

STATE OF NEW YORK

2683

2021-2022 Regular Sessions

IN SENATE

January 22, 2021

Introduced by Sen. SEPULVEDA -- 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, the penal law, the executive law and the criminal procedure law, in relation to establishing residency restrictions for sex offenders

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (f) of subdivision 1 of section 168-b of the
2 correction law, as relettered by chapter 10 of the laws of 2003, is
3 relettered paragraph (g) and a new paragraph (f) is added to read as
4 follows:

5 (f) If the sex offender has been given a level 2 or 3 designation and
6 stands convicted of a felony which requires registration pursuant to
7 this article, whether such offender is subject to a residency
8 restriction pursuant to section one hundred sixty-eight-w of this arti-
9 cle.

10 § 2. Section 168-b of the correction law is amended by adding a new
11 subdivision 13 to read as follows:

12 13. The division, upon initial registration and thereafter in annual
13 correspondence as required by subdivision four of this section, shall
14 advise each sex offender who is subject to a residency restriction
15 pursuant to section one hundred sixty-eight-w of this article, concern-
16 ing the term's specific duration and the accurate termination date of
17 such restriction.

18 § 3. Subdivisions 2 and 3 of section 168-d of the correction law,
19 subdivision 2 as amended by chapter 684 of the laws of 2005 and subdivi-
20 sion 3 as amended by chapter 11 of the laws of 2002, are amended to read
21 as follows:

22 2. Any sex offender, who is released on probation or discharged upon
23 payment of a fine, conditional discharge or unconditional discharge

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

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1 shall, prior to such release or discharge, be informed of his or her
2 duty to register under this article by the court in which he or she was
3 convicted. At the time sentence is imposed, such sex offender shall
4 register with the division on a form prepared by the division. The court
5 shall require the sex offender to read and sign such form and to
6 complete the registration portion of such form. The court shall on such
7 form obtain the address where the sex offender expects to reside upon
8 his or her release, and the name and address of any institution of high-
9 er education he or she expects to be employed by, enrolled in, attending
10 or employed, whether for compensation or not, and whether he or she
11 expects to reside in a facility owned or operated by such an institu-
12 tion, and shall report such information to the division. The court shall
13 give one copy of the form to the sex offender and shall send two copies
14 to the division which shall forward the information to the law enforce-
15 ment agencies having jurisdiction. The court shall also notify the
16 district attorney and the sex offender of the date of the determination
17 proceeding to be held pursuant to subdivision three of this section,
18 which shall be held at least forty-five days after such notice is given.
19 This notice shall include the following statement or a substantially
20 similar statement: "This proceeding is being held to determine whether
21 you will be classified as a level 3 offender (risk of repeat offense is
22 high), a level 2 offender (risk of repeat offense is moderate), or a
23 level 1 offender (risk of repeat offense is low), or whether you will be
24 designated as a sexual predator, a sexually violent offender or a predi-
25 cate sex offender, which will determine how long you must register as a
26 sex offender and how much information can be provided to the public
27 concerning your registration. If you are classified as a level 2 or
28 level 3 offender for a felony sex offense, the court may also determine
29 whether you will be subject to a residency restriction which may
30 restrict where you can establish your permanent residence. If you fail
31 to appear at this proceeding, without sufficient excuse, it shall be
32 held in your absence. Failure to appear may result in a longer period of
33 registration or a higher level of community notification because you are
34 not present to offer evidence or contest evidence offered by the
35 district attorney." The court shall also advise the sex offender that
36 he or she has a right to a hearing prior to the court's determination,
37 that he or she has the right to be represented by counsel at the hearing
38 and that counsel will be appointed if he or she is financially unable to
39 retain counsel. If the sex offender applies for assignment of counsel to
40 represent him or her at the hearing and counsel was not previously
41 assigned to represent the sex offender in the underlying criminal
42 action, the court shall determine whether the offender is financially
43 unable to retain counsel. If such a finding is made, the court shall
44 assign counsel to represent the sex offender pursuant to article eigh-
45 teen-B of the county law. Where the court orders a sex offender released
46 on probation, such order must include a provision requiring that he or
47 she comply with the requirements of this article. Where such sex offen-
48 der violates such provision, probation may be immediately revoked in the
49 manner provided by article four hundred ten of the criminal procedure
50 law.

51 3. For sex offenders released on probation or discharged upon payment
52 of a fine, conditional discharge or unconditional discharge, it shall be
53 the duty of the court applying the guidelines established in subdivision
54 five of section one hundred sixty-eight-1 of this article to determine
55 the level of notification pursuant to subdivision six of section one
56 hundred sixty-eight-1 of this article [~~and~~], whether such sex offender

1 shall be designated a sexual predator, sexually violent offender, or
2 predicate sex offender as defined in subdivision seven of section one
3 hundred sixty-eight-a of this article and, when determining the level of
4 notification and applying the guidelines established in subdivision
5 five-a of section one hundred sixty-eight-1 of this article, whether a
6 sex offender, classified as a level 2 or level 3 offender who stands
7 convicted of a felony which requires registration pursuant to this arti-
8 cle, will be subject to a residency restriction pursuant to section one
9 hundred sixty-eight-w of this article. At least fifteen days prior to
10 the determination proceeding, the district attorney shall provide to the
11 court and the sex offender a written statement setting forth the deter-
12 minations sought by the district attorney together with the reasons for
13 seeking such determinations. The court shall allow the sex offender to
14 appear and be heard. The state shall appear by the district attorney, or
15 his or her designee, who shall bear the burden of proving the facts
16 supporting the determinations sought by clear and convincing evidence.
17 Where there is a dispute between the parties concerning the determi-
18 nations, the court shall adjourn the hearing as necessary to permit the
19 sex offender or the district attorney to obtain materials relevant to
20 the determinations from any state or local facility, hospital, institu-
21 tion, office, agency, department or division. Such materials may be
22 obtained by subpoena if not voluntarily provided to the requesting
23 party. In making the determinations, the court shall review any victim's
24 statement and any relevant materials and evidence submitted by the sex
25 offender and the district attorney and the court may consider reliable
26 hearsay evidence submitted by either party provided that it is relevant
27 to the determinations. Facts previously proven at trial or elicited at
28 the time of entry of a plea of guilty shall be deemed established by
29 clear and convincing evidence and shall not be relitigated. The court
30 shall render an order setting forth its determinations and the findings
31 of fact and conclusions of law on which the determinations are based. A
32 copy of the order shall be submitted by the court to the division. Upon
33 application of either party, the court shall seal any portion of the
34 court file or record which contains material that is confidential under
35 any state or federal statute. Either party may appeal as of right from
36 the order pursuant to the provisions of articles fifty-five, fifty-six
37 and fifty-seven of the civil practice law and rules. Where counsel has
38 been assigned to represent the sex offender upon the ground that the sex
39 offender is financially unable to retain counsel, that assignment shall
40 be continued throughout the pendency of the appeal, and the person may
41 appeal as a poor person pursuant to article eighteen-B of the county
42 law.

43 § 4. Subdivision 2 of section 168-k of the correction law, as amended
44 by chapter 684 of the laws of 2005, is amended to read as follows:

45 2. The division shall advise the board that the sex offender has
46 established residence in this state. The board shall determine whether
47 the sex offender is required to register with the division. If it is
48 determined that the sex offender is required to register, the division
49 shall notify the sex offender of his or her duty to register under this
50 article and shall require the sex offender to sign a form as may be
51 required by the division acknowledging that the duty to register and the
52 procedure for registration has been explained to the sex offender. The
53 division shall obtain on such form the address where the sex offender
54 expects to reside within the state and the sex offender shall retain one
55 copy of the form and send two copies to the division which shall provide
56 the information to the law enforcement agency having jurisdiction where

1 the sex offender expects to reside within this state. No later than
2 thirty days prior to the board making a recommendation, the sex offender
3 shall be notified that his or her case is under review and that he or
4 she is permitted to submit to the board any information relevant to the
5 review. After reviewing any information obtained, and applying the
6 guidelines established in subdivision five of section one hundred
7 sixty-eight-1 of this article, the board shall within sixty calendar
8 days make a recommendation regarding the level of notification pursuant
9 to subdivision six of section one hundred sixty-eight-1 of this article
10 ~~[and]~~, whether such sex offender shall be designated a sexual predator,
11 sexually violent offender, or predicate sex offender as defined in
12 subdivision seven of section one hundred sixty-eight-a of this article
13 and, when determining the level of notification and applying the guide-
14 lines established in subdivision five-a of section one hundred sixty-
15 eight-1 of this article, whether a sex offender, classified as a level 2
16 or level 3 offender who stands convicted of a felony which requires
17 registration pursuant to this article, will be subject to a residency
18 restriction pursuant to section one hundred sixty-eight-w of this arti-
19 cle. This recommendation shall be confidential and shall not be avail-
20 able for public inspection. It shall be submitted by the board to the
21 county court or supreme court and to the district attorney in the county
22 of residence of the sex offender and to the sex offender. It shall be
23 the duty of the county court or supreme court in the county of residence
24 of the sex offender, applying the guidelines established in subdivision
25 five of section one hundred sixty-eight-1 of this article, to determine
26 the level of notification pursuant to subdivision six of section one
27 hundred sixty-eight-1 of this article ~~[and]~~, whether such sex offender
28 shall be designated a sexual predator, sexually violent offender, or
29 predicate sex offender as defined in subdivision seven of section one
30 hundred sixty-eight-a of this article and, when determining the level of
31 notification and applying the guidelines established in subdivision
32 five-a of section one hundred sixty-eight-1 of this article, whether a
33 sex offender, classified as a level 2 or level 3 offender who stands
34 convicted of a felony which requires registration pursuant to this arti-
35 cle, will be subject to a residency restriction pursuant to section one
36 hundred sixty-eight-w of this article. At least thirty days prior to
37 the determination proceeding, such court shall notify the district
38 attorney and the sex offender, in writing, of the date of the determi-
39 nation proceeding and the court shall also provide the district attorney
40 and sex offender with a copy of the recommendation received from the
41 board and any statement of the reasons for the recommendation received
42 from the board. This notice shall include the following statement or a
43 substantially similar statement: "This proceeding is being held to
44 determine whether you will be classified as a level 3 offender (risk of
45 repeat offense is high), a level 2 offender (risk of repeat offense is
46 moderate), or a level 1 offender (risk of repeat offense is low), or
47 whether you will be designated as a sexual predator, a sexually violent
48 offender or a predicate sex offender, which will determine how long you
49 must register as a sex offender and how much information can be provided
50 to the public concerning your registration. If you are classified as a
51 level 2 or level 3 offender for a felony sex offense, the court may also
52 determine whether you will be subject to a residency restriction which
53 may restrict where you can establish your permanent residence. If you
54 fail to appear at this proceeding, without sufficient excuse, it shall
55 be held in your absence. Failure to appear may result in a longer period
56 of registration or a higher level of community notification because you

1 are not present to offer evidence or contest evidence offered by the
2 district attorney." The court shall also advise the sex offender that
3 he or she has a right to a hearing prior to the court's determination,
4 that he or she has the right to be represented by counsel at the hearing
5 and that counsel will be appointed if he or she is financially unable to
6 retain counsel. A returnable form shall be enclosed in the court's
7 notice to the sex offender on which the sex offender may apply for
8 assignment of counsel. If the sex offender applies for assignment of
9 counsel and the court finds that the offender is financially unable to
10 retain counsel, the court shall assign counsel to represent the sex
11 offender pursuant to article eighteen-B of the county law. If the
12 district attorney seeks a determination that differs from the recommen-
13 dation submitted by the board, at least ten days prior to the determi-
14 nation proceeding the district attorney shall provide to the court and
15 the sex offender a statement setting forth the determinations sought by
16 the district attorney together with the reasons for seeking such deter-
17 minations. The court shall allow the sex offender to appear and be
18 heard. The state shall appear by the district attorney, or his or her
19 designee, who shall bear the burden of proving the facts supporting the
20 determinations sought by clear and convincing evidence. It shall be the
21 duty of the court applying the guidelines established in subdivision
22 five of section one hundred sixty-eight-1 of this article to determine
23 the level of notification pursuant to subdivision six of section one
24 hundred sixty-eight-1 of this article ~~and~~, whether such sex offender
25 shall be designated a sexual predator, sexually violent offender, or
26 predicate sex offender as defined in subdivision seven of section one
27 hundred sixty-eight-a of this article and, when determining the level of
28 notification and applying the guidelines established by subdivision
29 five-a of section one hundred sixty-eight-1 of this article, whether a
30 sex offender, classified as a level 2 or level 3 offender who stands
31 convicted of a felony which requires registration pursuant to this arti-
32 cle, will be subject to a residency restriction pursuant to section one
33 hundred sixty-eight-w of this article. Where there is a dispute between
34 the parties concerning the determinations, the court shall adjourn the
35 hearing as necessary to permit the sex offender or the district attorney
36 to obtain materials relevant to the determinations from the state board
37 of examiners of sex offenders or any state or local facility, hospital,
38 institution, office, agency, department or division. Such materials may
39 be obtained by subpoena if not voluntarily provided to the requesting
40 party. In making the determinations the court shall review any victim's
41 statement and any relevant materials and evidence submitted by the sex
42 offender and the district attorney and the recommendation and any mate-
43 rial submitted by the board, and may consider reliable hearsay evidence
44 submitted by either party, provided that it is relevant to the determi-
45 nations. If available, facts proven at trial or elicited at the time of
46 a plea of guilty shall be deemed established by clear and convincing
47 evidence and shall not be relitigated. The court shall render an order
48 setting forth its determinations and the findings of fact and conclu-
49 sions of law on which the determinations are based. A copy of the order
50 shall be submitted by the court to the division. Upon application of
51 either party, the court shall seal any portion of the court file or
52 record which contains material that is confidential under any state or
53 federal statute. Either party may appeal as of right from the order
54 pursuant to the provisions of articles fifty-five, fifty-six and fifty-
55 seven of the civil practice law and rules. Where counsel has been
56 assigned to represent the sex offender upon the ground that the sex

1 offender is financially unable to retain counsel, that assignment shall
2 be continued throughout the pendency of the appeal, and the person may
3 appeal as a poor person pursuant to article eighteen-B of the county
4 law.

5 § 5. Section 168-1 of the correction law is amended by adding a new
6 subdivision 5-a to read as follows:

7 5-a. The board shall develop guidelines and procedures to assess
8 whether to recommend that a sex offender who stands convicted of a felo-
9 ny should be subject to a residency restriction as described in section
10 one hundred sixty-eight-w of this article. Such guidelines shall include
11 the following:

12 (a) whether a residency restriction would adversely impact the
13 offender's successful reentry and reintegration into society;

14 (b) whether a residency restriction is necessary, based on the
15 offender's current behavior and present and prospective living arrange-
16 ments to protect public safety;

17 (c) the ability of the offender to obtain permanent and stable housing
18 in order to reduce the likelihood that the offender will be transient;

19 (d) the accessibility to supportive services, including, but not
20 limited to, locally available sex offender treatment programs that have
21 demonstrated effectiveness in reducing sex offender recidivism and
22 increasing public safety;

23 (e) the ability of the offender to find gainful and stable employment;
24 and

25 (f) whether the offense that requires the offender to register pursu-
26 ant to this article was committed against a minor child.

27 § 6. The opening paragraph of subdivision 6 of section 168-1 of the
28 correction law, as amended by chapter 11 of the laws of 2002, is amended
29 to read as follows:

30 Applying [~~these~~] the guidelines established in subdivision five of
31 this section, the board shall within sixty calendar days prior to the
32 discharge, parole, release to post-release supervision or release of a
33 sex offender make a recommendation which shall be confidential and shall
34 not be available for public inspection, to the sentencing court as to
35 whether such sex offender warrants the designation of sexual predator,
36 sexually violent offender, or predicate sex offender as defined in
37 subdivision seven of section one hundred sixty-eight-a of this article.
38 In addition, the guidelines established in subdivision five of this
39 section shall be applied by the board to make a recommendation to the
40 sentencing court which shall be confidential and shall not be available
41 for public inspection, providing for one of the [~~following~~] three levels
42 of notification described in paragraphs (a), (b), and (c) of this subdi-
43 vision depending upon the degree of the risk of re-offense by the sex
44 offender. Further, when the board makes a recommendation to the sentenc-
45 ing court that a sex offender be classified as a level 2 or level 3
46 offender and such offender stands convicted of a felony which requires
47 registration pursuant to this article, the board shall also apply the
48 guidelines established in subdivision five-a of this section and may
49 make a recommendation regarding whether such offender should be subject
50 to a residency restriction as described in section one hundred sixty-
51 eight-w of this article.

52 § 7. Subdivision 7 of section 168-1 of the correction law, as amended
53 by chapter 11 of the laws of 2002, is amended to read as follows:

54 7. Upon request by the court, pursuant to section one hundred sixty-
55 eight-o of this article, the board shall provide an updated report
56 pertaining to the sex offender petitioning for relief of the duty to

1 register [~~or~~], for a modification of his or her level of notification or
2 for modification or termination of a residency restriction imposed by
3 the sentencing court.

4 § 8. Subdivisions 2 and 3 of section 168-n of the correction law,
5 subdivision 2 as amended by chapter 453 of the laws of 1999 and subdivi-
6 sion 3 as amended by chapter 684 of the laws of 2005, are amended to
7 read as follows:

8 2. In addition, applying the guidelines established in subdivision
9 five of section one hundred sixty-eight-1 of this article, the sentenc-
10 ing court shall also make a determination with respect to the level of
11 notification, after receiving a recommendation from the board pursuant
12 to section one hundred sixty-eight-1 of this article. [~~Both~~] Further,
13 when the court classifies a sex offender as a level 2 or level 3 offen-
14 der and such offender stands convicted of a felony which requires regis-
15 tration pursuant to this article and the board has recommended that such
16 offender be subject to a residency restriction, the court shall apply
17 the guidelines established in subdivision five-a of section one hundred
18 sixty-eight-1 of this article and make a determination with respect to
19 whether such offender shall be subject to a residency restriction in
20 accordance with section one hundred sixty-eight-w of this article. All
21 determinations of the sentencing court pursuant to this section shall be
22 made thirty calendar days prior to discharge, parole or release.

23 3. No later than thirty days prior to the board's recommendation, the
24 sex offender shall be notified that his or her case is under review and
25 that he or she is permitted to submit to the board any information rele-
26 vant to the review. Upon receipt of the board's recommendation, the
27 sentencing court shall determine whether the sex offender was previously
28 found to be eligible for assigned counsel in the underlying case. Where
29 such a finding was previously made, the court shall assign counsel to
30 represent the offender, pursuant to article eighteen-B of the county
31 law. At least twenty days prior to the determination proceeding, the
32 sentencing court shall notify the district attorney, the sex offender
33 and the sex offender's counsel, in writing, of the date of the determi-
34 nation proceeding and shall also provide the district attorney, the sex
35 offender and the sex offender's counsel with a copy of the recommenda-
36 tion received from the board and any statement of the reasons for the
37 recommendation received from the board. This notice shall include the
38 following statement or a substantially similar statement: "This
39 proceeding is being held to determine whether you will be classified as
40 a level 3 offender (risk of repeat offense is high), a level 2 offender
41 (risk of repeat offense is moderate), or a level 1 offender (risk of
42 repeat offense is low), or whether you will be designated as a sexual
43 predator, a sexually violent offender or a predicate sex offender, which
44 will determine how long you must register as a sex offender and how much
45 information can be provided to the public concerning your registration.
46 If you are classified as a level 2 or level 3 offender for a felony sex
47 offense, the court may also determine whether you will be subject to a
48 residency restriction which may restrict where you can establish your
49 permanent residence. If you fail to appear at this proceeding, without
50 sufficient excuse, it shall be held in your absence. Failure to appear
51 may result in a longer period of registration or a higher level of
52 community notification because you are not present to offer evidence or
53 contest evidence offered by the district attorney." The written notice
54 to the sex offender shall also advise the offender that he or she has a
55 right to a hearing prior to the court's determination, and that he or
56 she has the right to be represented by counsel at the hearing. If coun-

1 sel has been assigned to represent the offender at the determination
2 proceeding, the notice shall also provide the name, address and tele-
3 phone number of the assigned counsel. Where counsel has not been
4 assigned, the notice shall advise the sex offender that counsel will be
5 appointed if he or she is financially unable to retain counsel, and a
6 returnable form shall be enclosed in the court's notice to the sex
7 offender on which the sex offender may apply for assignment of counsel.
8 If the sex offender applies for assignment of counsel and the court
9 finds that the offender is financially unable to retain counsel, the
10 court shall assign counsel to represent the sex offender pursuant to
11 article eighteen-B of the county law. If the district attorney seeks a
12 determination that differs from the recommendation submitted by the
13 board, at least ten days prior to the determination proceeding the
14 district attorney shall provide to the court and the sex offender a
15 statement setting forth the determinations sought by the district attor-
16 ney together with the reasons for seeking such determinations. The court
17 shall allow the sex offender to appear and be heard. The state shall
18 appear by the district attorney, or his or her designee, who shall bear
19 the burden of proving the facts supporting the determinations sought by
20 clear and convincing evidence. Where there is a dispute between the
21 parties concerning the determinations, the court shall adjourn the hear-
22 ing as necessary to permit the sex offender or the district attorney to
23 obtain materials relevant to the determinations from the state board of
24 examiners of sex offenders or any state or local facility, hospital,
25 institution, office, agency, department or division. Such materials may
26 be obtained by subpoena if not voluntarily provided to the requesting
27 party. In making the determinations the court shall review any victim's
28 statement and any relevant materials and evidence submitted by the sex
29 offender and the district attorney and the recommendation and any mate-
30 rials submitted by the board, and may consider reliable hearsay evidence
31 submitted by either party, provided that it is relevant to the determi-
32 nations. Facts previously proven at trial or elicited at the time of
33 entry of a plea of guilty shall be deemed established by clear and
34 convincing evidence and shall not be relitigated. The court shall render
35 an order setting forth its determinations and the findings of fact and
36 conclusions of law on which the determinations are based. A copy of the
37 order shall be submitted by the court to the division. Upon application
38 of either party, the court shall seal any portion of the court file or
39 record which contains material that is confidential under any state or
40 federal statute. Either party may appeal as of right from the order
41 pursuant to the provisions of articles fifty-five, fifty-six and fifty-
42 seven of the civil practice law and rules. Where counsel has been
43 assigned to represent the sex offender upon the ground that the sex
44 offender is financially unable to retain counsel, that assignment shall
45 be continued throughout the pendency of the appeal, and the person may
46 appeal as a poor person pursuant to article eighteen-B of the county
47 law.

48 § 9. The section heading of section 168-o of the correction law, as
49 amended by chapter 453 of the laws of 1999, is amended and a new subdi-
50 vision 2-a is added to read as follows:

51 Petition for relief or modification of level of notification and/or
52 residency restriction.

53 2-a. Any sex offender subject to a residency restriction pursuant to
54 this article may petition the court which imposed such restriction for
55 an order terminating or modifying such residency restriction. The peti-
56 tion shall set forth the reasons for seeking such modification or termi-

1 nation. The sex offender shall bear the burden of proving the facts
2 supporting the requested modification or termination by clear and
3 convincing evidence. Such a petition shall not be considered more than
4 annually. The district attorney and the sex offender may appeal as of
5 right from an order issued under this subdivision pursuant to the
6 provisions of articles fifty-five, fifty-six and fifty-seven of the
7 civil practice law and rules. Where counsel has been assigned to repre-
8 sent the sex offender upon the ground that the sex offender is finan-
9 cially unable to retain counsel, that assignment shall be continued
10 throughout the pendency of the appeal, and the person may appeal as a
11 poor person pursuant to article eighteen-B of the county law.

12 § 10. Section 168-o of the correction law is amended by adding a new
13 subdivision 3-a to read as follows:

14 3-a. Prior to the expiration of a residency restriction ordered pursu-
15 ant to section one hundred sixty-eight-w of this article, the district
16 attorney may file a petition with the sentencing court or with the court
17 which ordered the residency restriction to extend the duration of such
18 residency restriction in accordance with subdivision four of section one
19 hundred sixty-eight-w of this article. The petition shall set forth the
20 reasons for seeking to extend the duration of such residency
21 restriction. The district attorney shall bear the burden of proving new
22 facts and circumstances that warrant the requested extension, by clear
23 and convincing evidence. In the event that the district attorney's peti-
24 tion is granted, the sex offender may appeal as of right from the order,
25 pursuant to the provisions of articles fifty-five, fifty-six and fifty-
26 seven of the civil practice law and rules. Where counsel has been
27 assigned to represent the offender upon the ground that he or she is
28 financially unable to retain counsel, that assignment shall be continued
29 throughout the pendency of the appeal, and the person may proceed as a
30 poor person, pursuant to article eighteen-B of the county law.

31 § 11. Subdivision 4 of section 168-o of the correction law, as added
32 by chapter 453 of the laws of 1999, is amended to read as follows:

33 4. Upon receipt of a petition submitted pursuant to subdivision one,
34 two ~~[of]~~, two-a, three, or three-a of this section, the court shall
35 forward a copy of the petition to the board and request an updated
36 recommendation pertaining to the sex offender and shall provide a copy
37 of the petition to the other party. The court shall also advise the sex
38 offender that he or she has the right to be represented by counsel at
39 the hearing and counsel will be appointed if he or she is financially
40 unable to retain counsel. A returnable form shall be enclosed in the
41 court's notice to the sex offender on which the sex offender may apply
42 for assignment of counsel. If the sex offender applies for assignment
43 of counsel and the court finds that the offender is financially unable
44 to retain counsel, the court shall assign counsel to represent the
45 offender, pursuant to article eighteen-B of the county law. Where the
46 petition was filed by a district attorney, at least thirty days prior to
47 making an updated recommendation the board shall notify the sex offender
48 and his or her counsel that the offender's case is under review and he
49 or she is permitted to submit to the board any information relevant to
50 the review. The board's updated recommendation on the sex offender
51 shall be confidential and shall not be available for public inspection.
52 After receiving an updated recommendation from the board concerning a
53 sex offender, the court shall, at least thirty days prior to ruling upon
54 the petition, provide a copy of the updated recommendation to the sex
55 offender, the sex offender's counsel and the district attorney and noti-
56 fy them, in writing, of the date set by the court for a hearing on the

petition. After reviewing the recommendation received from the board and any relevant materials and evidence submitted by the sex offender and the district attorney, the court may grant or deny the petition. The court may also consult with the victim prior to making a determination on the petition. The court shall render an order setting forth its determination, and the findings of fact and conclusions of law on which the determination is based. If the petition is granted, it shall be the obligation of the court to submit a copy of its order to the division. Upon application of either party, the court shall seal any portion of the court file or record which contains material that is confidential under any state or federal statute.

§ 12. Section 168-t of the correction law, as amended by chapter 373 of the laws of 2007, is amended to read as follows:

§ 168-t. Penalty. Any sex offender required to register or to verify pursuant to the provisions of this article who fails to register or verify in the manner and within the time periods provided for in this article shall be guilty of a class E felony upon conviction for the first offense, and upon conviction for a second or subsequent offense shall be guilty of a class D felony. Any sex offender who violates the provisions of section one hundred sixty-eight-v of this article or knowingly violates a residency restriction imposed pursuant to section one hundred sixty-eight-w of this article shall be guilty of a class A misdemeanor upon conviction for the first offense, and upon conviction for a second or subsequent offense shall be guilty of a class D felony. Any such failure to register or verify may also be the basis for revocation of parole pursuant to section two hundred fifty-nine-i of the executive law or the basis for revocation of probation pursuant to article four hundred ten of the criminal procedure law.

§ 13. Section 168-w of the correction law, as relettered by chapter 604 of the laws of 2005, is relettered section 168-x and a new section 168-w is added to read as follows:

§ 168-w. Residency restriction for certain sex offenders. 1. Pursuant to subdivision three of section one hundred sixty-eight-d, subdivision two of section one hundred sixty-eight-k and subdivision two of section one hundred sixty-eight-n of this article, when the court which makes the determination regarding the level of notification of a sex offender classifies such offender as a level 2 or level 3 offender and such offender was convicted of a felony which requires registration pursuant to this article and, where applicable, the board has recommended that such offender be subject to a residency restriction, the court may order that such offender comply with a residency restriction according to this section. Such residency restriction may be imposed only after the court has applied the guidelines established in subdivision five-a of section one hundred sixty-eight-l of this article.

2. When the court determines that a residency restriction is necessary pursuant to the provisions of this article, the court may order that the sex offender be prohibited from knowingly establishing his or her permanent residence within up to one thousand feet of any school grounds, as the term is defined in paragraph (a) of subdivision fourteen of section 220.00 of the penal law. For the purposes of this subdivision, the term permanent residence shall mean the place where the offender maintains a fixed, permanent and principal home and to which he or she, whenever temporarily away, intends to return. Permanent residence shall not include temporary or transitional housing such as a shelter, residential treatment program, or other similar temporary or transient housing.

1 3. The court shall determine the duration of the residency restriction
2 imposed pursuant to this section provided, however, that such
3 restriction shall not apply for more than ten years after the later of
4 the offender's release from jail or prison or the period or term of
5 probation, parole, conditional release or post-release supervision for
6 the offense which requires the offender to register as a sex offender
7 pursuant to this article. In calculating the duration of the residency
8 restriction, any period of time during which the offender is incarcerat-
9 ed for any reason after such residency restriction is ordered shall be
10 excluded and the duration of the restriction shall be extended by a
11 period or periods equal to the time of such incarceration.

12 4. Where the court has granted a petition to extend the duration of a
13 residency restriction pursuant to subdivisions three-a and four of
14 section one hundred sixty-eight-o of this article, such extension may be
15 for a period of up to five years.

16 § 14. Paragraph (a) of subdivision 4-a of section 65.10 of the penal
17 law, as amended by chapter 67 of the laws of 2008, is amended to read as
18 follows:

19 (a) When imposing a sentence of probation or conditional discharge
20 upon a person convicted of an offense defined in article one hundred
21 thirty, two hundred thirty-five or two hundred sixty-three of this chap-
22 ter, or section 255.25, 255.26 or 255.27 of this chapter, and the victim
23 of such offense was under the age of eighteen at the time of such
24 offense or such person has been designated a level three sex offender
25 pursuant to subdivision six of section [~~168-1~~] one hundred sixty-eight-1
26 of the correction law, the court shall require, as a mandatory condition
27 of such sentence, that such sentenced offender shall refrain from know-
28 ingly entering into or upon any school grounds, as that term is defined
29 in paragraph (a) of subdivision fourteen of section 220.00 of this chap-
30 ter, or any other facility or institution primarily used for the care or
31 treatment of persons under the age of eighteen while one or more of such
32 persons under the age of eighteen are present, provided however, that
33 when such sentenced offender is a registered student or participant or
34 an employee of such facility or institution or entity contracting there-
35 with or has a family member enrolled in such facility or institution,
36 such sentenced offender may, with the written authorization of his or
37 her probation officer or the court and the superintendent or chief
38 administrator of such facility, institution or grounds, enter such
39 facility, institution or upon such grounds for the limited purposes
40 authorized by the probation officer or the court and superintendent or
41 chief officer. Nothing in this subdivision shall be construed as
42 restricting any lawful condition of supervision that may be imposed on
43 such sentenced offender.

44 § 15. Subdivision 14 of section 259-c of the executive law, as amended
45 by section 38-b of subpart A of part C of chapter 62 of the laws of
46 2011, is amended to read as follows:

47 14. notwithstanding any other provision of law to the contrary, where
48 a person serving a sentence for an offense defined in article one
49 hundred thirty, one hundred thirty-five or two hundred sixty-three of
50 the penal law or section 255.25, 255.26 or 255.27 of the penal law and
51 the victim of such offense was under the age of eighteen at the time of
52 such offense or such person has been designated a level three sex offen-
53 der pursuant to subdivision six of section one hundred sixty-eight-1 of
54 the correction law, is released on parole or conditionally released
55 pursuant to subdivision one or two of this section, the board shall
56 require, as a mandatory condition of such release, that such sentenced

1 offender shall refrain from knowingly entering into or upon any school
2 grounds, as that term is defined in paragraph (a) of subdivision four-
3 teen of section 220.00 of the penal law, or any other facility or insti-
4 tution primarily used for the care or treatment of persons under the age
5 of eighteen while one or more of such persons under the age of eighteen
6 are present, provided however, that when such sentenced offender is a
7 registered student or participant or an employee of such facility or
8 institution or entity contracting therewith or has a family member
9 enrolled in such facility or institution, such sentenced offender may,
10 with the written authorization of his or her parole officer and the
11 superintendent or chief administrator of such facility, institution or
12 grounds, enter such facility, institution or upon such grounds for the
13 limited purposes authorized by the parole officer and superintendent or
14 chief officer. Nothing in this subdivision shall be construed as
15 restricting any lawful condition of supervision that may be imposed on
16 such sentenced offender.

17 § 16. The opening paragraph of subdivision 4 of section 530.13 of the
18 criminal procedure law, as amended by chapter 240 of the laws of 2015,
19 is amended to read as follows:

20 Upon sentencing on a conviction for any offense, where the court has
21 not issued an order of protection pursuant to section 530.12 of this
22 article, the court may, in addition to any other disposition, including
23 a conditional discharge or youthful offender adjudication, enter an
24 order of protection. Where a temporary order of protection was issued,
25 the court shall state on the record the reasons for issuing or not issu-
26 ing an order of protection. The duration of such an order shall be fixed
27 by the court and; (A) in the case of a felony conviction, shall not
28 exceed the greater of: (i) eight years from the date of such sentencing,
29 except where the sentence is or includes a sentence of probation on a
30 conviction for a felony sexual assault, as provided in subparagraph
31 (iii) of paragraph (a) of subdivision three of section 65.00 of the
32 penal law, in which case, ten years from the date of such sentencing, or
33 (ii) eight years from the date of the expiration of the maximum term of
34 an indeterminate or the term of a determinate sentence of imprisonment
35 actually imposed; or (B) in the case of a conviction for a class A
36 misdemeanor, shall not exceed the greater of: (i) five years from the
37 date of such sentencing, except where the sentence is or includes a
38 sentence of probation on a conviction for a misdemeanor sexual assault,
39 as provided in subparagraph (ii) of paragraph (b) of subdivision three
40 of section 65.00 of the penal law, in which case, six years from the
41 date of such sentencing or (ii) five years from the date of the expira-
42 tion of the maximum term of a definite or intermittent term actually
43 imposed; or (C) in the case of a conviction for any other offense, shall
44 not exceed the greater of: (i) two years from the date of sentencing, or
45 (ii) two years from the date of the expiration of the maximum term of a
46 definite or intermittent term actually imposed, provided, however, that
47 in the case of a conviction for an offense for which registration as a
48 sex offender is required pursuant to subdivision two or three of section
49 one hundred sixty-eight-a of the correction law, and the victim of such
50 offense was under the age of eighteen at the time of such offense, the
51 duration of an order of protection issued pursuant to this subdivision
52 may be, but shall not exceed, the greater of the applicable duration
53 provided for in the foregoing provisions of this subdivision or until
54 the victim of such offense attains the age of eighteen. For purposes of
55 determining the duration of an order of protection entered pursuant to
56 this subdivision, a conviction shall be deemed to include a conviction

1 that has been replaced by a youthful offender adjudication. In addition
2 to any other conditions such an order may require that the defendant:

3 § 17. The opening paragraph of subdivision 4 of section 530.13 of the
4 criminal procedure law, as amended by chapter 9 of the laws of 2011, is
5 amended to read as follows:

6 Upon sentencing on a conviction for any offense, where the court has
7 not issued an order of protection pursuant to section 530.12 of this
8 article, the court may, in addition to any other disposition, including
9 a conditional discharge or youthful offender adjudication, enter an
10 order of protection. Where a temporary order of protection was issued,
11 the court shall state on the record the reasons for issuing or not issu-
12 ing an order of protection. The duration of such an order shall be fixed
13 by the court and, in the case of a felony conviction, shall not exceed
14 the greater of: (i) five years from the date of such sentencing, or (ii)
15 three years from the date of the expiration of the maximum term of an
16 indeterminate sentence of imprisonment actually imposed; or in the case
17 of a conviction for a class A misdemeanor, shall not exceed three years
18 from the date of such sentencing; or in the case of a conviction for any
19 other offense, shall not exceed one year from the date of sentencing,
20 provided, however, that in the case of a conviction for an offense for
21 which registration as a sex offender is required pursuant to subdivision
22 two or three of section one hundred sixty-eight-a of the correction law,
23 and the victim of such offense was under the age of eighteen at the time
24 of such offense, the duration of an order of protection issued pursuant
25 to this subdivision may be, but shall not exceed, the greater of the
26 applicable duration provided for in the foregoing provisions of this
27 subdivision or until the victim of such offense attains the age of eigh-
28 teen. For purposes of determining the duration of an order of

29 protection entered pursuant to this subdivision, a conviction shall be
30 deemed to include a conviction that has been replaced by a youthful
31 offender adjudication. In addition to any other conditions such an order
32 may require that the defendant:

33 § 18. No municipal corporation, as defined in section 2 of the general
34 municipal law, shall, on or after the effective date of the chapter of
35 the laws of 2021 that created this section, enact any local law, ordi-
36 nance, code, rule or regulation requiring a sex offender, as such term
37 is defined by section 168-a of the correction law, to comply with a
38 residency restriction. The provisions of this act shall invalidate and
39 preempt any such local law, ordinance, code, rule or regulation enacted
40 after the effective date of the chapter of the laws of 2021 that added
41 this section.

42 § 19. The provisions of this act shall preempt and invalidate any
43 local law, ordinance, code, rule or regulation enacted before the effec-
44 tive date of the chapter of the laws of 2021 that added this section
45 requiring a sex offender, as such term is defined by section 168-a of
46 the correction law, to comply with a residency restriction, except that
47 nothing in this act shall preclude any local probation department from
48 enforcing any lawful condition of probation that may be imposed on a
49 sentenced offender.

50 § 20. The district attorney may file a petition to seek the imposition
51 of a residency restriction for: (i) a sex offender classified as a level
52 2 or 3 offender who stands convicted of a felony which requires regis-
53 tration pursuant to article 6-C of the correction law and who is at
54 liberty on the effective date of this act; and (ii) a sex offender who
55 was convicted of a felony which requires registration pursuant to arti-
56 cle 6-C of the correction law prior to the effective date of this act

1 and is incarcerated in a state or local correctional facility on the
2 effective date of this act and is classified as a level 2 or 3 offender.
3 A petition filed pursuant to paragraph (i) of this section shall be
4 filed with the sentencing court or the court which made the determi-
5 nation regarding the level of notification of such offender within one
6 year of the effective date of this act. A petition filed pursuant to
7 paragraph (ii) of this section shall be filed with the sentencing court
8 or the court which made the determination regarding the level of notifi-
9 cation of such offender within one year of the release of such offender
10 from incarceration. The petition shall set forth the reasons for seeking
11 the residency restriction and the district attorney shall bear the
12 burden, by clear and convincing evidence, of proving the facts support-
13 ing the imposition of a residency restriction. Upon receipt of a peti-
14 tion submitted pursuant to this section, the court shall proceed in a
15 manner consistent with subdivision 4 of section 168-o of the correction
16 law. Applying the guidelines established in subdivision 5-a of section
17 168-1 of the correction law, the court shall determine whether to impose
18 a residency restriction on the offender named in the petition pursuant
19 to section 168-w of the correction law. In the event that the district
20 attorney's petition is granted, the sex offender may appeal as of right
21 from the order, pursuant to the provisions of articles 55, 56 and 57 of
22 the civil practice law and rules. Where counsel has been assigned to
23 represent the offender upon the ground that he or she is financially
24 unable to retain counsel, that assignment shall be continued throughout
25 the pendency of the appeal, and the person may proceed as a poor person,
26 pursuant to article 18-B of the county law.

27 § 21. This act shall take effect immediately, provided that the amend-
28 ments to the opening paragraph of subdivision 4 of section 530.13 of the
29 criminal procedure law made by section sixteen of this act shall be
30 subject to the expiration and reversion of such paragraph pursuant to
31 section 74 of chapter 3 of the laws of 1995, as amended, when upon such
32 date the provisions of section seventeen of this act shall take effect.