

3403

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. PERRY, SPANO -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, BOYLAND, CLARK, COLTON, EDDINGTON, FIELDS, GALEF, GUNTHER, JAFFEE, JOHN, KOON, LATIMER, LAVINE, LUPARDO, MAYERSOHN, MENG, PERALTA, PHEFFER, P. RIVERA, SCHROEDER, SWEENEY, TITUS, WRIGHT -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to tracking certain sex offenders with a global positioning system

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 established in subdivision
7 five of section one hundred sixty-eight-1 of this article to determine
8 the level of notification pursuant to subdivision six of section one
9 hundred sixty-eight-1 of this article [and]; whether such sex offender
10 shall be designated a sexual predator, sexually violent offender, or
11 predicate sex offender as defined in subdivision seven of section one
12 hundred sixty-eight-a of this article; AND, IF SUCH SEX OFFENDER HAS
13 BEEN CONVICTED OF AN OFFENSE INVOLVING A CHILD AND DESIGNATED A LEVEL
14 THREE OFFENDER AND A SEXUAL PREDATOR OR PREDICATE SEX OFFENDER, THE
15 PERIOD OF TIME SUCH SEX OFFENDER SHALL SUBMIT TO GLOBAL POSITIONING
16 SYSTEM MONITORING AS PROVIDED IN SUBDIVISION THREE-A OF SECTION ONE
17 HUNDRED SIXTY-EIGHT-F OF THIS ARTICLE. At least fifteen days prior to
18 the determination proceeding, the district attorney shall provide to the
19 court and the sex offender a written statement setting forth the deter-
20 minations sought by the district attorney together with the reasons for
21 seeking such determinations. The court shall allow the sex offender to
22 appear and be heard. The state shall appear by the district attorney, or

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

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1 his or her designee, who shall bear the burden of proving the facts
2 supporting the determinations sought by clear and convincing evidence.
3 Where there is a dispute between the parties concerning the determi-
4 nations, the court shall adjourn the hearing as necessary to permit the
5 sex offender or the district attorney to obtain materials relevant to
6 the determinations from any state or local facility, hospital, institu-
7 tion, office, agency, department or division. Such materials may be
8 obtained by subpoena if not voluntarily provided to the requesting
9 party. In making the determinations, the court shall review any victim's
10 statement and any relevant materials and evidence submitted by the sex
11 offender and the district attorney and the court may consider reliable
12 hearsay evidence submitted by either party provided that it is relevant
13 to the determinations. Facts previously proven at trial or elicited at
14 the time of entry of a plea of guilty shall be deemed established by
15 clear and convincing evidence and shall not be relitigated. The court
16 shall render an order setting forth its determinations and the findings
17 of fact and conclusions of law on which the determinations are based. A
18 copy of the order shall be submitted by the court to the division. Upon
19 application of either party, the court shall seal any portion of the
20 court file or record which contains material that is confidential under
21 any state or federal statute. Either party may appeal as of right from
22 the order pursuant to the provisions of articles fifty-five, fifty-six
23 and fifty-seven of the civil practice law and rules. Where counsel has
24 been assigned to represent the sex offender upon the ground that the sex
25 offender is financially unable to retain counsel, that assignment shall
26 be continued throughout the pendency of the appeal, and the person may
27 appeal as a poor person pursuant to article eighteen-B of the county
28 law.

29 S 2. Section 168-f of the correction law is amended by adding a new
30 subdivision 3-a to read as follows:

31 3-A. THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION SHALL BE
32 APPLIED TO A SEX OFFENDER REQUIRED TO REGISTER UNDER THIS ARTICLE EXCEPT
33 THAT A SEX OFFENDER CONVICTED OF AN OFFENSE INVOLVING A CHILD AND DESIG-
34 NATED A LEVEL THREE OFFENDER AND A SEXUAL PREDATOR OR PREDICATE SEX
35 OFFENDER, MUST ALSO BE FITTED WITH A GLOBAL POSITIONING SYSTEM MONITOR
36 IMMEDIATELY UPON RELEASE OR COMMENCEMENT OF PAROLE OR POST-RELEASE
37 SUPERVISION, OR PROBATION, OR RELEASE ON PAYMENT OF A FINE, CONDITIONAL
38 DISCHARGE OR UNCONDITIONAL DISCHARGE. SUCH GLOBAL POSITIONING DEVICE
39 SHALL BE PROGRAMMED TO SEND FORTH AN ALARM WHEN SUCH SEX OFFENDER LEAVES
40 A CERTAIN JURISDICTION OR ENTERS A FORBIDDEN AREA. THE PERIOD OF SUCH
41 MONITORING FOR SUCH SEX OFFENDER SHALL BE DETERMINED BY THE COURT, AS
42 PROVIDED IN SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-D OF
43 THIS ARTICLE. THE DIVISION SHALL ANNUALLY EVALUATE SUCH SEX OFFENDER'S
44 FINANCIAL ABILITY TO OFFSET THE COST OF ADMINISTERING THE GLOBAL POSI-
45 TIONING SYSTEM AND LEVY SUCH ASSESSMENT UPON SUCH OFFENDER. FAILURE TO
46 PAY SUCH ASSESSMENT SHALL RESULT IN A FINANCIAL HARDSHIP HEARING AS
47 PROVIDED IN SECTION 420.40 OF THE CRIMINAL PROCEDURE LAW. SUCH SEX
48 OFFENDER SHALL HAVE THE RIGHT TO PETITION FOR RELIEF OR MODIFICATION OF
49 SUCH DUTY TO WEAR A GLOBAL POSITIONING SYSTEM MONITOR AS PROVIDED IN
50 SUBDIVISION TWO-A OF SECTION ONE HUNDRED SIXTY-EIGHT-O OF THIS ARTICLE.
51 THE DUTY TO WEAR A GLOBAL POSITIONING SYSTEM MONITOR SHALL BE TEMPORAR-
52 ILY SUSPENDED DURING ANY PERIOD IN WHICH SUCH SEX OFFENDER IS CONFINED
53 TO ANY STATE OR LOCAL CORRECTIONAL FACILITY, HOSPITAL OR INSTITUTION AND
54 SHALL IMMEDIATELY RECOMMENCE ON THE DATE OF SUCH SEX OFFENDER'S RELEASE.

55 S 3. Section 168-o of the correction law is amended by adding a new
56 subdivision 2-a to read as follows:

1 2-A. ANY SEX OFFENDER REQUIRED TO WEAR A GLOBAL POSITIONING SYSTEM
2 MONITOR PURSUANT TO THIS ARTICLE MAY PETITION THE SENTENCING COURT OR
3 THE COURT WHICH MADE THE DETERMINATION REGARDING SUCH MONITORING FOR AN
4 ORDER MODIFYING OR TERMINATING THE MONITORING PORTION OF THE DETERMI-
5 NATION. THE PETITION SHALL SET FORTH THE REASONS SUPPORTING SUCH MODIFI-
6 CATION OR TERMINATION. THE SEX OFFENDER SHALL BEAR THE BURDEN OF PROVING
7 THE FACTS SUPPORTING THE REQUESTED MODIFICATION OR TERMINATION BY CLEAR
8 AND CONVINCING EVIDENCE. SUCH A PETITION SHALL NOT BE CONSIDERED MORE
9 THAN ANNUALLY. IN THE EVENT THAT THE SEX OFFENDER'S PETITION TO MODIFY
10 THE LEVEL OF NOTIFICATION IS GRANTED, THE DISTRICT ATTORNEY MAY APPEAL
11 AS OF RIGHT FROM THE ORDER PURSUANT TO THE PROVISIONS OF ARTICLES
12 FIFTY-FIVE, FIFTY-SIX AND FIFTY-SEVEN OF THE CIVIL PRACTICE LAW AND
13 RULES. WHERE COUNSEL HAS BEEN ASSIGNED TO REPRESENT THE SEX OFFENDER
14 UPON THE GROUND THAT THE SEX OFFENDER IS FINANCIALLY UNABLE TO RETAIN
15 COUNSEL, THAT ASSIGNMENT SHALL BE CONTINUED THROUGHOUT THE PENDENCY OF
16 THE APPEAL, AND THE PERSON MAY APPEAL AS A POOR PERSON PURSUANT TO ARTI-
17 CLE EIGHTEEN-B OF THE COUNTY LAW.

18 S 4. This act shall take effect on the first of November next succeed-
19 ing the date on which it shall have become a law.