



**THE NYS SENATE
COALITION**

Keeping Our Children Safe

FROM
SEX OFFENDERS



**SPECIAL REPORT:
WESTCHESTER & ROCKLAND COUNTIES**

New York State Senator
William J. Larkin

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Introduction

The New York State Senate Coalition and its leaders Senator Dean G. Skelos and Jeffrey D. Klein are committed to keeping communities safe from sexual predators. The Senate convened the 2015 Legislative session by passing several bills proposed by Coalition members passed to enhance protections afforded to communities.

Those bills, waiting for action by the Assembly, include: a bill sponsored by Senator Jeffrey Klein and Senator Carlucci prohibiting Level 2 and Level 3 sex offenders from being placed in temporary or emergency housing or homeless shelters where children are present, a bill sponsored by Senator Michael Ranzenhofer making it a crime to knowingly house or employ a sex offender who has failed to register or verify employment, a bill sponsored by Senator John Flanagan which would prohibit certain sex offenders from being granted custody and unsupervised visitation with a child, a bill sponsored by Senator John Bonacic which would require a registered sex offender to report multiple or part-time residences, a bill sponsored by Senator Patrick Gallivan requiring the Office for People with Developmental Disabilities to contact local officials when a sex offender is placed in a community residence within their municipality, and two bills by Senator Joseph Robach, the first prohibits sex offenders from living in student housing and the second which creates a sex offender public awareness program.

These bills, however, have not captured all of the infirmities in the current laws. The Court of Appeals dealt a blow to many communities in the state when in *People v. Diack*¹, it held that localities were unable to enact their own local laws more restrictive than state law in protecting children from sexual predators.

Going back to 1996, with Temporary President Dean G. Skelos authoring and securing passage of the ground-breaking Sex Offender Registration Act (SORA) also known as Megan's Law, the Senate has been a leader in protecting children and families across the state from sex offenders. However, more can and should be done. Recently, weakness has been highlighted by the office of State Senator Jeffrey D. Klein when he released an investigative report revealing that shocking numbers of paroled sex offenders were living perilously close to school buildings throughout New York City in blatant contravention of state law. Still more were recorded in state databases as living in one zip code while their actual address was in another zip code. These revelations led Senator Klein and Senator Carlucci to introduce legislation in the Senate, passed by the Senate Coalition in June 2014 that would alter the way that state agencies maintained their sex offender and school location databases, ensuring that such dangers did not threaten New York's children and families any further.

However, that investigation revealed an additional loophole in state law, which allows dangerous sex offenders to live and work next door to many of the kindergarten and pre-kindergarten programs that serve our youngest and most vulnerable children.

¹ Slip Op. No. 1 February 17, 2015.

In June 2014, Michael Ocasio, a Level 3 sex offender convicted on May 14, 2009 of sexual conduct against a child in the second degree, was found to be living near a Montessori school offering kindergarten and pre-k programs. The Office of Senator Klein conducted a thorough investigation to uncover why and how often such dangerous placements were occurring. Sadly, as this report will show, Mr. Ocasio was only one of many sex offenders living just down the street from our kindergarten and Pre-K schools.

Previous Investigation and Legislation

In January 2014, a Bronx local community leader and grandmother, Edith Blitzer, received an email that registered sex offender Roland Marrero had moved into her neighborhood. The email was the product of a 2009 law sponsored by Senator Klein (Chapter 478 of 2009) that allows concerned New Yorkers to sign-up to receive email notifications when a registered sex offender moves into their zip code. Ms. Blitzer brought the issue to Senator Klein's attention and the ensuing investigation revealed that the sex offender was living less than 700 feet from PS 357 in the Bronx, a school that had opened only a few months prior, in September 2013.

The investigation also revealed six convicted sex offenders living within 1,000 feet of school buildings and over 130 additional sex offenders whose New York City addresses were improperly registered with state authorities.² As a result, not only was the safety of children endangered, but community members who wanted to know about sex offenders living in their neighborhoods did not have access to accurate information.

With this in mind, the Senate Coalition and Senators Klein and Carlucci spearheaded Senate bill 6600 (2014) to remedy the situation. The bill called for the Department of Corrections and Community Supervision (DOCCS) and the Board of Parole to obtain on a quarterly basis an updated list of all elementary and secondary schools in the state. The bill would ensure that state agencies charged with supervising sex offenders on probation or parole have accurate lists of any new schools that open in a neighborhood and any schools that close. The bill passed overwhelmingly in the Senate, 53 to 4 but died in committee in the Assembly.

In addition, Senator Klein held a press conference on February 11, 2014 to raise public awareness about the incorrect sex offender zip codes, promising to take legislative action if the problem was not corrected by state agencies. Following the press conference, the Division of Criminal Justice Services (DCJS) announced plans to conduct an audit on registered sex offender addresses. DOCCS also announced that no sex offender would be released until his proposed residence was verified as being in compliance with the Sex Offender Registration Act (SORA).³

² Protecting Our Citizens: Curbing the High Incidence of Sex Offenders Living Near Schools, IDC report, released February 2014. tribwpix.files.wordpress.com/2014/02/sexoffenderreport1.pdf

³ Beth DeFalco, Georgett Roberts, & Josh Saul, *Housing Bungle Allows Convicted Pedophiles to Live Close to Schools*, NY Post, Feb. 17, 2014.

Senator Klein and Senator Carlucci and the Senate Coalition have also taken steps to address the newly discovered kindergarten and pre-k loophole.

The Loophole

The loophole allowing convicted sex offenders to live near some kindergarten and Pre-K programs arises from the interaction of several separate existing laws:

The Sex Offender Registration Act (SORA)

In 1996, then Senator Dean G. Skelos, now Temporary President of the Senate, sponsored and led the effort to enact New York State's Sex Offender Registration Act (SORA)--or "Megan's Law."⁴ It established a Sex Offender Registry designed to protect communities and assist local law enforcement agencies by compiling the names, addresses, photographs, and criminal information of sex offenders and making everything available to the public. The registry contains information on all convicted sex offenders living in New York State, even those convicted elsewhere, and classifies them according to the severity of their crimes. A Level 1 sex offender has a relatively low probability of causing his or her community harm, while a Level 2 sex offender is a moderate risk and a Level 3 sex offender is a high risk to his or her community.

The Act then uses these ratings to dictate how long a sex offender's information will remain in the database. Non-designated Level 1 offenders are required to register for 20 years, while the remaining Level 1 offenders, as well as all Level 2 and 3 offenders, are required to register for life (though non-designated Level 2 offenders may petition to be removed after 30 years). All offenders are required to keep their addresses and photographs up-to-date, and failure to abide by registration requirements is punishable by a Class E felony, or a Class D felony for repeat offenders.

Residency Restrictions for Sex Offenders

In order to protect communities from the potential dangers posed by released sex offenders on probation or parole, New York State places several restrictions on them with respect to residency and movement. Level 1 or Level 2 sex offenders whose victim was under the age of 18, as well as all Level 3 sex offenders, are prohibited from entering school grounds or being within 1,000 feet of any school or institution used primarily for the care or treatment of persons under the age of 18. The Executive Law § 259-c (14) and Penal Law § 65.10 (4-a) state that Level 3 sex offenders or those sex offenders with victims under the age of 18 on parole or probation

“shall refrain from knowingly entering into or upon any school grounds, as that term is defined in subdivision fourteen of section 220.00 of the Penal Law, or any other facility or institution primarily used for the care or

⁴ Correction Law Article 6-A

treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present.”

Section 220.00 of the Penal Law then goes on to define school grounds as

“(a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section an ‘area accessible to the public’ shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.”

DOCCS has interpreted these statutes as prohibiting sex offenders from knowingly residing within 1,000 feet of school buildings and from knowingly traveling within 1,000 feet of school buildings.

However, there is some ambiguity as to which schools and which children are covered by these statutes. Although the term “school grounds”, as defined by the Penal Law includes public or private elementary schools, schools that only offer pre-kindergarten are not expressly included within this statute. The term “elementary school” is not defined under this statute, leaving the plain meaning of the term to be used. According to the dictionary definition (Merriam-Webster dictionary) an elementary school is “a school including usually the first four to the first eight grades and often a kindergarten.” This excludes pre-kindergarten from the definition and thus excludes such schools from the 1,000 feet residency and movement protections.

In addition, there is a difference in interpretation of statutes between state agencies as to whether a school that only offers pre-kindergarten and kindergarten is included within the residency and movement protections. In June 2014, Level 3 sex offender Michael Ocasio was spotted near the Carrig Montessori School, which contains pre-school and kindergarten. DOCCS stated that the Montessori school was not considered an elementary school for purposes of the statute while the State Education Department stated that any school with kindergarten was afforded the protections of the statute. Despite the law’s clear and avowed intent to afford protection to *all* children, the language of the statute must be strengthened to unambiguously protect pre-kindergarteners and kindergarteners from sex offenders.

Recidivism Among Sex Offenders

One of the primary reasons that these restrictions are in place is to limit a sex offender’s interaction with children. The alarmingly high recidivism rate among sex offenders

makes it imperative that they be watched – especially those convicted of preying on children. The New York State Division of Probation and Correctional Alternatives reported in 2007 that of 19,837 sex offenders on the sex offense registry, 15 % were re-arrested within one year of registration, 24% within two years, 41% within five years and 48% within eight years.

Proportion of Registered Sex Offenders Rearrested
(Among 19,827 Offenders on the Registry on March 31, 2005)*

Time From Registration Date	Any New Arrest
~ 1 Year	15%
~ 2 Years	24%
~ 5 Years	41%
~ 8 Years	48%

***Source: DCJS: NYS Sex Offender Registry and NYS Computerized Criminal History Data Base**

By limiting their access to schools, and other locations where children may congregate, including day care and other locations the State can also limit sex offenders’ access to children, thereby protecting the most vulnerable members of society. Because the intent of SORA and these residency restriction requirements was to protect all children and victims of sexual predators, not just those attending programs tied to a grade school, we must act to close this loophole as well as many others that have been identified.

Sex Offenders Next Door to Pre-schools in Westchester and Rockland Counties

In order to determine just how much of a risk this loophole poses to our children in Westchester and Rockland Counties, Senator Skelos and Senator Klein conducted an investigation into the matter. The results revealed that there are numerous sex offenders living perilously close to a building housing pre-kindergarten programs. The Senate Coalition understands there is a clear need to address the problem and protect all of our children with equal fervor.

Methodology

Since not all preschool programs are attached to a grade school, the first step was to identify UPK and Pre-K programs throughout Westchester and Rockland Counties. In order to accomplish this, the Coalition staff called all school districts in Westchester and Rockland Counties represented by Senators David Carlucci, Bill Larkin and Terrence Murphy and asked for a list of their Pre Ks and UPKs.

As mandated by SORA, the New York State Department of Criminal Justice Services (DCJS) maintains an online database for the Public Registry of Sex Offenders. Within the Registry, all of the state’s sex offenders are listed by the zip code in which they reside. The zip codes of each of the Rockland and Wetschester Pre-K programs were then run against the zip codes in the DCJS registry to determine an initial set of sex offenders to be examined.

Each listed sex offender in the DCJS registry also has a link to view their address on Google Maps. Those who shared a zip code with a school then had their address cross-referenced with the addresses of Pre-K programs within that zip code to determine which ones were within close proximity to schools. The exact distance between their residence and the nearby school was calculated, and those found within 1,000 feet were recorded.

Because the limitations on the movement and residence of Level 1 and Level 2 sex offenders only apply to those on parole or probation, and not those who have successfully completed their rehabilitation, this list then had to be further focused. The State Department of Corrections and Community Services (DOCCS) maintain a public list of parolees within New York State. The existing list of convicted sex offenders living within 1,000 feet of a Pre-K program was then run against the DOCCS list of parolees, and any sex offender not listed as on active parole by DOCCS was removed. The list was also checked to ensure that those remaining were on parole for the sex offense in question, excluding those on parole for petty crimes or unrelated offenses. Finally, all sex offenders for whom the age of the victim could not be verified were removed from the list, to ensure that only those whose victims had been children were included.

This left a list of paroled sex offenders, all of whom are classified as Level 3 offenders – those deemed the highest risk to their communities. As detailed below, all 13 of these dangerous predators were living within 1,000 feet of a Pre-K program in Westchester and Rockland Counties despite the clear intent of State law to prevent this.

Findings

The following 7 offenders are, as of the writing of this report, legally allowed to live within 1,000 ft. of the UPKs near them because these programs are not affiliated with a grade school.

Sex Offenders Residing Within 1,000 ft. of a Community UPK Program

Name	Address	Level Offender	Victim Age	School Address	Distance from School
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Westchester County

Douglas Krakie	11 Locust Ave Apt. 1 New Rochelle, NY 10801	3	14	The Guidance Center 32 LeCount Place New Rochelle, NY 10801	687 ft.
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Michael Newman	121 Coligni Ave 2nd Floor New Rochelle, NY 10801	3	Under 17	New Rochelle Daycare 115 Clinton Ave New Rochelle, NY 10801	370 ft.
Samuel Toffel	24 Carhart Ave Apt. 317 White Plains, NY 10605	3	7,12,15	YMCA 250 Mamaroneck Ave, White Plains, NY 10605	950 ft.
John Hamm	209 Franklin Avenue, Apt. 8 Mt. Vernon, NY, 10550	3	9, and two under 17	WESTHELP Mt. Vernon 240 Franklin Avenue, Mt. Vernon, NY 10550	5815 ft.
Jonathan Maxwell	340 South 6 th Avenue, 2 nd Floor, Mt. Vernon, NY 10550	3	Unknown	WESTCOP CAG 250 South Sixth Avenue, Mt. Vernon, NY 10550	739 ft.
Michael Smith	236 South Fifth Avenue, Apt. 3, Mt. Vernon, NY 10550	3	Unknown	WESTCOP Toddler's Park Head Start/Day Care 260 South Fourth Avenue, Mt. Vernon, NY 10550	950 ft.
David Tyree	321 South Third Avenue, Apt. 103 Mt. Vernon, NY, 10550	3	41	WESTCOP Toddler's Park Head Start/Day Care 260 South Fourth Avenue, Mt. Vernon, NY 10550	792 ft.

Because many UPK programs do, in fact, partner with grade schools, the investigation also revealed 6 convicted sex offenders living within 1,000 ft. of local schools. These predators are currently illegally living too close to a school under existing law, underscoring the need to update agency reporting policies. They are listed below:

Sex Offenders Residing Within 1,000 ft. of a UPK Program Affiliated with an Elementary School

Westchester County

Archie Shannon	6 Highland Place Yonkers, NY 10705	3	64	Cedar Place School, 20 Cedar Place, Yonkers, NY 10705	792 ft.
Horatio Joss	7 Highland Ave Apt 6H Yonkers, NY10705	3	2	Cedar Place School, 20 Cedar Place, Yonkers, NY 10705	581 ft.
Michael Winchester	121 Ludlow St. Apt 3E Yonkers, NY 10705	3	51,15	St. Peter School 204 Hawthorne Avenue Yonkers, NY 10705	845 ft.
Carl Tennyson	360 Franklin Ave., 2 nd Floor, Mt. Vernon, NY 10553	3	Unknown	Edward Williams Elementary 9 Union Lane, Mt. Vernon, NY 10553	634 ft.
Miguel Benitez	137 North Fifth Avenue, 23 Mt. Vernon, NY 10550	3	9	Our Lady of Victory Private School 38 North Fifth Avenue Mt. Vernon, NY 10550	844 ft.

Rockland County

Fritz Lemite	8 John St. Spring Valley, NY 10977	3	16	Yeshiva Darkei Emunah 49 South Main St Spring Valley, NY 10977	950 ft.
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Legislative Solution

These findings make it clear that the Michael Ocasio placement was not a rare occurrence, despite its clear dangers. Because the loophole allowing such occurrences stems merely from the fact that kindergarten and pre-kindergarten programs are not explicitly included in the legal descriptions of schools, it is a relatively easy one to fix. To this end, Senator Klein and Senator Carlucci have sponsored Senate bill S. 1520 to alter the definition of school grounds in the Penal and Executive Laws to explicitly include kindergarten and pre-kindergarten programs, thereby ensuring that all preschool programs are equally protected under the law. The provisions of this bill also have broad bipartisan support as the bill passed unanimously in the Senate in 2014 (S.7868). On February 26, 2015, this bill again passed the New York State Senate by a vote of 54-0.

Several other important bills relating to the sex offender registry and aimed at the protection of children were passed by the Senate under the Leadership of Senator Skelos and Senator Klein in 2014 and again on February 26, 2015.

- A bill (S. 2269) sponsored by Senator Martin Golden preventing convicted Level 1, 2, or 3 sex offenders from residing within 1000 feet of a building used exclusively as an elementary or high school;
- A bill sponsored this year by Senator Robert Ort (S. 2981) clarifying the definition of residence in the SORA;
- Senator Andrew Lanza's bill (S. 3811), which would require that in addition to disclosure to the public of a convicted registered sex offender's residence, that they also disclose where they are working in their community;
- Senator James Seward's Bill (S.3926) which expands the definition of an institution for the care and treatment of children under age 18 to clearly include day care centers.

Senator Klein's investigation reveals just one of many serious infirmities in the current system. The recent rejection of a local law enacted by Nassau County related to further imposing restrictions on residency of sexual predators has been a major cause of concern for communities across the State. The Court of Appeals held on February 17, 2015 that the State, through its enactment of these various laws relative to parole and supervision of sexual predators has intended to occupy the field and pre-empt local laws. The Court held, "the State's comprehensive and detailed statutory and regulatory framework for the identification, regulation and monitoring of registered sex offenders prohibits the enactment of a residency restriction law such as Local Law 4." *People v. Diack* No. 1 Slip op. at p. 3 (2/17/2015). However, as just revealed by not only the investigation above, but by the numerous other local laws enacted in counties across the state, that there are local needs and concerns not addressed by the existing statutory framework, which in and of itself has weakness in its imprecision in definition and in implementation by the various state agencies tasked with supervising sex offenders.

In light of this decision, the Coalition is proud that it passed S. 3925 sponsored by Senator Michael Venditto and Co-prime sponsors Senator Rich Funke and Senator Terrence Murphy.

This bill is a direct response to the recent Court of Appeals decision *People v. Diack*.⁵ This legislation will empower localities to protect their children by enacting local laws that are no less restrictive than the state laws.

The Senate Coalition, on February 26th, also passed:

- Senator Kenneth LaValle's bill (S. 22) requiring a school district, upon receiving sex offender residence information from law enforcement officials, to distribute the information to the parents of its students;
- S. 2950, sponsored by Senator Terrence Murphy which would prohibit registered sex offenders from living within 1500 feet of their victim;
- Senator Tony Avella's legislation (S. 712) that also passed once again with bipartisan support on February 26th, ensures that risk assessment hearings are held *before* any sexual predator can be released into a community.

Conclusion

The Senate Coalition stands committed to keeping communities safe as evidenced by the introduction of several important measures safeguarding children. The State of New York has enacted numerous laws to protect its communities and children from dangerous sex offenders, and for the most part they are largely effective. However, continuing vigilance and investigation can uncover seemingly minor weaknesses that, as in these examples, may put our youngest and most vulnerable children at risk unnecessarily. Swift and smart legislation can, however, close these loopholes that allow predators to legally live just down the street from preschool centers, day cares, their victims and other locations where children congregate throughout New York. Enactment of the proposed legislation discussed in this report, not just passage in the Senate, will inform parents, protect victims, and keep New York's children safe.

⁵ 2015 NY Slip Op 01376 (February 17, 2015)