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

1095

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. RABBITT, KOLB, FINCH, McDONOUGH, McKEVITT, MOLINARO -- Multi-Sponsored by -- M. of A. CALHOUN, CROUCH, WALKER -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, the criminal procedure law and the family court act, in relation to requiring persons adjudicated as juvenile delinquents, juvenile offenders and youthful offenders for sex offenses to register as sex offenders

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

Section 1. Section 168-a of the correction law is amended by adding two new subdivisions 19 and 20 to read as follows:

19. "CONVICTION" INCLUDES (A) ANY ADJUDICATION OF A PERSON THIRTEEN, FOURTEEN OR FIFTEEN YEARS OF AGE AS A JUVENILE DELINQUENT FOR THE COMMISSION OF AN ACT THAT, IF COMMITTED BY AN ADULT, WOULD BE A SEX OFFENSE OR A SEXUALLY VIOLENT OFFENSE, NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW; (B) ANY CONVICTION OF A JUVENILE OFFENDER FOR A SEX OFFENSE OR A SEXUALLY VIOLENT OFFENSE, NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW; AND (C) ANY YOUTHFUL OFFENDER FINDING THAT IS SUBSTITUTED FOR A CONVICTION OF AN ACT THAT IS A SEX OFFENSE OR A SEXUALLY VIOLENT OFFENSE, NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW.

20. "FACILITY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES" MEANS ANY FACILITY REFERRED TO IN SECTION FIVE HUNDRED FOUR OR FIVE HUNDRED FOUR-A OF THE EXECUTIVE LAW.

S 2. Subdivision 1 of section 168-c of the correction law, as amended by chapter 11 of the laws of 2002, is amended to read as follows:

1. In the case of any sex offender, it shall be the duty of the department, hospital, FACILITY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES or local correctional facility at least ten calendar days prior to the release or discharge of any sex offender from a correctional facility, hospital or local correctional facility to notify the division

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

LBD02785-01-9

of the contemplated release or discharge of such sex offender, informing the division in writing on a form provided by the division indicating the address at which he or she proposes to reside and the name and address of any institution of higher education at which he or she expects to be enrolled, attending or employed, whether for compensation or not, and whether he or she resides in or will reside in a facility owned or operated by such institution. If such sex offender changes his or her place of residence while on parole, such notification of the change of residence shall be sent by the sex offender's parole officer within forty-eight hours to the division on a form provided by the division. If such sex offender changes the status of his or her enrollment, attendance, employment or residence at any institution of higher education while on parole, such notification of the change of status shall be sent by the sex offender's parole officer within forty-eight hours to the division on a form provided by the division.

S 3. Subdivision 1 of section 168-e of the correction law, as amended by chapter 11 of the laws of 2002, is amended to read as follows:

1. Any sex offender, to be discharged, paroled, released to post-release supervision or released from any state or local correctional facility, hospital, FACILITY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES or institution where he or she was confined [or], committed OR PLACED, shall at least fifteen calendar days prior to discharge, parole or release, be informed of his or her duty to register under this article, by the facility in which he or she was confined or committed. The facility shall require the sex offender to read and sign such form as may be required by the division stating the duty to register and the procedure for registration has been explained to him or her and to complete the registration portion of such form. The facility shall obtain on such form the address where the sex offender expects to reside upon his or her discharge, parole or release and the name and address of any institution of higher education he or she expects to be employed by, enrolled in, attending or employed, whether for compensation or not, and whether he or she expects to reside in a facility owned or operated by such an institution, and shall report such information to the division. The facility shall give one copy of the form to the sex offender, retain one copy and shall send one copy to the division which shall provide the information to the law enforcement agencies having jurisdiction. The facility shall give the sex offender a form prepared by the division, to register with the division at least fifteen calendar days prior to release and such form shall be completed, signed by the sex offender and sent to the division by the facility at least ten days prior to the sex offender's release or discharge.

S 4. Subdivision 1 of section 168-f of the correction law, as amended by chapter 453 of the laws of 1999, is amended to read as follows:

1. Any sex offender shall, (a) at least ten calendar days prior to discharge, parole, release to post-release supervision or release from any state or local correctional facility, hospital, FACILITY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES or institution where he or she was confined or committed, or, (b) at the time sentence is imposed for any sex offender released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge, register with the division on a form prepared by the division.

S 5. Section 720.35 of the criminal procedure law, as added by chapter 981 of the laws of 1971, subdivision 1 as amended by chapter 452 of the laws of 1992, subdivision 2 as amended by chapter 412 of the laws of 2001, subdivision 3 as added by chapter 181 of the laws of 2000 and

subdivision 4 as added by chapter 7 of the laws of 2007, is amended to read as follows:

S 720.35 Youthful offender adjudication; effect thereof; records.

1. A youthful offender adjudication is not a judgment of conviction for a crime or any other offense, and does not operate as a disqualification of any person so adjudged to hold public office or public employment or to receive any license granted by public authority but shall be deemed a conviction only for the purposes of transfer of supervision and custody pursuant to section two hundred fifty-nine-m of the executive law AND ARTICLE SIX-C OF THE CORRECTION LAW.

2. Except where specifically required or permitted by statute or upon specific authorization of the court, all official records and papers, whether on file with the court, a police agency or the division of criminal justice services, relating to a case involving a youth who has been adjudicated a youthful offender, are confidential and may not be made available to any person or public or private agency, other than the designated educational official of the public or private elementary or secondary school in which the youth is enrolled as a student provided that such local educational official shall only have made available a notice of such adjudication and shall not have access to any other official records and papers, such youth or such youth's designated agent (but only where the official records and papers sought are on file with a court and request therefor is made to that court or to a clerk thereof), an institution to which such youth has been committed, the division of parole and a probation department of this state that requires such official records and papers for the purpose of carrying out duties specifically authorized by law; provided, however, that information regarding an order of protection or temporary order of protection issued pursuant to section 530.12 of this chapter or a warrant issued in connection therewith may be maintained on the statewide automated order of protection and warrant registry established pursuant to section two hundred twenty-one-a of the executive law during the period that such order of protection or temporary order of protection is in full force and effect or during which such warrant may be executed. Such confidential information may be made available pursuant to law only for purposes of adjudicating or enforcing such order of protection or temporary order of protection and, where provided to a designated educational official, as defined in section 380.90 of this chapter, for purposes related to the execution of the student's educational plan, where applicable, successful school adjustment and reentry into the community. Such notification shall be kept separate and apart from such student's school records and shall be accessible only by the designated educational official. Such notification shall not be part of such student's permanent school record and shall not be appended to or included in any documentation regarding such student and shall be destroyed at such time as such student is no longer enrolled in the school district. At no time shall such notification be used for any purpose other than those specified in this subdivision. IN THE CASE OF A YOUTHFUL OFFENDER FINDING THAT IS SUBJECT TO THE PROVISIONS OF ARTICLE SIX-C OF THE CORRECTION LAW, THE PROVISIONS OF THIS SUBDIVISION ARE SUPERSEDED TO THE EXTENT NECESSARY TO IMPLEMENT THE PROVISIONS OF SUCH ARTICLE.

3. If a youth who has been adjudicated a youthful offender is enrolled as a student in a public or private elementary or secondary school the court that has adjudicated the youth as a youthful offender shall provide notification of such adjudication to the designated educational official of the school in which such youth is enrolled as a student.

Such notification shall be used by the designated educational official only for purposes related to the execution of the student's educational plan, where applicable, successful school adjustment and reentry into the community. Such notification shall be kept separate and apart from such student's school records and shall be accessible only by the designated educational official. Such notification shall not be part of such student's permanent school record and shall not be appended to or included in any documentation regarding such student and shall be destroyed at such time as such student is no longer enrolled in the school district. At no time shall such notification be used for any purpose other than those specified in this subdivision. IN THE CASE OF A YOUTHFUL OFFENDER FINDING THAT IS SUBJECT TO THE PROVISIONS OF ARTICLE SIX-C OF THE CORRECTION LAW, THE PROVISIONS OF THIS SUBDIVISION ARE SUPERSEDED TO THE EXTENT NECESSARY TO IMPLEMENT THE PROVISIONS OF SUCH ARTICLE.

4. Notwithstanding subdivision two of this section, whenever a person is adjudicated a youthful offender and the conviction that was vacated and replaced by the youthful offender finding was for a sex offense as that term is defined in article ten of the mental hygiene law, all records pertaining to the youthful offender adjudication shall be included in those records and reports that may be obtained by the commissioner of mental health or the commissioner of mental retardation and developmental disabilities, as appropriate; the case review panel; and the attorney general pursuant to section 10.05 of the mental hygiene law.

S 6. Section 380.1 of the family court act, as added by chapter 920 of the laws of 1982, subdivision 3 as amended by chapter 181 of the laws of 2000 and subdivision 4 as added by chapter 7 of the laws of 2007, is amended to read as follows:

S 380.1. Nature and effect of adjudication. 1. No adjudication under this article may be denominated a conviction and no person adjudicated a juvenile delinquent shall be denominated a criminal by reason of such adjudication BUT SHALL BE DEEMED A CONVICTION ONLY FOR THE PURPOSES OF ARTICLE SIX-C OF THE CORRECTION LAW.

2. No adjudication under this article shall operate as a forfeiture of any right or privilege or disqualify any person from holding any public office or receiving any license granted by public authority. Such adjudication shall not operate as a disqualification of any person to pursue or engage in any lawful activity, occupation, profession or calling.

3. Except where specifically required by statute, no person shall be required to divulge information pertaining to the arrest of the respondent or any subsequent proceeding under this article; provided, however, whenever a person adjudicated a juvenile delinquent has been placed with the office of children and family services pursuant to section 353.3 of this article, and is thereafter enrolled as a student in a public or private elementary or secondary school, the court that has adjudicated such person shall provide notification of such adjudication to the designated educational official of the school in which such person is enrolled as a student. Such notification shall be used by the designated educational official only for purposes related to the execution of the student's educational plan, where applicable, successful school adjustment and reentry into the community. Such notification shall be kept separate and apart from such student's school records and shall be accessible only by the designated educational official. Such notification shall not be part of such student's permanent school record and shall not be appended to or included in any documentation regarding such

student and shall be destroyed at such time as such student is no longer enrolled in the school district. At no time shall such notification be used for any purpose other than those specified in this subdivision. IN THE CASE OF A JUVENILE DELINQUENCY ADJUDICATION THAT IS SUBJECT TO THE PROVISIONS OF ARTICLE SIX-C OF THE CORRECTION LAW, THE PROVISIONS OF THIS SUBDIVISION ARE SUPERSEDED TO THE EXTENT NECESSARY TO IMPLEMENT THE PROVISIONS OF SUCH ARTICLE.

4. Notwithstanding any other provision of law, where a finding of juvenile delinquency has been entered, upon request, the records pertaining to such case shall be made available to the commissioner of mental health or the commissioner of mental retardation and developmental disabilities, as appropriate; the case review panel; and the attorney general pursuant to section 10.05 of the mental hygiene law.

S 7. This act shall take effect immediately and shall apply to persons convicted of or adjudicated for a sex offense or a sexually violent offense prior to the effective date of this act who, on such effective date, have not completed service of the sentence or adjudication imposed therefor in its entirety.