

STATE OF NEW YORK

3201

2025-2026 Regular Sessions

IN SENATE

January 24, 2025

Introduced by Sen. KRUEGER -- 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 assessment instruments for sex offenders

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

1 Section 1. Subdivision 3 of section 168-d of the correction law, as
2 amended by chapter 11 of the laws of 2002, is amended to read as
3 follows:
4 3. For sex offenders released on probation or discharged upon payment
5 of a fine, conditional discharge or unconditional discharge, it shall be
6 the duty of the court applying the guidelines and risk assessment
7 instrument established in subdivision five of section one hundred
8 sixty-eight-1 of this article to determine the level of notification
9 pursuant to subdivision six of section one hundred sixty-eight-1 of this
10 article and whether such sex offender shall be designated a sexual pred-
11 ator, sexually violent offender, or predicate sex offender as defined in
12 subdivision seven of section one hundred sixty-eight-a of this article.
13 At least fifteen days prior to the determination proceeding, the
14 district attorney shall provide to the court and the sex offender a
15 written statement setting forth the determinations sought by the
16 district attorney together with the reasons for seeking such determi-
17 nations. The court shall allow the sex offender to appear and be heard.
18 The state shall appear by the district attorney, or [~~his or her~~] the
19 district attorney's designee, who shall bear the burden of proving the
20 facts supporting the determinations sought by clear and convincing
21 evidence. Where there is a dispute between the parties concerning the
22 determinations, the court shall adjourn the hearing as necessary to
23 permit the sex offender or the district attorney to obtain materials
24 relevant to the determinations from any state or local facility, hospi-

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

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tal, institution, office, agency, department or division. Such materials may be obtained by subpoena if not voluntarily provided to the requesting party. In making the determinations, the court shall review any victim's statement and any relevant materials and evidence submitted by the sex offender and the district attorney and the court may consider reliable hearsay evidence submitted by either party provided that it is relevant to the determinations. Facts previously proven at trial or elicited at the time of entry of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. The court shall render an order setting forth its determinations and the findings of fact and conclusions of law on which the determinations are based. A copy of the order shall be submitted by the court 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. Either party may appeal as of right from the order pursuant to the provisions of articles fifty-five, fifty-six and fifty-seven of the civil practice law and rules. Where counsel has been assigned to represent the sex offender upon the ground that the sex offender is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may appeal as a poor person pursuant to article eighteen-B of the county law.

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

2. The division shall advise the board that the sex offender has established residence in this state. The board shall determine whether the sex offender is required to register with the division. If it is determined that the sex offender is required to register, the division shall notify the sex offender of ~~[his or her]~~ the duty to register under this article and shall require the sex offender to sign a form as may be required by the division acknowledging that the duty to register and the procedure for registration has been explained to the sex offender. The division shall obtain on such form the address where the sex offender expects to reside within the state and the sex offender shall retain one copy of the form and send two copies to the division which shall provide the information to the law enforcement agency having jurisdiction where the sex offender expects to reside within this state. No later than thirty days prior to the board making a recommendation, the sex offender shall be notified that ~~[his or her]~~ the case is under review and that ~~[he or she]~~ the sex offender is permitted to submit to the board any information relevant to the review. After reviewing any information obtained, and applying the guidelines and risk assessment instrument established in subdivision five of section one hundred sixty-eight-1 of this article, the board shall within sixty calendar days make a recommendation regarding the level of notification pursuant to subdivision six of section one hundred sixty-eight-1 of this article and whether such sex offender shall be designated a sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article. This recommendation shall be confidential and shall not be available for public inspection. It shall be submitted by the board to the county court or supreme court and to the district attorney in the county of residence of the sex offender and to the sex offender. It shall be the duty of the county court or supreme court in the county of residence of the sex offender, applying the guidelines and risk assessment instrument established in subdivision five of section one hundred sixty-eight-1 of this

1 article, to determine the level of notification pursuant to subdivision
2 six of section one hundred sixty-eight-1 of this article and whether
3 such sex offender shall be designated a sexual predator, sexually
4 violent offender, or predicate sex offender as defined in subdivision
5 seven of section one hundred sixty-eight-a of this article. At least
6 thirty days prior to the determination proceeding, such court shall
7 notify the district attorney and the sex offender, in writing, of the
8 date of the determination proceeding and the court shall also provide
9 the district attorney and sex offender with a copy of the recommendation
10 received from the board and any statement of the reasons for the recom-
11 mendation received from the board. This notice shall include the follow-
12 ing statement or a substantially similar statement: "This proceeding is
13 being held to determine whether you will be classified as a level 3
14 offender (risk of repeat offense is high), a level 2 offender (risk of
15 repeat offense is moderate), or a level 1 offender (risk of repeat
16 offense is low), or whether you will be designated as a sexual predator,
17 a sexually violent offender or a predicate sex offender, which will
18 determine how long you must register as a sex offender and how much
19 information can be provided to the public concerning your registration.
20 If you fail to appear at this proceeding, without sufficient excuse, it
21 shall be held in your absence. Failure to appear may result in a longer
22 period of registration or a higher level of community notification
23 because you are not present to offer evidence or contest evidence
24 offered by the district attorney." The court shall also advise the sex
25 offender that ~~[he or she]~~ the sex offender has a right to a hearing
26 prior to the court's determination, that ~~[he or she]~~ the sex offender
27 has the right to be represented by counsel at the hearing and that coun-
28 sel will be appointed if ~~[he or she]~~ the sex offender is financially
29 unable to retain counsel. A returnable form shall be enclosed in the
30 court's notice to the sex offender on which the sex offender may apply
31 for assignment of counsel. If the sex offender applies for assignment
32 of counsel and the court finds that the offender is financially unable
33 to retain counsel, the court shall assign counsel to represent the sex
34 offender pursuant to article eighteen-B of the county law. If the
35 district attorney seeks a determination that differs from the recommen-
36 dation submitted by the board, at least ten days prior to the determi-
37 nation proceeding the district attorney shall provide to the court and
38 the sex offender a statement setting forth the determinations sought by
39 the district attorney together with the reasons for seeking such deter-
40 minations. The court shall allow the sex offender to appear and be
41 heard. The state shall appear by the district attorney, or ~~[his or her]~~
42 the district attorney's designee, who shall bear the burden of proving
43 the facts supporting the determinations sought by clear and convincing
44 evidence. It shall be the duty of the court applying the guidelines and
45 risk assessment instrument established in subdivision five of section
46 one hundred sixty-eight-1 of this article to determine the level of
47 notification pursuant to subdivision six of section one hundred sixty-
48 eight-1 of this article and whether such sex offender shall be desig-
49 nated a sexual predator, sexually violent offender, or predicate sex
50 offender as defined in subdivision seven of section one hundred sixty-
51 eight-a of this article. Where there is a dispute between the parties
52 concerning the determinations, the court shall adjourn the hearing as
53 necessary to permit the sex offender or the district attorney to obtain
54 materials relevant to the determinations from the state board of examin-
55 ers of sex offenders or any state or local facility, hospital, institu-
56 tion, office, agency, department or division. Such materials may be

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

23 § 3. Subdivision 5 and the opening paragraph of subdivision 6 of
24 section 168-1 of the correction law, subdivision 5 as added by chapter
25 192 of the laws of 1995, subparagraph (i) of paragraph (a) of subdivi-
26 sion 5 and the opening paragraph of subdivision 6 as amended by chapter
27 11 of the laws of 2002, are amended and a new subdivision 5-a is added
28 to read as follows:

29 5. The board shall develop guidelines and procedures and use a vali-
30 dated risk assessment instrument to assess the risk of a repeat offense
31 by such sex offender and the threat posed to the public safety. Such
32 risk assessment instrument shall be periodically subjected to empirical
33 re-validation. Such guidelines shall ~~[be based upon,]~~ incorporate
34 factors found to be predictive of risk of re-offense, including but not
35 limited to, the following:

36 (a) criminal history factors indicative of high risk of repeat
37 offense, including:

38 (i) whether the sex offender has a mental abnormality or personality
39 disorder that makes ~~[him or her]~~ the sex offender likely to engage in
40 predatory sexually violent offenses;

41 (ii) whether the sex offender's conduct was found to be characterized
42 by repetitive and compulsive behavior, associated with drugs or alcohol;

43 (iii) whether the sex offender served the maximum term;

44 (iv) whether the sex offender committed the felony sex offense against
45 a child;

46 (v) the age of the sex offender at the time of the commission of the
47 first sex offense;

48 (b) other criminal history factors to be considered in determining
49 risk, including:

50 (i) the relationship between such sex offender and the victim;

51 (ii) whether the offense involved the use of a weapon, violence or
52 infliction of serious bodily injury;

53 (iii) the number, date and nature of prior offenses;

54 (c) conditions of release that minimize risk ~~[or]~~ of re-offense,
55 including but not limited to whether the sex offender is under super-

1 vision; receiving counseling, therapy or treatment; or residing in a
2 home situation that provides guidance and supervision;

3 (d) physical conditions that minimize risk of re-offense, including
4 but not limited to advanced age or debilitating illness;

5 (e) whether psychological or psychiatric profiles indicate a risk of
6 recidivism;

7 (f) the sex offender's response to treatment;

8 (g) recent behavior, including behavior while confined;

9 (h) recent threats or gestures against persons or expressions of
10 intent to commit additional offenses; and

11 (i) review of any victim impact statement.

12 5-a. (a) The board in consultation with the department and the divi-
13 sion of criminal justice services shall maintain a statewide database of
14 sex offender recidivism statistics.

15 (b) The board in consultation with the department and the division of
16 criminal justice services shall conduct a periodic retroactive study at
17 least every five years to determine the predictive value of the risk
18 assessment instrument used to assign risk of repeat offense levels to
19 sex offenders pursuant to subdivision six of this section. After each
20 such study the board shall prepare a detailed report to the governor and
21 legislature determining the predictive value of the risk assessment
22 instrument and the predictive value of each factor considered in the
23 overall risk assessment when applied to the statewide database main-
24 tained pursuant to paragraph (a) of this subdivision. The report shall
25 include recommended changes to the guidelines and risk assessment
26 instrument to enhance their predictive capabilities for the purpose of
27 periodic revalidation of such guidelines and risk assessment instrument
28 pursuant to subdivision five of this section. The first such study shall
29 be completed within two years of the effective date of this subdivision.

30 Applying these guidelines and the validated risk assessment
31 instrument, 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 and such instrument shall be applied by the
39 board to make a recommendation to the sentencing court which shall be
40 confidential and shall not be available for public inspection, providing
41 for one of the following three levels of notification depending upon the
42 degree of the risk of re-offense by the sex offender.

43 § 4. Subdivisions 1 and 2 of section 168-n of the correction law,
44 subdivision 1 as amended by chapter 11 of the laws of 2002 and subdivi-
45 sion 2 as amended by chapter 453 of the laws of 1999, are amended to
46 read as follows:

47 1. A determination that an offender is a sexual predator, sexually
48 violent offender, or predicate sex offender as defined in subdivision
49 seven of section one hundred sixty-eight-a of this article shall be made
50 prior to the discharge, parole, release to post-release supervision or
51 release of such offender by the sentencing court applying the guidelines
52 and risk assessment instrument established in subdivision five of
53 section one hundred sixty-eight-1 of this article after receiving a
54 recommendation from the board pursuant to section one hundred sixty-
55 eight-1 of this article.

1 2. In addition, applying the guidelines and risk assessment instrument
2 established in subdivision five of section one hundred sixty-eight-1 of
3 this article, the sentencing court shall also make a determination with
4 respect to the level of notification, after receiving a recommendation
5 from the board pursuant to section one hundred sixty-eight-1 of this
6 article. Both determinations of the sentencing court shall be made thir-
7 ty calendar days prior to discharge, parole or release.

8 § 5. This act shall take effect on the one hundred eightieth day after
9 it shall have become a law.