving on the public streets or highways, public
43 places or private property, or at any private place or places within
44 any such municipality, any medicine, medicinal preparation or
45 preparations represented to cure ailments or diseases of the body or
46 mind, or any samples thereof, or any advertisements or circulars
47 relating thereto, but no ordinance shall prohibit a delivery of any

1 such article to any person above the age of 12 years willing to
2 receive the same;

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

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

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

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

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

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

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

45 Advertise municipality. 30. Appropriate funds for advertising the
46 advantages of the municipality;

47 Government Energy Aggregation Programs. 31. Establish
48 programs and procedures pursuant to which the municipality may

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

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

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

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

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

10

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

13 1. **【Child】** a. Except as provided in subsection b. of this
14 section, child care centers for which, upon completion, a license is
15 required from the Department of ²【Human Services】 Children and
16 Families² pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.), shall be
17 a permitted use in all nonresidential districts of a municipality. The
18 floor area occupied in any building or structure as a child care
19 center shall be excluded in calculating: (1) any parking requirement
20 otherwise applicable to that number of units or amount of floor
21 space, as appropriate, under State or local laws or regulations
22 adopted thereunder; and (2) the permitted density allowable for that
23 building or structure under any applicable municipal zoning
24 ordinance.

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

32 (cf: P.L.1989, c.286, s.1)

33

34 6. This act shall take effect immediately.