ASSEMBLY, No. 3562

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Assemblywoman PAMELA R. LAMPITT
District 6 (Burlington and Camden)

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.

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

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

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

2. (New section) a. As used in this act:

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

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

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

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

c. Municipal ordinances establishing areas where a person subject to limitations may be prohibited from residing shall not establish areas that extend such prohibition beyond 500 feet from the real property comprising an elementary or secondary school, playground, or child care center, as the case may be, provided that

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 <u>thus</u> is new matter.

any such ordinance shall not be formulated in a manner that would prohibit persons subject to limitations from residing in every residentially-zoned area within the municipality.

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

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

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

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

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

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

f. An ordinance enacted pursuant to the provisions of this act shall provide that the municipal engineer shall produce a map for the purpose of depicting the location and boundaries of the areas where a person subject to limitations is prohibited from residing pursuant to the ordinance. A true copy of such a map shall, upon proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas, provided that the governing body of the municipality has adopted an ordinance approving the map as official finding and record of the location and boundaries of the area. Any map approved pursuant to this section may be changed from time to time by the governing body of the municipality. The original of every map approved or revised pursuant to this section, or a true copy thereof, shall be filed with the clerk of the municipality and shall be maintained as an official record of the municipality. Nothing in any ordinance adopted pursuant to this section shall be construed to preclude the prosecution from introducing or relying upon any other evidence or testimony to establish any element of an offense; nor shall any such

ordinance be construed to preclude the use or admissibility of any map or diagram other than one which has been approved by the governing body of a municipality, provided that the map or diagram is otherwise admissible pursuant to the Rules of Evidence.

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

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

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

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

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

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

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

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

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

Maintain order. 6. Prevent vice, drunkenness and immorality; to preserve the public peace and order; to prevent and quell riots,

disturbances and disorderly assemblages; to prohibit the consumption of alcoholic beverages by underage persons on private property pursuant to section 1 of P.L.2000, c.33 (C.40:48-1.2);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c.24 (C.48:3-93.1 through C.48:3-93.3). Notwithstanding the provisions of any other law, rule or regulation to the contrary, a municipality acting as a government aggregator pursuant to P.L.1999, c.23 (C.48:3-49 et al.) shall not be deemed to be a public utility pursuant to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed to be operating any form of public utility service pursuant to R.S.40:62-1 et seq., to the extent such municipality is solely engaged in the provision of such aggregation service and not otherwise owning or operating any plant or facility for the production or distribution of gas, electricity, steam or other product as provided in R.S.40:62-12;

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

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

Protective Custody. 34. Provide protective custody to persons arrested for operating a motor vehicle under the influence of

alcoholic beverages, any chemical substance, or any controlled dangerous substance in violation of R.S.39:4-50 as provided in section 1 of P.L.2003, c.164 (C.40:48-1.3);

Private Outdoor Video Surveillance Camera Registry. 35. Establish a private outdoor video surveillance camera registry and allow voluntary registration of private outdoor video surveillance cameras as provided in P.L.2015, c.142 (C.40:48-1.6 et al.)

Sex Offenders. 36. Regulate the location of sex offenders' residences within the municipality as provided in P.L. , c. (C.) (pending before the Legislature as this bill).

(cf: P.L.2015, c.142, s.3)

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

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

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

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

6. This act shall take effect immediately.

STATEMENT

This bill permits a municipality to enact an ordinance establishing areas in or around elementary or secondary schools, playgrounds, or child care centers where certain registered sex offenders may be prohibited from residing. The bill also imposes restrictions on the location of school bus stops and the siting of child care centers so that they are not situated near the residence of a high risk sex offender. It is the Legislature's intent to enhance the public safety by permitting municipalities to enact ordinances to prevent convicted sex offenders who have committed crimes against

minors from residing within 500 feet of a school, playground or child care center, subject to certain statutorily-enumerated exceptions, and also by prohibiting the siting of school bus stops and child care centers near the residences of high risk sex offenders.

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

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

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

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

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

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

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

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

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

This bill also prohibits a school board from locating a school bus stop within 250 feet of the residence of a high risk (tier three) sex

offender unless the relocation of the school bus stop creates a more dangerous condition for a child. In making this determination, the school board is required to consult with the chief law enforcement officer of the municipality. The bill requires the school board to adopt a resolution stating the reason for the relocation of the school bus stop.

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