

4821

2013-2014 Regular Sessions

I N   S E N A T E

April 25, 2013

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Introduced by Sen. GALLIVAN -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, in relation to risk-level recommendations under the sex offender registration act

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

1     Section 1. Subdivision 2 of section 168-d of the correction law, as  
2 amended by chapter 684 of the laws of 2005, is amended to read as  
3 follows:  
4     2. Any sex offender, who is released on probation or discharged upon  
5 payment of a fine, conditional discharge [or], unconditional discharge,  
6 A DEFINITE SENTENCE OF NINETY DAYS OR LESS OR A SENTENCE THAT WILL BE  
7 SATISFIED BY THE AMOUNT OF TIME ALREADY SERVED shall, prior to such  
8 release or discharge, be informed of his or her duty to register under  
9 this article by the court in which he or she was convicted. At the time  
10 sentence is imposed, such sex offender shall register with the division  
11 on a form prepared by the division. The court shall require the sex  
12 offender to read and sign such form and to complete the registration  
13 portion of such form. The court shall on such form obtain the address  
14 where the sex offender expects to reside upon his or her release, and  
15 the name and address of any institution of higher education he or she  
16 expects to be employed by, enrolled in, attending or employed, whether  
17 for compensation or not, and whether he or she expects to reside in a  
18 facility owned or operated by such an institution, and shall report such  
19 information to the division. The court shall give one copy of the form  
20 to the sex offender and shall send two copies to the division which  
21 shall forward the information to the law enforcement agencies having  
22 jurisdiction. The court shall also notify the district attorney and the  
23 sex offender of the date of the determination proceeding to be held  
24 pursuant to subdivision three of this section, which shall be held at

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

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1 least forty-five days after such notice is given. This notice shall  
2 include the following statement or a substantially similar statement:  
3 "This proceeding is being held to determine whether you will be classi-  
4 fied as a level 3 offender (risk of repeat offense is high), a level 2  
5 offender (risk of repeat offense is moderate), or a level 1 offender  
6 (risk of repeat offense is low), or whether you will be designated as a  
7 sexual predator, a sexually violent offender or a predicate sex offen-  
8 der, which will determine how long you must register as a sex offender  
9 and how much information can be provided to the public concerning your  
10 registration. If you fail to appear at this proceeding, without suffi-  
11 cient excuse, it shall be held in your absence. Failure to appear may  
12 result in a longer period of registration or a higher level of community  
13 notification because you are not present to offer evidence or contest  
14 evidence offered by the district attorney." The court shall also advise  
15 the sex offender that he or she has a right to a hearing prior to the  
16 court's determination, that he or she has the right to be represented by  
17 counsel at the hearing and that counsel will be appointed if he or she  
18 is financially unable to retain counsel. If the sex offender applies for  
19 assignment of counsel to represent him or her at the hearing and counsel  
20 was not previously assigned to represent the sex offender in the under-  
21 lying criminal action, the court shall determine whether the offender is  
22 financially unable to retain counsel. If such a finding is made, the  
23 court shall assign counsel to represent the sex offender pursuant to  
24 article eighteen-B of the county law. Where the court orders a sex  
25 offender released on probation, such order must include a provision  
26 requiring that he or she comply with the requirements of this article.  
27 Where such sex offender violates such provision, probation may be imme-  
28 diately revoked in the manner provided by article four hundred ten of  
29 the criminal procedure law.

30 S 2. Subdivision 3 of section 168-d of the correction law, as amended  
31 by chapter 11 of the laws of 2002, is amended to read as follows:

32 3. For sex offenders released on probation or discharged upon payment  
33 of a fine, conditional discharge [or], unconditional discharge, A DEFI-  
34 NITE SENTENCE OF NINETY DAYS OR LESS, OR A SENTENCE THAT WILL BE SATIS-  
35 FIED BY THE AMOUNT OF TIME ALREADY SERVED, it shall be the duty of the  
36 court applying the guidelines established in subdivision five of section  
37 one hundred sixty-eight-1 of this article to determine the level of  
38 notification pursuant to subdivision six of section one hundred sixty-  
39 eight-1 of this article and whether such sex offender shall be desig-  
40 nated a sexual predator, sexually violent offender, or predicate sex  
41 offender as defined in subdivision seven of section one hundred sixty-  
42 eight-a of this article. At least fifteen days prior to the determi-  
43 nation proceeding, the district attorney shall provide to the court and  
44 the sex offender a written statement setting forth the determinations  
45 sought by the district attorney together with the reasons for seeking  
46 such determinations. The court shall allow the sex offender to appear  
47 and be heard. The state shall appear by the district attorney, or his or  
48 her designee, who shall bear the burden of proving the facts supporting  
49 the determinations sought by clear and convincing evidence. Where there  
50 is a dispute between the parties concerning the determinations, the  
51 court shall adjourn the hearing as necessary to permit the sex offender  
52 or the district attorney to obtain materials relevant to the determi-  
53 nations from any state or local facility, hospital, institution, office,  
54 agency, department or division. Such materials may be obtained by  
55 subpoena if not voluntarily provided to the requesting party. In making  
56 the determinations, the court shall review any victim's statement and

1 any relevant materials and evidence submitted by the sex offender and  
2 the district attorney and the court may consider reliable hearsay  
3 evidence submitted by either party provided that it is relevant to the  
4 determinations. Facts previously proven at trial or elicited at the time  
5 of entry of a plea of guilty shall be deemed established by clear and  
6 convincing evidence and shall not be relitigated. The court shall render  
7 an order setting forth its determinations and the findings of fact and  
8 conclusions of law on which the determinations are based. A copy of the  
9 order shall be submitted by the court to the division. Upon application  
10 of either party, the court shall seal any portion of the court file or  
11 record which contains material that is confidential under any state or  
12 federal statute. Either party may appeal as of right from the order  
13 pursuant to the provisions of articles fifty-five, fifty-six and fifty-  
14 seven of the civil practice law and rules. Where counsel has been  
15 assigned to represent the sex offender upon the ground that the sex  
16 offender is financially unable to retain counsel, that assignment shall  
17 be continued throughout the pendency of the appeal, and the person may  
18 appeal as a poor person pursuant to article eighteen-B of the county  
19 law.

20 S 3. The opening paragraph of subdivision 6 of section 168-1 of the  
21 correction law, as amended by chapter 11 of the laws of 2002, is amended  
22 to read as follows:

23 Applying these guidelines, EXCEPT WHERE THE SEX OFFENDER IS SERVING A  
24 DEFINITE SENTENCE OF NINETY DAYS OR LESS, OR A SENTENCE THAT WILL BE  
25 SATISFIED BY THE AMOUNT OF TIME ALREADY SERVED, the board shall within  
26 sixty calendar days prior to the discharge, parole, release to post-re-  
27 lease supervision or release of a sex offender make a recommendation  
28 which shall be confidential and shall not be available for public  
29 inspection, to the sentencing court as to whether such sex offender  
30 warrants the designation of sexual predator, sexually violent offender,  
31 or predicate sex offender as defined in subdivision seven of section one  
32 hundred sixty-eight-a of this article. In addition, the guidelines shall  
33 be applied by the board to make a recommendation to the sentencing court  
34 which shall be confidential and shall not be available for public  
35 inspection, providing for one of the following three levels of notifica-  
36 tion depending upon the degree of the risk of re-offense by the sex  
37 offender.

38 S 4. Subdivisions 1 and 2 of section 168-n of the correction law,  
39 subdivision 1 as amended by chapter 11 of the laws of 2002 and subdivi-  
40 sion 2 as amended by chapter 453 of the laws of 1999, are amended to  
41 read as follows:

42 1. A determination that an offender is a sexual predator, sexually  
43 violent offender, or predicate sex offender as defined in subdivision  
44 seven of section one hundred sixty-eight-a of this article shall be made  
45 prior to the discharge, parole, release to post-release supervision or  
46 release of such offender by the sentencing court applying the guidelines  
47 established in subdivision five of section one hundred sixty-eight-1 of  
48 this article after receiving a recommendation from the board OR DISTRICT  
49 ATTORNEY pursuant to section one hundred sixty-eight-1 OR SECTION ONE  
50 HUNDRED SIXTY-EIGHT-D of this article.

51 2. In addition, applying the guidelines established in subdivision  
52 five of section one hundred sixty-eight-1 of this article, the sentenc-  
53 ing court shall also make a determination with respect to the level of  
54 notification, after receiving a recommendation from the board OR  
55 DISTRICT ATTORNEY pursuant to section one hundred sixty-eight-1 OR  
56 SECTION ONE HUNDRED SIXTY-EIGHT-D of this article. Both determinations

1 of the sentencing court shall be made thirty calendar days prior to  
2 discharge, parole or release.  
3 S 5. This act shall take effect on the ninetieth day after it shall  
4 have become a law.