S T A T E O F N E W Y O R K

10895

I N A S S E M B L Y

April 28, 2010

Introduced by M. of A. AUBRY -- (at request of the Governor) -- read once and referred to the Committee on Correction

AN ACT to amend the correction law and the criminal procedure law, in relation to sex offenders

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

Section 1. Paragraph (a) of subdivision 2 of section 168-a of the correction law, as amended by chapter 405 of the laws of 2008, is amended to read as follows:

(a) (i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05 or 230.06, or subdivision two of section 230.30, or section 230.32 or 230.33 of the penal law, or (ii) a conviction of or a conviction for an attempt to commit any of the provisions of section 235.22 of the penal law, or (iii) a conviction of or a conviction for an attempt to commit any provisions of the foregoing sections committed or attempted as a hate crime defined in section 485.05 of the penal law or as a crime of terrorism defined in section 490.25 of such law, or [as] (IV) A CONVICTION OF OR A CONVICTION FOR AN ATTEMPT TO COMMIT a sexually motivated felony defined in section 130.91 of [such] THE PENAL law; or

S 2. Subparagraph (ii) of paragraph (d) of subdivision 2 of section 168-a of the correction law, as amended by chapter 11 of the laws of 2002, is amended to read as follows:

(ii) a [felony] CRIME in any other jurisdiction for which the offender is required to register as a sex offender in the jurisdiction in which the conviction occurred or,

S 3. Paragraph (e) of subdivision 2 of section 168-a of the correction law, as added by chapter 69 of the laws of 2003, is amended to read as follows:

(e) a conviction of OR A CONVICTION FOR AN ATTEMPT TO COMMIT any of the provisions of subdivision two, three or four of section 250.45 of

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

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the penal law, unless upon motion by the defendant, the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that registration would be unduly harsh and inappropriate.

S 4. Paragraphs (b-2), (b-3) and (c) of subdivision 2 of section 168-f of the correction law, paragraphs (b-2) and (b-3) as added by section 2 of part O of chapter 56 of the laws of 2005 and paragraph (c) as amended by chapter 453 of the laws of 1999, are amended to read as follows:

(b-2) If the sex offender has been given a level TWO OR three designation, he or she shall personally appear at the law enforcement agency having jurisdiction within twenty days of the first anniversary of the sex offender's initial registration and every year thereafter during the period of registration for the purpose of providing a current photograph of such offender. The law enforcement agency having jurisdiction shall photograph the sex offender and shall promptly forward a copy of such photograph to the division. For purposes of this paragraph, if such sex offender is confined in a state or local correctional facility, the local law enforcement agency having jurisdiction shall be the warden, superintendent, sheriff or other person in charge of the state or local correctional facility.

(b-3) If the sex offender has been given a level one [or level two] designation, he or she shall personally appear at the law enforcement agency having jurisdiction within twenty days of the third anniversary of the sex offender's initial registration and every three years thereafter during the period of registration for the purpose of providing a current photograph of such offender. The law enforcement agency having jurisdiction shall photograph the sex offender and shall promptly forward a copy of such photograph to the division. For purposes of this paragraph, if such sex offender is confined in a state or local correctional facility, the local law enforcement agency having jurisdiction shall be the warden, superintendent, sheriff or other person in charge of the state or local correctional facility.

(c) If the sex offender fails to mail the signed verification form to the division within ten calendar days after receipt of the form, he or she shall be in violation of this [section unless he proves that he or she has not changed his or her residence address] ARTICLE.

S 5. Subdivision 3 of section 168-f of the correction law, as amended by chapter 11 of the laws of 2002, is amended to read as follows:

3. The provisions of subdivision two of this section shall be applied to a sex offender required to register under this article except that such sex offender designated as a sexual predator or having been given a level three designation must ALSO personally verify his or her address with the local law enforcement agency NO LATER THAN TEN CALENDAR DAYS AFTER THE DATE OF RELEASE OR COMMENCEMENT OF PAROLE, POST-RELEASE SUPERVISION, OR PROBATION, OR RELEASE ON PAYMENT OF A FINE, CONDITIONAL DISCHARGE OR UNCONDITIONAL DISCHARGE OR ANY CHANGE OF RESIDENCE ADDRESS AND every ninety calendar days [after the date of release or commencement of parole or post-release supervision, or probation, or release on payment of a fine, conditional discharge or unconditional discharge] THEREAFTER. The duty to personally verify shall be temporarily suspended during any period in which the sex offender is confined to any state or local correctional facility, hospital or institution and shall immediately recommence on the date of the sex offender's release.

S 6. Paragraph (b) of subdivision 6 of section 168-l of the correction law, as amended by chapter 106 of the laws of 2006, is amended to read as follows:

(b) If the risk of repeat offense is moderate, a level two designation shall be given to such sex offender. In such case the law enforcement agency or agencies having jurisdiction and the law enforcement agency or agencies having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which shall include a photograph and description of the offender and which may include the exact name and any aliases used by the sex offender, [approximate] EXACT address [based on sex offender's zip code], background information including the offender's crime of conviction, mode of operation, type of victim targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides and the description of special conditions imposed on the offender to any entity with vulnerable populations related to the nature of the offense committed by such sex offender. Any entity receiving information on a sex offender may disclose or further disseminate such information at its discretion. In addition, in such case, the information described herein shall also be provided in the [subdirectory] DIRECTORY established in this article and notwithstanding any other provision of law, such information shall, upon request, be made available to the public.

Such law enforcement agencies shall compile, maintain and update a listing of vulnerable organizational entities within its jurisdiction. Such listing shall be utilized for notification of such organizations in disseminating such information on level two sex offenders pursuant to this paragraph. Such listing shall include and not be limited to: superintendents of schools or chief school administrators, superintendents of parks, public and private libraries, public and private school bus transportation companies, day care centers, nursery schools, preschools, neighborhood watch groups, community centers, civic associations, nursing homes, victim's advocacy groups and places of worship.

S 7. Subdivision 1 of section 168-q of the correction law, as amended by chapter 478 of the laws of 2009, is amended to read as follows:

1. The division shall maintain a subdirectory of level two and three sex offenders. The subdirectory shall include the exact address, address of the offender's place of employment and photograph of the sex offender along with the following information, if available: name, physical description, age and distinctive markings. Background information including the sex offender's crime of conviction, modus of operation, type of victim targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides and a description of special conditions imposed on the sex offender shall also be included. The subdirectory shall have sex offender listings categorized by county and zip code. [A copy of the subdirectory shall annually be distributed to the offices of local village, town, city, county or state law enforcement agencies for purposes of public access. The division shall distribute monthly updates to the offices of local village, town, city, county or state law enforcement agencies for purposes of public access. Such departments shall require that a person in writing provide their name and address prior to viewing the subdirectory. Any information identifying the victim by name, birth date, address or relation to the sex offender shall be excluded from the subdirectory distributed for purposes of public access. The subdirectory provided for herein shall be updated monthly to maintain its efficiency and usefulness and shall be computer accessible.] Such subdirectory shall be made available at all times on the internet via the division homepage. Any person may apply to the

division to receive automated e-mail notifications whenever a new or updated subdirectory registration occurs in a geographic area specified by such person. The division shall furnish such service at no charge to such person, who shall request e-mail notification by county and/or zip code on forms developed and provided by the division. E-mail notification is limited to three geographic areas per e-mail account.

S 8. Subdivision 3 of section 168-o of the correction law, as amended by chapter 11 of the laws of 2002, is amended to read as follows:

3. The district attorney may file a petition to modify the level of notification for a sex offender with the sentencing court or with the court which made the determination regarding the level of notification OR WITH ANY COURT IN WHICH THE SEX OFFENDER HAS BEEN CONVICTED OF A NEW CRIME, where the sex offender (a) has been convicted of a new crime, or there has been a determination after a proceeding pursuant to section 410.70 of the criminal procedure law or section two hundred fifty-nine-i of the executive law that the sex offender has violated one or more conditions imposed as part of a sentence of a conditional discharge, probation, parole or post-release supervision for a designated crime, and (b) the conduct underlying the new crime or the violation is of a nature that indicates an increased risk of a repeat sex offense. The petition shall set forth the level of notification sought, together with the reasons for seeking such determination. The district attorney shall bear the burden of proving the facts supporting the requested modification, by clear and convincing evidence. In the event that the district attorney's petition is granted, the sex offender 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 offender upon the ground that he or she is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may proceed as a poor person, pursuant to article eighteen-B of the county law.

S 9. Subdivision 4 of section 20.40 of the criminal procedure law is amended by adding a new paragraph (n) to read as follows:

(N) AN OFFENSE OF FAILURE TO REGISTER OR VERIFY AS A SEX OFFENDER AS REQUIRED BY ARTICLE SIX-C OF THE CORRECTION LAW MAY BE PROSECUTED IN (I) ANY COUNTY IN WHICH SUCH SEX OFFENDER RESIDES; (II) ANY COUNTY IN WHICH SUCH SEX OFFENDER PREVIOUSLY RESIDED DURING THE PERIOD IN WHICH SUCH SEX OFFENDER WAS REQUIRED TO REGISTER; (III) ANY COUNTY IN WHICH SUCH SEX OFFENDER NOTIFIED THE DIVISION OF CRIMINAL JUSTICE SERVICES, PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW, THAT HE OR SHE WAS RESIDING OR INTENDED TO RESIDE; OR (IV) ANY COUNTY IN WHICH SUCH SEX OFFENDER WAS CONFINED IN A STATE OR LOCAL CORRECTIONAL FACILITY, HOSPITAL OR INSTITUTION WHEN HE OR SHE MADE A NOTIFICATION OF A RESIDENCE ADDRESS AS REQUIRED BY ARTICLE SIX-C OF THE CORRECTION LAW.

S 10. Subdivision 3-a of section 190.30 of the criminal procedure law, as added by chapter 453 of the laws of 1999, is amended to read as follows:

3-a. (A) A sex offender registration form, sex offender registration continuation/supplemental form, sex offender registry address verification form, sex offender change of address form or a copy of such form maintained by the division of criminal justice services concerning an individual who is the subject of a grand jury proceeding, may, when certified by a person designated by the commissioner of the division of criminal justice services as the person to certify such records, as a

true copy thereof, be received in such grand jury proceeding as evidence of the facts stated therein.

(B) A STATEMENT, SIGNED BY A PERSON DESIGNATED IN PARAGRAPH (A) OF THIS SUBDIVISION, THAT HE OR SHE HAS MADE A SEARCH OF THE RECORDS MAINTAINED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES AND HAS FOUND NO RECORD OF A SEX OFFENDER REGISTRATION FORM, SEX OFFENDER REGISTRATION CONTINUATION/SUPPLEMENTAL FORM, SEX OFFENDER REGISTRY ADDRESS VERIFICATION FORM OR SEX OFFENDER CHANGE OF ADDRESS FORM IS PRIMA FACIE EVIDENCE THAT THE RECORDS OF THE DIVISION OF CRIMINAL JUSTICE SERVICES CONTAIN NO SUCH SEX OFFENDER REGISTRATION FORM, SEX OFFENDER REGISTRATION CONTINUATION/SUPPLEMENTAL FORM, SEX OFFENDER REGISTRY ADDRESS VERIFICATION FORM OR SEX OFFENDER CHANGE OF ADDRESS FORM.

S 11. Paragraph (a) of subdivision 2 of section 720.10 of the criminal procedure law, as amended by chapter 316 of the laws of 2006, is amended to read as follows:

(a) the conviction to be replaced by a youthful offender finding is for (i) a class A-I or class A-II felony, or (ii) an armed felony as defined in subdivision forty-one of section 1.20, except as provided in subdivision three, or (iii) rape in the first degree, RAPE IN THE SECOND DEGREE, criminal sexual act in the first degree, [or] CRIMINAL SEXUAL ACT IN THE SECOND DEGREE, SEXUAL ABUSE IN THE FIRST DEGREE, aggravated sexual abuse IN THE FIRST DEGREE, AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE, AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE, OR FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE, except as provided in subdivision three, or

S 12. Subdivision 3 of section 720.10 of the criminal procedure law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

3. Notwithstanding the provisions of subdivision two, a youth who has been convicted of an armed felony offense or of rape in the first degree, RAPE IN THE SECOND DEGREE, criminal sexual act in the first degree, [or] CRIMINAL SEXUAL ACT IN THE SECOND DEGREE, SEXUAL ABUSE IN THE FIRST DEGREE, aggravated sexual abuse IN THE FIRST DEGREE, AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE, AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE, OR FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE is an eligible youth if the court determines that one or more of the following factors exist: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution. Where the court determines that the eligible youth is a youthful offender, the court shall make a statement on the record of the reasons for its determination, a transcript of which shall be forwarded to the state division of criminal justice services, to be kept in accordance with the provisions of subdivision three of section eight hundred thirty-seven-a of the executive law.

S 13. This act shall take effect immediately; provided, however, that the amendments to subparagraph (ii) of paragraph (d) of subdivision 2 of section 168-a of the correction law, made by section two of this act shall apply to persons who committed a crime in another jurisdiction prior to the effective date of this act who establish a residence in this state on or after the effective date of this act.