

2593

2011-2012 Regular Sessions

I N S E N A T E

January 26, 2011

Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to disclosure of sexual offender information related to a patient or client, and to amend the correction law, in relation to inclusion of certain persons within the provisions of the sex offender registration act who have had pleas accepted, or who have had verdicts entered with respect to them, of not responsible by reason of mental disease or defect

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph 9 of subdivision (c) of section 33.13 of the
2 mental hygiene law is amended by adding a new subparagraph (ix) to read
3 as follows:
4 (IX) APPROPRIATE PERSONS AND ENTITIES PURSUANT TO ARTICLE SIX-C OF THE
5 CORRECTION LAW, WHEN DISCLOSURE IS LIMITED TO SEXUAL OFFENDER REGISTRA-
6 TION INFORMATION NECESSARY TO ENSURE THE WELFARE AND SAFETY OF OTHERS.
7 S 2. Subdivision 1 of section 168-a of the correction law, as added by
8 chapter 192 of the laws of 1995, is amended to read as follows:
9 1. "Sex offender" includes any person who is convicted of any of the
10 offenses set forth in subdivision two or three of this section.
11 Convictions that result from or are connected with the same act, or
12 result from offenses committed at the same time, shall be counted for
13 the purpose of this article as one conviction. Any conviction set aside
14 pursuant to law is not a conviction for purposes of this article. FOR
15 PURPOSES OF THIS ARTICLE, THE TERM "SEX OFFENDER" SHALL BE DEEMED TO
16 INCLUDE A PERSON WHO HAS HAD A CRIMINAL ACTION COMMENCED AGAINST THEM BY
17 THE FILING OF AN ACCUSATORY INSTRUMENT, A SUPERIOR COURT INFORMATION, OR
18 INDICTMENT WHICH INCLUDES A CHARGE FOR THE COMMISSION OF ANY OF THE
19 OFFENSES SET FORTH IN SUBDIVISION TWO OR THREE OF THIS SECTION AND, WITH
20 RESPECT TO SUCH OFFENSE OR OFFENSES, HAS ENTERED A PLEA, WHICH IS

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 ACCEPTED, OR HAS HAD A VERDICT ENTERED AGAINST SUCH PERSON, OF NOT
2 RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT. ANY SUCH PLEA OR
3 VERDICT WITH RESPECT TO SUCH OFFENSE OR OFFENSES SHALL BE CONSIDERED A
4 CONVICTION OF ALL OF THE OFFENSES SO CHARGED, OR THAT REMAIN AS CHARGED
5 OR OTHERWISE EXIST AT THE TIME OF THE ENTRY OF SUCH PLEA OR VERDICT, AS
6 MAY BE APPLICABLE, THAT FALL WITHIN THE DEFINITION OF SEX OFFENSE OR
7 SEXUALLY VIOLENT OFFENSE AS SET FORTH IN SUBDIVISION TWO OR THREE OF
8 THIS SECTION AND SHALL BE DEEMED TO BE A CONVICTION FOR ALL OTHER
9 PURPOSES OF THIS ARTICLE.

10 S 3. Paragraph (c) of subdivision 1 of section 168-b of the correction
11 law, as amended by chapter 11 of the laws of 2002, is amended to read as
12 follows:

13 (c) A description of the offense for which the sex offender was
14 convicted, the date of conviction and the sentence imposed. IN THE EVENT
15 THAT SUCH CONVICTION IS DEEMED TO EXIST FROM THE ENTRY AND ACCEPTANCE OF
16 A PLEA, OR THE ENTRY OF A VERDICT, OF NOT RESPONSIBLE BY REASON OF
17 MENTAL DISEASE OR DEFECT AS DESCRIBED IN SUBDIVISION ONE OF SECTION ONE
18 HUNDRED SIXTY-EIGHT-A OF THIS ARTICLE, THE DATE OF CONVICTION SHALL BE
19 DEEMED TO BE THE DATE THE PLEA WAS ACCEPTED BY THE COURT, OR THE DATE A
20 VERDICT WAS ENTERED, OF NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR
21 DEFECT. IN LIEU OF A DESCRIPTION OF THE SENTENCE IMPOSED WHERE A
22 CONVICTION IS DEEMED TO EXIST AS A RESULT OF SUCH PLEA OR VERDICT, THERE
23 SHALL BE ENTERED A DESCRIPTION OF ALL PROCEEDINGS THAT HAVE OCCURRED
24 PURSUANT TO THE PROVISIONS OF ARTICLE THREE HUNDRED THIRTY OF THE CRIMI-
25 NAL PROCEDURE LAW.

26 S 4. Section 168-d of the correction law, as amended by chapter 11 of
27 the laws of 2002, paragraph (a) of subdivision 1 as amended by chapter
28 69 of the laws of 2003, paragraph (b) of subdivision 1 as amended by
29 chapter 74 of the laws of 2007, and subdivision 2 as amended and subdivi-
30 sion 4 as added by chapter 684 of the laws of 2005, is amended to read
31 as follows:

32 S 168-d. Duties of the court. 1. (a) Except as provided in paragraphs
33 (b) and (c) of this subdivision, upon conviction of any of the offenses
34 set forth in subdivision two or three of section one hundred sixty-
35 eight-a of this article the court shall certify that the person is a sex
36 offender and shall include the certification in the order of commitment,
37 if any, and judgment of conviction OR IN AN ORDER ISSUED PURSUANT TO THE
38 PROVISIONS OF ARTICLE THREE HUNDRED THIRTY OF THE CRIMINAL PROCEDURE
39 LAW, except as provided in paragraph (e) of subdivision two of section
40 one hundred sixty-eight-a of this article. The court shall also advise
41 the sex offender of his or her duties under this article. Failure to
42 include the certification in the order of commitment [or], the judgment
43 of conviction, OR IN AN ORDER ISSUED PURSUANT TO THE PROVISIONS OF ARTI-
44 CLE THREE HUNDRED THIRTY OF THE CRIMINAL PROCEDURE LAW shall not relieve
45 a sex offender of the obligations imposed by this article.

46 (b) Where a defendant stands convicted of an offense defined in para-
47 graph (b) of subdivision two of section one hundred sixty-eight-a of
48 this article or where the defendant was convicted of patronizing a pros-
49 titute in the third degree under section 230.04 of the penal law and the
50 defendant controverts an allegation that the victim of such offense was
51 less than eighteen years of age or, in the case of a conviction under
52 section 230.04 of the penal law, less than seventeen years of age, the
53 court, without a jury, shall, prior to sentencing OR ISSUING AN ORDER
54 PURSUANT TO THE PROVISIONS OF ARTICLE THREE HUNDRED THIRTY OF THE CRIMI-
55 NAL PROCEDURE LAW, conduct a hearing, and the people may prove by clear
56 and convincing evidence that the victim was less than eighteen years of

1 age or less than seventeen years of age, as applicable, by any evidence
2 admissible under the rules applicable to a trial of the issue of guilt.
3 The court in addition to such admissible evidence may also consider
4 reliable hearsay evidence submitted by either party provided that it is
5 relevant to the determination of the age of the victim. Facts concerning
6 the age of the victim proven at trial or ascertained at the time of
7 entry of a plea of guilty, OR FACTS CONCERNING THE AGE OF THE VICTIM
8 ASCERTAINED AT THE TIME A PLEA IS ENTERED, WHICH IS ACCEPTED BY THE
9 COURT, OR AT A TRIAL WHERE VERDICT IS ENTERED AGAINST SUCH PERSON, OF
10 NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT, shall be deemed
11 established by clear and convincing evidence and shall not be reliti-
12 gated. At the conclusion of the hearing, or if the defendant does not
13 controvert an allegation that the victim of the offense was less than
14 eighteen years of age or less than seventeen years of age, as applica-
15 ble, the court must make a finding and enter an order setting forth the
16 age of the victim. If the court finds that the victim of such offense
17 was under eighteen years of age or under seventeen years of age, as
18 applicable, the court shall certify the defendant as a sex offender, the
19 provisions of paragraph (a) of this subdivision shall apply and the
20 defendant shall register with the division in accordance with the
21 provisions of this article.

22 (c) Where a defendant stands convicted of an offense defined in para-
23 graph (c) of subdivision two of section one hundred sixty-eight-a of
24 this article and the defendant controverts an allegation that the
25 defendant was previously convicted of a sex offense or a sexually
26 violent offense defined in this article or has previously been convicted
27 of or convicted for an attempt to commit any of the provisions of
28 section 130.52 or 130.55 of the penal law, the court, without a jury,
29 shall, prior to sentencing OR ISSUING AN ORDER PURSUANT TO THE
30 PROVISIONS OF ARTICLE THREE HUNDRED THIRTY OF THE CRIMINAL PROCEDURE
31 LAW, conduct a hearing, and the people may prove by clear and convincing
32 evidence that the defendant was previously convicted of a sex offense or
33 a sexually violent offense defined in this article or has previously
34 been convicted of or convicted for an attempt to commit any of the
35 provisions of section 130.52 or 130.55 of the penal law, by any evidence
36 admissible under the rules applicable to a trial of the issue of guilt.
37 The court in addition to such admissible evidence may also consider
38 reliable hearsay evidence submitted by either party provided that it is
39 relevant to the determination of whether the defendant was previously
40 convicted of a sex offense or a sexually violent offense defined in this
41 article or has previously been convicted of or convicted for an attempt
42 to commit any of the provisions of section 130.52 or 130.55 of the penal
43 law. At the conclusion of the hearing, or if the defendant does not
44 controvert an allegation that the defendant was previously convicted of
45 a sex offense or a sexually violent offense defined in this article or
46 has previously been convicted of or convicted for an attempt to commit
47 any of the provisions of section 130.52 or 130.55 of the penal law, the
48 court must make a finding and enter an order determining whether the
49 defendant was previously convicted of a sex offense or a sexually
50 violent offense defined in this article or has previously been convicted
51 of or convicted for an attempt to commit any of the provisions of
52 section 130.52 or 130.55 of the penal law. If the court finds that the
53 defendant has such a previous conviction, the court shall certify the
54 defendant as a sex offender, the provisions of paragraph (a) of this
55 subdivision shall apply and the defendant shall register with the divi-
56 sion in accordance with the provisions of this article.

1 2. Any sex offender, who is released on probation or discharged upon
2 payment of a fine, conditional discharge or unconditional discharge OR
3 IS RELEASED OR DISCHARGED PURSUANT TO THE PROVISIONS OF ARTICLE THREE
4 HUNDRED THIRTY OF THE CRIMINAL PROCEDURE LAW shall, prior to such
5 release or discharge, be informed of his or her duty to register under
6 this article by the court in which he or she was convicted OR BY THE
7 COURT ISSUING AN ORDER PURSUANT TO THE PROVISIONS OF ARTICLE THREE
8 HUNDRED THIRTY OF THE CRIMINAL PROCEDURE LAW. At the time sentence is
9 imposed OR AT THE TIME THAT THE COURT ISSUES AN ORDER PURSUANT TO THE
10 PROVISIONS OF ARTICLE THREE HUNDRED THIRTY OF THE CRIMINAL PROCEDURE
11 LAW, such sex offender shall register with the division on a form
12 prepared by the division. The court shall require the sex offender to
13 read and sign such form and to complete the registration portion of such
14 form. The court shall on such form obtain the address where the sex
15 offender expects to reside upon his or her release, and the name and
16 address of any institution of higher education he or she expects to be
17 employed by, enrolled in, attending or employed, whether for compen-
18 sation or not, and whether he or she expects to reside in a facility
19 owned or operated by such an institution, AND, IF APPLICABLE, A COPY OF
20 THE ORDER ISSUED, AND DESCRIPTION OF ALL PROCEEDINGS THAT HAVE OCCURRED,
21 PURSUANT TO THE PROVISIONS OF ARTICLE THREE HUNDRED THIRTY OF THE CRIMI-
22 NAL PROCEDURE LAW and shall report such information to the division. The
23 court shall give one copy of the form to the sex offender and shall send
24 two copies to the division which shall forward the information to the
25 law enforcement agencies having jurisdiction. The court shall also noti-
26 fy the district attorney and the sex offender of the date of the deter-
27 mination proceeding to be held pursuant to subdivision three of this
28 section, which shall be held at least forty-five days after such notice
29 is given. This notice shall include the following statement or a
30 substantially similar statement: "This proceeding is being held to
31 determine whether you will be classified as a level 3 offender (risk of
32 repeat offense is high), a level 2 offender (risk of repeat offense is
33 moderate), or a level 1 offender (risk of repeat offense is low), or
34 whether you will be designated as a sexual predator, a sexually violent
35 offender or a predicate sex offender, which will determine how long you
36 must register as a sex offender and how much information can be provided
37 to the public concerning your registration. If you fail to appear at
38 this proceeding, without sufficient excuse, it shall be held in your
39 absence. Failure to appear may result in a longer period of registration
40 or a higher level of community notification because you are not present
41 to offer evidence or contest evidence offered by the district attorney."
42 The court shall also advise the sex offender that he or she has a right
43 to a hearing prior to the court's determination, that he or she has the
44 right to be represented by counsel at the hearing and that counsel will
45 be appointed if he or she is financially unable to retain counsel. If
46 the sex offender applies for assignment of counsel to represent him or
47 her at the hearing and counsel was not previously assigned to represent
48 the sex offender in the underlying criminal action, the court shall
49 determine whether the offender is financially unable to retain counsel.
50 If such a finding is made, the court shall assign counsel to represent
51 the sex offender pursuant to article eighteen-B of the county law. Where
52 the court orders a sex offender released on probation, such order must
53 include a provision requiring that he or she comply with the require-
54 ments of this article. Where such sex offender violates such provision,
55 probation may be immediately revoked in the manner provided by article
56 four hundred ten of the criminal procedure law.

1 3. For sex offenders released on probation or discharged upon payment
2 of a fine, conditional discharge or unconditional discharge, OR RELEASED
3 OR DISCHARGED PURSUANT TO THE PROVISIONS OF ARTICLE THREE HUNDRED THIRTY
4 OF THE CRIMINAL PROCEDURE LAW, it shall be the duty of the court apply-
5 ing the guidelines established in subdivision five of section one
6 hundred sixty-eight-1 of this article to determine the level of notifi-
7 cation pursuant to subdivision six of section one hundred sixty-eight-1
8 of this article and whether such sex offender shall be designated a
9 sexual predator, sexually violent offender, or predicate sex offender as
10 defined in subdivision seven of section one hundred sixty-eight-a of
11 this article. At least fifteen days prior to the determination proceed-
12 ing, the district attorney shall provide to the court and the sex offen-
13 der a written statement setting forth the determinations sought by the
14 district attorney together with the reasons for seeking such determi-
15 nations. The court shall allow the sex offender to appear and be heard.
16 The state shall appear by the district attorney, or his or her designee,
17 who shall bear the burden of proving the facts supporting the determi-
18 nations sought by clear and convincing evidence. Where there is a
19 dispute between the parties concerning the determinations, the court
20 shall adjourn the hearing as necessary to permit the sex offender or the
21 district attorney to obtain materials relevant to the determinations
22 from any state or local facility, hospital, institution, office, agency,
23 department or division. Such materials may be obtained by subpoena if
24 not voluntarily provided to the requesting party. In making the determi-
25 nations, the court shall review any victim's statement and any relevant
26 materials and evidence submitted by the sex offender and the district
27 attorney and the court may consider reliable hearsay evidence submitted
28 by either party provided that it is relevant to the determinations.
29 Facts previously proven at trial or elicited at the time of entry of a
30 plea of guilty OR PREVIOUSLY ELICITED AT THE TIME A PLEA IS ENTERED,
31 WHICH IS ACCEPTED BY THE COURT, OR ARE PROVEN AT A TRIAL WHERE A VERDICT
32 HAS BEEN ENTERED, OF NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR
33 DEFECT shall be deemed established by clear and convincing evidence and
34 shall not be relitigated. The court shall render an order setting forth
35 its determinations and the findings of fact and conclusions of law on
36 which the determinations are based. A copy of the order shall be submit-
37 ted by the court to the division. Upon application of either party, the
38 court shall seal any portion of the court file or record which contains
39 material that is confidential under any state or federal statute. Either
40 party may appeal as of right from the order pursuant to the provisions
41 of articles fifty-five, fifty-six and fifty-seven of the civil practice
42 law and rules. Where counsel has been assigned to represent the sex
43 offender upon the ground that the sex offender is financially unable to
44 retain counsel, that assignment shall be continued throughout the
45 pendency of the appeal, and the person may appeal as a poor person
46 pursuant to article eighteen-B of the county law.

47 4. If a sex offender, having been given notice, including the time and
48 place of the determination proceeding in accordance with this section,
49 fails to appear at this proceeding, without sufficient excuse, the court
50 shall conduct the hearing and make the determinations in the manner set
51 forth in subdivision three of this section.

52 S 5. Section 29.16 of the mental hygiene law, as amended by chapter
53 465 of the laws of 1992, is amended to read as follows:
54 S 29.16 Discharge OR RELEASE; certain cases.

55 (A) The director of a facility shall, with respect to any patient
56 admitted to such facility pursuant to section five hundred nine of the

1 executive law or 353.4 of the family court act and article nine or
2 fifteen of this chapter, give immediate written notice to the [director
3 of the division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES and to
4 the mental hygiene legal service when any such patient leaves the facil-
5 ity without the consent of its director. Such patient shall not be
6 discharged so long as there is a valid order of the family court placing
7 such person with the [division for youth] OFFICE OF CHILDREN AND FAMILY
8 SERVICES, except in accordance with the provisions of section five
9 hundred nine of the executive law or section 353.4 of the family court
10 act.

11 (B) NOTWITHSTANDING ANY PROVISIONS OF LAW TO THE CONTRARY, PRIOR TO
12 THE DISCHARGE OR RELEASE, INCLUDING A COURT ORDERED RELEASE, FROM A
13 DEPARTMENT FACILITY OF A PATIENT WHO IS A SEX OFFENDER REQUIRED TO
14 REGISTER PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW, THE DIRECTOR
15 OF A FACILITY SHALL CONTACT THE DIVISION OF CRIMINAL JUSTICE SERVICES
16 (HEREIN THE "DIVISION") TO DETERMINE WHETHER OR NOT SUCH PATIENT HAS
17 REGISTERED A CHANGE OF ADDRESS PURSUANT TO THE PROVISIONS OF SUBDIVISION
18 FOUR OF SECTION ONE HUNDRED SIXTY-EIGHT-F OF THE CORRECTION LAW. IN THE
19 EVENT THAT THE DIRECTOR DETERMINES THAT SUCH PATIENT HAS FAILED TO
20 PROVIDE THE DIVISION WITH THE NOTIFICATION OF CHANGE OF ADDRESS WHICH
21 WILL PROVIDE THE DIVISION WITH THE PATIENT'S INTENDED NEW ADDRESS WHICH
22 WILL TAKE EFFECT UPON SUCH DISCHARGE OR RELEASE, THE DIRECTOR IMMEDIATE-
23 LY SHALL NOTIFY THE PATIENT AND THE MENTAL HYGIENE LEGAL SERVICE OF THE
24 REQUIREMENTS OF REGISTERING A CHANGE OF ADDRESS PURSUANT TO SUCH
25 PROVISIONS OF THE CORRECTION LAW. NOTWITHSTANDING THE PROVISIONS OF
26 SECTION ONE HUNDRED SIXTY-EIGHT-F OF THE CORRECTION LAW, THE DIRECTOR OF
27 A FACILITY IS AUTHORIZED TO DELAY THE IMPLEMENTATION OF THE DISCHARGE OR
28 RELEASE, INCLUDING A COURT ORDERED RELEASE, OF SUCH PATIENT FOR A PERIOD
29 OF UP TO TEN DAYS OR UNTIL THE DATE THAT SUCH PATIENT COMPLIES WITH THE
30 REGISTRATION REQUIREMENTS OF SUCH PROVISIONS OF THE CORRECTION LAW,
31 WHICHEVER OCCURS FIRST.

32 S 6. Section 29.17 of the mental hygiene law is amended to read as
33 follows:

34 S 29.17 Clothing and money to be furnished patients discharged or
35 released.

36 No patient shall be discharged or released from a department facility
37 without suitable clothing adapted to the season in which he OR SHE is
38 discharged or released; and if it cannot be otherwise obtained, the
39 facility shall upon the order of the director, or of the commissioner,
40 as the case may be, furnish the same, and money not exceeding fifty
41 dollars, to defray his OR HER expenses until he OR SHE can reach his OR
42 HER relatives or friends, or find employment to earn a subsistence. THE
43 FACILITY, UPON THE ORDER OF THE DIRECTOR, OR OF THE COMMISSIONER, AS THE
44 CASE MAY BE, SHALL FURNISH A PATIENT, WHO IS A SEX OFFENDER AND IS
45 REQUIRED TO REGISTER A CHANGE OF ADDRESS PURSUANT TO SUBDIVISION FOUR OF
46 SECTION ONE HUNDRED SIXTY-EIGHT-F OF THE CORRECTION LAW, WITH MONEY, IN
47 AN AMOUNT EQUAL TO THE STATUTORY AMOUNT CHARGED BY THE DIVISION OF CRIM-
48 INAL JUSTICE SERVICES TO DEFRAY THE EXPENSE OF REGISTERING HIS OR HER
49 CHANGE OF ADDRESS WITH THE DIVISION, AT OR PRIOR TO THE DATE OF SUCH
50 DISCHARGE OR RELEASE.

51 S 7. Paragraph a of subdivision 2 of section 168-b of the correction
52 law, as amended by chapter 645 of the laws of 2005, is amended to read
53 as follows:

54 a. The division is authorized to make the registry available to any
55 regional or national registry of sex offenders for the purpose of shar-
56 ing information OR TO THE COMMISSIONER OF MENTAL HEALTH OR THE COMMIS-

1 SIONER OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES. The divi-
2 sion shall accept files from any regional or national registry of sex
3 offenders and shall make such files available when requested pursuant to
4 the provisions of this article.
5 S 8. This act shall take effect on the one hundred eightieth day after
6 it shall have become a law.