

Clerk Item 232-09 – Amendment In the Nature of a Substitution

Introduced by Legislators Scannell and Denenberg

Co-sponsored by Presiding Officer Yatauro, Minority Leader Schmitt and Legislators Abrahams, Becker, Bosworth, Ciotti, Corbin, Dunne, Ford, Gonsalves, Jacobs, Mangano, Mejias, Muscarella, Nicolello, Toback and Wink

LOCAL LAW NO. 25-2009

A LOCAL LAW to amend the Nassau County Administrative Code in relation to monitoring registered sex offenders

Passed the Nassau County Legislature on October 19, 2009

Voting: ayes: 19, nays: 0, abstained: 0

Became a law on October 26, 2009 with the approval of the County Executive.

BE IT ENACTED by the County Legislature of the County of Nassau, as follows:

Section 1. Title K of chapter VIII of the Nassau County Administrative Code, as established by Local Law No. 4- 2005 shall be known as “Dissemination of Information Concerning, Residency Restrictions and the Monitoring of Sex Offenders”.

Section 2. §§ 8-130.2 and 8-130.9 of such title, as added by Local Law No. 4-2006, are repealed.

Section 3. §§ 8-130.1, 8-130.5, 8-130.6 and 8-130.7 of title K of chapter VIII of the Nassau County Administrative Code, as added by Local Law No. 4-2005, and amended by Local Law 4-2006, are amended to read as follows:

Section	8-130.1	Legislative Intent.
	8-130.2	Definitions.
	8-130.3	Mandatory dissemination of information.
	8-130.4	Promulgation of rules and procedures.
	8-130.5	Database of entities with vulnerable populations.
	8-130.6	Residency restrictions.
	8-130.7-a	Notification.
	8-130.7-b	Hotel, Motel and Shelter Notification.
	8-130.8	Exemption.
	8-130.9	Location Monitoring.
	8-130.10	County Not Liable.
	8-130.11	Penalties.
	8-130.12	Separability.

FORM APPROVED

*El Guipaty*  
Interim MAJORITY COUNSEL

§ 8-130.1 Legislative intent. This legislature finds that sex offenders are prone to recidivism. The community has an interest in protecting vulnerable populations from sex offenders who may relapse into criminal behavior. This public interest can best be served by disseminating information about such offenders to groups or entities that are made up of children, seniors, women or others who are vulnerable to victimization by sex offenders. The New York State Sex Offender Registration Act ("SORA") provides for the registration of convicted sex offenders and the release of certain information about them by local law enforcement agencies. While this law is an invaluable tool for informing the public about the presence of certain convicted sex offenders in their communities, this legislature finds that it can be made more effective by requiring the county's law enforcement agencies to notify entities with vulnerable populations about such offenders residing in their vicinity. This local law is therefore necessary to ensure the widest possible dissemination of information about level 2 and level 3 sex offenders consistent with SORA.

The legislature further finds that sex offenders present a particular danger when they live in close proximity to schools and parks - areas where children learn, play, and congregate. The county's compelling governmental interest in ensuring that children do not become victims of sex crimes is best served by limiting the occasions for contact between children, especially those that were previously victimized, and registered sex offenders and the residency restriction contained in this law is therefore necessary to protect a vulnerable population from sex offenders.

This legislature further finds and determines that in order to protect the residents of Nassau County, particularly children, sex offenders who pose a high risk of repeating an offense should be electronically monitored.

§ 8-130.5 Database of entities with vulnerable population.

(a) The Commissioner shall establish and maintain a database categorizing the County's vulnerable populations in relation to the nature of the offenses for which a sex offender must register under section 168 et seq. of the correction law, as well as the local entities in the County having or providing services to such categories of vulnerable populations, which may include, but shall not be limited to, public and private schools, child day care centers, senior care centers, senior community centers, camps, organizations which serve primarily children, women or vulnerable adults, and community groups located in an area where a sex offender resides, expects to reside or is regularly found. In addition, upon written request of an entity in the form and manner established by the Commissioner, there shall be included in such database any entity which upon a review by the Commissioner, in his or her sole discretion, is determined to be an entity with a vulnerable population.

(b) All contracts with the County providing for child care services in a family day care home or group family day care home, as such terms are defined in section three hundred ninety of the New York State Social Services Law and section one thousand seven of the County Government Law shall be subject to the condition that said providers register with the Commissioner in accordance with § 8-130.5(a) of this Title. This requirement to register with the Commissioner for sex offender notifications shall be incorporated in contracts for family day care or group family day care services entered into with the County and any violation thereof shall be a material breach of the contract sufficient to cause termination.

§ 8-130.6 Residency restrictions and conditions.

(a) It shall be unlawful for any registered sex offender to establish a residence or domicile where the property line of such residence or domicile lies within:

- 1) one thousand feet of the property line of a school; or
- 2) five hundred feet of the property line of a park; or
- 3) knowingly establishes a residence or domicile where the property line of such residence or domicile lies within two thousand feet of the property line of the residence or the workplace of such sex offender's victim(s), unless otherwise ordered by a court having jurisdiction over said offender.

(b) A registered Level 2 or Level 3 offender shall provide oral notification that he or she is a registered sex offender to the proprietor of any hotel, motel or shelter within the County at the time said offender initially establishes a residence or domicile at said hotel, motel or shelter.

§ 8-130.7-a Notification.

(a) Each registered sex offender residing within the County shall be notified in writing by the Commissioner of the prohibitions applicable to such offender under this title.

(b) Any registered sex offender who has established a residence or domicile prohibited by this title shall relocate such residence or domicile within sixty days following receipt of written notice pursuant to subdivision a of this section. Failure to timely re-locate such residence or domicile to one that is permitted under this title or to notify the proprietor of any hotel, motel or shelter shall constitute a violation of section 8-130.6.

§ 8-130.7-b Hotel, Motel and Shelter Notification.

Any Level 2 or Level 3 offender whose residence or domicile is a hotel, motel or shelter contracting with the County to house persons, such hotel, motel or shelter shall be required to conspicuously post in a prominent and visible area behind the registration desk of a hotel or motel and the entrance way of a shelter a sign, in at least thirty-six point print, informing potential customers or clients that there is one or more registered sex offenders staying on the premises. If a customer is making a reservation via the internet or by telephone at such a hotel or motel, it shall be the duty of the hotel or motel to inform the customer at such time that there is one or more registered sex offenders staying on the premises.

Section 4. § 8-130 of title K of chapter VIII of the Nassau County Administrative Code, as added by Local Law No. 4-2005, and amended by Local Law 4-2006, is amended to add new §§ 8-130.2, 8-130.9 and 8-130.11, to read as follows:

§ 8-130.2 Definitions. When used in this title:

“Commissioner” shall mean the commissioner of the Nassau County Police Department.

“County” shall mean the county of Nassau.

“Domicile” shall mean a person’s true, fixed, permanent home or fixed place of habitation.

“Entity with a vulnerable population” shall mean any community group, organization, association, or other organized collection of people whose members are potential targets of a sex offender.

“Level 1 offender” shall mean a sex offender who received a level one designation pursuant to Article 6-C of the New York State Correction Law because the risk of repeat offense was determined to be low.

“Level 2 offender” shall mean a sex offender who received a level two designation pursuant to Article 6-C of the New York State Correction Law because the risk of repeat offense was determined to be moderate.

“Level 3 offender” shall mean a sex offender who received a level three designation pursuant to Article 6-C of the New York State Correction Law because the risk of repeat offense was determined to be high.

“Park” shall mean any park, preserve, playground, athletic field, golf course, swimming pool, or beach operated by the county, or by the state of New York or any town, village or city within the county.

“Probation Department” shall mean the Nassau County Department of Probation.

“Registered sex offender” shall mean a person who has been classified as a Level 1, Level 2 or Level 3 sex offender and who is required to register with the New York state division of criminal justice services, or other agency having jurisdiction, pursuant to the provisions of article 6-C of the New York State Correction Law, whether or not the sex offender has actually registered in compliance with the law or order of a court of competent jurisdiction.

“Residence” shall mean the place where a person sleeps, which may include more than one location, and may be mobile or transitory.

“School” shall mean a public, private or parochial elementary or secondary school, including a middle school, junior high school, high school or Board of Cooperative Educational Services (BOCES) school but not including a college, a university, a privately owned trade/vocational school or a home school.

“SORA” shall mean the New York State Sex Offender Registration Act.

#### § 8-130.9 Location Monitoring.

(a) When a sex offender is being monitored by the Probation Department and has been designated as a Level 3 offender the Probation Department shall petition the court having jurisdiction over said offender to modify and enhance the conditions of probation to include that the Level 3 offender be monitored by the Probation Department, with an active electronic monitoring device for a period of time as determined by said court, except where:

1) upon a showing of good cause to the Director of Probation, such Director deems such a petition to the court to be unnecessary;

2) the Level 3 offender has been previously ordered to be monitored and is currently being monitored by such a device; or

3) the Level 3 offender is committed to the custody of the State of New York.

(b) When a sex offender is being monitored by the Probation Department and has been designated as a Level 1 offender or Level 2 offender, the Probation Department shall, at its discretion petition the court having jurisdiction over said offender to modify and enhance the conditions of probation to include that the Level 1 offender or Level 2 offender be monitored by the Probation Department with an active electronic monitoring device for a period of time as determined by said court.

(c) For purposes of this section, "active electronic monitoring device" means a mechanism utilized by the Probation Department in conjunction with a system that actively monitors and identifies a person's location and that timely reports or records the person's presence near or within a crime scene or prohibited area or the person's departure from a specified geographic location.

(d) The Probation Department shall establish a system for the purpose of monitoring probationers required to wear the electronic monitoring device and shall promulgate regulations regarding the imposition and collection of fees for said electronic monitoring device consistent with Title 20 of the Miscellaneous Laws of Nassau County.

The electronic monitoring device fee shall be set by the Probation Department and shall be paid for by the probationer unless there is a further determination by the Probation Department that the probationer is financially incapable of paying the fee.

#### § 8-130.11 Penalties

(a) Any intentional violation of section 8-130.6 after notification pursuant to section 8-130.7-a shall be a class A Misdemeanor punishable by a fine not exceeding one thousand dollars; or imprisonment for a term not exceeding one year; or both such fine and imprisonment.

(b) Any violation of section 8-130.7-b shall be punishable by a fine not exceeding one thousand dollars. Each day or part of day in which a violation continues shall constitute a separate violation.

(c) Any registered sex offender monitored pursuant to section 8-130.9 of this title who intentionally removes, tampers with, defaces, alters, damages, or destroys an active electronic monitoring device is guilty of a class A Misdemeanor punishable by a fine not exceeding one thousand dollars; or imprisonment for a term not exceeding one year; or both such fine and imprisonment; and shall be responsible for restitution of the electronic monitoring device.

#### § 8-130.12 Separability.

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 5. SEQRA Determination. This legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this action is an unlisted action under the provisions of Title 6 NYCRR Part 617, and that based on an evaluation of the environmental criteria set forth in §617.7(c) that are considered to be indicia of significant adverse environmental impacts, along with the recommendation of the Nassau County Planning Commission acting in its advisory capacity to the legislature, that such action will not have significant adverse impacts on the environment, and that no additional environmental review or action is necessary.

Section 6. Effective Date. This Local Law shall take effect one hundred twenty days (120) after it shall have become a law.

**APPROVED**

*Marilyn Gottlieb*  
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**County Executive**

DATE 10/26/09