

PREYING ON PRE-KS

***THE IDC INVESTIGATES
PREDATORS' PROXIMITY TO
PRE-KS AND KINDERGARTENS***



August 2017

INTRODUCTION

On February 28, 2017, the New York State Senate passed Senate bill S.1787, which prohibits sex offenders whose victim were children, and Level 3 sex offenders from being within 1,000 feet of a pre-kindergarten or kindergarten facility. This is the third consecutive year the Senate has passed the bill, yet there has been no action on the Assembly's part.

The Independent Democratic Conference believes that protecting children from predators is of the utmost importance, and feels strongly that the exclusion of pre-K and kindergarten from the 1,000 foot prohibition from schools is a gross oversight in the current law. Senator Klein's bill corrects this oversight by specifying that Level 3 sex offenders and Level 2 sex offenders whose victims were children are prohibited from being within 1,000 feet from a pre-K or kindergarten.

This report will highlight the IDC's investigation into the number of child predators living near pre-Ks and kindergartens to demonstrate the current and immediate threat that these sex offenders pose to our children and communities. In addition, the investigation found a number of sex offenders illegally living within 1,000 feet of a school. As a result, the IDC is advocating for the adoption of S.1271, sponsored by Senator Avella, directing the commissioner of corrections and community supervision to establish precise and uniform standards for measuring and enforcing distance restrictions of registered sex offenders.

Key Takeaways

- ***Currently, pre-kindergarten and kindergarten programs are not included within the law that prohibits sex offenders from knowingly being within 1,000 feet of a school unless the pre-k is located in the same building as an elementary school***
- ***93 sex offenders are living within 1,000 feet of a pre-K program***
- ***60 sex offenders are also violating current law by illegally living near an elementary school.***
- ***The underlying crimes committed by these sex offenders include first degree rape, sodomy, first degree sexual abuse, and sexual exploitation of a minor.***

CURRENT SEX OFFENDER LAWS IN NYS

The Sex Offender Registration Act (SORA), found in article 6-C of the NYS Corrections Law, outlines the required conduct of individuals convicted of a sex offense.¹ Specifically, SORA requires individuals convicted of certain sex crimes to register with the Division of Criminal Justice Services (DCJS) at the time of discharge from a facility.²

¹ NYS Correction Law Article 6-C: Sex Offender Registration Act

² NYS Correction Law §168-f(1)

Sex offenders are classified as either Level 1, Level 2, or Level 3 depending on their risk level.³ Those designated as Level 1 are considered a low risk of repeated offense, while those designated Level 2 are deemed moderate risk, and those that are designated as Level 3 are considered a high risk of repeat offense and a threat to public safety.⁴ The court, when making such determination, looks to a number of factors, including the use of force, weapons, alcohol and drugs, the victim's age, and any assault or injury to the victim, and the sex offender's criminal history.⁵ The court also determines whether a designation should apply to the sex offender. Here, a sex offender may be designated as a sexual predator, sexually violent offender, or predicate sex offender. The risk level and the designations determine the length of time of a sex offender's registration. Level 2 and Level 3 sex offenders are required to register with DCJS for life, while Level 1 sex offenders must register for 20 years.⁶

Under New York's penal code, Level 3 sex offenders, and Level 2 sex offenders where the victim is a minor, are prohibited from knowingly entering into or upon any 'school grounds' as defined under section 220.00(14) of the penal code.⁷ School grounds is defined 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 1,000 feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within 1,000 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.⁸ Courts have interpreted section 220.00 to impose a residency restriction that prohibits sex offenders from residing within 1,000 feet of a school.⁹

Notably, however, the above 'school grounds' definition speaks to only real property owned by a public or private elementary, parochial, intermediate, junior high, vocational, and/or high schools. Pre-kindergarten and kindergarten facilities that are not part of an elementary school are exempt from this definition, and thus not subject to the 1,000-foot prohibition. As a result, sex offenders are free to reside within 1,000 feet of a pre-K facility or kindergarten facility, even immediately next-door, without issue or repercussion. The IDC finds this loophole to be unacceptable and has been working pass Senator Klein's legislation to correct this problem.

³ NYS Correction Law §168-l(6). See also: Division of Criminal Justice Services: Risk Level and Designation Determination http://www.criminaljustice.ny.gov/nsor/risk_levels.htm

⁴ NYS Correction Law §168-l(6), (a), (b) and (c). See also: DCJS: http://www.criminaljustice.ny.gov/nsor/risk_levels.htm

⁵ NYS Correction Law §168-l(5). See also: DCJS: http://www.criminaljustice.ny.gov/nsor/risk_levels.htm

⁶ NYS Correction Law §168-h. See also: DCJS: http://www.criminaljustice.ny.gov/nsor/risk_levels.htm

⁷ NYS Penal Code §65.10(4-a)

⁸ NYS Penal Code §220.00(14)

⁹ See *People v. Diack* 24 N.Y.3d 674, 682 [2015]; *Terrance v City of Geneva*, 799 F Supp 2d 250, 255 [WD NY 2011]; *People v Blair*, 23 Misc 3d 902, 908 [Albany City Ct 2009].

PREVIOUS INVESTIGATION

In February 2015, the New York State Senate Coalition issued a report that detailed an investigation conducted by Senator Klein's office, regarding the number of sex offenders residing within 1,000 feet of a pre-K or kindergarten facility. The investigation revealed that 17 Level 3 sex offenders and Level 2 sex offenders who committed abuses against children were living within 1,000 feet of a pre-K or kindergarten program in New York City. Specifically, the investigation found 12 predators were living within 1,000 feet of a pre-K facility. Additionally, the investigation found that five convicted sex offenders were illegally living within 1,000 feet of a public school.

In January 2015, upon the findings of the above investigation, Senator Klein introduced legislation to correct this dangerous oversight. The bill has passed the Senate every year since its introduction, but remains unmoved in the Assembly chamber.

2017 INVESTIGATION

During July and August 2017, the IDC conducted a second investigation into the number of sex offenders living near pre-K and kindergarten sites to determine whether the issue still exists. Unfortunately, the investigation revealed that the number of sex offenders living within 1,000 feet of a pre-k or kindergarten facility had significantly increased. Furthermore, the investigation revealed a number of sex offenders living within 1,000 feet of multiple facilities. In addition, the number of sex offenders illegally residing within 1,000 feet of a school had also increased. The need to address this issue has never been greater.

METHODOLOGY

This investigation required analysts to determine the location of pre-kindergarten programs throughout New York City, as well as the name, address, risk level, and parole/probation status of sex offenders living in New York City in order to determine the distance between sex offenders and pre-K and kindergarten programs.

The first step in the investigation was to identify the name and address of all kindergarten and pre-K programs in New York City. In order to identify these programs, the IDC examined the 2017-2018 New York City Pre-Kindergarten Directory and New York City map, which detail information on all pre-K programs located in New York City.

Second, analysts reviewed DCJS's online database, known as the Public Registry of Sex Offenders. The publicly available database, mandated under SORA, discloses sex offender information.¹⁰ Such information includes the name, address, and risk level of the sex offender, along with conviction information and the age of the victim.¹¹ Here, analysts searched the directory using New York City zip codes to determine a sex offender's residence.

¹⁰ NYS Correction Law §168-q

¹¹ NYS Correction Law §168-q(1)

Third, the sex offenders' addresses were compared to pre-K facility addresses to determine proximity. Using Google maps, the pre-K programs' addresses and the sex offenders' addresses were mapped and then distance was calculated. Those found to be within 1,000 feet were recorded and compiled, along with relevant details regarding the sex offender, victim, and pre-K program. Since uniform standards are lacking, the 1,000 foot distance was measured by both the walking distance and as the crow flies.

Finally, the compiled data was reviewed again because the 1,000-foot residency prohibition applies to only sex offenders on parole and probation who are either Level 3 sex offenders, or Level 2 sex offenders where the victim was a child. This information was confirmed using the Public Registry of Sex Offenders, and those that did not meet the above criteria were removed from the data. In addition, Level 2 sex offenders were removed from the data if the victim's age was not verifiable.

INVESTIGATION HIGHLIGHTS

The need to educate children earlier has led to the expansion of pre-K throughout the state. Currently, there are over 1,850 pre-K programs in New York City. The IDC's investigation determined that 93 sex offenders are living within 1,000 feet of a pre-K program. These violations encompass those that are currently living within 1,000 feet of multiple pre-K facilities. Below is a highlighted sample of these violations.

Examples of Sex Offenders Residing Within 1,000 ft. of a Pre-K Program

Name	Address	Victim, Age	Crime	Pre-K	Distance from the Pre-K
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Bronx

William Ackley	1265 Fulton Ave. Bronx, NY 10456	Male, 10	Sodomy	Fulton Avenue Day Care	686 ft.
Richard Garcia	1133 Saint Lawrence Ave 2 Bronx, NY 10472	Female, 15	Rape – 3 rd degree	Bronxdale Nursey	724 ft.
James Ogata	4113 Wickham Ave Bronx, NY 10466	Female, 4	Course of sexual conduct against a child – 1 st degree	Rainbow Rhymes Learning Center	667 ft

Brooklyn

Omar Husein	425 50th St. Brooklyn, NY 11220	Female, 8	Sexual abuse – 1 st degree	St. Andrew’s Community Day Care	166 ft.
Joel Fisher	145 East 96 St. Brooklyn, NY 11212	Female, 13	Sexual misconduct – engage in oral/anal sexual conduct without consent	Traditional Day Care Center	389 ft.
Arthur Grossman	1914 Avenue I BSMT Brooklyn, NY 11230	Male, 8; Male, 7; Male, 5; Male, 4	Sexual abuse – 1 st degree	Masores Bais Yaakov	357 ft.

Manhattan

Guy Stewart	573 West 183rd St. Apt. 1C New York, NY 10033	Female, 16	Rape – 3 rd degree	Washington Heights Expeditionary Learning School	588 ft.
Hector Vera	137 West 145 th St. #43 New York, NY 10039	Female, 12	Attempted criminal sex act – 2 nd degree	Seventh Avenue Center for Family Services	419 ft.

Queens

Jesus Chavez	215-33 112 Ave BSMT Queens Village, NY 11429	Female, 9	Sexual Abuse – 1 st degree	Nurturing Center Inc.	285 ft.
Keith Respass	198-12 Linden Boulevard 2A	Female, 7	Rape – 1 st degree; Sexual abuse – 1 st degree;	Sunshine Learning Center, Inc.	683 ft.

	Saint Albans, NY 11412		Incest		
Anthony Phillips	39-26 65 th St. Woodside, New York 11377	Female, 11; Female, 9; Male, 7	Sexual exploitation of a minor	ABC Kiddieland, Inc.	534 ft.

Staten Island

Modesto Reyes	232 Port Richmond Ave 2R Staten Island, New York 10302	Female, 10	Attempted course of sexual conduct against child – 2 nd degree	United Cerebral Palsy of New York City, Inc.	533 ft.
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Many pre-K programs choose to co-locate with traditional elementary schools. As stated above, the current law and judicial interpretation prohibits certain sex offenders from residing within 1,000 feet of a school. As a result, the investigation found numerous instances where sex offenders were illegally living within the 1,000 feet limit of a school, with a total of 60 sex offenders living within this 1,000 foot limit. Below is a highlighted sample of those currently living illegally near schools.

Examples of Sex Offenders Residing Within 1,000 ft. of a School

Name	Address	Victim, Age	Crime	School	Distance from the School
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Bronx

Charles Grant	1160 Teller Ave 927A Bronx, New York 10456	Female, 10	Rape – 1 st Degree	P.S. 53 Basheer Quisim	584 ft.
Colin Bullens	4059 Monticello Ave 1 st Fl. Bronx, NY 10466	Female, 13	Criminal sex act – 2 nd degree	P.S. 68 Bronx	469 ft.
Abraham Ulloa	260 E 176th St, BSMT Bronx, NY 10457	Female, 13	Rape – 2 nd degree	P.S. 28 Mount Hope	434 ft.

Brooklyn

Brian Maldonado	256 Pacific St Apt 12 Brooklyn NY 11201	Female, 12	Criminal sexual act – 3 rd degree	P.S. 261 Philip Livingston	690 ft.
Angel Burgos	368 Van Brunt St 8 Brooklyn, New York 11231	Female, 13	Criminal sex act – 2 nd degree	P.S. 15 Patrick F. Daly	512 ft.
Glynn Charles	589 Bristol St. Apt. 1 Brooklyn, NY 11212	Female, 10	Sexual abuse – 1 st degree	P.S. 165 Ida Posner	879 ft.

Manhattan

Jose Bonilla	2 Haven Plaza 10D, New York, NY 10009	Female, 5	Sexual abuse – 1 st degree	P.S. 34 Franklin D. Roosevelt	331 ft.
Jaquan Johnson	408 Manhattan Ave Apt 6D New York, NY 10026	Female, 13	Rape – 2 nd degree	P.S. 180 Hugo Newman	741 ft.
Jose Diaz	310 East 4th St. Apt 2A New York, NY 10009	Female, 14	Rape – 2 nd degree	P.S. 15 Roberto Clemente	666 ft.

Queens

William Ferebee	117-12 144 Street 2nd Fl Jamaica, NY 11436	Female, 10	Attempted Sexual Abuse – 1 st degree	P.S. 123	728 ft.
Wilbert Cortez	62-54 97th Place 4K	Male, 6 Male, 7	Sexual abuse – 1 st degree	P.S. 206 Horace Harding	906 ft.

	Rego Park, New York 11374	Male, 7 Male, 10			
Giovanni Vilca	115-06 202 Street BSMT St Albans, New York 11412	Female, 12	Course of sexual conduct – 2 nd degree	P.S. 136 Roy Wilkins	230 ft.

Staten Island

Anthony Bowden	859 Post Ave Staten Island, New York 10310	Female, 14	Attempted criminal sex act – 2 nd degree	P.S. 19 The Curtis School	520 ft.
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LEGISLATIVE SOLUTION

The above findings, when compared to the previous investigation, make it abundantly clear that the number of sex offenders living within 1,000 feet of pre-Ks is on the rise. It is more important than ever to enact S1787/A2605, sponsored by Senator Klein and Assemblyman Sepulveda. This bill would expand the 1,000-foot prohibition to include pre-kindergarten and kindergarten facilities, thereby prohibiting sex offenders from living within 1,000 feet of such facilities.

This legislation is necessary in order to close the ‘school grounds’ loophole and ensure the safety of our children. Without it, sex offenders can and will continue to live within steps of a pre-K or kindergarten facility with no consequence. The 1,000-foot limitation, enacted under SORA, was intended to safeguard our children while at school. This legislation will ensure that continues.

This investigation also found a number of sex offenders illegally living within 1,000 feet of a public or private elementary, parochial, intermediate, junior high, vocational, or high school. This finding is alarming, given the current law. Such an oversight is unacceptable, and further puts our children at risk. The State of New York must ensure that it is doing all it can to ensure that the current restrictions are enforced with uniformity and the same level of assessment. Senator Avella’s bill, S.1271, would require uniform standards be place when measuring the distance between a sex offender’s home and nearby schools. This practice clarifies the current prohibition and ensures that the 1,000 foot distance is properly determined and invariable when assessing the distance between a sex offender’s residence and local schools.

CONCLUSION

New York State strives to protect the safety and welfare of its children. In pursuing this goal, New York has enacted SORA to protect the public and children from sexual predators. As part of this act, the 1,000-foot limitation that prohibits sex offenders from knowingly entering schools was

enacted, and later interpreted to impose a residency restriction. Although laudable, the law contains an unacceptable oversight in its failure to apply the 1,000-foot restriction to pre-kindergarten and kindergarten programs. In the above investigation, the IDC found an overwhelming number of sex offenders living within 1,000 feet of a pre-K or kindergarten facility. The investigation also found a number of sex offenders illegally living within 1,000 feet of a school, prohibited under current law.

Senator Klein's bill S.1787 corrects the above oversight by including pre-kindergarten and kindergarten facilities within the current 1,000-foot limitation. This legislation will strengthen the current law to ensure that our children will be safe from predatory conduct while at school, regardless of whether our child is a pre-K student, kindergartener, or a child in grades one through twelve. Senator Avella's bill S.1271 clarifies the current law to require uniform standards be enacted to ensure compliance with the 1,000 foot restriction. This legislation addresses the concern regarding how distance between a sex offender's residence and school is measured and whether such assessment is the same throughout the state. The IDC believes enacting these pieces of legislation is of utmost importance and calls on the Assembly to do the same.